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AUTHORISED ECONOMIC OPERATORS

GUIDELINES

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ABBREVIATIONS

AEO	Authorised Economic Operator
AEOC	an AEO certificate – Customs simplifications
AEOS	an AEO certificate – Security and safety
AEOF	an AEO certificate – Customs simplifications/Security and safety
AC	Account Consignor
CCC	Community Customs Code[1]
CCIP	Customs Code Implementing Provisions[2]
EC	European Community
ERP	Enterprise resource planning
EU	European Union
EORI	Economic Operator Registration Identification
EOS	Economic Operator System
ICA	Issuing Customs Authority
ICAO	International Civil Aviation Organisation
ISO	International Standard Organisation
ISO/PAS	International Standard Organisation, Public Available Specification
IMO	International Maritime Organisation
KC	Known Consignor
MRA	Mutual Recognition Agreement
MS	Member State (s) of the EU
OJ	Official Journal
OTIF	Intergovernmental Organisation for International Carriage by Rail
PBE	Permanent Business Establishment
RA	Regulated Agent
SME	Small and Medium sized Enterprise
SAQ	Self-assessment questionnaire
TAPA	Transported Asset Protection Association
TAXUD	General Directorate 'Taxation and Customs Union'
UNECE	United Nations Economic Commission for Europe
UPU	Universal Postal Union
WCO	World Customs Organisation
WCO SAFE	World Customs Organisations Safe and Secure Framework of Standards

[1] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code

[2] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

PART 1, General information

The concept of AEO was introduced as one of the main elements of the security amendment[3] of the CCC.

The detailed provisions are laid down in the amendment of the CCIP[4]. These provisions were drafted on the basis of experiences from the AEO Pilot conducted in 2006.

At the same time the AEO Guidelines (TAXUD/2006/1450) were developed for both customs authorities and economic operators to ensure common understanding and uniform application of the new customs legislation related to the AEO concept, and to guarantee transparency and equal treatment of economic operators. However, at the time of development of the AEO Guidelines there was not much practical experience with the provisions and they would need to be further developed and explained with best practices after the AEO provisions had become operational and more practical experience had been acquired.

The current updated AEO Guidelines were developed as a result of more than 4 years practical implementation of the program and applications received and status granted in all 27 MS, monitoring action carried out in 2008 and 2009, and experience gained in mutual recognition negotiations with third countries.

These Guidelines do not constitute a legally binding act and are of an explanatory nature. Their purpose is to ensure a common understanding for both customs authorities and economic operators and to provide a tool to facilitate the correct and harmonised application by MS of the legal provisions on AEO. They constitute a single document together with its annexes covering all main tools used during the AEO application and management procedure. Please consult TAXUD customs and security website http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aeo/index_en.htm to find the latest version of the AEO Guidelines.

How to use these guidelines?

Part 1 of the Guidelines provides general information about the EU AEO program including the benefits of the status and mutual recognition.
Part 2 of the Guidelines describes the AEO criteria and the different aspects of the security requirements and supply chain security.
Part 3 of the Guidelines deals with the overall decision-making process concerning both customs authorities and economic operators.
Part 4 of the Guidelines describes different aspect of the exchange of information between customs authorities including consultation.
Part 5 of the Guidelines covers all aspects related to the management of the already granted status, including monitoring, reassessment, suspension and revocation.
Part 6 of the Guidelines contains all the Annexes.
Annex 1 includes the SAQ and its Explanatory Notes. It is recommended that the SAQ is prepared by the applicant at the very beginning of the application process as it aims at giving

[3] Regulation (EC) no 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) no 2913/92 establishing the Community Customs Code
[4] Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

a state of play of his business and procedures, in particular in the context of the AEO authorisation.

Annex 2 includes the document 'Threats, Risks and Possible solutions' which is addressed both to customs authorities and economic operators. It aims at facilitating the audit and the examination to ensure compliance with AEO criteria by matching the information provided in the SAQ and the risk areas identified and also provides examples of possible solutions to cover the risks and threats identified.

Annex 3 includes an example of a template for security declaration.

Section I - Introduction

The AEO status

An AEO can be defined as an economic operator as laid down in Article 1 (12) of the CCIP who is deemed reliable in the context of his customs related operations, and, therefore, is entitled to enjoy benefits throughout the EU.

On the basis of Article 5a of the CCC upon the security amendments, the AEO status can be granted to any economic operator meeting the following common criteria:

- record of compliance with customs requirements,

- satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,

- proven financial solvency and,

- where appropriate, security and safety standards.

The AEO status is granted in the form of a certificate as laid down in Article 14a (1) of the CCIP.

The AEO status granted by one MS is recognised by the customs authorities in all MS.

See also Part 1, Section III 'AEO benefits'.

1.I.1. AEOC:

An AEO status in the form of an AEOC is envisaged for economic operators established in the Community who would like to benefit from the various simplifications specifically provided for under the customs legislation.

The criteria for granting of an AEOC include:

- a record of compliance with customs requirements,
- satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls; and
- proven financial solvency.

As these criteria apply to almost all customs simplifications, obtaining an AEOC would facilitate the economic operator's eligibility and usage of the various simplifications. For

example, Regulation 1192/2008[5] introducing harmonised rules for simplified procedures have already aligned the criteria for granting both the AEOC and the authorisation for simplified declaration procedure and local clearance procedure. In addition, the Guidelines on simplified procedures/Single authorisation for simplified procedures (TAXUD/1284/2005, Rev.5.5) fully reflect the AEOC/AEOF.

The holder of AEOC is entitled to:
- easier admittance to customs simplifications listed in Article 14b (1) of CCIP as the criteria which have already been examined when granting the AEOC will not be re-examined again;
- fewer physical and document-based customs controls than other economic operators, with the exception of those controls related to security and safety measures;
- priority treatment if selected for control;
- possibility to request a specific place for such control.

See also Part 1, Section III 'AEO benefits'.

The criterion for appropriate security and safety standards is not required for this type of AEO certificate. Therefore holders of AEOC are not entitled to any of the AEO benefits related to security and safety of the international supply chain. The AEO status in the form of AEOC is not currently taken into account with respect to MRA with third countries.

1.I.2. AEOS:

An AEO status in the form of AEOS is envisaged for economic operators established in the Community who would like to benefit from particular facilitations related to customs controls relating to security and safety when the goods enter or leave the customs territory of the Community.

The criteria for granting of AEOS include:

- a record of compliance with customs requirements,
- satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls. However, unlike an AEOC, an AEOS is not required to have a logistical system which distinguishes between Community and non-Community goods within their records;
- proven financial solvency; and
- appropriate security and safety standards.

The holder of this certificate is entitled to:
- possibility of prior notification when selected for control, as described in Article 14b (2) of CCIP;
- reduced data set for entry and exit summary declarations as specified in Article 14b (3) of CCIP;
- fewer physical and document-based controls in respect of security and safety;
- priority treatment if selected for control;
- possibility to request a specific place for such control.

[5] Commission Regulation (EC) No 1192/2008 of 17 September 2008 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

The holder of an AEOS is recognised as an economic operator who has taken appropriate measures to secure his business and is thus a reliable actor in the international supply chain both from the perspective of the relevant government authorities and from the perspective of his business partners. The AEO status in the form of AEOS is taken into account with respect to MRA with third countries.

In the development of the AEO security and safety requirements, the WCO SAFE, existing international mandatory security standards for maritime and air transport and ISO/PAS 28001 have been studied and where possible integrated. The integration of the WCO SAFE was very important, as mutual recognition of secure AEO status could not be ensured without a globally recognised common standard. Furthermore, in order to avoid, for the purpose of applying for AEOS, unnecessary duplication of legal requirements on security and/or safety certificates in maritime, air cargo and surface freight transport at the international and/or European level, the relevant Commission services worked closely together. In this way requirements can be compatible enabling the authorities to recognise each others' security certifications and thus alleviating the compliance burden on the AEOS applicant.

See also Part 1, Section III 'AEO benefits'.

1.I.3. AEOF:

An AEO status in the form of AEOF is envisaged for economic operators established in the Community who would like to benefit from the various simplifications specifically provided for under the customs legislation and from particular facilitations related to customs controls on security and safety. The criteria for granting of AEOF include:

- a record of compliance with customs requirements;
- satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- proven financial solvency; and
- appropriate security and safety standards.

The holder of this certificate is entitled to all benefits as listed in points I.1 and I.2 of this section.
See also Part 1, Section III 'AEO benefits'.

1.I.4. Preparation before submitting an application:

The AEO programme is open to **all economic operators**, regardless of the size of the company including small and medium sized enterprises. However, for any specific guidance related to small and medium sized enterprises, please see Part 3, Section III.2. 'Small and medium-sized enterprises' of the AEO Guidelines.

There is no legal obligation for economic operators to become AEO, it is a matter of the operators' own choice based on their specific situation. Nor is there any legal obligation for AEOs to require their business partners to obtain AEO status.

An operator who applies and strives to obtain the AEO status should be aware that he has to be “in control” of his business. This means that depending on the type of the AEO certificate and the company's business activities and business model, the company should have in place

appropriate organisational measures in the fields related to the AEO criteria, aiming at ensuring that risks linked to his customs activities may be identified and avoided and/or minimised.
"In control" can be looked at in different ways:

In a general way it means that an operator has:

- clear vision, mission and strategy on his activities in particular with relation/influence on the international supply chain;
- implemented appropriate organisational measures;
- a system of appropriate internal controls;
- an evaluation system which leads to adjustments and refining the organisational structure and procedures when necessary.

In a more specific way it means that an operator has:

- identified and assessed any possible risks related to his business activities, in case of an AEO application this should include customs related risks and/or security and safety risks; and
- taken steps to mitigate identified risks by implementing internal procedures and routines, and appropriate control measures.

Before formally submitting the application, it is very important that economic operators take the following steps:

- *decision on the type of certificate* – the economic operator has to be fully aware from the beginning of the different types of AEO certificates and following an adequate assessment submits an application for the type of AEO certificate which is the most appropriate for him. While making this assessment the main question to be answered is "What kind of customs activities I'm involved in and in what aspects the AEO certificate can be beneficial for me?';
- *nomination of a contact person* **–** during the different stages of the application process various departments/people will be engaged in the process and the legislation requires the economic operator to appoint a person, from within the business, to act as a contact point for the customs authority. However it is recommended that this is done even before the formal submission of the application and, particularly within large businesses, a person is appointed at a senior level, with the authority to take decisions, to supervise and co-ordinate the application process;
- *preliminary information from the customs authorities* - an early exchange of information and discussion with the customs authority will save a lot of time once the formal AEO procedure starts. In order to identify the competent MS where to submit the application see also Part 3, Section I 'Determination of the competent Member State for submitting an AEO application';
- *consolidation of the information of different units/departments* – upon review of the main documents and preparation of the information required it is advisable that responsible units are aware of it and their specific responsibility regarding the overall AEO requirements/process;
- *carry out a self assessment against the AEO criteria* – it is strongly recommended that the SAQ tool at Annex 1 is used to assess the readiness of the economic operator to meet the AEO criteria. Before using the SAQ it is advisable to look at the points 1-9 of the SAQ Explanatory Notes and use them when answering the questions provided in the SAQ;

- *finalisation of the relevant documents* – as a result of all the previous steps it might be necessary to further amend the application and the other documents. Though some additional time might be required, it is more efficient if recommendations made by customs authorities are taken into account at this stage;
- *formal submission of the application* - the customs authority must examine the application and carry out initial acceptance checks within 30 calendar days of receipt, and will then carry out auditing procedures to verify if the conditions and criteria for the AEO status are met. A decision must normally be taken within 120 calendar days from the date of acceptance of the application, although this period can be extended by the customs authority by further 60 calendar days in duly justified circumstances. The period can be also extended on request by the applicant and with the agreement of the customs authority.

Section II - Who can become an AEO?

Article 5a (1) of the CCC stipulates that the status of 'authorised economic operator' can be granted, subject to the criteria provided for in the legislation, to **any economic operator established in the customs territory of the Community**.

This basic requirement implies fulfilment of two conditions: the applicant being an economic operator **and** being established in the customs territory of the Community.

1.II.1. Who is an 'economic operator'?

Article 1, point 12 of the CCIP provides that "Economic operator means: a person who, in the course of his business, is involved in activities covered by customs legislation".

Again the legal definition of 'economic operator' implies two main conditions. The applicant has to be a 'person' and has to be involved in activities covered by customs legislation.

Pursuant to Article 4(1) of the CCC "person" means:
— a natural person,
— a legal person,
— where the possibility is provided for under the rules in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person.

The national law of each Member State defines who is considered a natural person, a legal person or an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person.

Multinational companies usually consist of a parent company and subsidiary companies or/and branches.

A subsidiary is an individual legal person, i.e. an individual legal person or an association of persons registered in the local company register according to the Member State's company law where the relevant subsidiary is established. Therefore, if a parent company would like to get the AEO status for a part or all of its subsidiaries, AEO applications must be submitted by all the subsidiary companies wishing to get the AEO status. However, if the subsidiary companies are applying the same corporate standards/procedures for their customs related activities, the questionnaire, contained in Annex 1 may be completed by the parent company

on behalf of all the subsidiaries that have submitted an application. Nevertheless, it should be considered that the ICA may request to receive all documentation in its own language.

A "branch", on the other hand, is an office/premise/another location of the company itself and forms part of the company's total assets and thus is not an individual legal person. In this case a single application, covering all the EU branches that are not individual legal persons or association of persons, has to be submitted by the parent company wishing to acquire the AEO status. In order to identify the competent MS where to submit the single application see Part 3, Section I 'Determination of the competent Member State for submitting an AEO application'.

1.II.2. Who is an economic operator 'established in the Community':

Pursuant to Article 4(2) of the CCC, a person is established in the Community, if:

(a) in the case of a natural person, he is normally resident there,

(b) in the case of a legal person or an association of persons, it has in the Community:
- its registered office, or
- central headquarters, or
- a permanent business establishment.

The general definition of PBE is included in the Model Convention with respect to taxes on income and on capital (OECD model treaty)[6]. In line with the Convention (Article 8), the fact that a PBE is not paying income tax in a particular MS is immaterial for its status as PBE. The branch may qualify as a PBE even if it is not paying income tax in a particular MS, and may thus qualify the parent company as being "established in the Community" and entitle it to apply for a particular customs simplification/AEO authorisation provided in the customs legislation.

Multinational or big companies usually consist of a parent company and subsidiaries or branches which can be established in one or several MS. Although being a PBE of the same parent company these companies can have different legal status in the different MS as the legal form under they operate in MS depends on how they have chosen to operate and mainly on the national legislation of the MS concerned. As a result a parent company may have some of its branches considered individual legal persons in some MS (i.e. an individual legal person registered in the local company register according to the MS company law) and also some PBE are not considered being individual legal person in other MS.

In this case an economic operator which wants to apply for an AEO status for all its PBEs has to assess in which group they belong. In case they are legal persons or fall under the definition described in the third indent of Article 4(1) of the CCC they shall apply separately for an AEO status in the relevant MS. In all others cases they cannot apply separately for an AEO status; instead a single application covering all of them shall be submitted by the parent company considered a person accordingly the EU legislation.

Customs authorities should also consider that the general conditions are the same for all kinds of authorisations/decisions for which the economic operator applies for. For example customs

[6]MODEL CONVENTION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL Article 5 -For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

cannot deem an economic operator to be a legal person when applying for an EORI number or for a local clearance procedure authorisation and deem it to be a simple branch when it applies for AEO status while using the same legislation to do so.

The only exceptions from the requirement for being established in the customs territory of the Community when applying for AEO status are laid down in Article 14g of the CCIP.

1.II.3. Who is an economic operator 'involved in customs related activities':

The other aspect that has to be considered when establishing whether a particular applicant is an 'economic operator' is whether his economic activity is 'covered by customs legislation'.
Applications for AEO status may only be accepted from an economic operator who in the course of his business is involved in activities covered by customs legislation. On the basis of this definition there are number of situations where the economic operator cannot apply for an AEO status as he is not involved in customs activities, e.g.:

- an EU based supplier who distributes only goods already in free circulation to an EU based manufacturer;
- a transport operator that moves only goods in free circulation which are not under any other customs procedure within the customs territory of the Community;
- a manufacturer producing goods only for the EU internal market and using raw materials already in free circulation;
- a consultant who is only consulting/providing opinion in customs matters.

The definition of economic operator does not restrict the notion of "involvement in activities covered by customs legislation" to direct involvement only. A manufacturer producing goods to be exported can apply for an AEO status even if the export formalities are performed by another person.
The concept of AEO Security and Safety is closely linked to supply chain management. Operators who are handling goods subject to customs supervision or handling customs related data regarding these goods can apply for AEOS.

However, each case has to be treated separately with due account of all the circumstances relevant for the particular economic operator.

1.II.4. Stakeholders in an international supply chain

The international end-to-end supply chain from a customs perspective represents the process, e.g. from manufacturing goods destined for export until delivery of the goods to the buyer in another customs territory (being the customs territory of the EC or another customs territory). The international supply chain is not a discrete identifiable entity. It is a series of ad hoc constructs comprised of economic operators representing various trade industry segments. In some cases the economic operators are all known and a long-term relationship may exist, whilst in other cases economic operators may change frequently or may only be contractually related for a single operation/shipment. From an operational point of view the reference to "supply chains" instead of "supply chain" is better, meaning that any economic operator may be involved not just in one theoretical supply chain but in many practical ones.

In practice, many businesses can have more than one role in a particular supply chain and will fulfil more than one of the responsibilities related to these roles. When applying for AEO

status the applicant must ensure his application includes the customs related activities for all their responsibilities within the international supply chain.

The various stakeholders and their different responsibilities in the international supply chain, relevant from a customs perspective which can apply for an AEO status are mainly the following:

a) manufacturer

In the framework of the international supply chain a manufacturer is an economic operator who in the course of his business produces goods destined for export.

A manufacturer's responsibility in the international supply chain can be, *inter alia*:

- ensure a safe and secure manufacturing process for its products;
- ensure a safe and secure supply of its products to its clients;
- ensure the correct application of customs rules with regard to the origin of the goods.

b) exporter

An exporter, pursuant to Article 788 of CCIP, is the person on whose behalf the export declaration is made and who is the owner of the goods or has a similar right of disposal over them at the time when the declaration is accepted. Where the ownership or a similar right of disposal over the goods belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community.

An exporter's responsibility in the international supply chain can be, *inter alia*:

- responsible for the correctness of the export declaration and for its timely lodgement, if the export declaration is lodged by the exporter;
- responsible for lodging an export declaration which, when required, contains the data elements of the exit summary declaration;
- apply the legal export formalities in accordance with the customs rules, including commercial policy measures and where appropriate, export duties;
- ensure a secure and safe supply of the goods to the carrier or freight forwarder or customs agent.

c) freight forwarder

A freight forwarder organises the transportation of goods in international trade on behalf of an exporter, an importer or another person. In some cases, the freight forwarding applicant acts as a carrier and issues its own transport contract, e.g. bill of lading. A freight forwarder's typical activity can include: obtaining, checking and preparing documentation to meet customs requirements.

A freight forwarder's responsibility in the international supply chain can be, *inter alia*:

- apply the rules on transport formalities
- ensure, if relevant, a secure and safe transport of goods
- apply, where appropriate, the rules on summary declarations in accordance with the legislation

d) warehouse keepers and other storage facility operators

A warehouse-keeper is a person authorised to operate a customs warehouse pursuant to Article 99 of the CCC, or a person operating a temporary storage facility pursuant to Article 51 (1) of the CCC and Article 185 (1) of CCIP, or free zone facilities.

A warehouse-keeper's responsibility in the international supply chain can be, *inter alia*:

- ensure that while the goods are in a customs warehouse or in a temporary storage, they are not removed from customs supervision and fulfil other obligations that arise from the storage of goods covered by the customs warehousing procedure or by the rules on temporary storage;

- comply with the particular conditions specified in the authorisation for the customs warehouse or for the temporary storage facility;

- provide an adequate protection of the storage area against external intrusion;

- provide an adequate protection against unauthorised access to, substitution of and tampering with the goods.

e) customs agent

A customs agent referred to in these AEO Guidelines means a customs representative as laid down in Article 5 of CCC. A customs representative is acting on behalf of a person who is involved in customs related business activities (e.g. an importer or an exporter). A customs representative may act either in the name of this person (direct representation) or in his own name (indirect representation).

A customs agent's responsibility in the international supply chain can be, *inter alia*:

- apply the necessary provisions in accordance with the customs rules specific for the type of representation, for placing the goods under a customs procedure;

- in case of indirect representation, responsible for the correctness of the customs or summary declaration and for its timely lodgement.

f) carrier

A carrier is the person actually transporting the goods or who has undertaken a contract, and issued e.g. a bill of lading or air waybill, for the actual carriage of the goods.

A carrier's responsibility in the international supply chain can be, *inter alia*:

- ensure a secure and safe transport of goods while in the carrier's custody, in particular avoiding unauthorised access to and tampering with the means of transport and the goods being transported;

- provide timely transport documentation as required by law;

- apply the necessary legal formalities in accordance with customs law;

- apply, where appropriate, the rules on summary declarations in accordance with the legislation.

g) importer

An importer is an economic operator who is making or on whose behalf an import declaration is made. However, from a more general trade perspective and in particular with a view to the substance of the AEO program, the definition of the real importer should be considered from a more broader perspective (the person making the import declaration is not necessarily always the person who also places the goods on the market).

An importer's responsibility in the international supply chain can be, *inter alia*:

- responsible in his dealings with the customs authorities, for assigning the goods presented to customs a customs-approved treatment or use;

- responsible for the correctness of the declaration and that it will be lodged in time;

- where the importer is the person lodging the entry summary declaration responsible for the correct application of the rules on summary declarations;

- apply the necessary legal formalities in accordance with customs rules relevant to the import of goods;

- ensure a secure and safe receipt of goods, in particular avoiding unauthorised access to and tampering with the goods.

h) others, for example, terminal operators, stevedores and cargo packers.

Section III - AEO Benefits

The AEO certificate is issued to the applicant, after a thorough audit of his business, and not to his business partners. The AEO status granted relates to the economic operator itself and applies to its own business activities and he is the only one entitled to receive the benefits. This is a general principle for all types of AEO certificates that can be issued to economic operators with different roles in the international supply chain.

The AEO status shall be recognised across all MS, pursuant to Article 5a of the CCC, therefore, the holder of an AEO certificate shall receive the same benefits in all MS.

The AEO benefits, dependant on the type of the certificate, are summarised below. To enable customs authorities to deliver these benefits, the AEO should ensure its EORI number is declared to customs.

1.III.1. Easier admittance to customs simplifications

This benefit is applicable to holders of AEOC and AEOF.

Economic operators do not need to have AEO status in order to get an authorisation for a simplification provided for under the customs rules. However, for some simplifications, they do need to fulfil certain AEO criteria or part of them to obtain the relevant authorisation.
Article 14b (1) of the CCIP provides that if the person requesting a particular simplification is the holder of an AEOC or AEOF, customs authorities shall not re-examine those conditions which have already been examined when granting the AEO status.
The criteria which are deemed to be met by an AEO can be found at the appropriate articles of the CCIP related to the specific simplification. A list of the simplifications concerned is provided below:

Local clearance and simplified declaration - Article 253c
Regular shipping service Article 313b (3a)
Proof of Community status/authorised consignor Article 373 (3)
Proof of Community status/Article 324e Article 373 (3)
Transit simplifications Articles 373 (3) and 454a (5)
T5 control copy/Art. 912g not specified but inherent in Article 912g (4)

The AEO status was introduced in the CCC and CCIP after the other simplifications and therefore the majority of economic operators have already been authorised for them before they get the AEO status. Nevertheless, this particular benefit is still very important for AEOs, or those considering applying for an AEO status, and even more for customs authorities. In terms of planning any monitoring activities for the AEO they would be coordinated with those for other authorisations granted and thus avoiding duplication as much as possible. In order that this benefit is used in the most efficient way both for AEOs and for customs authorities, the following should be taken into account:

- as simplifications are conditional on compliance with certain AEO criteria, the relationship/dependency between the specific authorisation and the AEO status have to be

ensured/kept throughout the process, covering not only the application phase but also the monitoring and reassessment once the authorisation/status are granted;
- the examination of the relevant AEO criteria before granting the status of an AEO is not an 'abstract' exercise and is always done against the particular business activities that the economic operator has. Therefore, when an application for a specific authorisation is submitted customs authorities should not re-examine the criteria which have been already checked but focus only on any new elements/requirements.
For further details, in particular as far as local clearance and simplified procedure is concerned, please see also the Guidelines on simplified procedures/Single authorisation for simplified procedures (TAXUD/1284/2005, Rev.5.5).

1.III.2. Prior notification

This benefit is applicable to holders of AEOS or AEOF. Article 14b (2) of the CCIP lays down that when an entry/exit summary declaration has been lodged by an AEO, the competent customs office may, before the arrival/departure of the goods into/from the customs territory of the Community, notify the AEO when, as a result of security and safety risk analysis, the consignment has been selected for further physical control. The prior notification might be particularly important for AEO operating at big ports as it will allow them better planning of their business.

This notice shall only be provided where it does not jeopardise the control to be carried out. The customs authorities may, however, carry out physical control even where the AEO has not been notified.

1.III.3. Reduced data set for entry and exit summary declarations

This benefit is applicable to holders of AEOS or AEOF. Article 14b (3) of CCIP allows them when submitting an entry/exit summary declarations to use the reduced data set as shown in Table 5 of Annex 30A of CCIP. This benefit can only be realised by:

AEOS or AEOF consignee or consignors when lodging the entry/exit summary declaration themselves with the knowledge and consent of the carrier, or

AEOS or AEOF carriers lodging ENS/EXS for shipments controlled by AEOF or AEOS consignees or consignors or, freight forwarders or customs agents if lodging the declaration on behalf of AEOF or AEOS consignee or consignors.

1.III.4. Fewer physical and document-based controls

This benefit is applicable to all categories of AEO. Article 14b (4) of the CCIP lays down that an AEO shall be subject to fewer physical and document based controls than other economic operators. However, the customs authorities may decide to control shipments of an AEO in order to take into account a specific threat, or control obligations set out in other Union legislation (i.e. related to product safety etc.).

At the same time there are also examples where the AEO status is favourably taken into account even for other controls[7].

[7] COMMISSION REGULATION (EC) NO 1276/2008 OF 17 DECEMBER 2008
on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts

It is also important that the distinction between controls related to security and safety and controls related to application of other measures provided for in the customs legislation is made.

This means that only AEOS and AEOF that fulfil the security and safety criterion shall benefit from fewer physical and document-based controls related to security and safety.

Similarly only AEOC and AEOF shall benefit from fewer physical and document-based controls related to other measures provided for in the customs legislation. This includes fewer controls at the point of importation or exportation and can be taken into account for post clearance controls as well.

To deliver this benefit, a lower risk score should be incorporated into the customs risk management systems. Nevertheless, while the lower risk score is due to the fact that the status of the AEO is always favourably taken into account, the level of reduction can vary depending on the role and responsibility of the AEO in the particular supply chain.

It has to be also taken into account that this benefit is related with the overall risk assessment done for a particular transaction. Thus, although the AEO status would always count for favourable treatment other risk indicators e.g. country of origin etc. might trigger the necessity for a control to be done.

Taking the abovementioned general principles into consideration the following are some examples of potential situations:

a) entry summary declaration (ENS):

In most of the cases the requirements and responsibilities for submitting an ENS are for the carrier. In case he is the person submitting the ENS and is a holder of an AEOF or AEOS, he is directly entitled to receive lower risk scores being his systems and procedures related to security of conveyance, business partners, employees already examined by customs authorities. If in addition to the carrier also the consignee is holder an AEOF or AEOS the level of controls could be further reduced.

Besides, if the declared consignor also holds an equivalent AEO certificate issued by a customs authority in a third country which is recognised by the EU under a mutual recognition agreement (see Part 1, Section IV 'Mutual recognition') all parties declared in the ENS, including those who have direct information of the goods involved, would have had their security and safety systems verified by customs authorities, either in the EU or by a comparable process by customs authorities in the third country. This would contribute to maximise the security of the end to end supply chain and result in an even higher level of reduction of controls related to security and safety.

There might be also cases where the data necessary for ENS are submitted through a customs declaration (e.g. for transit). The level of reductions is assessed in the same way by taking into consideration what is the role and responsibilities of the actors involved. For example, a freight forwarder who is a holder of an AEO status is the principal in a customs declaration for transit with the data set for ENS. In this case, the type of the certificate should be considered first. In case the freight forwarder is a holder of an AEOC, the risk scores

related to the customs procedure concerned can be reduced accordingly as for the traditional customs declaration for transit, the freight forwarder is the principal. He bears (even financial) responsibility for the goods carried and for the accuracy of the information given as well as for the compliance with the transit rules from the office of departure till the office of destination.
However, for reductions of risk scores related to security and safety controls the principal shall be holder of AEOS or AEOF.

b) customs declaration with security and safety data for exit summary declaration (EXS) included:

In most of the cases the exporter provides the security and safety data through the export customs declaration. Therefore, in general, if the exporter is a holder of an AEOS or AEOF he gets higher level of reductions in terms of security and safety controls.

c) customs declarations (security and safety data for ENS/EXS not included):

- the holder of an AEOC or AEOF is a customs agent and his client whom he represents is a non-AEO. The AEO customs agent is lodging a customs declaration for free circulation:

In general, the customs authorities should lower the risk score in accordance with the degree of the AEO customs agent's involvement into the representation of his client. This is depending on the type of representation.

Allocation of benefits is related to the notion of 'Declarant'. It is important to note that according to Article 4 (18) of the CCC the 'Declarant' is "*the person making the customs declaration in his own name or the person in whose name a customs declaration is made*".

In case of direct representation, the customs agent is a direct representative of the importer which means that the customs agent acts in the name of the importer. Thus "the AEO holder" (the customs agent) and "the declarant" (the importer) are not the same persons.

Taking into consideration that customs authorities have checked the customs routines and procedures of the customs agent, his AEO status should be positively taken into account. However, at the same time it should be also taken into account that in this case the one responsible for the accuracy of the information given in the customs declaration, authenticity of the documents presented and compliance with all the obligations relating to the entry of the goods in question under the procedure concerned is the declarant (the importer who is not an AEO) and not the AEO holder.

In case of indirect representation, the customs agent who is the holder of the AEO status is acting in his own name. He is the 'declarant' and his procedures in place for bearing the responsibilities enshrined in Article 199 of the CCIP have been verified by customs authorities.

- the holder of an AEOC or AEOF is an importer and he works with a customs agent who is not an AEO. The importer is lodging a customs declaration for free circulation:

The management of the risk should also be treated in accordance with the degree of involvement of the customs agent into his client's dealings with customs authorities.

1.III.5. Priority treatment of consignments if selected for control

This benefit is applicable to all categories of AEO. Article 14b (4), second sub-paragraph of the CCIP lays down that when, following risk analysis, goods that are covered by an entry or exit summary declaration or a customs declaration lodged by an AEO are selected for examination, the necessary controls shall be carried out as a matter of priority. This means that the consignment should be the first to be controlled if others are selected from non-AEO's.

The granting of this benefit is directly related, and dependent upon, the mode of transport involved and the infrastructure of the port/airport facility.

1.III.6. Choice of the place of controls

This benefit is applicable to all categories of AEO. Article 14b (4), second sub-paragraph of the CCIP provides the possibility that an AEO can request that customs control be diverted to an alternative location which might offer a shorter delay and/or lower costs. However, this is subject to individual agreements with the customs authority concerned. The selected place for control should always allow customs authorities to carry out the necessary controls and not jeopardise the results of the controls.

Although the possibility for choice of the place of controls is also provided under Article 239 (2) of the CCIP for all economic operators under other conditions and procedures, there is a distinction between the general provisions and the provision in the form of a benefit for AEOs, as customs can take account of the status in determining whether to grant the request.

Several practical situations may appear in terms of an AEO:

- *due to his business activities an AEO needs to use that option on a permanent base and in combination with all the other 'possibilities' provided under the local clearance procedure*

  In this case the status of an AEO is not enough to allow the economic operator automatic use of 'local clearance procedure' and permanent clearance of the goods in his premises. The AEO has to apply separately for the authorisation for 'local clearance' procedure. However, as far as the criteria are the same the AEO status will allow the operator to get the authorisation for local clearance procedure much easier and quicker than the other operators. It should be also taken into account that the 'local clearance procedure' is given for particular goods initially indicated in the authorisation.

- *on a case by case base, for particular transactions an AEO can ask for another place where the controls to be carried out*

  In this case customs authorities shall take into account the AEO status and in case there are no other circumstances that can prevent it customs authorities have to allow that the control is carried out in the place chosen by the AEO. These are situations where the status of the AEO and the knowledge that customs authorities have can be used as a benefit not enjoyed by other operators.

1.III.7. Indirect benefits

It is important to highlight that, in addition to the direct benefits provided for in the legislation, an AEO may derive benefits that are not directly linked to the customs side of his business. Although they are considered as 'indirect' benefits and therefore not explicitly reflected in the legislation they are important as they may have a highly positive effect on the overall business of the AEO.

The AEO approach helps economic operators to analyse in details all their related international supply chain processes. Activities of all concerned departments are generally assessed during the preparation of the AEO application. In most cases efficiency and cooperation between these services are optimised in order to obtain more transparency and visibility of the supply chain.

Investments by operators in increasing their security and safety standards may yield positive effects in the following areas: visibility and tracking, personnel security, standards development, supplier selection and investment, transportation and conveyance security, building organisational infrastructure awareness and capabilities, collaboration among supply chain parties, proactive technology investments and voluntary security compliance.
Some examples of the indirect benefits that may result from these positive effects could be as follows:

- reduced theft and losses;
- fewer delayed shipments;
- improved planning;
- improved customer service;
- improved customer loyalty;
- improved inventory management
- improved employee commitment;
- reduced security and safety incidents;
- lower inspection costs of suppliers and increased co-operation;
- reduced crime and vandalism;
- improved security and communication between supply chain partners.

1.III.8. Recognised as a secure and safe business partner

An AEO who meets the security and safety criterion is considered to be a secure and safe partner in the supply chain. This means that the AEO does everything in his power to reduce threats in the supply chains where he is involved. The AEO status, including the possibility to use the AEO logo enhances his reputation.
The AEO logo is copyrighted by the EU and is not freely available for downloading. An economic operator who wants to use it has to request permission from the competent customs authority (generally the one who has issued the status). The AEO logo can be used under the following conditions:
- the right to use the logo is on condition of having a valid AEO certificate and only the holder of the AEO certificate can use it;
- the AEO must stop using it as soon as its AEO status is suspended or revoked;
- any abuse or misuse of it will be subject to prosecutions by the EU.

1.III.9. Improved relations with Customs

An AEO should have a designated contact point in the customs authority to which it can address its questions. The contact point might not be able to provide all answers on all

questions but would guide the AEO on how best to proceed and whom to further contact if necessary.

1.III.10. Improved relations and acknowledgement by other government authorities

The AEO status is gaining recognition and importance in many areas. Currently, there are a number of certificates or authorisations for which the requirements are either one or more of the AEO criteria, or directly the AEO status. Thus, this brings advantages for the AEO when applying for these certificates/authorisations. For the time being the following examples can be given:

- aviation legislation[8]

Aviation authorities certify companies that are involved in the carriage of air cargo. Depending on the role in the supply chain, companies can be granted the status of a RA, KC or AC.

If a holder of an AEOS or AEOF applies for the status of a RA or a KC, the AEO status should be taken into account.

In case of an AC there is a direct recognition for holders of an AEOS or AEOF as they do not need to sign the declaration of commitments 'account consignor' but are automatically recognised as AC due to relevant law.

- Approved Economic Operator[9] (APEO)

For economic operators dealing with fishery products and catch certificates it is possible to apply for the status of an APEO. APEO should be eligible to use simplified procedures within the import of fishery products into the EU.

For issuing the status of an APEO it is mandatory to have an AEO status as laid down in the relevant regulations. Besides, if the APEO applicant is a holder of an AEOS or AEOF, the application process is simplified.

- others

Security and safety is gaining in significance and importance for different stakeholders. The AEO status is one of the biggest security initiatives worldwide and attracting increasing attention.

Section IV - Mutual recognition

The WCO's SAFE Framework identifies mutual recognition as a key element to strengthen and facilitate the end-to-end security of international supply chains and as a useful tool to avoid duplication of security and compliance controls. A MRA can contribute greatly to

[8] Regulation (EC) No 300/2008 of the European Parliament and the Council of 11 March 2008 on common rules in the field of civil aviation security. Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down measures for the implementation of common basic standards on aviation security

[9] Commission Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

facilitation and risk management and grant substantial, comparable and, where possible, reciprocal benefits to reliable international partners and economic operators.

There are two different types of mutual recognition:

- where one customs administration recognises the AEO status granted by another country:

The objective of mutual recognition of AEO status or equivalent is that one customs administration recognises the validation findings and AEO authorisations issued under the other programme and agrees to provide substantial, comparable and, where possible, reciprocal benefits/facilitations to the mutually recognised AEOs. Generally this will involve taking the AEO status of an operator authorised by the other customs authority into account favourably in the risk assessment to reduce inspections or controls for security and safety purposes. Currently only AEOs which meet the security and safety criterion will be recognised and receive benefits within a MRA.

- where one customs administration recognises the customs security standards, risk assessment controls and control results of another country:

The objective of mutual recognition of customs security standards, controls and control results is that two customs administrations recognise reciprocally the customs security standards, controls and control results carried out by the other customs administration thus avoiding duplication of interventions. This will allow international trade to run smoothly whilst maintaining a consistent level of security.

Identification and validation of AEOs

For customs administrations to deliver the benefits associated with mutual recognition it is imperative that they can recognise each other's AEOs.

In the EU the validation of the AEOs is by the use of the EORI number. Other customs administrations have similar processes whereby their ‘customs registration’ number is used to validate their AEOs. However, the characters used and the length of such ‘trader identification numbers’ can differ from country to country or country to customs union.

The EU has raised the issue of a common data set for trader identification numbers with the WCO. Until a universal standard is agreed, the method of trader identification will be established between EU and its trading partners as part of each MRA.

To comply with EU Data Protection legislation AEOs shall provide their written consent before their authorisation details can be exchanged with the customs administration of the partner country and the benefits of the MRA are delivered. It should be considered that this consent is different from the consent for having listed the AEO name's on the TAXUD website. Both consents can be provided by filling in and duly signing the relevant box in the SAQ. At any time it is possible for the AEO to withdraw or to restart his consent.

Specific benefits

Each individual MRA will set out the specific benefits within the agreement. These benefits will be dependent on the type of the MRA. However, the reduced risk scores and, therefore, reduced controls on AEOs, are benefits which are granted under almost all existing mutual recognition of AEO arrangements/agreements and may significantly contribute to the facilitation of legitimate trade. The reduction of controls will lead to a quicker release of goods and more predictability for trade. Furthermore, a major benefit stemming from mutual recognition of the AEO will be that AEOs, including those in third countries, may primarily seek cooperation with other AEOs to secure the end to end supply chain.
In addition to the general benefit of reduced inspections or controls for security and safety purposes the benefits may include measures for trade recovery, for example establishing a joint business continuity mechanism to respond to disruptions in trade flows, where priority cargos shipped by AEOs could be facilitated and expedited to the extent possible by the customs authorities.
In its negotiations on mutual recognition, the EU is emphasising the need to develop further benefits under MRA. Therefore, normally a clause is included in the agreements stating that both sides will work towards further benefits to be granted to AEOs.

Where can I find details of the EU MRA?

The EU has already entered into a number of MRA with its trading partners. The objective is to reach mutual recognition with its main trading partners who have also established their AEO programs. The following link provides you with details of the individual MRA:

http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/index_en.htm

PART 2, AEO criteria

2.1. Appropriate record of compliance with customs requirements

As indicated in Article 14(h) of the CCIP, record of compliance with customs requirements shall be considered as appropriate if over the last three years preceding the submission of the application no serious infringement or repeated infringements of customs rules have been committed by any of the following persons:

- the applicant,
- the persons in charge of the applicant company or exercising control over its management,
- if applicable, the applicant's legal representative in customs matters,
- the person responsible in the applicant company for customs matters.

Nevertheless, the record of compliance with customs requirements may be considered as appropriate if the competent customs authority considers any infringement to be of negligible importance, in relation to the number or size of the customs related operations, and not creating doubts concerning the good faith of the applicant.

If the persons exercising control over the applicant company are established or resident in a third country, or if the applicant has been established for less than three years, the customs authorities shall assess the compliance with that criterion on the basis of the records and information that are available to them.

The following common specific circumstances are recommended to be taken into account in the evaluation of the infringement by the competent customs authorities throughout EU:

- the assessment of the compliance should cover compliance across all customs activities of the applicant;
- the term "infringement" shall refer not only to the acts which are discovered by customs authorities on the occasion of checks carried out at the time when the goods are introduced into the customs territory of the Community, or being placed under a customs procedure. Any infringements of the customs rules discovered on the occasion of any post clearance control carried out at a later stage, shall also be considered and assessed, as well as any infringements that could be discovered through the use of other customs authorisations and any other source of information available for customs authorities;
- infringements made by freight forwarders, customs agents or other third parties acting on behalf of the applicant shall be also taken into account. The applicant should show evidence that appropriate measures have been put in place to ensure the compliance of persons acting on its behalf such as clear instructions to those parties, monitoring and checking of the accuracy of declarations and remedial action when errors occur;
- failures to comply with domestic non-customs legislation by the applicant in the different Member States are not to be ignored, although in this case those failures should be considered in the light of the trader's good faith and relevance for its customs activities;
- where penalties related to a specific infringement are revised by the competent authority following an appeal or review their assessment of the seriousness of the infringement should be based on the revised decision. Where the penalty for an infringement is withdrawn in full by the competent authority the infringement shall be deemed not to have taken place.

Infringements of negligible importance

Infringements of negligible importance are those acts that, even if there was an actual infringement of any aspect of the customs regulations, they are not sufficiently important to be considered as a risk indicator with regard to the international movement of goods, security issues or demandable customs debt.

In order to establish what may be regarded as an infringement of negligible importance, the first point to be observed is that each case is different, and should be treated on its own merits against the compliance history, nature of activities and size of the economic operator concerned. If a decision is taken that the infringement may be regarded as of negligible importance the operator must show evidence of intended measures to be undertaken to reduce the number of errors occurring in his customs operations.

The following checklist may assist customs authorities when evaluating whether an infringement could be regarded of negligible importance:

- infringements should be looked at on a cumulative basis but relative to the total volume of operations;
- establishment of whether the infringement was an isolated or sporadic act by one person within the general organisation of the company;
- there must be no deliberate fraud intended;
- context should always be considered;
- the internal controls systems of the applicant should be in place and it should be taken into account if the offences have been detected by the applicant himself as a result of its own internal checks and whether they were immediately notified to customs authorities;

- if the applicant has taken immediate measures in order to correct or avoid those acts in the future;
- nature of the infringement – the customs authorities should take into account the type and size of the infringement. Some errors can be defined as 'of negligible importance' because they have no impact on the amount of customs duties to be paid, for example an incorrect classification between two commodities with the same duty rate and no difference between the other measures applicable to them. Other infringements may affect the amount of duties to be paid, but the difference is not considered to be significant in terms of the number and volume of the declarations made by the applicant;

If as a result of the evaluation, the infringements committed have been considered as being of negligible importance in those cases it shall not be concluded that an inappropriate record of compliance exist.

Taking the above mentioned into consideration, and providing that in each case analysed there is not any other circumstances which should be taken into account, the following infringements could be given as examples of customs infringements of negligible importance:

- failures which are considered to have no significant effect on the operation of a customs procedure as set out in Article 859 of the CCIP;
- minor failure to comply with the maximum period allowed for goods to have the status of goods in temporary storage or any other time limits applicable to goods under any suspension customs procedure, i.e. inward processing or temporary admission, without this affecting the correct determination of the demandable customs debt;
- isolated, non-recurring, errors incurred by the operator when completing the data included in the customs declarations filed, providing such errors did not result in an incorrect assessment of the demandable customs debt.

Repeated infringements

In case of infringements which could be initially considered as minor or being of negligible importance, the customs authorities should establish whether there has been a repetition of infringements that are identical in nature and, in that case, to analyse whether that repetition is the result of the action of one or several persons in particular within the applicant company or is the result of structural deficiencies within the applicant's systems. The customs authorities should also establish whether the type of infringement is continuing to occur or the cause of the infringement has been identified by the applicant and addressed and will not happen again in the future. On the contrary, should the infringement happen again in different periods of time, this could mean there is an inadequate internal management of the company regarding the adoption of measures to prevent the repetition of those infringements in the future. Before considering appropriate or not for the criterion of record compliance, it is necessary to put in relation the full number of infringements committed by the applicant over time, by examining and comparing them with the full number of customs operations carried out by the applicant in the same period of time, in order to establish appropriate ratios, taking always in consideration the different types of activities and volumes of operations of each applicant in particular.

Serious infringements

The following should be taken into account when considering serious infringements:

- deliberate intent or fraud - where it has been established by customs authorities that the infringement was the result of a deliberate act by the applicant, the persons in charge of

the applicant company or exercising control over its management or the person responsible in the applicant company for customs matters. In that case, an infringement which has been fully proved to be with full knowledge of one of the above parties or with full intention in his act, should be considered a more serious infringement than the same case under other circumstances, even if the nature of the error could be considered to be 'of negligible importance';

- nature of the infringement - where an infringement is of such character that it can be considered a serious infringement of the customs legislation and which requires the imposition of a significant penalty or referral to the criminal proceedings;

- obvious negligence – the European Court of Justice (ECJ) has set out the three factors that should be taken into account in assessing whether a business has been obviously negligent: the complexity of the customs legislation, the care taken by the business and their experience. Where the customs authorities have established that the business has been obviously negligent this can be an indicator that the infringement may be deemed to be serious;

- nevertheless, serious infringements could also be those that, even without the aim of the applicant of committing a fraud, are so important to be considered a serious risk indicator with regard to security and safety or customs rules.

Taking the abovementioned into consideration, and providing that in each case analysed individually there is not any other circumstances which should be taken into account, the following infringements could be given as examples of serious infringements:

- smuggling;
- fraud, for example deliberate misclassification, undervaluation or false declared origin to avoid payment of customs duties;
- infringements related to Intellectual Property Rights (IPR);
- any other offence related to customs requirements which, due to the extent of the debt or to any other circumstances, has been subject to the decision taken by a competent judicial authority within the field of criminal law.

2.2. Satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls

In order to enable the customs authorities to establish that the applicant has a satisfactory system of managing commercial and, where appropriate, transport records, and complies with that particular criterion, the applicant shall fulfil all the requirements laid down in Article 14i of CCIP. The only exception is regarding applicants for AEOS who are waived from the requirement to have a logistical system which distinguish between Community and non-Community goods. The reason is that the provisions related to security do not differentiate between Community or non-Community goods. The security requirements apply to all goods entering or leaving the customs territory of the EU, irrespective of their status.

The following general considerations should be taken into account regarding the verification of this particular criterion:

- it should be checked against all the customs activities of the applicant;
- customs authorities should use all available information and knowledge of any authorisations already granted to the applicant. In general there should be no need for this part of the business to be rechecked if the previous audit was carried out recently and

there have been no subsequent changes. However, it has to be ensured that all different aspects/sub-criteria have been covered during that previous audit;
- it is recommended that part of the verification is done on the spot while visiting the company;
- whilst the audit is being done at the applicant's premises there are several crucial elements to be considered: verification that the information that has been given in the application and the other documents is correct, that the routines/procedures described by the applicant are documented and implemented in practise; do transaction tests to ensure that there is an audit trail in the records; and verification that the IT system used is reasonably protected against intrusion, manipulation and also that historic events are logged in the system so that changes can be monitored if necessary.

With regard to the check of the specific requirements customs authorities have to take always into account the specific nature/business of the operator, however, bearing in mind also a number of common considerations, i.e.:

a) *Article 14i (a) of the CCIP requires "an accounting system which is consistent with the generally accepted accounting principles applied in the MS where the accounts are held and which will facilitate audit-based customs control"*:

In accounting, an audit trail is a process or an instance of cross-referring each bookkeeping entry to its source in order to facilitate checking its accuracy. A complete audit trail will track the life cycle of operational activities of the applicant, in this respect related to the flow of consignments, goods and products coming in, being processed and leaving the company premises. Many businesses and organisations require an audit trail in their automated systems for security reasons. It is important to combine the checks done in the business system with checks done for security and safety. For security and safety it is important that where appropriate the information in the business system reflects the physical movement of consignments, goods and products and that should be a part of the verification. It is important also that where appropriate the information in the business system reflects the flow of consignments, goods and products and the measures taken with a view to their security and safety at the different stages in the international supply chain. Transaction tests should reflect both these issues when done and also make sure that the company follows the given routines at all times. The audit trail maintains a historical record of the data that enables you to trace a piece of data from the moment it enters the data system to the time it leaves;

b) *Article 14i (b) of the CCIP requires that the applicant "allow the customs authority physical or electronic access to its customs and, where appropriate, transport records*":

Access to company's records is defined as the possibility of getting the required information, no matter where the data is physically stored. Required information includes company's records as well as other relevant information, which is needed to perform the audit. Access can take place in different ways:
- **paper-based:** a hard copy of the required information is handed out. Paper-based solution is suitable when the quantity of the required information is limited. This situation can for instance occur when annual accounts are checked;
- **CD_ROM etc**: a copy of the required information is handed out as a CD-ROM or similar media. The situation is appropriate when bigger quantity of information is involved and data processing is needed;
- **on-line access:** through the company's computer system in case of site visit. The situation is a mixture of the two above-mentioned cases;

Electronic access is not a pre-requisite to comply with this requirement.

No matter which way data is accessible, customs authorities should have the possibility of data interrogation and analysis (e.g. is able to work on the data).

For this particular sub-criterion the nature of SMEs shall be taken into account. For example, while all applicants seeking an AEOC will have to demonstrate a good record-keeping system to facilitate audit-based customs controls the way it is achieved may vary. For a large applicant it might be necessary to have integrated electronic record-keeping system directly facilitating for customs authorities to audit while for an SME having only a simplified and paper-based system of record-keeping might be enough if it allows customs to do the relevant controls.

c) *Article 14i (c) of the CCIP requires that the applicant "have a logistical system which distinguishes between Community and non-Community goods*":
It has to be assessed how the non-Community goods or goods subject to customs control are distinguished from the Community goods. As far as SMEs are concerned, the fulfilment of this sub-criterion may be regarded as satisfactory if the distinction between Community and non-Community goods can be done by means of a simple electronic file or paper records, provided that they are managed and protected in a secure way.

d) *Article 14i (d) of the CCIP includes two important requirements, that the applicant "have 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 that he 'have internal controls capable of detecting illegal or irregular transactions*":
It has to be taken into account that no 'standard rule' for administrative organisation exists. The most important to be demonstrated by the applicant is that the administrative organisation that is in place is suitable, taking into account the applicant's business model, for the management of the flow of goods and there is an adequate system for internal control. Therefore the use of any 'quantitative thresholds' i.e. minimum number of staff etc. is not appropriate.
Internal control procedures impact not only everyday functioning of the department responsible for the operations covered by customs legislation but also all the services involved in managing those activities related to the international supply chain where the applicant is involved in.

e) *Article 14i (e) of the CCIP requires the applicant to "have satisfactory procedures in place for the handling of licenses and authorisations connected to commercial policy measures or to trade in agricultural products":*
Where applicable, based on the information provided in the SAQ and any other information available to customs authorities it is important to identify in advance if the applicant trades in goods that are subject to economic trade licences (for example, textiles sector). If that is the case there should be appropriate routines and procedures in place for administering the licences related to the import and/or export of goods. If necessary the practical application of these routines and procedures has to be verified on the spot. In case of trade with specific goods subject to any licences issued by other competent authorities it is advisable that customs authorities consult them for any feedback/background information on the applicant;

f) *Article14i (f) of the CCIP requires the applicant to "have satisfactory procedures in place for the archiving of the company's records and information and for protection against the loss of information":*

Procedures for archiving and retrieving of the applicant's records and information have to be assessed, including on what kind of media and in which software format the data is stored, and whether the data gets compressed and at what stage. If a third party is used, the relevant arrangements have to be clear, in particular the frequency and location of any back-up and archived information. Important aspect of this sub-criterion is related to possible destruction or loss of relevant information. Thus, it should be checked where a safety plan exist, including action points describing the measures to be taken in case of incidents and whether it is regularly updated. Any back-up routines when computer systems don't work should be checked;

g) *Article 14i (g) of the CCIP requires the applicant's employees are made aware of the need to inform the customs authorities whenever compliance difficulties are discovered and to establish suitable contacts for the contact with the customs authorities:*

The applicant should have procedures in place for notifying customs in case of customs compliance difficulties and also an appointed contact person responsible for notifying the customs authorities. Formal instructions should be addressed to employees involved in the supply chain in order to prevent possible difficulties to comply with customs requirements. All identified difficulties should be reported to the appointed responsible person (s) and/or his replacement(s).

h) *Article 14i (h) of the CCIP requires the applicant to have appropriate information technology security measures in place:*

Procedures for protecting the computer system from unauthorised intrusion and securing data have to be in place. This may include how the applicant controls access to the computer systems through the use of passwords, protects against unauthorised intrusion, for example through the use of firewalls and anti-virus protection and how the applicant files and ensures the secure storage of documents.

2.3. Proven financial solvency

As indicated in Article 14j of CCIP, the condition relating to the financial solvency of the applicant shall be deemed to be met if his solvency can be proven for the past three years. The legislation lays down that financial solvency means a good financial standing which is sufficient to fulfil the commitments of the applicant, with due regard to the characteristics of the type of the business activity.

If the applicant has been established for less than three years, their financial solvency shall be judged on the basis of records and information that are available.

To check whether the applicant meets the criterion in Article 14j of the CCIP the customs authorities shall take into consideration the following:

a) the applicant is not subject to insolvency proceedings;
b) 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 importation or exportation of goods without any major problems;
c) the applicant can demonstrate sufficient financial resources to meet their obligations;
d) the applicant has no negative assets except when it can be proved that these can be covered.

The term "insolvency" within this Section of the Guidelines is not to be regarded as an equivalent to "bankruptcy" which means a legally declared, usually by a court, inability or impairment of ability of a company to pay their creditors. Pursuant to Article 14f of CCIP, an AEO application must be not accepted because of bankruptcy, this non acceptance should have been notified before the customs authority starts the audit.

For this criterion the focus is more on the technical meaning of insolvency and on the possible risk that, due to its economic and financial situation, an economic operator will be unable to satisfy its debts. In this context any indications that the economic operator is unable or may in the immediate future be unable to meet its financial obligations should be carefully considered and evaluated.

Sources of information

Customs authorities may rely on various sources of information to assess this criterion, i.e.:

- official records of insolvencies, liquidations and administrations;
- the record for the payment of customs duties and all other duties, taxes or charges which are collected on or in connection with the importation or exportation of goods during the last three years;
- the published financial statements and balance sheets of the applicant covering the last three years in order to analyse the applicant's ability to pay their legal debts;
- draft accounts or management accounts, in particular any interim reports and the latest cash flow, balance sheet and profit and loss forecasts approved by the directors/partners/sole proprietor, in particular where the latest published financial statements do not provide the necessary evidence of the current financial position or the applicant has a newly established business;
- the applicant’s business case where the applicant is financed by a loan from a financial institution and the facilities letter from that institution;
- the conclusions of credit rating agencies or credit protection associations;
- other evidence which the applicant may provide, for example a guarantee from a parent (or other group) company that demonstrates that the applicant is financially solvent.

When considering the proven financial solvency criterion it is important that all the information is, where appropriate, considered together in order to get the full overview. One indicator should not be considered in isolation and decisions should be based on the overall position of the applicant reflecting that the main purpose is to ensure that, once granted the AEO status, the operator concerned will be able to continue to fulfil his obligations.
With regard to the various sources of information the following shall be taken into account:

(a) the applicant is not subject to insolvency proceedings

Generally where the applicant is subject to any insolvency or recovery proceedings the proven financial solvency criterion will not be met. However, information should be gathered on the circumstances which have led to the initiation of the proceedings (economic recession, collapse of subsidiaries, temporary and unexpected changes in market trends), as well as on the amounts due. The amounts due can be compared to the amount of different types of assets of the applicant, i.e., current assets (cash and other liquid instruments, including accounts receivable, that can be converted to cash within one year at maximum), long term assets (property, plant and equipment and other capital assets, net of depreciation), intangible assets (assets with a determined value, but which may not be realised, such as goodwill, patents,

copyrights, and brand name recognition) and prepaid (expenditures for future costs or expenses, such as insurance, interest or rent) and deferred assets. A business may also go into voluntary liquidation for reasons other than financial reasons.

(b) payment of customs duties and all other duties, taxes and charges which are collected on or in connection with the importation or exportation of goods

The customs authorities can establish whether the applicant has paid or was late in paying the customs duties/taxes that are legally due to customs in the last three years. This excludes amounts that are not yet legally due or are under appeal.
Generally, where the applicant has not paid amounts that are legally due the proven solvency criterion will not be met. However the reasons for the non-payment or late payment should be examined to determine whether there are acceptable mitigating circumstances. Examples of mitigating circumstances might include:

- a short term or one-off cash flow or liquidity issue where the overall financial status and reliability of the applicant is not in doubt;

- where the applicant was late in making a payment because of an administrative error, rather than any underlying solvency issue, this should not affect their compliance with this criterion.

There is a possibility for a company to apply for payment facilities as provided for in Article 229 of the CCC. The existence of such deferral applications should not result automatically in the applicant being regarded as unable to pay, and thus being denied the AEO status.

However, apart from any payment facilities granted, in the other cases the amounts due have to be paid within the periods legally prescribed. The obligations stipulated by the provisions of Article 222 of the CCIP shall be considered related not only for the payment itself but also the time limits for the payment. Any non-compliance with these time limits should be considered with a view to the overall customs compliance of the applicant.

(c) the applicant can demonstrate sufficient financial resources to meet his obligations

The customs authorities can establish whether the applicant is able to meet his legal debts to third parties by checking the applicant's full sets of financial statements due in the last three years taking into account:

- where required by company law, the accounts have been filed within the time limits laid down in that law. Failure to file the accounts within the required time limits is an indicator that the business may have problems with their records or be in financial difficulties. Where the time limits have not been met the customs authorities should make further enquiries to establish the reasons;

- any audit qualifications or comments about the continuation of the business as a going concern by for example the auditors or directors. Where auditors have doubts about the solvency of a business they may either qualify the accounts or record their reservations in the auditor comments. Similarly the directors may also, exceptionally, make such a comment. Where this is the case the customs authorities should investigate the reason for the comment with the auditor or director and consider its significance for the business;

- any contingent liabilities or provisions. Significant contingent liabilities will give an indication of the applicant’s ability to pay future debts.

If the applicant uses a customs suspensive procedure such as community transit or customs warehousing in general the applicant should already have demonstrated it has sufficient financial resources to cover his obligations under these procedures. For example for community transit if the applicant has been already given an authorisation for reduced amount of the comprehensive guarantee or guarantee waiver this has to be taken into account by customs authorities as he has already demonstrated sufficient financial resources to meet any obligations that might arise during the use of the transit procedure. In such cases and if the applicant has no other customs related activities there is no need for customs authorities to re-examine or duplicate checks that have already been carried out.

(d) the applicant has no negative net assets except where it can be proved that they can be covered

The customs authorities should examine two key indicators in the financial statements and balance sheets to assess the proven solvency criterion, the net current assets position (current assets minus current liabilities) and net assets position (total assets minus total liabilities).

- the net current assets position is an important indicator of whether the applicant has sufficient capital available to conduct its day to day operations. The customs authorities should compare the net current assets over the three sets of accounts to identify any significant trends over the three years and examine the reasons for any changes, for example, if the net current assets move from a positive to a negative situation or the net current assets are becoming increasingly negative. This may be due to the impact of falling turnover or adverse trading conditions or increased costs. The customs authorities should assess whether this is due to short term factors or whether it affects the long term viability of the business;

- the net assets position is an important indicator of the longer term viability of the applicant and its ability to pay its debts. It is expected a business should have positive net assets to meet the proven financial solvency criterion. Where the net assets include significant intangible assets such as goodwill the customs authorities should consider whether these intangible assets have any real market value. The customs authorities should also take into account the nature of the business and its lifespan. In some circumstances it may be normal practice for a business to have negative net assets, for example when a company is set up by a parent company for research and development purposes when the liabilities may be funded by a loan from the parent or a financial institution. Similarly new businesses may often trade at a loss and with negative net assets when they are first set up whilst they are developing their products or building up their customer base, before they start to receive returns on their investment in subsequent years. In these circumstances negative net assets may not be an indicator on which to place high emphasis that a business is unable to pay its legal debts.

The latest draft accounts or management accounts between the latest signed financial statements and the current date should also be reviewed to determine whether there have been any significant changes to the financial position of the applicant that may impact on its proven financial solvency.

Where there are concerns the applicant can take a number of actions to improve the net assets position. For example additional capital can be raised through a share issue. For multinational companies negative net assets may often arise from inter-group transactions and liabilities. In these circumstances the liabilities may often be covered by a guarantee from the parent (or other group) company.

<u>Finance from a loan from another person or a financial institution</u>

If the applicant is financed by a loan from another person or financial institution, customs authorities can also require a copy of the applicant's business case and the bank facilities letter or equivalent document. The customs authorities should compare the business case and/or loan document with the latest cash flow, balance sheet and profit and loss forecasts to ensure the applicant is operating within its approved overdraft facility and performing in line with its forecast at the time of completing its business case. Where there are significant differences the reasons should be investigated.

However, the customs authorities may require further evidence such as an undertaking from the lender or a bank facilities letter and establish the period of the loan and any terms and conditions attached to it. The customs authorities should check the position recorded in the accounts is consistent with the undertaking or bank facilities letter. If the applicant is a sole proprietor or partnership and personal assets are being used to support the solvency of the business the customs authorities should obtain a list of any personal assets and satisfy themselves that the list is credible.

Letters of comfort and guarantees from parent (or other group) companies

Letters of comfort are documents usually issued by a parent (or other group) company acknowledging the approach of a subsidiary company's attempt for financing. Letters of comfort may be found where the subsidiary company has negative net assets and are used to support the directors' opinion and evidence the auditor's opinion that the company has adequate financial resources to continue to operate as a going concern. They may be limited to a specific period of time. They represent a written statement of intent to continue with financial support to the applicant company but are not necessarily legally binding.

When judging the proven financial solvency of a subsidiary, it should be taken into account that a subsidiary company may operate under a guarantee from the parent company and the customs authorities could look into the accounts of that parent company providing support to ensure it has the facilities to do so. However, letters of comfort are often not legally binding contractual agreements and therefore do not constitute a legally enforceable guarantee. Where the applicant is dependent on the financial support of a parent (or other group) company to meet the proven financial solvency criterion the customs authorities should, where appropriate, ensure the support is provided in a legally binding, contractual agreement. If a guarantee is required as evidence of support from the parent (or other group) company it must be legally binding according to the national legislation of the MS where it is accepted, otherwise it cannot be taken into account in assessing compliance with the criterion.

To constitute a legally binding, contractual agreement it must contain an undertaking to irrevocably and unconditionally pay the liabilities of the subsidiary. Once signed it will be the legal responsibility of the signatory to pay any customs debts that are not paid by the applicant.

Applicants established in the EU for less than three years

Where the applicant has been established in the EU for less than three years, it will not be possible to carry out the same depth of financial checks as for longer established businesses. The absence of information about the financial history of the applicant increases the level of risk for the customs authorities. In these circumstances proven financial solvency will be judged, according to Article 14j (2) of the CCIP, on the basis of records and information that are available at the time of the application. This could include any interim reports and the latest cash flow, balance sheet and profit and loss forecasts provided by the directors/partners/sole proprietor.

The customs authorities should also be alert to applications from businesses that have gone into liquidation to avoid their liabilities and started up again under a different name. Where the customs authorities have information showing that the persons controlling the AEO applicant have had previous control over a business that falls into this category and the new business is to all intents and purposes the same business as the previous legal person which went into liquidation, this information can be used to challenge whether the applicant has a sufficiently good financial standing to satisfy the proven financial solvency criterion.

2.4. Appropriate security and safety standards

The conditions of security and safety shall be deemed to be met if the applicant complies with all, where appropriate, requirements as indicated in Article 14k (1) of the CCIP. It has to be clearly indicated, that the criterion of security and safety is only relevant if an economic operator applies for an AEOS or AEOF.

At the same time it is important to know that examinations of the security and safety criterion shall be carried out for all the premises which are relevant to the customs related activities of the applicant. For example, a warehouse where goods, which are not under customs supervision but which are intended to be exported (and so to enter an international supply chain) are stored has to be secured. On the contrary, a warehouse where only goods in free circulation are stored that will be sold inside the EU internal market might not be relevant for security purposes. Thus, while preparing their application, operators must be able to identify activities in all their premises.
Only in case of a large number of premises, where the period for issuing the certificate would not allow for examination of all the relevant premises, but the customs authority has no doubt that the applicant maintains corporate security standards which are commonly used in all its premises, it may decide only to examine a representative proportion of those premises. This decision can also be reviewed during the monitoring process. Thus, premises not visited before can be included in the monitoring plan.

Because each company is structurally different from another, each having its own business model, the security and safety measures implemented by the applicants have to be considered on case by case base by customs authoritiues. The aim of this section is not to provide an exhaustive list of all the security and safety measures that applicants could implement to comply with AEO security and safety requirements but rather to give guidance to understand the concept of AEO security and safety. Examples of possible solutions of measures to be taken can be found in the SAQ explanatory notes and the relevant section of Annex II of the Guidelines.
When preparing the AEO application it is very important to read each following sub-section in parallel with the related SAQ security and safety explanatory notes.

The applicant’s security and safety standards shall be considered to be appropriate only in case all the conditions listed in Article 14k (1) of the CCIP can be verified by customs authorities and deemed to be fulfilled. However, for the purpose of establishing compliance with Article 14k (1) letter (a) to (c) CCIP minor shortcomings in one sub-criterion may be overcome by strengths in another sub-criterion. The meaning and the aim of the provision should always be kept in mind, namely that there are appropriate control measures in place to reduce the level of risk to an acceptable level. For example, there may be shortcomings in the background checks that are carried out on temporary staff. However the applicant recognises and effectively manages this risk by putting in place appropriate access controls to ensure that

those temporary staff does not have unsupervised access to goods in the supply chain or to security sensitive areas of the business.
In that light it should also be reflected that good awareness and practical application of the AEO concept by the applicant and its employees may avert a minor risk due to lack of physical controls. On the other hand the best physical security and safety measures may fail without the necessary awareness of the competent staff.

Although some of the criteria presented in Part 2 'AEO criteria' of the Guidelines may be both checked on the basis of documentation presented or on the spot, the security and safety criterion will always include checks on the spot in the premises of the applicant.

a) Building security

To prevent tampering with goods but also to protect sensitive data and documentations the applicant shall ensure that *"buildings to be used in connection with the operations to be covered by the certificate are constructed of materials which resist unlawful entry and provide protection against unlawful intrusion"*.

The aim of security measures to secure buildings is to prevent unlawful intrusions and in case of intrusion of the perimeter fence/building allowing for:

- delay and deter the intruder (i.e. grids, codes, external and internal windows, gates and fences secured with locking devices);
- fast detection of the intrusion (i.e. access monitoring or control measures such as internal/external anti-burglar alarm systems or CCTV (close circuit TV systems);
- fast reaction to the intrusion (i.e. remote transmission system to a manager or to a security company in case alarm goes off).

This sub-criterion has always to be reflected in the context of access controls and cargo security. Indeed, security measures need to be reflected as a whole: if applicants want to protect their property (goods, data, buildings) they cannot strictly separate building security and access controls from cargo security measures.

Moreover, for risk analysis purposes, both applicants and customs authorities shall take into account particular characteristics of each location. In some cases a premise will only consist of a building which therefore serves at the same time as an external boundary for the premises of the company; in other cases a premise will be situated in a well secured logistic park. In some cases even the loading ramp for incoming or outgoing goods will be part of the outer shell.

Even the premises layout (e.g. a surrounding with a high criminality or a greenfield development site, near or attached to other buildings, close to roads or railroad tracks) may influence the necessary measures to be taken. The premises layout may also influence the assessment of criteria 14k (1) (a) "building security" and (b) "access controls**"**. Things to be taken into account when assessing this sub-criterion may, for example, be that a fence is set up at the ridge of a slope or on an embankment which elevates it or bordered by a hedge or a watercourse that make access to the building difficult.

While checking this sub-criterion it is of great importance to take due account that each applicant has to ensure the security of its buildings and access control, however when

assessing the way it is achieved the specific characteristics of SMEs shall be taken into account. For example,
- a large manufacturer might have to have a perimeter wall/fence, security guards, and CCTV (close circuit TV systems) cameras etc; while
- for a customs agent operating from a single room in a building with locks on doors, windows and filing cabinets it might be sufficient to have a clear procedure for access control including responsibilities;

b) Appropriate access controls

To prevent tampering with goods the applicant shall have "*appropriate access control measures in place to prevent unauthorised access to shipping areas, loading docks and cargo areas"*.

Consideration should be given to a stepped approach depending on the risk of different areas (onion peeling principle).
Specifically, there may be cases in which exterior security measures like fences, gates and lighting will be mandatory (when goods are stored outside of buildings, when the buildings walls are not regarded as an external perimeter or when all the buildings' protection and access are not secured enough). On the other hand there may be cases where a complete exterior circular wall will not be possible and necessary. This might be the case if the applicant leases parts of an industrial or logistic park, no goods are stored outside and the other physical security requirements like building security and the like are of high standard.

At least the security sensitive areas must be protected against unauthorised access from third parties but also the applicant's own personnel who have no competence or security clearance to access those areas. This includes not only access control of unauthorised persons but also of unauthorised vehicles and goods.

There should be routines in place how to respond to security incidents in the case of an unauthorised access or attempt to access the premise (e.g. contact local police, internal security staff and as the case may be customs authorities).
In this context it is also important to know that the AEO security concept aims at prevention of occurrences. Therefore, it is necessary to indicate any security breaches in advance before they can have an impact on the security and safety of the international supply chain in an essential way.
An example may be a CCTV-system which only records but is not monitored. Even it may be sufficient for other purposes, this may not be sufficient for AEOS or AEOF.

While checking this sub-criterion, it is of great importance to take due account of the specific characteristics of SMEs. Even if SMEs have to comply with the same requirements as a Large Scale Enterprise (LSE) with regard to the internal control procedures for access, different solution may be suitable for them concerning access controls. For examples:

- most of the time, small businesses and micro-enterprises do not have enough resources to dedicate employees to monitor the access control to the site. In this case, for example, an enclosed fence equipped with an intercom should allow access remote control to the site;
- an instruction recalling the obligation to maintain the shipping areas' doors lock closed and that the doors must be equipped with a bell for the drivers who want to access the shipping area, should prevent unauthorised access to cargo areas.

c) Cargo security

To ensure the integrity of cargo and to prevent irregular practices in the flow of goods within the international supply chain, the applicant shall have established "*measures for the handling of goods include protection against the intrusion, exchange or loss of any material and tampering with cargo units*".

These measures, where appropriate to the business concerned, shall contain:

- integrity of cargo units (including usage of seals and 7-points inspection (outside, inside/outside doors, right and left side, front wall, ceiling/roof, floor/inside));
- logistical processes (including choice of freight forwarder and means of transport);
- incoming goods (including checking of quality and quantity, seals, where appropriate);
- storage of goods (including stock-checks);
- production of goods (including quality inspections);
- packing of goods;
- loading of goods (including checking quality and quantity and sealing/marking).

Where appropriate and feasible, the above measures shall be documented and recorded.

Again, breaches of the integrity of the cargo/cargo units should be recognised at the earliest possible stage, reported to a designated security department or staff, investigated and recorded in order to take necessary countermeasures. Thus, it is also essential that competences and responsibilities between involved units and parties are clearly described and known.

As mentioned in point (a), cargo security is inseparable from building security and access controls because the aim of security and safety measures is, at the end to secure goods by preventing in particular unauthorised access to cargo (shipping areas, loading docks and cargo areas).

Moreover, while checking this sub-criterion it is of great importance to take due account of the specific characteristics of SMEs. For example:

- closed doors/railings, propitiatory sign and instructions may be sufficient to restrict access to authorised personnel only to restricted areas (these instructions may be incorporated into the general security and safety procedure referred in article 14k of the CCIP);
- to prevent unauthorised access in manufacturing areas, shipping areas, loading bays, cargo areas and offices, visitors could be escorted systematically in the premises and sign a register at the entrance.

Finally, cargo security is also inseparable from point (e) "Business Partner Security" because when goods in cargo units enter the supply chain, they are often placed under business partner responsibility.

d) Where applicable procedures for handling export/import licenses

To prevent misuse and unlawful delivery of security sensitive goods, the applicant shall have "*where applicable, procedures in place for the handling of import and/or export licenses connected to prohibitions and restrictions and to distinguish these goods from other goods*".

The addressed procedures may be/include:

- to distinguish goods subject to non-fiscal requirements and other goods;
- to check if the operations are carried out in accordance with current (non-fiscal) legislation;
- related to the handling of goods subject to an embargo;
- related to the handling of licenses;
- regarding other goods that are subject to restrictions;
- to identify potential dual-use goods and routines attached to their handling.

e) Business Partner Security

Business partner is a term used to describe a commercial entity with which another commercial entity has some form of business relationship to the mutual benefit of both. For AEO purposes, relevant are business partners with direct involvement in the international supply chain.

All economic operators in the international supply chain that fall between the exporter/manufacturer and the importer/buyer may be regarded as business partners to each other depending on the particular situation.

The applicant may also have contractual business relationships with other parties including cleaners, caterers, software providers, external security companies or short-term contractors. For AEO purposes, these parties are referred to as service providers. Although these parties do not have a direct role in the international supply chain they may have a critical impact on the security and customs systems of the applicant. In terms of security and safety the applicant should apply appropriate measures to them just as he should for his business partners.

The relationship with business partners may be contractual where the rights and obligations of both parties are set out in a legal contract. Alternatively, it may be a very loose arrangement without legal basis or it may be somewhere between both of these extremes (where documentation exists but is simply a statement of fact or intention). There may also be relationships where one party, e.g. a government owning and operating transport infrastructure and facilities, essentially determines the service parameters that another party, e.g. a carrier, can either accept or not and has very little, if any, influence over these parameters.

The selection of business partners is of vital importance and applicants for AEO status should have a clear and verifiable process for selection of their business partners.

From an AEO perspective business partners as mentioned in article 14k (1) (e) of the CCIP may have the option to apply for the AEO status, but if they choose not to exercise that option or if established in a country where it is not possible to obtain an AEO status they should provide adequate evidence to their AEO partner that they can meet acceptable level of security and safety standards. The ideal scenario of course would be that maximum number of participants in the international supply chain hold AEO status or equivalent to it granted by the competent authorities of any third country with which EU has MRA.

Identification of Business Partners

When an international supply chain is being examined in the context of an AEO self-assessment, it is important that the role of every business partner is clearly identified. The role of the business partner determines the level of risk involved, the level of security and safety awareness required from them and, alternatively the measures to be implemented by the AEO to mitigate the risks identified. The responsibilities of the AEO's business partners could be e.g. the following:

- **manufacturers and warehouse-keepers** should ensure and promote the awareness that premises should meet an acceptable security standard that prevents goods in storage from being tampered with, and prevent unauthorised access;

- **importers/freight-forwarders/exporters/customs agents** should ensure third-party agents have awareness of relevant border procedures and systems, and are familiar with the required documentation that needs to accompany goods in transit and for customs clearance;

- **carriers** should arrange that the transportation of goods is not unnecessarily interrupted, and that the integrity of the goods while in their custody is maintained;

Security requirements for business partners and service providers

Article 14k (1) (e) of CCIP stipulates that security and safety standards in relation to business partners shall be considered to be appropriate if "the applicant has implemented measures allowing a clear identification of his business partners in order to secure the international supply chain."

AEO can only be held responsible for their part of the supply chain, for the goods which are in their custody, and for the facilities they operate. When granted, the AEO status only relates to the person that applied for it. However, the AEO is also dependent on the security standards of their business partners in order to ensure the security of the goods in their custody. It is essential that the AEO is aware of all roles in their supply chain(s) and that their influence on security can be shown through the relationships with their business partners.

It is expected that any applicant will ensure that his business partners are aware of their security and safety requirements and endeavour, where appropriate and feasible depending on their business model, to have written contractual agreements in place. The applicant should therefore, if necessary, when entering into contractual arrangements with a business partner, encourage the other contracting party to assess and enhance their supply chain security and include details as to how this is to be achieved and demonstrated in those contractual arrangements. Management of risk related to business partners is also essential. Therefore, the applicant should retain documentation in support of this aspect to demonstrate its efforts to ensure that its business partners are meeting these requirements and, alternatively, have taken mitigating actions to address any identified risks.

The AEO needs to be aware of who its new potential business partners are. When considering new potential business partners, the AEO should endeavour to obtain information about those aspects of the potential new partners' business which are of relevance for the AEO status.

Specific might be the approach towards the security requirements for service providers, where some of the AEO security and safety sub-criteria are fulfilled by the service provider on behalf of the AEO applicant and this has to be verified in the course of the audit. A typical example is the sub-criterion for access control when the AEO applicant has contracted a security company to fulfill his obligations in this area. The access control sub-criterion has to be verified by assessing the way the service provider fulfils this on behalf of the AEO.

Although the AEO may outsource these activities to a third party, it is the AEO that, because the service partners acts on its behalf is and remains responsible for compliance with the AEO criterion and ensuring the service provider complies with the requirements.

Examples of how an AEO could enhance his supply chain security are:

- the AEO works together with other AEO's or equivalent;
- the AEO enters, where appropriate and feasible according to its business model, into contractual arrangements on security with his business partners;
- subcontractors (for example transporters) used by the AEO are chosen on the basis of their adherence to certain security rules and sometimes applicable mandatory international requirements;
- contracts contain clauses preventing the subcontractor from further subcontracting the work to parties unknown to the AEO
- seals should be used for all modalities whenever possible to detect intrusion through the entry point(s) into the cargo compartment. Loaded containers should be sealed, by the party stuffing the container immediately upon completion of the stuffing process, with an ISO17712 compliant seal;
- loaded containers are inspected at the subcontractor's premises, the terminal and recipient premises to verify that they have been sealed;
- general information from bodies responsible for the registration of companies (where possible) and the partner's products (risky and sensitive goods etc.) are considered before entering into contractual arrangements;
- the AEO carries out or requires third party security audits of the business partner to ensure they comply with their security requirements;
- the AEO, where appropriate and feasible considering its business model, asks for a security declaration reflecting both parties' respective business models, roles and responsibilities.

An example of security declaration that can be used in MS is attached in Annex 3 to the AEO Guidelines in cases where the AEO applicant wishes to meet the requirements set out in Article 14k (1)(e) of the CCIP by means of a security declaration from a particular business partner. However, in case the use of a security declaration is chosen as being an appropriate and feasible mechanism considering its business model, the applicant should be in a position to ensure that the obligations covered by it are really in place and observed by the relevant business partner.

- the AEO uses carriers and/or facilities that are regulated by international or European security certificates (for example ISPS Code and RA).
- the AEO enters into non-contractual arrangements to specifically identify issues of importance relating to security, especially where potential weaknesses have been identified in a security assessment.

Both customs authorities and economic operators should take into account that the above mentioned measures are only examples and this list is not exhaustive. The choice of one or another measure or combination of measures depends very much on the role of the particular business partner and its business model.

Regardless of what measures the applicant has taken to comply with this requirement, it is important that procedures are in place for the monitoring of the arrangements with business partners and these are reviewed and updated on a regular basis.

If an AEO has information that one of his business partners, who are part of the international supply chain, is not meeting established appropriate security and safety standards, he shall immediately take appropriate measures to enhance supply chain security, to the best of his ability.

Regarding consignments taken over from unknown trading partners it is recommended that the AEO takes appropriate measures to mitigate the security risks related to that particular transaction to an acceptable level. This is particularly relevant where the AEO has new or temporary business partners or is involved in the transport of high volume consignments such as in the postal and express courier businesses.

In case of multiple subcontracting, the responsibility for securing the supply chain is transferred from the AEO (e.g. an exporter) to his own business partner (e.g. a freight forwarder). Indeed, this business partner is the one who has formally committed to secure the respective tasks on behalf of the AEO. However, if the "first degree subcontractor" (e.g. the freight forwarder) further uses other parties he should check the implementation of the security measures by the next subcontractor(s) (e.g. the carrier, or other subsequent freight forwarder).

If the AEO discovers compliance difficulties, he should contact the customs authorities with details of such occurrences.

f) Personnel security

Personnel security is along with the physical security, access controls, security of business partners etc. one of the main aspects of security.

To prevent infiltration of unauthorised staff that could compose a security risk, the applicant shall "*conduct, in so far as legislation permits, security screening on prospective employees working in security sensitive positions and carry out periodic background checks*". With regard to the practical implementation of this requirement the following important issues have to be taken into account both by the customs authorities and by the applicant himself:

- all economic operators should have in place appropriate system/procedures to comply with this requirement and customs authorities have to be able to verify this;
- it is the applicant, being the employer, who is responsible for conducting these checks while customs authorities verify whether they are done and whether they are sufficient to ensure compliance taking into account prevailing legislation;
- scope and purpose of the checks should be clear. The proportionality principle should be respected i.e. 'action should not go beyond what is necessary with regard to the purpose'.

The extent and evaluation of the sub-criterion fulfilment depends on the size, organisational structure and type of the business activity of the economic operator. Therefore, a particular verification is adjusted to the applicant concerned. However, the main areas that should be always checked include:

- *employment policy of the applicant*

The general organisation and procedures for the recruitment of new staff have to be clear including who is responsible for it. The applicant's policy should particularly reflect all reasonable precautions to be taken into account when recruiting new staff to work in security sensitive positions to verify that they are not previously convicted of security-related, customs or other criminal offences related to the security of the international supply chain, and conduct periodic background checks for established staff in security sensitive positions with the same intent both to the extent permitted by national legislation.
Security checks methods may comprise basic checks like verifying the identity and the residence, checking the labour permit if necessary before recruitment, conducting a self-declaration of criminal records and inquiries based on undeniable and/or official elements of previous employment history and references.
The applicant should also have security requirements in place regarding the use of temporary personnel and agency workers. Similar security standards for temporary and permanent staff as well as agency workers are required taking into account the security sensitiveness of the positions. If an employment agency is used to recruit personnel the applicant should particularly detail in contracts with the agency the level of security checks to be performed on staff prior to and after recruitment to security sensitive positions. Customs auditors may ask to verify how the AEO applicant checks on external staff are carried out. In this respect, the AEO applicant should maintain evidences of the applied standards within its records.

- employees working in security sensitive positions

When defining the 'security sensitive positions' appropriate risk analysis should be done and it has to be taken into account that these are not only management positions but also positions related directly with the handling and movement of goods. Security sensitive positions in this context are for example:

- positions with responsibility for security, customs or recruitment matters;
- jobs assigned to the buildings and reception supervision;
- workplaces described in Section 5 of the SAQ related to incoming/outgoing goods and storage.

These checks may also concern existing employees coming from other departments, not regarded as sensitive from a security point of view, and moving to such posts.

For high and/or critical security posts, police checks on both spent and unspent convictions could be required. Appointed employees could inform their employer of police caution/bail, pending court proceedings and/or convictions. They should also disclose of any other employment or any activity subject to any security risks.
It should also be recommended that the employed personnel are not listed in one of the blacklists which are established by national or supranational law (e.g. Regulation (EEC) No 2580/2001[10], Regulation (EEC) No 881/2002[11] and Regulation (EU) No 753/2011[12]).

Any checks to be done have to be in conformity with any EU and/or national law on personal data protection that regulates the processing of personal data under different conditions. In a number of cases there are provisions that allows treatment of personal data only in case the

[10] COUNCIL REGULATION (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism
[11] COUNCIL REGULATION (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures irected against certain persons and entities associated
[12] COUNCIL REGULATION (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan

purson concerned has given his/her consent for this in advance. Thus, in order to facilitate the process for some of the positions a special clause may be included in the contract that asks the person concerned to give his consent for doing the so called background checks.

- *policy and procedures when staff leaves or are dismissed*

The applicant should have procedures in place to expeditiously remove identification, premises and information systems access for employees whose employment has been terminated.

As mentioned in the SAQ explanatory notes (see question 5.12 "*Personnel security*"), all of these security requirements implemented with regard to the applicant's employment policy should be documented.

g) Security awareness programmes

To prevent inadequate awareness of security requirements the applicant shall "*ensure that its staff concerned actively participates in security awareness programmes*". The AEO applicant should develop mechanisms in order to educate and train staff on security policies, recognition of deviations from those policies and understanding what actions should be taken in response to security lapses.

The applicant should particularly:

- educate its personnel, and where appropriate its business partners, with regard to the risks in the international supply chain;

- provide educational material, expert guidance and appropriate training on the identification of potentially suspect cargo to all relevant personnel involved in the supply chain, such as, security personnel, cargo-handling and cargo-documentation personnel, as well as employees in the shipping and receiving areas. This training should be in place before the economic operator applies for the AEO status;

- keep adequate records of educational methods, guidance provided and training undertaken to document the awareness programmes;

- a service or a person (internal or external to the company) should be responsible for the training of personnel;

- make employees aware of the procedures which are in place within the company to identify and report suspicious incidents;

- conduct specific training to assist employees in maintaining cargo integrity, recognising potential internal threats to security and protecting access controls;

- the content of training should be regularly revised and updated when readjustments are necessary.

- there is no mandatory frequency in which safety and security training should be repeated. However, as from a year to another, staff, buildings, procedures and flows

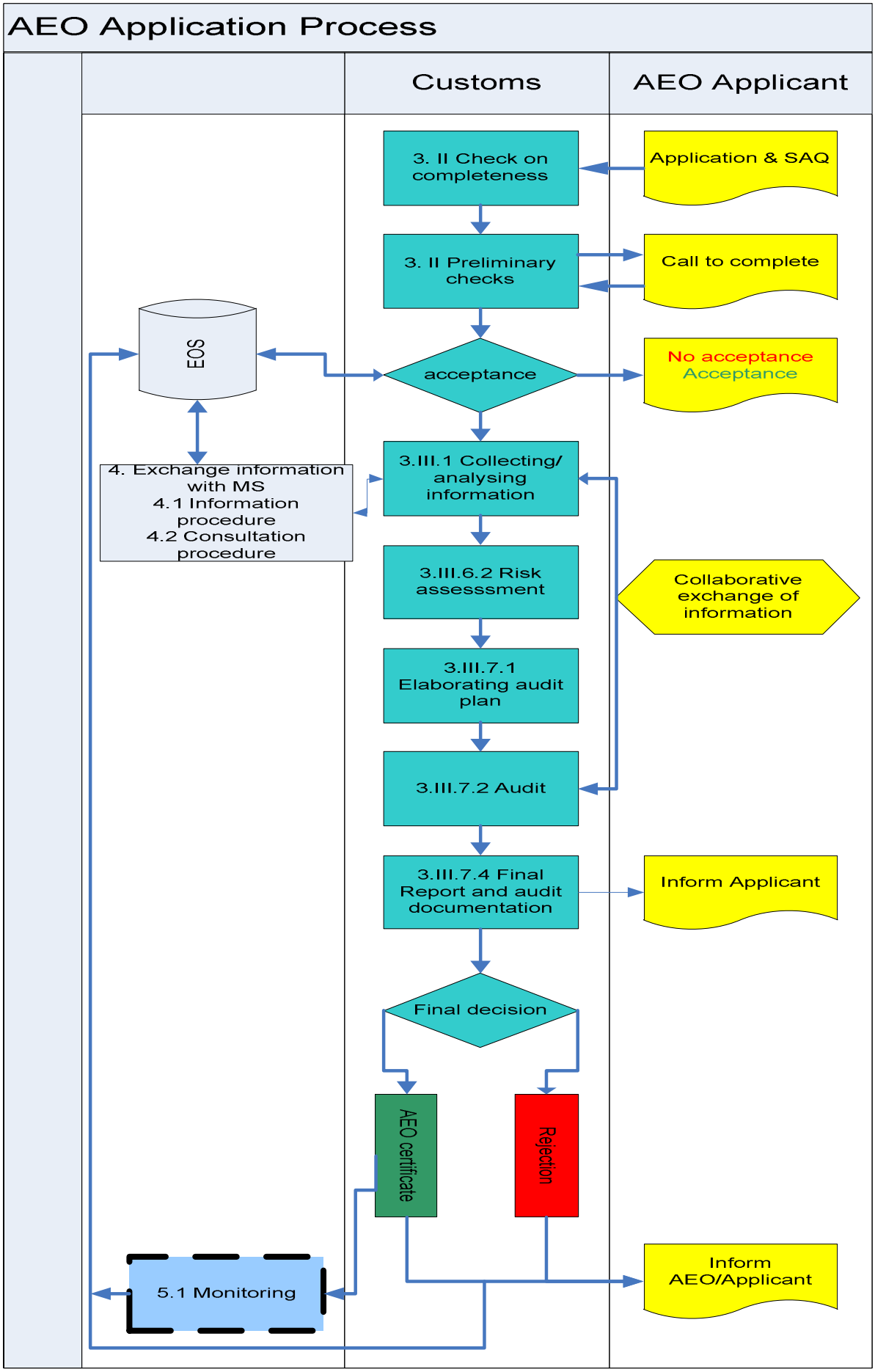
can change, repetition and updates should be planned to ensure awareness levels are maintained.

Moreover adequate training is mandatory for all new employees or for any employee of the company newly assigned to a post in connection with the international supply chain.

These mechanisms for the education and training of personnel regarding security policies should be, of course, appropriate to the size of the enterprise (See Part 3, Section III, point 3.III.2. 'Small and medium sized-enterprises'). For example, for micro SMEs, an oral training, however documentary recorded, and a recall of basic security and safety requirements in the general security and safety procedures or a simple note of awareness, initialled by the staff concerned may be accepted by customs authorities.
At the same time the frequency and the intensity of the security and safety training may vary between different employees in one enterprise due to their responsibility and their individual possibility to influence the security of the international supply chain.

PART 3, Application and authorisation process

Following the preparatory stage, the application process upon the formal submission of the application is illustrated in the picture below:


AEO Application Process
Customs
AEO Applicant
3. II Check on completeness
Application & SAQ
3. II Preliminary checks
Call to complete
EOS
acceptance
No acceptance
Acceptance
4. Exchange information with MS
4.1 Information procedure
4.2 Consultation procedure
3.III.1 Collecting/ analysing information
3.III.6.2 Risk assesssment
Collaborative exchange of information
3.III.7.1 Elaborating audit plan
3.III.7.2 Audit
3.III.7.4 Final Report and audit documentation
Inform Applicant
Final decision
AEO certificate
Rejection
5.1 Monitoring
Inform AEO/Applicant

Section I - Determination of the competent Member State for submitting an AEO application

3.I.1. General:

The MS to which the AEO application should be submitted is determined in Article 14d of CCIP. The general principle is that the application should be submitted to the MS which has the best knowledge of the applicant's customs related activities,
If it is not possible to determine clearly the MS which should act as ICA, the application should be submitted to the MS where the main accounts related to the customs activities involved are held or accessible. In view of the modern trends in companies' organisational structures and business flows, as well as of the ongoing trend on outsourcing certain activities including accountancy, the correct decision is not always "at hand".

In the cases of single application as referred to in Part 1, Section II, point 1.II.1. 'Who is an 'economic operator', it shall be submitted by the parent company to one of the customs authorities of the MS where it has PBEs/branches, based on the following criteria:

- applying the criteria under Article 14d of the CCIP; or
- if the company has a location which has the role of an European centre/headquarters, where the applicant's general logistical management activities are conducted in the MS where it is situated;

3.I.2. Multinational companies and large businesses

Example 1:
A parent company "P" is established in DE. It has the following subsidiaries: subsidiary "S1" registered in BE and subsidiary "S2" registered in AT. The parent company "P" is not carrying out any customs related activities, but its subsidiaries are involved in activities covered by customs legislation. Parent company "P" would like to get the AEO status for all the customs related activities carried out by the subsidiaries. The main accounts related to customs activities involved as well as the customs related activities are performed in the MS where the subsidiaries are registered:

Subsidiary "S1" has to submit an application in BE, and subsidiary "S2" submits an application in AT.

Example 2:
A parent company 'A' is established in GB. It has branches which are not separate legal persons in BE, DE and NL:

Only one application has to be submitted by company 'A' in GB.

Example 3:
A parent company 'A' is established in the USA. It has PBEs which are not separate legal persons in GB, BE, DE and NL. The PBE in GB has the role of a European centre and the main accounts for the activities in all the branches in EU are held in GB. There are customs related activities in GB, BE, DE and NL:

Only one application has to be submitted by company 'A' in GB. However, the following information has to be included in the application:

- *Box 1 = name of the parent company in GB + the names of the branches in BE, DE and NL;*
- *Box 4 = addresses of the branches in BE, DE and NL;*
- *Box 9 = the EORI number of the company in GB + the relevant registration numbers (VAT or TIN if VAT is not available) of the branches in BE, DE and NL*
- *Box 16-18 = offices of all EU branches.*

3.I.3. Accessibility of customs related documentation

Article 14d (1)(b) and (2)(b) of the CCIP is addressing the situation where a company is outsourcing its customs related accountancy to an entity in another MS or in a third country. This practise is usual and legally allowed in many MS. In these cases, the company ensures that the customs authority of the MS where it is established has electronic access to the documentation held in another MS or in a third country.
In these cases, the application has to be submitted in the MS to which the company ensures the accessibility to the main accounts and where its logistical management activities are conducted, as well as (at least part of) the customs related activities are carried out.
If the company carries out its customs related activities in another MS, the application has to be submitted nevertheless in the MS where accessibility of the main accounts related to the customs activities involved is ensured and its logistical management activities are conducted.

Example 1:
Company "C" is established in SE. It carries out all its business activities in SE, except that the accountancy is outsourced into EE. It ensures electronic access to its documentation to the Swedish customs authorities as defined by the relevant rules in SE:

The AEO application is to be submitted in SE.

Example 2:
Company "C" is established in the UK. It outsources its accountancy to IE and ensures electronic access to its documentation to the UK customs authorities as defined by the relevant rules in the UK. It imports goods from Asia through IT, but the general logistical management activities are still maintained in the UK:

The AEO application is to be submitted in the UK.

Section II - Receipt and acceptance of the application

The general process to be followed when an application for an AEO status has been submitted is described in Articles 14c to 14f of the CCIP. Upon receipt of the application form customs authorities examine it and decide upon its acceptance or non-acceptance. The following common general considerations have to be always taken into account:

- the application should be lodged according to the requirements of Art. 14c (1) of the CCIP;
- the annexes to be submitted with the application are those listed in Annex 1C of the CCIP and they should be filled in properly (see explanatory notes to Annex 1C). This information can be provided also in the SAQ in case it is submitted together with the application;

- even if there is no legal requirement that the SAQ has to be submitted together with the application, it is highly recommended that the applicant submits the SAQ at the earliest possible stage especially keeping in mind that the SAQ has been introduced with a view to speed up the process. It is also important to take into account that the information provided in the SAQ cannot be used as a reason for non-acceptance except where the information in the mandatory annexes is submitted using the SAQ;
- to be in a position to do the quick check of the application submitted against the conditions for acceptance customs authorities have to have all of the necessary information. This can be sought by either accessing the relevant databases or asking the applicant to submit it together with the application (i.e. a certificate of criminal clearance, a certificate of good standing etc.);
- whenever appropriate, customs should also use other available sources of information e.g. common EU databases, contacts with other authorities, information from the company's web page etc;
- in case additional information is required customs authorities have to ask for it from the applicant as soon as possible but not later than 30 calendar days from the date of receipt of the application;
- in the CCIP there is no deadline for the applicant to submit the additional information requested. In these cases, any national administrative provisions that might exist apply. However, without the additional information, the application cannot be processed further;
- customs authorities must always inform the applicant about the acceptance of the application and the date of acceptance; they should inform him also in case of non-acceptance of the application, stating the reasons for non-acceptance;
- in the cases of applications received by multinational companies when taking the decision for acceptance/non-acceptance, please see also Part 3, Section I 'Determination of the competent MS for submitting an AEO application' of the AEO Guidelines.

Section III - Risk analysis and Auditing process

3.III.1. Collect and analyse information

In order to perform risk analysis and prepare an effective and efficient audit it is vital to get as much as possible and relevant information available for the economic operator. The information is collected with the purpose to:

- better understand the business of the economic operator;
- get the best possible overview of economic operators' business organisation, processes, and procedures;
- prepare the audit plan according to the risk evaluation results;
- prepare the audit (optimum audit team, focus of the audit, etc.),
- verify the fulfillment of the criteria as much as possible.

The economic operator should be always advised to complete the SAQ and to submit it together with the application form.
The information that can be obtained by customs authorities from various sources includes the following:

- internal databases;
- internal information (result of previous checks and or audit; other authorisations granted or revoked, review of previously submitted customs declarations, etc);
- information requested of and provided by other authorities;

- other MS (Information and consultation procedure – see part 4 'Exchange of information between MS' of the Guidelines);
- information provided by the operators themselves (i.e. SAQ);
- risk indicators;
- publically available information (news, internet, studies, reports, etc);
- any other relevant information including images, photos, video, premises' plan, etc.

All the information collected has to be carefully evaluated in order to assess its accuracy and relevance to the objectives of the auditing. It should be clear that collecting information is a dynamic process and it could well happen that "information asks for more information". The applicant should be aware of this and be ready to provide customs with any additional information needed. Even once the examination has commenced, the auditors can ask and collect additional relevant information that adds value to the result. It should be also considered that information is changing and sometimes it is only valid at the time it is collected. Therefore, it is important to have the most recent and update information. To ensure that the ICA is up to date with events that can affect the outcome in the application phase and in the follow up work it is essential to have a system to capture and communicate to the applicant where more information is needed.

The size of the economic operator, its specificity, and cases where he has gone through other relevant accreditation processes could result in speeding up the process very much.

3.III.2. Small and medium-sized enterprises

SMEs are defined in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[13],

However, it should be also taken into account that for the purposes of the AEO certification and compliance with the requirements this distinction is not the only relevant one. While this might be sufficient for separate economic operators considered as SME according to this classification system, for an SME which is part of a bigger multinational company with common security standards and procedures this will also play a role. SMEs are all different in terms of size, complexity of the business, type of goods handled, position in the international supply chain etc. For example:

- an AEO applicant with 51 employee importing glasses would be dealt differently than an AEO applicant with 249 employee importing weapons and which has already implemented various security measures;

- a customs agent with 4 employee acting as a subcontractor for another 150 employee manufacturer also illustrates the variety of the SMEs' situation.

SMEs represent 99%[14] of all European businesses, and nine out of ten SMEs are actually micro enterprises with less than 10 employees.

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[13] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124/2003

[14] In 2008, there were over 20 million enterprises in the European Union. Only about 43 000 were large scale enterprises (LSEs). Hence, the vast majority (99.8 %) of enterprises in the EU are SMEs. (*annual report – EU Small an d medium enterprise 2009 - DG for Enterprise and industry*)

They are also becoming an essential part of the international supply chains. In some cases, they may represent the bulk of economic operators in the international supply chains, often acting as subcontractors to larger companies.

Taking into consideration in particular the possible difficulty for SMEs in entering the certification process and in order to make the AEO status more available to SMEs, the necessary flexibility has been implemented in the AEO legislation to minimise costs and burdens. Even if the AEO criteria apply to all businesses regardless of their size, article 14a (2) of the CCIP lays down the legal obligation that "the customs authorities shall take due account of the specific characteristics of economic operators, in particular of small and medium-sized companies. In parallel all along the present guidelines SMEs specificities regarding AEO certification will be treated through examples.

3.III.3. Specific economic activities

3.III.3.1. Express operator

The role of a carrier within the international supply chain is described in Part 1, Section II.4 paragraph (f) of the AEO Guidelines. Within this trade sector there is a distinct sub-sector involving express operators. This sub-sector involves a relatively small number of economic operators but significant volumes of transactions; in some MS this sub-sector accounts for about a third of all consignments at import and about 50% of all consignments at export.

This sub-sector has a number of distinct features:

- high volumes of transactions;
- the importance of speed of transport and fast clearance – quick delivery times are an important marketing tool for these businesses and important to their customers;
- a large number and range of business partners from regular business customers to one-off private customers;
- the economic operators often fulfil the role of customs agent/representative in addition to the role of carrier;
- as the mode of transport is mainly air freight these economic operators will operate as RA and/or KC as referred to in Regulation (EC) No 300/2008[15] and fulfil the requirements within Regulation (EU) No 185/2010[16] for the majority of their business;
- carrying packages and freight on their own aircraft or providing loaded bags and loose packages for other air carriers;
- the economic operators often holds authorisations from the customs authorities to use simplified customs procedures;

Given these distinct features there are a number of specific risks for this sub-sector that particularly need to be considered, when the economic operators apply for the AEO status, i.e.:

- the level of infringements in assessing the customs compliance criterion. The customs authorities will need to take into account the high volume of transactions and assess

[15] Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002

[16] Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security

whether infringements are systematic, the quality of the economic operators' internal controls and the procedures to identify and correct errors – see Part 2 'AEO criteria' of the Guidelines;
- the security of data held in assessing the economic operator's system of managing commercial and, where appropriate, transport records. Given the high volume of data held the customs authorities will need to consider the measures in place to protect the economic operator's systems against unauthorised access or intrusion and the access to documentation and the procedures for processing the information into the systems used by the express operators;
In assessing appropriate security and safety standards:
- locations or activities that are not covered by the status of RA;
- breaches of agreed security arrangements with the risk of delivering unsafe or unsecured goods. Given the wide range of business partners the customs authorities will need to assess the procedures for selecting business partners and managing the risks associated with known and unknown trading partners;
- persons infiltrating the business that could pose a security risk. Given the high volumes of business the customs authorities will need to assess the procedures for performing background checks on new employees for both permanent and temporary personnel;
- inadequate awareness of security requirements. The customs authorities will need to assess the procedures for providing appropriate training covering the security and safety risks associated with the movement of express consignments.

3.III.3.2. Postal operators

A postal operator has its own peculiarity and it is necessary to take in consideration its characteristics and the risks associated. As it can be assumed that the criterion on proven solvency shall be assed in the same ways as for the others operators, the focus below will be on some specific issues related to the other AEO criteria.

Customs Compliance
A postal operator deals with delivery/dispatch service to a multiplicity of small clients/users whose reliability is not very easy to control. The consequences relates to possible problems customs duties, and also security and safety compliance. Examples of risks areas related to customs operations could be the following:

- the high number of "small" shipments, i.e. low weight/value shipments;
- the unreliability of the statements made by the customers (mostly individuals): errors and omissions in the statements on the value and quality description of the contents of shipments, lack/inadequacy of the supporting documents accompanying the customs declarations and the consequent difficulties in meeting customs requirements (lack of certifications/ licenses, etc.);
- delays in delivery caused by the carrier;
- high risk of "mishandled" (lost) shipments.

Therefore, during the audit, as far as customs compliance criterion is concerned, even taking into account the size and type of the economic operator, the number of infringements related with customs declarations should always be examined and compared to the total number of transactions yearly lodged in order to evaluate potential risks, including those of financial nature. The management of local clearance procedure and warehouses is the most important element to be evaluated in a circumstantial way, evaluating also the remaining risks.

Accounting and logistic systems

One of the risks to be taken into account is the management of inventories reporting undelivered mail/parcels (when it has not been possible to trace the recipient or when the recipient has failed to pick them up). Regarding this critical aspect, it is necessary to make an assessment of the costs of storage (and, if any, subsequent destruction, where specified by the rules) or the costs associated with the return to sender. This could heavily influence customs and accounting operations traceability and have an impact on the logistics organisation as well management, cost, stock safety and warehouse security.

Such an operational situation requires the possibility of relying on an IT system which has to be safe enough and structured in a way to ensure the audit traceability of all customs operations, both export and import, as well as the safety of the data contained therein.

When assessing the effectiveness of the internal control system it is important to check, in addition to the segregation of duties, if there are people in charge of monitoring compliance with the rules regarding customs procedures and how the associated risks are actually detected and covered. Consequently, the impact of various possible negative events on the operator's activity should be assessed and the effectiveness of the procedures carried out to take action for resolving non-compliance should be carefully evaluated.

Besides, still in relation to internal control, it is important to check which databases and which information procedures are used for storing the data regarding customers and shipments.

Another aspect which should be evaluated is the management of land transport, especially if it concerns an airport operator, in which case it is necessary to assess the reliability of the drivers which retrieve packages.

Security requirements

In this context the personnel recruitment should be carefully considered, for example it is important to consider the percentage of occasional workers with regard to the total number as it is a clear indicator of the possibility of infiltration and misuse of the service for illicit activities, which could have an impact in terms of security and safety (parcel bombs, drugs, other kinds of illicit goods).
Therefore, the selection criteria adopted for recruiting the personnel to be assigned to special operations such as those in direct contact with sensitive goods from storage places or high risk areas, will have to be carefully evaluated.

It is necessary also to control the frequency with which the operator performs the monitoring of personnel, as if labour standards are respected. It is very important in this context to consider the procedures for managing of the contracts with employment agencies.

All staff, regardless of the type of contract under which they carry out their work, should be guaranteed adequate professional training, in particular regarding customs procedures and regulations. In order to achieve a high quality standard in the application of security and safety procedures, it is necessary to provide an adequate level of training including the staff dedicated to the scanning of particular goods to be shipped.

In order to ensure the security of the international supply chain a postal operator should:

- draw up security and safety guidelines to inform and train staff on the risks related to postal operations;

- have an adequate internal organisation that allows increasing the frequency of inspections during specific risk events or following specific intelligence reports;
- train postal inspectors assigned to security checkpoints properly and provide them with an updated information on how to identify potentially dangerous shipments keeping into account risk indicators such as:
    - sender not indicated;
    - sensitive recipients (diplomatic, political institutions, financial bodies, religious communities, the press, etc.);
    - presence of notes or stickers aimed at avoiding controls like: "Do not expose to X-rays," "Confidential", "does not require post inspection ", "do not open" etc.;
    - unusual macroscopic physical and chemical characteristics (e.g. Hot Pack, presence of unusual odours, loss or spread of contents, packaging discoloration, oily spots, noises coming from inside, etc.).

A postal operator must also takes measures for the logistic/organisational dimension of the spaces used for the storage of shipments through the following actions:

- have special areas where security controls of arriving or departing shipments can be carried out;
- physically separate the goods subject to control from those not yet inspected;
- require customers to use products which traceability can be assured;
- prepare a plan of reaction to identify, isolate and neutralise a detected threat;
- create a security contact office for customs, police, intelligence and health authorities according to the kind of service offered and its importance.

In conclusion, given the significant size and the special characteristics of the service offered by postal operators, as well as the number of transactions, and in order to put in place reliable procedures in terms of customs, logistics, accounting and security, it is essential that all procedures are strictly standardised, with detailed internal procedural protocols which are actually made operational in everyday practice.

3.III.3.3. Rail carriers

In general the audit of a rail carrier doesn’t significantly differ from other carriers. It can be even considered that railway operators constitute a lower risk due to the nature of the transport mode. However, planning the auditing activities and assessing the risks will benefit from elaborating on a few distinct features in rail carriers’ business operations:

- railroad operators are bound by **international agreements** and conventions (COTIF, CIM). These agreements may impose requirements related to seals and cargo integrity. Responsibility during transport might also be addressed;

- railroad traffic is subject to **rail safety regulations and certifications** concerning both passenger safety and cargo safety. These may include requirements of security management systems, personnel safety and internal control system;

- rail carriers operate in a fragmented environment from a regulatory point of view. The railroad operations may be regulated and monitored by **several national authorities**;

- the operating environment contains several elements which are often controlled by third parties, responsible for the infrastructure such as tracks, marshalling yards and container terminals or third parties responsible for the cargo unit;

- the applicant might have a complicated organisational structure, a lot of premises and a wide range of operations. The operations can also be divided into passenger and cargo operations;

- rail carriers may operate with a multitude of business partners, regularly well-known. These may include for example road carriers, warehouse operators, harbour operators and service providers for security at railway yards. Loading and unloading of cargo units/containers from or on to a wagon can be in the responsibility of the carrier. However, loading and unloading of goods is regularly the customer's responsibility. Railway carriers regularly do not load or unload cargo units by themselves or by third parties. Only if railway carrier offers parcel service and additional other logistic services by themselves they may have the operational responsibility for the handling of the goods;

- during transport several persons might handle the documents or might control the cargo units/wagons. Only when railway carriers offer parcel service and additional other logistic services by themselves they handle the goods in load transfer points, logistic centres or warehouses.

Points of attention during risk assessment and audit of a rail carrier applying for an AEO:

- to better understand the business environment the customs authorities should ask the applicant to give a short presentation on the regulations, agreements and conventions they are bound by before the audit;

- when preparing for audit, auditors should be able to establish a clear overview of sites and premises involved in customs operations and determine whether the applicant is in control of them or not. The relevant sites are premises where customs related documents, cargo units and goods are handled;

- preventing unauthorised access to goods and cargo units implies adequate security surveillance methods especially in open access railway yards and during transport/unloading/loading and halts;

- tracking of cargo units, security procedures related to border crossing (surveillance camera, scanning) and halts, weighing of cargo and 7 point inspection (especially after long-term storage);

- sealing procedures including instructions for security breaches;

- identification of business partners and incorporating security requirements into contracts, even for ad hoc partners. Due to outsourcing of key activities (loading/unloading/security surveillance) the applicant has to manage risks related to business partners through implementing requirements into contracts and monitoring them. Also routines when a security breach is noticed play an important role in enhancing the supply chain security;

- security awareness training is properly implemented;

- routines for informing about and handling security breaches are a key requirement.

3.III.4. Factors facilitating the authorisation process

3.III.4.1. General

The different economic operators due to their economic activities have to fulfil different standards and regulations besides the AEO requirements. The AEO programme tries to consider and rely on already existing standards and certifications, without including a requirement to have any additional certifications to become an AEO.

In order to speed up the processing of applications, customs authorities should use, wherever possible, information they already hold on the AEO applicants, in order to reduce the time needed for audit. This can include information in particular from:

- previous applications for customs authorisations;
- information which has already been communicated to customs or other public authorities and available/accessible to customs;
- customs audits;
- customs procedures used/declarations made by the applicant;
- self-assessment carried out by the applicant before submitting the application;
- existing standards applicable to and certifications held by the applicant; and
- existing conclusions of the relevant experts as laid down in Article 14n (2) of CCIP.

However, depending on the circumstances of each individual case, taking mainly into consideration the time to which this information is related, customs authorities may need to re-examine or seek confirmation from other authorities that the information (wholly or in part) is still valid.

Specific attention shall be paid to the cases, where the legislation provides for automatic recognition of security and safety standards i.e.:

- Article 14k (3) of CCIP, see also Part 3, Section III, point 4.2. (b) of the AEO Guidelines;
- Article 14k (4) of CCIP, security and safety criteria shall also be deemed to be met to the extent that the criteria for issuing a certificate are identical or correspond to those laid down in the CCIP, if the applicant, established in the Community, is holder of the following:
  - an internationally recognised security and/or safety certificate issued on the basis of international conventions;
  - an European security and/or safety certificate issued on the basis of Union legislation;
  - an International Standard of the International Organisation for Standardisation;
  - an European Standard of the European Standards Organisations.

This shall only be valid for certifications issued by internationally accredited certifiers[17] or national competent authorities.

Besides, there is a large number of international and national standards and certifications as well as conclusions provided by experts in the field of record-keeping, financial solvency or

[17] MLA (Multilateral Recognition Arrangement) or MRA. See also www.european-accreditation.org

security and safety standards which the ICA may accept according to Article 14n (2) of the CCIP. In these cases, the submission of a certificate does not mean that the corresponding AEO criterion is automatically fulfilled and not to be checked any more. Rather it is up to the competent customs authority to determine whether and to what extend the criteria are fulfilled.

In this context there are different indicators to be considered for evaluation if and to what extent a certificate or a standard is relevant and substantial and can be helpful within the AEO application procedure. Some of those indicators are:

- who has issued the certificate or who is competent for granting the standard? Is the certificate granted by an authority or by a third party? Is the third party internationally accredited?
- in what way the certificate is granted? Are there checks done by an authority (examples under Part 3, Section III, point .4.2.), by self-assessment of an operator or is there a verification done by an independent and accredited third party (examples under Part 3, Section III, point 4.1.2. of the AEO Guidelines)?
- was there an on-site audit or documentary verification only?
- what are the reasons for the operator to apply for the certificate?
- is the certification process done by the company itself or is there a consultant installed by the company?
- is the certificate valid for the whole entity, one special site or one single process?
- when was the certificate issued? When did the last audit take place?

The list of known standards and certificates presented below is not exhaustive. Due to the variety of economic activities of economic operators and due to national particularities only the most common ones are listed.
Nevertheless, the AEO applicants can submit information on every standard they have fulfiled or certificate they hold with impact to the AEO criteria to the competent customs authority. Then the competent customs authority will check whether it can be taken into account and to which extent.
This is also valid if the economic operator was counselled by an independent authority/institution in cases influencing the AEO criteria without leading to a certification (e.g. individual guidance of the local police in crime prevention on site, training programmes).

It should be noted that it is not necessary, for the purposes of becoming and AEO, to hold any of those certificates or to be counselled but if there are any certificates it could be useful information to the customs authorities and could result in speeding up the process (see also SAQ Explanatory Notes for sections 3 and 5 related to accounting and logistical system and to security and safety requirements).

Consider also that it is always the responsibility of the applicant to demonstrate that the AEO-criteria are fulfilled.

3.III.4.2. Certificates/authorisations granted by customs or other governmental authorities

a) *existing customs authorisations*

When an economic operator is applying for an AEO certificate, all other customs authorisations already given to him should be taken into account.

b) *certificates granted by aviation agencies or authorities*

Aviation administrations certify companies that are engaged in the transport of air cargo. Depending on the role in the supply chain companies can therefore apply for the status of a RA, KC or AC.

RA are companies such as agencies, freight forwarders or other entities that are in business with an airline and carry out security controls, which are recognised or prescribed by the competent authority in respect of cargo, courier and express parcels or mails. For a RA the criterion laid down in Article 14k (1) CCIP shall be deemed to be met according to Article 14k (3) CCIP in relation to the premises for which the economic operator obtained the RA status. Unlike the AEO programme the RA status is always given to a specific premise. It should also be noted that the RA status, in principle, only applies to outgoing goods transported onboard an aircraft. For incoming goods, the processes are not certified.

Therefore, in that respect there should not be automatic recognition but avoid duplication of the same checks.

KC and AC are companies in relationship to RA and determined to send cargo by air. Although there is no legal recognition of the KC status, similar objectives are pursued so that the KC and AC status may be helpful at the AEO certification procedure, too.

c) *International Ship and Port Facility Security (ISPS)*

The IMO has adopted as part of the international, mandatory “Safety of Life at Sea Convention (SOLAS)”, an international, mandatory code for the security of ships and port facilities, the International Ship and Port Facility Security Code' (ISPS-Code). It prescribes responsibilities to governments, shipping companies, ship's masters, shipboard personnel, ports, ports facilities and port facility personnel to perform risk assessment and risk analysis, and to develop, maintain and improve security plans for the shipping company and its vessels as well as for ports and port facilities with the aim of preventing security incidents affecting ships or port facilities used in international trade.
The security requirements of the ISPS-Code include physical security measures, including access control to ships and port facilities as well as maintaining the integrity of cargo and cargo units. These measures have to be documented duly in a security plan which is submitted to the Designated Authority for Ship and Port Security. The approved security plan is not only a helpful tool to assess the security criterion for AEO but shall also, for those elements in the approved security plan that are identical or correspond to the AEO sub-criteria, be considered by Customs as compliance with these sub-criteria (Article 14k (4) of the CCIP).
While ships and port facilities meeting the applicable ISPC Code requirements are being issued certificates proving this, it must be noted that shipping companies’ compliance with the relevant parts of the ISPS Code is subject to mandatory validation by national maritime administrations in cooperation with the EU’s European Maritime Safety Agency (EMSA); such authoritative validation of the shipping company should therefore also be considered in the context of the AEO authorisation.

d) *eligibility of the European Central Bank Eurosystem credit assessment framework (ECAF)*

The European Central Bank Eurosystem credit assessment framework (ECAF) defines the procedures, rules and techniques which ensure that the Eurosystem requirement of high credit standards for all eligible assets is met. In the assessment of the credit standard the Eurosystem takes into account institutional criteria and features guaranteeing similar protection for the instrument holder such as guarantees. In some member states eligibility is certificated by the national central bank. The Eurosystem's permanent benchmark for establishing its minimum requirements for high credit standards is defined in terms of a "single A" credit assessment, "single A" meaning a minimum long-term rating of "A-" by Standard & Poor's or Fitsch Ratings, of "A3" by Moody's, or of "AL" by DBRS.
Therefore the assessment by rating agencies can also be taken into account for the assessment of the criterion on proven financial solvency.

e) *the Sarbanes-Oxley-Act (SOX)*

The SOX is a United States federal law, which sets out new or enhances standards for all U.S. public company boards, management and public accounting firms. It is also applicable for companies outside the US, whose stocks are traded in the US. It mainly includes regulations on the internal control system for accounting, balancing and financial report. The focus is on disclosure requirements and the liability of the leadership.
Even if a company is compliant with the SOX regulations there is no automatic fulfilment of any AEO criterion. However, this should be an indicator to be considered in the risk analysis and in the context of the AEO authorisation.

f) *AEO programmes or similar programmes in third countries*

In some countries there is a security and safety programme installed which is in line with the AEO concept of WCO SAFE Framework. Even if there is no mutual recognition between EU and a particular country, the fact that an economic operator is validated/certified under such a programme is also of importance in the context of the AEO authorisation and should be taken into account by the competent customs authority in the examination process for granting an AEO status.

g) *TIR (Transports Internationaux Routiers)*

Under the auspices of the UNECE, the Customs Convention on the International Transport of Goods under Cover of TIR Carnets in 1975 (TIR Convention 1975) was developed.

The TIR Convention is maintained by the UNECE who also maintains the TIR Handbook. The Handbook not only contains the text of the Convention but also a wealth of other useful information concerning the practical application of the Convention.

Of particular interest for the purpose of an AEO certification is the controlled access to TIR procedures, which constitutes one of the pillars of the TIR Convention. According to Article 6 of the TIR Convention, the access to TIR procedures shall be granted by competent authorities only to transport operators who fulfil the minimum conditions and requirement laid down in Annex 9, Part 2 to the Convention, namely:

- proven experience and capability to engage in international transport;
- sound financial standing;
- proven knowledge in the application of TIR;
- absence of serious or repeated offences against customs or tax legislation;

- an undertaking in a written declaration of commitment to comply with Customs legislation and to pay the sums due in case of infringement or irregularity.

Of particular interest for the purpose of an AEO certification can also be the approval of road vehicles and containers. The TIR Convention stipulates that goods shall be carried in containers or road vehicles the load compartments of which are so constructed that there shall be no access to the interior when secured by seal.
If a container or load compartment fulfils the requirements of the Convention, relevant national approval or inspection authorities issue so called approval certificates for road vehicles or containers.

h) *others*

Verifiable compliance with security requirements and standards set by intergovernmental organisations, such as IMO, UNECE, OTIF, UPU and ICAO may also constitute partial or complete compliance with the AEO criteria to the extent the requirements are identical or comparable.

3.III.4.3 Commercial standards and certifications

a) certificates according to ISO 27001

The ISO 27001 is a worldwide standard by the ISO for the safety of information technology and the protection set of electronic information systems. This standard includes regulations on information technology, security technology and information security management systems requirements. It specifies the requirements for production, introduction, monitoring, maintenance and improvement of documented information security management system. So an ISO 27001 certification is applicable to different sectors, e.g. wording of requirements and aims for information security, cost efficient management of safety risks, ensure the compliance with law and regulations.

b) ISO 9001:2008 (if any combined with ISO 14001:2009)

The ISO 9001 standard created by the ISO includes substantial proposals for the improvement of quality management in enterprises. The purpose of this standard is to increase the effectiveness of the company and the improvement of quality assurance. Therefore, the customer requirements should be met with a certain quality process. Ultimately, customer satisfaction should be increased.
For the AEO application procedure an ISO 9001:2008 certification can be useful e.g. for the assessment of the internal control system.

c) ISO 28000: 2007

Pursuant to ISO 28000:2007, companies can be certified as having an adequate security management system regarding the security of the international supply chain. ISO 28000:2007 is a framework standard and the requirements for security and safety in this particular standard are very general.
However, another ISO standard in the ISO 28000 series, ISO 28001:2007, includes much more specific supply chain security requirements and aims to be aligned with the WCO

SAFE's AEO criteria. Compliance with ISO 28001 should therefore, according to Article 14k (1) CCIP, be considered by the customs authorities in the context of the AEO authorisation.

d) TAPA Certificates

TAPA is an incorporation of persons responsible for security and logistics in the fields of production and logistics. The aim of this international association is to protect their especially high-priced goods against theft and loss during storage, transhipment and transport. TAPA certificates are granted on the basis of cargo security standards developed by the TAPA organisation. Hereby, checks concerning compliance with the standards are done by a neutral certification body (TAPA certificates A or B) or in a self-assessment by the company (TAPA certificate C). The TAPA cargo security standards include instructions for security concerning buildings, equipment and processes during storage and transportation of goods.
A successful certification (certificates A and B) according to the requirements of the cargo security standards by the TAPA organisation requires adherence to a high level of physical security standards by the certificate holder.
However, it remains important to note that TAPA certificates are being issued for individual sites and not for the whole company.

3.III.5. Parent/subsidiary companies with common system/procedures

Regardless of the legal set-up of a particular company, the relevant criteria have to be fulfilled in principal by the applicant.
The particularities in the event of outsourced activities have already been explained in Part 2 'AEO criteria' of the Guideliens. The same principles are applicable if activities are outsourced within a group of affiliated companies.

However, in terms of parent/subsidiary companies there are some factors to be considered, which can influence the risk analysis and the audit process. First, the connection has to be clarified is and if it has influence on administrative and/or operative processes.

There are cases in which a subsidiary will be granted independence by the parent company. Frequently there are at least profit transfer agreements or the like between affiliated companies. In some cases specific activities are outsourced within the group by a contract, which can lead towards a company without own personnel at all.

In other cases specialised units fulfil tasks (shared services) for all companies belonging to a group.
In all these cases the connection can influence the likelihood of a risk to occur and the impact of the occurring risk both positive and negative.

It might be of practical importance for the examination of the AEO application that in case of common processes of connected companies, it will be often sufficient to check these processes only once.
This is as well if one unit within the group conducts particular activities for all affiliated companies (shared services) as if different legal entities within one group make use of the same principles (corporate standards).

This can speed up the audit process and the specialist knowledge can also enhance the quality of processes. At the same time knowledge about one company of a group has always also to

be assessed in the light of a possible impact on affiliated companies. If the internal control system fails in one affiliated company with common corporate standards, the internal control system in the connected companies should not be automatically assumed to also have failed, but the customs authorities may decide to review those other systems (wholly or in part).

3.III.6. Risk and risk analysis

3.III.6.1 Economic operator's risk management

The organisation of an economic operator can be a complex system involving many interrelated processes. An AEO should focus on processes, management of risk, internal controls and measures taken to reduce risks. This should include a regular review of those processes, controls and measures taken to reduce or mitigate risks related to the international movement of goods. Internal control is the process implemented by the economic operator to prevent, detect, and address risks in order to assure that all relevant processes are adequate. An organisation that has not implemented any internal control system or there is evidence that the system is performing poorly is by definition at risk.

Risk based management systems are the disciplines by which economic operators in any industry assess, control, monitor and address risks. For an AEO, this means that the economic operator has to set out clearly in its policies/strategies the objectives of being compliant with customs rules and of securing its part of the supply chain according to its business model. The management system should allow for:
- a continual cycle of identifying needs or requirements,
- evaluating the best means for complying with the requirements,
- implementing a managed process for applying the selected management actions,
- monitoring the performance of the system,
- maintaining evidence of the application of processes used to meet business objectives, and identify functional or business improvement opportunities, including reporting mechanisms on gaps, incidental mistakes and possible structural errors.

This all has to be seen within the framework of complying with the legal and regulatory requirements to which the organisation subscribes or is required to comply.
The more an organisation is aware about its processes and the risks related to its activities the more it is possible that processes can be managed according to the preset intentions and improved and the objectives achieved. This means that an organisation should be aware about concepts such as: risk management; governance; control (monitoring, re-assessment; re-implement process and/or redesign procedures) and have implemented the relevant procedures to cover the most important risks.

Within the economic operator organisation there should be a responsible person or, unit depending on its size and complexity, responsible for carrying out a risk and threat assessment and for putting in place and evaluating the internal controls and other measures. Risk and threat assessment should cover all the risks relevant for the AEO status keeping into account the role of the economic operator in the supply chain and should include:

- security/safety threats to premises and goods;
- fiscal threats;
- reliability of information related to customs operations and logistics of goods;
- visible audit trail and prevention and detection of fraud and errors;
- contractual arrangements for business partners in the supply chain.

The risk and threat assessment for security and safety purposes should cover all the premises which are relevant to the economic operator's customs related activities.

3.III.6.2. Customs risk analysis and auditing

As seen under the previous point, the economic operator himself is the one that is in the best position to assess his own risks and to take action to cover them. Customs' role is to perform audits to assess how effectively the economic operator tackles these issues. Is the applicant aware of the most important risks and is he taking adequate measures to cover them?
To carry out this evaluation and take the appropriate decision whether to grant the AEO status or not, customs authorities have to:

- assess the risk of the economic operator;
- prepare an adequate audit plan based on risk;
- perform the audit;
- address any non-acceptable risk with the economic operator;
- take the appropriate decision, either granting the AEO status or not;
- monitor, and if necessary re-assess, the economic operator concerned.

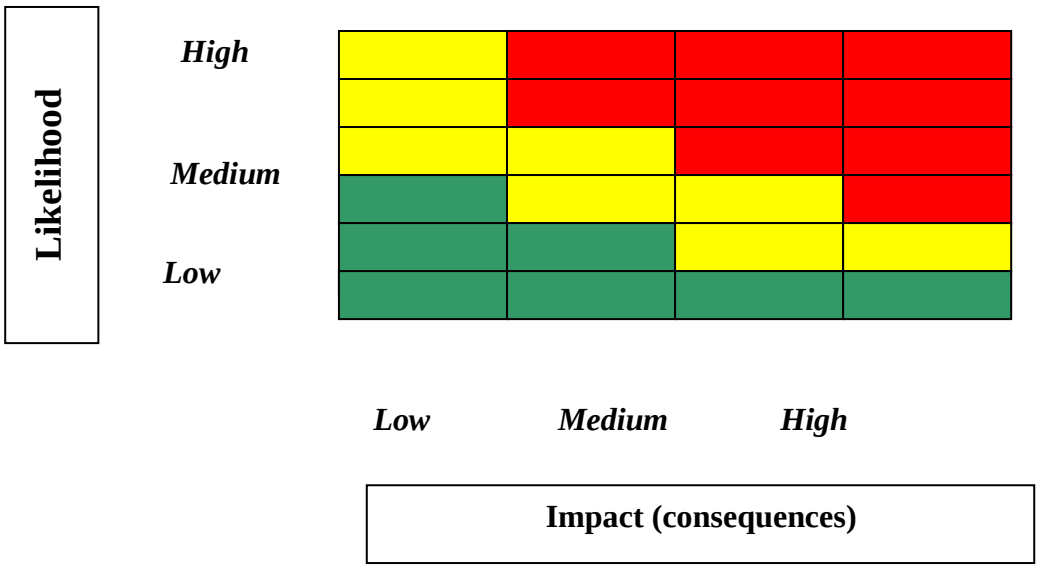
The economic operator should have implemented adequate procedures and measures at management level to deal with the risk relevant for the AEO authorisation. In this context the economic operator should be aware that it is possible to outsource "activities" but not "responsibilities". In the context of the AEO concept, the economic operator should be aware of the risks related to outsourcing activities and should take action to cover these risks and provide evidence to customs about that.

Risk assessment of a specific economic operator

For customs the first step is to collect as much relevant information as possible to understand the economic operator's business (see Part 3, Section 3.III.1). Once this has been done customs can proceed with the risk assessment, elaborating an audit plan and conducting the auditing. Using all available information a risk assessment is undertaken on all the relevant risk area of the operator's activity within the international supply chain in accordance with the economic operator's business model. This is to be done area by area, taking in consideration all risks related to the activity of the economic operator and relevant for the AEO status. At this stage this is the risk as assessed based on all available information before the audit and on the estimated existence and effectiveness of the internal control system in the economic operator's organisation. It should guide auditors in preparing the audit plan.

Risk Mapping and AEO COMPACT Model

In the WCO "Risk management guide", the risk from a customs perspective is generally defined as: "The potential for non-compliance with Customs laws", but in the context of these guidelines it is better to have a broader approach and define the risk as "the probability that an action or event will adversely affect an organisation's ability to be compliant with the AEO requirements and criteria". There are two things to be considered: the likelihood that an event occurs but also its impact, and in order to assess the importance of the relevant risk, these two dimensions should always be taken into account. These concepts can be visualised through the so called risk matrix in the following picture:



A risk can never be totally eliminated, except when a process is aborted totally. This matrix shows a high consequence risk would be unacceptable in all but a low likelihood situation, while a medium consequence risk would be unacceptable in a high likelihood situation. The aim is to reduce the level of risk (impact/likelihood) to an acceptable level, and assure through monitoring that it is not changing.
Normally, it should be considered that if:

- the risk is in the red area, it is considered high and further countermeasures should be introduced to reduce the level of risk;
- the risk is in the yellow area, corrective actions can be suggested to move the risk in the green area, either mitigating the impact or reducing the probability that it occurs;
- we are in the green area, the risk can be treated as acceptable but improvements can be considered.

These two dimensions should also be used to prioritise risks and envisage appropriate countermeasures.

It is clear that the risks could have different relevance depending on the perspective of a specific stakeholder concerned. For example, an economic operator and customs authorities could have a different understanding of the concept of security: the objective of the economic operator could be to secure the cargo against the risk of theft, while customs' focus will be on protecting citizens and preventing the insertion of illicit or dangerous goods into the supply chain. It is important that the economic operator's threat and risk assessment cover all risks to their business relevant for the AEO status, keeping in mind the scope of the AEO concept and the economic operators' role in the international supply chain in accordance with its business model.

As part of the process the economic operator not only has to implement and manage appropriate selected measures but also to make sure that the measures work and review and reassess them.
This means the economic operator should monitor on regular basis the relevant processes, checking whether the procedures in place are adequate to assure customs and security and safety compliance. The economic operator should document what has been done, both to manage the improvement action and to evidence it to customs authorities.

Summarising, the economic operator should have in place procedures and measures to:

- clearly set out the assets and objectives at stake (i.e. for AEO it is clear that what is important is to have the objective of being compliant with the customs rules and securing its supply chain);
- identify the threats that can put in danger assets and objectives set out;
- continuously monitor whether its own assets are threatened by those identified threats;
- assess the risk related to his role in the international supply chain in accordance with its business model;
- cover this risks by taking action and implementing adequate procedures; and
- monitor the effectiveness of the procedures implemented.

In order to have comparable results the risk assessment process should be based on a recognised risk analysis model. The AEO COMPACT Model[18] is recommended to be used.

3.III.7. Auditing and risk based audit

3.III.7.1. Preparing an audit plan

The auditor has the responsibility to plan and perform the audit to obtain reasonable assurance whether the economic operator is compliant with the established criteria. The auditors should determine their audit plan according to the risks identified for the specific economic operator. Auditing action and allocated resources should be based on the following principle: "the higher the risk the higher the level of scrutiny".

The audit plan should be drawn as a result of the risk assessment and reflect information about:

- the risks of each area, indicating the relevant points/aspects to check;
- a Risk Analysis Matrix;
- the management and the staff to interview;
- what, how and when a specific transaction/security test should be done.

3.III.7.2. Perform auditing activities

Auditing is a systematic process of objectively obtaining and evaluating evidence. It includes also communicating the results to continuously improve the relevant processes and, in doing so, reduce or mitigate the risk related to the specific activities carried out by the operator to an acceptable level. A key element of the audit is to assess the effectiveness of the economic operator's risk assessment and internal controls. The economic operator should have committed to assess, reduce and mitigate the risks identified to its business and to document this. It is also important to bear in mind that for SME's the level of internal control and documentation required should be appropriate for the level of risk depending on the scope and size of their business. However even where the economic operator have carried out a risk assessment, their assessment may not always correspond with the threats and risks identified by customs authorities.

Audit should always be risk-based and focused on high risk areas to be able to meet the objectives of the audit in relation to the particular economic operator. Risk-based audit (RBA) is an approach to audit that analyses audit risks, sets acceptable thresholds based on audit risk

[18] Authorised Economic Operator, Compliance and Partnership Customs and Trade (TAXUD/2006/1452)

analysis and develops audit programmes that allocate a larger portion of audit resources to high-risk areas. This is important because an auditor may not be able to perform detailed audit procedures on all areas of audit, particularly in the case of large multinationals (i.e. in cases of many premises). Audit should focus primarily on the identification and assessment of the highest risks and the internal controls and counter and mitigating measures taken by the applicant and provides a framework to reduce the impact of these identified risks to an acceptable level before granting the AEO status. RBA is primarily characterised as systems audit.

3.III.7.3. Managing residual risk

RBA provides indicators of risks as a basis of opportunities for improvement of audited risk management and control processes. This affords an opportunity to the economic operator to improve its operations from recommendations on risks that do not have current impact in terms both of customs compliance and security and safety but could put in danger the economic operator's operational strategies and performance in the long run. A good risk analysis provides a framework for assurance in performance auditing. Auditors should take into account that the audit plan is a living document that can change according to the information auditors receive during the audit. A potential risk estimated low in the risk assessment phase can be reassessed as high once the actual process is observed and the procedures are judged not only on paper but also how they have been implemented. The auditors should always evaluate any additional information related to the areas judged as being in the “green area” and be ready to check the relevant procedures in case the estimated risk is challenged by facts.

The use of the table 'Threats, risks and possible solutions', attached as Annex 2 to the AEO Guidelines is recommended.

RBA consists of four main phases starting with the identification and prioritisation of risks, to the determination of residual risk, reduction of residual risk to acceptable level and the reporting of audit results to the economic operator. These are achieved through the following:

- establish the various operations of the economic operator in order to identify and prioritise risks, including examining their security plan if there is such and threat assessment and identifying the measures taken and internal controls;

- confirm economic operator's management strategies and procedures and evaluate controls to determine residual audit risk. Where appropriate test those controls;

- manage any residual risk to reduce it to acceptable level (follow up action should be agreed with the economic operator in order to reduce the impact and/or likelihood of a specific risk and have all the risks in the green area);

- inform the economic operator of audit results. It is important that auditors clearly indicate to the applicant any risks identified including also recommendations on how they can be overcome;

- monitoring and, if necessary, re-assess criteria and requirements.

3.III.7.4. Final report and audit documentation

The verification and checks carried out during the audit and the conclusions of the auditors should be accurately documented. It is efficient to document what has been done and not just collect evidence and information. This is important both for customs authorities throughout the authorisation process including the management of the authorisation and also for the economic operator.

The final report and the audit documentation should include the following information in a clear and systematic way:

1) a clear overview of the economic operator (its business, its role in the supply chain, its business model, its customs related activities, etc.);
2) a clear description of all risk areas considered and checked and any follow-up actions suggested to the AEO applicant;
3) a clear report of any action or reaction the AEO applicant has undertaken or expressed to the auditors;
4) the clear recommendation about whether to grant the status or not according to the result of auditing activities;
5) in case the AEO status is not granted, complete and detailed justifications why the status is not granted, including any information received from other MS, stating whether they have been obtained through the “information” and/or “consultation” procedure;
6) an overview regarding the AEO risk profile and in case the AEO status is granted any recommendations for monitoring and/or reassessment;

Therefore, the final report is a really important document as it reflects the overall work already done (risk analysis, audit planning, checks and visits to the premises of the AEO applicant, information received by other MS, risk profile of the specific economic operator, etc.) in a summarised and systemised way, and where clear indications about future actions are indicated.

Monitoring and reassessment of the authorisation already granted have been explained in details in Part 5 'Management of the authorisation' of the AEO Guidelines. However, as directly related with the risk analysis concept it has to be highlighted that these concepts are quite different. While monitoring is done on continuous basis by customs authorities, including through monitoring of the day-to-day activities of the AEO, visits to his premises and is aimed at early detecting of any signal of non-compliance and acting promptly, re-assessment implies that something has already been detected and action has to be taken in order to verify if the economic operator is still compliant with the AEO criteria. In this context it is clear that monitoring can trigger re-assessment.

Therefore any plan for monitoring should be primarily based on the AEO risk profiles as assessed by auditors during the performed auditing activities and included in the final report.

As risk is a dynamic concept, any future information obtained through monitoring could change the economic operator’s risk profile and require immediate action or lead to establishing a different re-assessment time period. This process also follows the AEO COMPACT Model steps and if well managed and implemented it can result in improving the relevant process related to security and compliance in the economic operator's organisation.

Section IV - Decision about granting of the status

3.IV.1. Factors to be considered before taking the decision

The decision of the customs authorities is based on the information collected and analysed, through the different stages of the authorisation process, from receipt of the application submitted to when the audit process has been fully completed.
To enable customs authorities to make the decision, the following factors should be taken into consideration:

- all previous information known about the applicant by the competent authority, including the AEO application form along with the completed SAQ, and all other supporting information. This information may need to be rechecked and, in some cases, updated, in order to take account of possible changes, which may have occurred in the period from the date of receipt and acceptance of the application to the end of the authorisation process and issuing the final decision;
- all relevant conclusions arrived at by the auditors during the audit process. Customs authorities should prepare and implement the most efficient methods of internal communication of the audit results which have emanated from the audit team(s) to the other competent customs authorities involved in taking the decision. A full documentation of the checks done through and audit report or other appropriate document/way is recommended as the most appropriate mechanism to do so;
- the results of any other evaluation of the organisation and procedures of the applicant that took place for other control reasons.

At the end of the process, customs authorities, before taking the final decision, will inform the applicant in particular where those conclusions are likely to result in a negative decision. The customs authorities shall allow the applicant the opportunity to express his point of view and respond to the conclusions and to introduce further supplementary information that can be taken into account in the assessment of the conditions and criteria, with the intention of achieving a positive decision.

To avoid the right to be heard giving rise to prolonged delays, a time limit for the applicant's response should normally be indicated. This is defined in Article 14o (4) as a period of 30 days. The applicant should be advised that failure to respond within that period will be deemed to be a waiver of the right to be heard. In circumstances where a person indicates that they wish to waive the right to be heard, this fact should be recorded and retained as evidence that the applicant was provided with the possibility to respond.

If, as a result of the supplementary information provided or further evidence that has been submitted, customs authorities decide to alter the original decision and the applicant will be informed accordingly.

3.IV.2. Taking the decision

The following factors have to be taken in consideration:

- each MS determines, within its internal organisation, the specific service of the organisation which has the competence to decide on whether to grant the AEO status or not;

- when the decision is taken the final report of the competent audit team(s) should play an essential role in relation to the compliance or not with the specific AEO criteria, as detailed above;
- MS have 120 calendar days to take the decision. The time limit can be extended in two cases:

- by the ICA with another 60 calendar days, if it is unable to meet the 120 calendar days. Before the expiry of the 120 calendar days the applicant has to be informed about the extension;

- on request by the applicant and subject to agreement with the customs authority concerned. During the latter extension, the applicant carries out adjustments in order to satisfy the criteria and communicates them to the customs authority. The period of extension requested should be reasonable with a view to the nature of the adjustments to be done.

3.IV.3. Informing the applicant

Once the decision is taken the customs authorities will inform the applicant in writing. Any decision to reject an application shall include the reasons for rejection and the right to appeal as provided for in Article 243 of the CCC.

3.IV.4. Appeals

Any person who is aggrieved by a written decision related to customs matters covered by EU customs legislation may appeal such decision.
Article 243 of the CCC provides that any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually. The person appealing a customs matter should set out, in writing, the basis of the appeal and forward it, together with any relevant documentation (or copies), to the relevant department in the customs authority who has issued the decision subject to the appeal.

PART 4, Exchange of information between MS

In the context of the AEO procedure, exchange of information between MS is an important factor when it comes to assuring the compliance of an economic operator with the AEO criteria. This is particularly important because, once granted, the status of AEO is valid throughout the EU. It also recognises that many economic operators are engaged in customs activities in a number of different MS and the assessment of the AEO criteria should be made against all their relevant customs activities. This can only be done through effective information and consultation procedures between the MS.

The legislation assigns a leading role to the ICA that is responsible for accepting the application and granting the AEO status. Nevertheless, customs authorities in the other MS also play an important role in the process. In particular two different procedures are established in order to exchange information among MS and provide to the ICA all the relevant information for taking the appropriate decision.

Section I – Information procedure

According to Article 14l (1) and (2) of the CCIP the ICA has the obligation to communicate the application to the customs authorities of all other MS allowing them to be aware that a specific application has been accepted. Thus they can react in case they have at their disposal relevant information for that particular applicant or in case they have been asked by the ICA to take particular action (consultation procedure).
This would normally be done through the EU EOS system and MS are encouraged to ensure that regular checks are carried out in the system to guarantee that they are aware of any applications in which they may have interest. It is recommended that at least weekly checks in the system are performed.
It is also important that each customs authority should also carry out checks in EOS to see whether there is any relevant information to be sent to the ICA or not. Any negative information about the applicant, related to the compliance with the AEO criteria should be communicated to the ICA to enable them to make the correct decision based on all available facts. Article 14l (2) of the CCIP allows MS a maximum of 35 calendar days to make this information available to the ICA. The timely exchanges of information could save MS valuable time and resources.

The information above is normally submitted before the certificate has been issued nevertheless the procedure is available to exchange information at any time, even after the certificate has been issued. If a MS has any new information, it has to send it as soon as possible to the ICA as it could have an impact on the conditions to be met by the AEO. This is possible as Article 14q (4) lays down that the customs authorities (both the ICA and other customs authorities) have to monitor the compliance with the conditions and criteria. In case the information sent appears to be relevant and significant, this can lead the ICA to start a re-assessment process according to article 14q (5).

Section II – Consultation procedure

According to Article 14m (1), first subparagraph of the CCIP the consultation between the customs authorities of the MS shall be required if the examination of one or more of the criteria laid down in Articles 14g to 14k cannot be performed by the ICA due either to lack of information or to the impossibility of checking it (see also part 2 'AEO criteria'). It could be necessary, for example, to start a consultation procedure if the economic operator has one or more premises in another MS; if part of its customs activities is carried out in other MS; or to get information on some important management member normally resident in other MS etc.
This consultation is mandatory and the consulted customs authority shall reply to the ICA even if the outcome is positive and the AEO applicant meets the criteria requested to be checked. This then ensures that the ICA has the relevant records to support the final decision. The MS has 60 calendar days to complete this action and respond accordingly to the ICA. According to Article 14m (1) 2nd subparagraph, this 60 calendar days time limit can be extend on request by the applicant to the consulted customs authority and subject to agreement of the consulting customs authority. During this extension, the applicant carries out necessary adjustments in order to comply with AEO criteria and is obliged to communicate them to the consulted customs authority.
If no reply is received within the deadline the ICA will assume that the criterion or criteria for which the consultation has been requested in the consulted MS are met.

As in the case of information procedure, also the consultation procedure is normally started by the ICA at the beginning of the process in order to get information before the certificate has been issued. Nevertheless, this procedure can be started at any time the ICA considers it necessary in order to assess whether the AEO is still compliant or not. In particular, when the ICA decides to start a re-assessment, it has to decide if a consultation with another (or several) MS is necessary or not. If it is deemed necessary, the ICA starts a consultation and waits for the results; otherwise it continues the re-assessment itself and all results (suspensions, revocations, AEO certificate still valid) will be notified to all MS when the results are entered into the EOS system. MS must send prejudicial information, if any, to the ICA irrespective of the status of the application.

All the information related to both the "information procedure" and the "consultation procedure" should be primarily provided using the EOS system through the use of the appropriate codes. Nevertheless, should MS need to exchange more detailed information they can use all available communication channels, including the AEO network contacts. Any supporting documents/information should be retained by the MS as this may be required later on to support the ICA's decision in such instances as a review, appeal or audit.

PART 5, Management of the authorisation

Section I - Monitoring

5.I.1. General

Monitoring by the economic operator and obligation to notify of any changes

Regular monitoring is the primary responsibility of the economic operator. It should form part of its internal control systems. The economic operator should be able to demonstrate how the monitoring is performed and show the results. The economic operator should review his processes, risks and systems to reflect any significant changes in his operations. Customs authorities should be informed about these changes.

There is also a legal requirement laid down in Article 14w (1) of the CCIP that the AEO shall inform the ICA of all factors arising after the certificate is granted which may influence its continuation or content. Although, it depends very much on the particular AEO concerned and thus the list cannot be exhaustive, it is recommended that in general the AEO should inform in the following cases:

- changes related to any data of the application form or in the mandatory Annexes (i.e. legal status, business name, etc.)
- changes related to the nature and structure of the business:
  - changes related to the accounting or computer systems;
  - additions or deletions of locations or branches involved in the international supply chain;
  - additions or deletions of any business activities/roles in the international supply chain included within the application, e.g. manufacturer, exporter;
  - major changes related to the main business partners;
- significant changes in the financial standing;
- report of any customs errors and any significant security incidents;
- report of any indications of failure to comply with the criteria.

To ensure AEOs are aware of this obligation ICA may e.g.:

- give examples of information which should be communicated to ICA in the written decision, letter etc. which is sent to the AEO after issuance of the AEO certificate;
- send an e-mail message (e.g. in the e-mail with which Customs provide the AEO logo to the economic operator) to the AEO contact person in the company stressing this obligation and giving the possibility to communicate relevant changes;
- when an unannounced change is discovered by ICA officers, send a "warning" e-mail to the AEO contact person in the company pointing out that this kind of information has to be communicated to ICA;
- sending regularly (e.g. annually) a short questionnaire "reminder" (using some questions from SAQ) to the AEO contact person (via e-mail) asking about possible changes regarding relevant criteria.

Monitoring by the customs authorities

Article 14q (4) of CCIP states that "The customs authorities shall monitor the compliance with the conditions and criteria to be met by the authorised economic operator". Furthermore, taking into consideration that the period of validity of the AEO certificate is not limited it is of great importance that the criteria and conditions of the AEO status are evaluated on a regular basis.

However, monitoring will also lead to a better understanding of the AEO's business which could even lead the customs authorities to recommend to the AEO a better, more efficient way of using the customs procedures or the customs rules in general.

Thus it is significant for ICA to ensure that a system for monitoring the compliance with the conditions and criteria of the authorisation is developed in conjunction with the AEO. Any control measures undertaken by the customs authorities should be recorded.

Although the legislation does not require a specific form for establishing the monitoring system in general the most appropriate way is that ICA draw up a monitoring plan. Regardless of the way customs authorities decide to organise the monitoring i.e. as a separate plan or part of the final report, the following shall be taken into account:

-results of the audit – monitoring should be primarily based on the AEO risk profiles as assessed by auditors during the performed auditing activities including any measures recommended to be taken by the AEO;

- early warning signals – as mentioned above the AEO is legally obliged to inform the ICA of any significant changes. It is possible that the changes made by the AEO lead customs authorities to decide on the necessity for reassessment. It is important that AEO has a clear understanding of his obligations and the way to communicate any changes to the ICA;

It is necessary that customs authorities have the possibility to continuously check thoroughly that the operator is still in control of his business and any risks identified or any changes in the situation (Are there any new risks? Is the quality of the administrative organisation and the internal control system still as good as it was during the time of the audit?). There are various ways allowing customs authorities to have early indications of any new risks/information, i.e.:

- random checking of declarations of the AEO;
- any physical inspections of goods undertaken;

- analysis of information available in internal customs databases;
- any audits other than AEO monitoring or reassessment audits (i.e. audit under a simplified procedures or an application for authorised warehouse keeper status);
- evaluation of any changes in company's behaviour or trade patterns that come to notice;

- monitoring of risks - new risks or new situations must be assessed through monitoring. If one of the elements of the evaluation leads to the conclusion that the operator is not or no longer adequately addressing identified risks, the customs authority informs the operator about that conclusion. The operator then should undertake improvement actions. It is again incumbent on the customs authority to assess these improvement actions. This can also lead to the conclusion that reassessment of one or more of the criteria and conditions should be done or that the AEO status should be suspended or revoked immediately.

The monitoring activities to be planned should be based on risk analysis performed at the various stages (examinations before granting the status, management of the authorisation granted, etc.). There are a number of factors which can influence them:

- the type of certificate held – while monitoring of some criteria, such as proven solvency, can be desk-based, monitoring of the security and safety criterion for AEOS and AEOF may require an on-site visit;
- the stability of the economic operator – whether there are frequent changes to locations, markets, key personnel, systems etc.;
- the size of the business and number of locations;
- the role of the AEO within the supply chain – whether the AEO has physical access to goods or acts as a customs agent;
- the strength of internal controls over the business processes and whether processes are outsourced;
- whether any follow up actions or minor improvements to processes or procedures have been recommended during the AEO audit;

Consequently, the frequency and nature of monitoring activities may vary depending on the AEO concerned. However, considering the specific nature of the security and safety criterion, an on-site visit for AEOS and AEOF is recommended at least once every 3 years.

Special attention shall be also given to the cases where the economic operator being granted the status of an AEO has been established for less than three years. In the latter cases customs authorities are required to carry out close monitoring during the first year after granting the AEO status.

It is also important to be taken into account that the development of the monitoring plan and in particular any visits in the premises of the AEO have to be done in the context of its overall customs activities. Customs authorities should co-ordinate and take into account any other auditing/monitoring activities envisaged for that particular economic operator. Duplication of examinations has to be avoided as much as possible.

5.I.2. AEO authorisation covering several branches

The general principles for monitoring as described in point 5.I.1 always apply. Nevertheless, in the cases of AEO status granted to a parent company for several branches additional

specific elements have to be taken into account. The general principle that the ICA is competent for granting the AEO status and has the leading role in the process shall be kept also for the phase of management of the issued authorisation. However, in these specific cases is has to be also considered that the 'practical' knowledge and information for a particular branch is with the customs authorities of the MS where it is situated. Having this in mind and in order to have an efficient management of the authorisation when any monitoring activities are developed the close cooperation between the ICA and the customs authorities of the MS where the separate PBEs/branches are situated is of significant importance. When elaborating the monitoring plan the following should be taken into account:

- it is recommended that one single general monitoring plan is developed for the AEO on whose name the status is granted. However it shall be based on the individual plans and information prepared by the MS concerned;
- the ICA is responsible for the general coordination and framework of the plan, i.e. ensuring avoidance of any possible overlaps or duplication of control activities envisaged/done; gathering all new information and update of the plans etc;
- customs authorities of MS where the branches are situated – are in general responsible for preparing the part of the monitoring plan related to the specific branch. It has to be communicated to the ICA within a reasonable time limit allowing it to prepare and coordinate the general monitoring plan. They are also responsible for any on-site visits to be done in the branch.

Section II – Re-assessment

Article 14q (5) requires that customs authorities re-assess whether an AEO certificate holder continue to comply with the conditions and criteria of AEO where there are:

- major changes to EU legislation , or
- reasonable indications that the relevant conditions and criteria are no longer met.

1. Re-assessment following major changes to EU legislation

A re-assessment shall be required if there are major changes in the Union customs legislation specific to and having impact on the conditions and criteria for granting the AEO status.

An example will be changes to the AEO criteria within the Modernised Customs Code. Usually the legislation will require the re-assessment to be carried out within a specified transitional period.

2. Re-assessment following reasonable indications that the relevant conditions and criteria are no longer met

The starting point for taking a decision for reassessment is that 'there is reasonable indication' that the criteria are no longer met by the AEO. This indication may arise from different situations – as a result of the monitoring that the customs authorities carry out; information received from other customs authorities; major changes in the activity of the AEO etc. Thus, it's up to the ICA to decide in each particular case whether re-assessment of all the conditions and criteria is necessary or only of the relevant condition or criteria for which there is indication for non-compliance. It is always possible to discover even during the re-assessment of one of the criteria that the others should be also checked again.

The re-assessment shall be made by the ICA. However, any customs authority in another MS may find out a reasonable indication that some of the criteria are no longer met by the AEO. This can occur, for example if:
- one or more of the AEO premises are located in a MS different from the one of the ICA;
- the AEO carries out its customs related activities not only in the MS where the AEO certificate was issued.

In these cases, the customs authority of the MS where this indication has been found out should inform the ICA about the facts, and the customs authorities concerned (including the ICA) should decide whether a re-assessment shall be carried out by the ICA or not.

In the cases of a certificate issued to the parent company for several branches each of the MS where the separate PBEs/branches are situated can ask the ICA to start a re-assessment of the conditions and the criteria.

In case the parent company establishes a new PBE/branch or it goes through a restructuring process which has an impact of PBE/branches, it shall inform the ICA which takes the necessary measures including a re-assessment is started, if necessary.

Although in general the re-assessment to be done may vary from case to case, the following common elements should be taken into account:
a) scope of the re-assessment – only documentary check or combined with on-site visit where appropriate for the specific criteria to be re-assessed;
b) *time limit* – there is no time limit specified for conducting a re-assessment. However, it has to be defined depending on the number of the criteria to be checked, whether an on-site visit is envisaged and normally it should not go beyond the same time limits for the original AEO decision. The initial reason for starting the re-assessment should also be taken into account;
c) re-assessments involving other MS
Where the re-assessment involves a re-assessment of the criteria in other MS the rules for the consultation procedures in Part 4 'Exchange information between MS' of the Guidelines shall apply. Normally, the customs authority in the other MS will determine whether a visit is required as part of the re-assessment process. The time limits for the other MS to respond should follow the normal time limits for consultation under Article 14m of the CCIP.
d) other customs authorisations affected
When a re-assessment is carried out it is advisable to establish whether the AEO holds other authorisations or simplifications that are conditional on compliance with the AEO criteria, for example authorisation to use the local clearance procedure or simplified declarations for export. Where this is the case it should be taken into account and any possible duplication of re-assessment work both in terms of the customs resources and the economic operator concerned should be avoided.
e) *re-assessment report*
In terms of reports and documentation similar approach as for the original audit should apply. It is important that the subsequent action proposed is reflected in the report i.e. suspension, revocation, measure to be taken.
f) availability of the results
It is necessary to make the results of the re-assessment available to the customs authorities of all MS, using the communication system EOS no matter whether it has been involved in a consultation procedure or not.

Section III - Suspension

Suspension of the AEO status means that an assigned certificate is not valid during a specific period. During this period the holder may not have access to the benefits that the status provides which can have serious consequences to him. The provisions for the suspension of the certificate are laid down in Article 14r of the CCIP.

Suspension can be a potential consequence of an examination done during the monitoring where serious deficiencies have been discovered which means that the holder of the certificate, from a risk perspective, cannot have the status under the present circumstances.

However, according to the provisions of Article 14r of the CCIP, prior to the decision to suspend, the ICA must notify the AEO of the findings, the assessments made and the fact that according to the evaluation they may result in a suspension of the certificate if the situation is not corrected. The AEO is given the right to be heard and possibly to correct the situation. The timescales for comments and corrections is 30 calendar days from the date of communication.

The replies should be carefully assessed from a risk perspective and unless the situation can be regarded as corrected, the status will be suspended for 30 calendar days with possibility to extension of additional 30 days. The AEO must be notified in writing.

The status can be suspended with immediate effect if the type or extent of the threat to public safety and protection, public health or the environment requires such a decision. This possibility should be used restrictively.

According to Article 14u of the CCIP the initiative for suspension of the status may also come from the holder of the certificate when he is temporarily unable to meet any of the AEO criteria. The AEO should present the reason for the request and where appropriate, propose an action plan showing the measures to be taken and the expected time framework. For example an operator is optimising or changing its computer-integrated manufacturing and, for a while, he is not able to follow the goods in the international supply chain. He would ask for a suspension and propose a timetable for implementation.
The status can be suspended if the action plan and the reason for the requested service can be considered as reasonable. If not, a revocation of the certificate on the demand of the holder should be discussed as a possibility.

However, it has to be taken into account that the distinction between suspension on the initiative of the customs authority under Article 14r and on the initiative of the AEO under Article 14u is very important and is clearly stated in the legislation. So, it cannot be used deliberately by AEO solely for the purpose to postpone revocation or avoid the three years period under Article 14v (4).

It has to be always taken into account that for an AEOF, if the criterion which the operator fails to fulfill is only the security and safety criterion, the status of the operator shall be only partially suspended. For the duration of the suspension the operator could have an AEOC if he so wishes.

The ICA should assess the effect of the suspension very carefully. The suspension will not affect a customs procedure which has been started before the date of the suspension and is still not completed.

As a general principle the suspension applies only to the AEO status but, depending on the type of deficiencies, it may have an impact on other customs decisions especially if they have been granted based on the AEO status (e.g. see the Guidelines on simplified procedures/Single authorisation for simplified procedures (TAXUD/1284/2005, Rev.5.5). The suspension of the AEO status is an indication that should be taken into account in other contexts related to the customs activity of the economic operator.

When the reason to suspend is eliminated, the certificate should be reinstated. If not, the ICA has to consider if the certificate should be revoked.

Section IV - Revocation

The provisions on revocation of the certificate and cases which could lead to the revocation are laid down in Article 14v of the CCIP.

The initiative for revocation may also come from the holder of the certificate. In this case, the operator is allowed to submit a new application for an AEO certificate as soon as his situation against compliance with the criteria is stabilised.

If a revocation is decided by the ICA, the operator is not allowed to submit a new application for an AEO certificate within three years from the date of revocation.

However, it has to be taken into account that the distinction between revocation on the initiative of the ICA and on the initiative of the AEO is very important and is clearly stated in the legislation. So, a call for revocation cannot be made deliberately by the AEO solely for the purpose to avoid a revocation by customs authorities with the consequence of a three years ban as under Article 14v (4).

It has to be always taken into account that for an AEOF, if the criterion which the operator fails to fulfill is only the security and safety criterion, the AEOF shall be revoked and a new certificate AEOC can be issued.

As a general principle the revocation applies only to the AEO status but depending on the type of deficiencies, it may have an impact on other customs decisions especially if they have been granted based on the AEO status (e.g. see the Guidelines on simplified procedures/Single authorisation for simplified procedures (TAXUD/1284/2005, Rev.5.5). The revocation of the status is an indication that should be taken into account in other contexts related to the customs activity of the economic operator.

Revocation on the initiative of the customs authorities is a customs decision and the economic operator has the right to be heard. Therefore, any findings, the assessment made and the fact that according to the evaluation they may result in revocation of the AEO status shall be notified to the AEO unless the right to be heard has been already expressed within the proceeding suspension precedure. For any decision for revocation the economic operator has also the right to appeal the decision.