TRAINING MANUAL

ON THE OPERATION OF

AUTHORISED ECONOMIC OPERATOR

PROGRAMME

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ABBREVIATIONS

AEO	Authorised Economic Operator
CAEO - E	Authorised Economic Operator Certificate for exporters
CAEO – I	Authorised Economic Operator Certificate for importers
CAEO – IE	Authorised Economic Operator Certificate for exporters and importers
ERP	Enterprise resource planning
ICAO	International Civil Aviation Organisation
ISO	International Standard Organisation
ISO / PAS	International Standard Organisation, Public Available Specification
IMO	International Maritime Organisation
MO	Ministerial Order
MRA	Mutual Recognition Agreement
OTIF I	Inter-State Organisation for International Carriage by Rail
PBE	Permanent Business Establishment
Ps & Rs	Prohibitions and Restrictions
SME	Small and Medium-sized Enterprise
SAQ	Self-Assessment Questionnaire
TAPA	Transported Asset Protection Association
UNECE	United Nations Economic Commission for Europe
UPU	Universal Postal Union
WCO	World Customs Organisation
WCO SAFE Framework	World Customs Organisations Safe and Secure Framework of Standards

CHAPTER 1 General information

1.1 Introduction to Training Manual

1.1.1 The legal provisions governing the Authorised Economic Operator (AEO) programme are laid down in Ministerial Order No 314/2012 of 23 November 2012. This Training Manual ('the Manual') on the AEO programme has been drawn up for the information and use of officials of the Customs Authority who will be involved, in some way or another, with processing applications for AEO status and / or monitoring AEO authorised economic operators. The Manual will also be available for economic operators that are considering applying for AEO certification.

1.1.2 The Manual does not constitute a legally binding act. It aims to provide assistance to the Customs Authority and would-be economic operator applicants for AEO certification to deal properly and fully with all the requirements of the AEO programme. It constitutes a single document covering the main tools aspects of the AEO programme, from detailing the criteria for AEO status, preparation of the application and Self-Assessment Questionnaire (SAQ) through to the management and monitoring the operations of AEO certified economic operators.

1.1.3 The focus of the Manual is;

- to ensure a common understanding and uniform application of the law and the various requirements relating to the AEO concept,
- to facilitate the correct and harmonised application of the legal provisions and the various requirements of AEO programme,
- to guarantee transparency and equal treatment of all economic operators that want to become AEOs,
- to assist in the preparation of the application and SAQ and in ensuring the provision of all supporting documents, for AEO status, and

1.1.4 The Manual examines, clarifies and amplifies, with examples, the various criteria for AEO status that are set down in the legal provisions relating to,

a) the application and certification / authorisation process for acquiring AEO status, and

b) the managing and monitoring of the operation of the AEO programme.

1.1.5 The opportunity has been taken, in preparing the Manual, to include information relating to the security and safety criterion, which is so vital in the context of the international supply chain, although it is not, as yet, included in the legislation. The main reason for including the criterion is that it will raise the awareness of the Customs Authority and affected stakeholders of the extent and nature of the requirements that must be met, in the event of the current legislation being amended to include this criterion. Furthermore, by including the security and safety criterion now and dealing with all its different sub-criteria, the need to amend this Manual or, alternatively, prepare a separate Manual to deal with it will not arise at some future date.

1.1.6 The Manual examines, clarifies and amplifies, with examples, the various criteria for AEO status that are set down in the legal provisions relating to,

c) the application and certification / authorisation process for acquiring AEO status, and

- the role of specific economic operators, such as express operators and postal operators,
- the factors facilitating the authorisation process,

- the role of risk analysis and the management of that risk,

- the screening and evaluation ('acceptance') of the application-related documentation,

- the survey and inspection ('audit') of the premises and the accounting / logistical records used by the economic operators concerned,

- managing and monitoring the operation of the AEO programme through applying various controls by the Customs Authority to AEO certified economic operators.

1.1.7 The Manual comprises five chapters, as set out as follows:

- Chapter 1 provides general information about the AEO programme, including the benefits of having AEO status and the application procedure.

- Chapter 2 deals with the AEO criteria that are currently provide for in the legislation. The opportunity is also being taken to include the various requirements on the security and safety criterion.

- Chapter 3 addresses the overall application and decision-making process relating to an application for AEO status, concerning both the affected economic operators and the Customs Authority.

- Chapter 4 covers all aspects of the AEO management, by the AEO economic operators and the Customs Authority, with particular emphasis on monitoring, reassessment, suspension and revocation of AEO certificates / authorisations.

- Chapter 5 describes the essential elements of Mutual Recognition Agreements (MRAs) and different aspects of the exchange of information between the Customs Authority and other State authorities.

1.2 The SAFE Framework and AEO programme

SAFE Framework

1.2.1 The continuous growth of global trade and ever-increasing security threats to the international movement of goods have forced Customs Authorities throughout the world to shift their focus more and more to securing the international trade flow and away from the traditional task of collecting customs duties, other import taxes, such as Value Added Tax, and charges having equivalent effect, in addition to enforcing prohibitions and restrictions (Ps & Rs). Recognising these developments, the World Customs Organisation (WCO), drafted and subsequently amended the WCO Framework of Standards to Secure and Facilitate global trade (SAFE Framework).

1.2.2 The SAFE Framework is part of the future international Customs model, whose principal goal is to support secure trade and sets out a range of standards to guide international Customs Authorities towards a harmonised approach, based on Customs to Customs cooperation and Customs to Business partnerships.

1.2.3 The SAFE Framework is based on four essential elements;

- the harmonisation of advance electronic cargo information,

- each country that joins the SAFE Framework commits to employing a consistent risk management approach to address security threats,

- on request from the Customs Authority of the importing country, the Customs Authority of the exporting country will carry out an outbound inspection of high-risk containers and cargo, and

- the definition of the benefits that the Customs Authority will provide to economic operators that meet minimal supply chain standards and best practices.

1.2.4 Within the SAFE Framework, several standards are included that can assist any Customs Authority in meeting these new challenges. Developing an AEO programme is a core part of and is one of the building blocks in the SAFE Framework. The essence of the AEO concept can be found in the Customs-to-Business partnerships. Economic operators can be accredited by the Customs Authority as AEOs when they prove that they have high quality internal processes in place that will prevent goods in international transport from being tampered with, that is to say:

- Ensure the integrity of information - what is said to be in a container is actually in the container.
- Ensure the integrity of its employees - they will not put goods in a container that should not be there: and
- Secure access to the AEO's premises - to prevent unauthorised persons putting goods in a container.

law

1.2.5 Article 1 (c) of Ministerial Order No. 314/2012 of 23 November 2015 ('the MO') defines an AEO '*as an economic operator who;*

- *as part of its activity as an importer and / or exporter, and*

- *after assessment as being compliant with the conditions and criteria established by the Customs Authority,*

is considered reliable and trustworthy and may avail of additional benefits in the context of the customs clearance process, within the context of its activity as an importer and / or importer'.

1.2.6 The AEO programme is currently limited by legislation to economic operators engaged in the importation or exportation goods. However, under WCO guidelines, participation in the programme can be made available to all stakeholders in the supply chain. It is to be especially noted that AEO status is available to any economic operator regardless of its size, including small and medium sized companies. In other words, there are no obstacles to prevent Small and Medium Enterprises (SMEs) from applying for and being AEO certification, once they have complied with the requirements set out in the various criteria.

1.2.7 It is also emphasised that there is no legal obligation for an economic operator to become an AEO. It is, in essence, a matter of choice on the part of any economic operator, based on its own specific situation. In addition, there is no legal obligation for an AEO to require its business partners to obtain AEO status.

AEO programme

1.2.8 In general terms, an AEO is a party involved in the international movement of goods, in whatever function, that has been approved by a Customs Authority as complying with WCO or equivalent supply chain standards. In its broadest manifestation, AEOs can include, *inter alia,* manufacturers, exporters, importers, carriers, warehousekeepers, customs brokers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators and distributors. As stated in paragraph 1.2.6, the facility of AEO status is currently confined by law to importers and exporters.

1.2.9 As a result of acquiring AEO status, Customs Authorities throughout the trading world will trust economic operators and perform less or minimal control interventions, including inspections on the goods that they import or export. This benefits many of the stakeholders involved in the international movement of goods, such as forwarders and carriers (and, obviously, importers and exporters), as goods move through customs controls more rapidly and are available for shipping by exporters and delivery to importers more quickly. This, ultimately, means lower transport costs and less opportunity costs lost through unnecessary delays for all involved and

which all impact on the 'bottom line'. Customs Authorities also benefit, as scarce administrative and inspection capacity can be targeted better at cargo of unknown and potentially unsafe economic operators.

1.2.10 Most members of the WCO have acceded or have indicated that they intend to accede to the SAFE Framework and it can be expected that, in the next few years, the majority of Customs Authorities throughout the world will introduce AEO programmes of some sort. There are many AEO programmes currently in operation across the various continents and they can vary from one country to another. For example, some countries limit the scope of the programmes to importers and exports, whereas others include all stakeholders in the supply chain. Some programmes do not include the security and safety criterion. whereas others do.

AEO status

1.2.11 On the basis of Article 7.1 (a), (b) and (c) of the MO, AEO status can be granted to an economic operator meeting the following common criteria;

a) record of compliance with customs legislation and taxation rules, (including no record of serious criminal offences relating to the economic activity of the applicant),

b) demonstrating a high level of control of its operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows for appropriate customs controls (and taxation controls). (There is also a clear implication is this criterion that it also includes practical standards of competence or professional qualification directly related to the activity carried out), and

c) proven financial solvency.

1.2.12 AEO status is granted in the form of a certificate, as laid down in Article 5 (a), (b) or (c) of the MO, as appropriate. There are three different types of authorisations available for economic operators that meet the criteria set down in the legislation and controlled by the Customs Authority:

a) An AEO status in the form of a CAEO-E may be granted to economic operators engaged in exporting goods from the Republic of Mozambique ('Mozambique').

b) An AEO status in the form of a CAEO-I may be granted to economic operators engaged in importing goods into Mozambique.

c) An AEO status in the form of a CAEO-EI may be granted to economic operators engaged in importing goods into and / or exporting goods from Mozambique.

control

1.2.13 With regard to paragraph 1.2.11 b), being 'in control' in relation to an economic operator means that it has;

- a clear vision, mission and strategy in respect of its business activities and, in particular, in relation to or with influence on the international supply chain,
- implemented appropriate organisational measures,
- a system of appropriate internal controls, and
- an evaluation system that leads to adjustments to and refinements of the organisational structure and procedures, when necessary.

1.2.14 In a more specific way, it means that an economic operator has;

- identified and assessed any possible risks related to its business activities. In the case of an AEO application this should include customs-related risks (and / or security and safety risks, where they are relevant); and

- taken steps to mitigate identified risks by implementing internal procedures and routines, and appropriate control measures.

1.3 Economic operator as importer or exporter

law

1.3.1 Article 1 (c) of the MO defines an AEO as... *'a reliable and trustworthy economic operator that may benefit from additional advantages in the customs clearance process within the scope of its business activity as an importer and / or exporter'.* This basic requirement implies the fulfilment of two conditions: firstly, that the applicant is an economic operator and, secondly, that the applicant is engaged as an importer and / or exporter.

economic operator

1.3.2 The first condition relates to the term 'economic operator'. Article 4 of the MO defines what an AEO is or can be. In more specific terms, article 4.1 states that the AEO can be a commercial company or a public entity. Article 4.2 states that, in the case of a single-person limited company, the AEO certificate cannot be extended or transferred to a spouse, children or any other relatives or its legal representative. Article 4.3 states that within the context of exercising the activity of an AEO in relation to a commercial company or a public company, the director, the administrator or the salaried manager acts with sufficient powers of representation.

1.3.3 Taking a broader view of the term, multinational companies, for example, usually consist of a parent company, and subsidiary companies or / and branches. A subsidiary is an individual legal entity, that is to say, an individual legal entity, registered as such, according to law, in the appropriate Company Register. Therefore, if a parent company would like to acquire AEO status for some or all of its subsidiaries, AEO applications must be submitted by all the subsidiary companies wishing to acquire the (AEO) status. However, if the subsidiary companies are applying the same corporate standards / procedures for their customs-related activities, the Self-Assessment Questionnaire (SAQ), as part of the application process, may be completed by the parent company on behalf of all the subsidiaries that have submitted applications for AEO status.

1.3.4 A 'branch', on the other hand, is an office / premise / other location of the parent company itself and forms part of the company's total assets and, thus, is not an individual legal entity. In this scenario, an application, covering a branch or more than one branch (that is / are not individual legal entities) of the same company has to be submitted by the parent company wishing to acquire the AEO status.

importer / exporter

1.3.5 The second condition, referred to in paragraph 1.3.1, that has to be considered when establishing whether a particular applicant is an 'economic operator' is whether its economic activity is as an 'importer and / or exporter', within the terms of the current legislation. Applications for AEO status may only be accepted from an economic operator that, in the course of its business, is involved in activities of an importer and / or exporter. On the basis of this definition there are a number of situations where the economic operator cannot apply for AEO status as it is not involved in activities of an importer and / or exporter, as the following examples highlight;

- a supplier, based in the country, that distributes only goods in free circulation (home produced or duty paid) to a manufacturer or other economic operator based in the country,

- a transport operator that moves only goods in free circulation (home produced or duty paid) and that are not under any other customs procedure within the country,
- a manufacturer producing goods only for the internal market of the country and using raw materials already in free circulation (duty paid or home produced), and
- a consultant who is only advising / providing opinions in customs matters.

permanent business establishment

1.3.6 The general definition of Permanent Business Establishment (PBE) is included in the OECD Model Convention with respect to taxes on income and on capital. In line with the Article 8 of the Convention, the fact that a PBE is not paying income tax in the country is immaterial for its status as PBE. A branch may qualify as a PBE even if it is not paying income tax in this country and may, thus, qualify the parent company as being 'established in this country' and entitles it to apply for AEO authorisation.

1.3.7 As stated in paragraph 1.3.3, multinational or large companies usually consist of a parent company and subsidiaries or branches that can be established in one or several countries. Although being a PBE of the same parent corporation, these companies can often have different legal status in those different countries, as the legal form under which they operate in those countries depends on how they have chosen to operate and on the national legislation of the countries concerned. As a result, a parent company may have some of its branches considered individual legal entities in some countries and also have some PBEs that are not considered as individual legal entities in other countries.

1.3.8 In this situation, an economic operator that wants to apply for an AEO status for all its PBEs has to assess in which group they belong. In case they are legal entities, each shall have to apply separately for AEO status. In all others cases, they cannot apply separately for AEO status and, instead, a single application covering all of them has to be submitted by the parent company, that is considered a legal entity, according to the legislation.

certificates / authorisations

1.3.9 The Customs Authority should also ensure that the general conditions and criteria are the same for acquiring certificates / authorisations for which the economic operator may apply for. For example, the Customs Authority cannot deem an economic operator to be a legal entity when applying for, for example, a simplified procedure authorisation and deem it to be a branch when it applies for AEO status.

1.4 Stakeholders in the international supply chain

overview

1.4.1 The international end-to-end supply chain, from a customs perspective, represents the process from manufacturing goods destined for export until delivery of the goods to the buyer in another customs territory.

1.4.2 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.

1.4.3 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. For example, an exporter may also act as a freight forwarder. When applying for AEO status the applicant must ensure that its application includes the customs-related activities for all its responsibilities within the international supply chain.

1.4.4 It is to be noted that, under current legislation, applicants for AEO status must either be importers and / or exporters. (The scope of the legislation may be extended, if deemed appropriate, to include the other principal stakeholders in the international supply chain.) In those circumstances and for completeness purposes, the various stakeholders and their different responsibilities in the international supply chain, relevant from a customs perspective, that may be able to apply for AEO status at some stage in the future (and may be already AEO-authorised in other countries) are mainly those that are dealt with in paragraphs 1.4.5 to 1.4.19.

exporter

1.4.5 An exporter means the entity established in this country that;

- at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining that the goods are brought to a destination outside this country,
- in other cases, has the power for determining that the goods are brought to a destination outside this country.

1.4.6 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,
- responsible for applying the legal export formalities in accordance with the customs rules, including commercial policy measures and where appropriate, the payment of export duties,
- responsible for ensuring a secure / safe supply of the goods to the carrier or freight forwarder.

importer

1.4.7 An importer is an economic operator who is making an import declaration, 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 programme, the definition of the importer should be considered from a broader perspective (the person making the declaration is not necessarily always the person who places the goods on the market).

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

- responsible in its dealings with the Customs Authority, for assigning the goods presented to the Customs Authority to a customs-approved treatment or use, such as entry for home use, customs warehousing, etc.,
- responsible for the correctness of the declaration and that it is lodged in time,
- responsible, where the importer is the person lodging the entry summary declaration, for the correct application of the rules on summary declarations,
- responsible for applying the necessary legal formalities, in accordance with customs rules relevant to the import of goods, and
- responsible for ensuring a secure and safe receipt of goods and. in particular, avoiding unauthorised access to and tampering with the goods.

manufacturer

1.4.9 In the framework of the international supply chain, a manufacturer is an economic operator that, in the course of its business, produces goods destined for export.

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

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

freight forwarder

1.4.11 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 forwarder acts as a carrier and issues its own transport contract, for example, a bill of lading. A freight forwarder's typical activity can include: obtaining, checking and preparing documentation to meet customs requirements.

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

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

warehousekeepers and other storage facility operators

1.4.13 A warehousekeeper is an entity, authorised to operate a customs warehouse. Similarly, an entity can be authorised to operate a temporary storage facility or free zone facilities.

1.4.14 The responsibility of a warehousekeeper or an entity authorised to operate a temporary storage facility in the international supply chain can be, *inter alia*;

- to ensure that, while the goods are in a customs warehouse or in a temporary storage, etc., they are not removed from customs supervision and that it fulfil other obligations that arise from the storage of goods covered by the customs warehousing procedure or by the rules on temporary storage, etc.,
- to comply with the particular conditions specified in the authorisation for the customs warehouse or for the temporary storage facility, etc.,
- to provide adequate protection of the storage area against external intrusion,
- to provide adequate protection against unauthorised access to, substitution of and tampering with the goods.

customs broker

1.4.15 A customs broker is a person who performs customs formalities acting as a customs representative. A customs representative acts on behalf of an economic operator that is involved in customs-related business activities, for

example an importer or an exporter. A customs representative may act either in the name of this economic operator (direct representation) or in its own name (indirect representation).

1.4.16 A customs broker'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, being responsible for the correctness of the customs or summary declaration and for its timely lodgement.

carrier

1.4.17 Generally speaking, a carrier is the person actually transporting the goods or who undertake a contract, and issues, for example, a bill of lading or air waybill, for the actual carriage of the goods.

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

- to ensure a secure and safe transport of goods while in its custody, in particular, avoiding unauthorised access to and tampering with the means of transport and the goods being transported,
- to provide timely transport documentation, as required by law,
- to apply the necessary legal formalities in accordance with customs law,
- to apply, where appropriate, the rules on summary declarations in accordance with the legislation.

others

1.4.19 This is a 'catch-all' category. It covers such entities as terminal operators, stevedores and cargo packers. An application from any of these entities for AEO status would be dealt with on its merits, bearing in mind compliance with the criteria set down.

1.5 AEO Benefits

overview

1.5.1 AEO benefits are an integral part of the legislation governing AEO status. The AEO certificate is issued to the applicant, after 'acceptance' of the application, along with the SAQ and the provision of the supporting documents, followed by a detailed 'audit' of its business (all relevant premises and company commercial records). 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.

1.5.2 The certificate is not issued to the business partners of the applicant. The AEO status granted;

- relates to the AEO economic operator itself,
- applies to the AEO economic operator's business activities only, and
- provides benefits that are only available to the AEO economic operator itself.

1.5.3 The range of AEO benefits, that the WCO has signalled could be available from the Customs Authority, are summarised below. Not all of these benefits are currently provided to AEOs under existing legislation. In any event, to be able to receive these available benefits, the AEO economic operator should ensure that some

unique identification number, such as the Single Tax Identification Number (NUIT), agreed with the Customs Authority in advance, should be inserted in all customs import, export and other declarations**.**

accelerated clearance

1.5.4 get precise info from Maputo

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fewer controls

1.5.6 This benefit is applicable to all AEO importers and exporters. Article 12 (b) of the MO lays down that an AEO '*shall be subject to fewer physical and document-based controls than other economic operators'*. This benefit should be triggered through the risk management system, by way of a lower risk for the AEOs concerned.

1.5.7 However, the Customs Authority may decide to control shipments of an AEO to take into account a specific threat, or control obligations, set out in other legislation (for example, related to product safety, etc.). At the same time there are also examples where the AEO status is favourably taken into account even in respect of other controls.

1.5.8 It is also important to make a clear distinction between controls related to security and safety and controls related to application of other measures provided for in the customs legislation. This means, in effect, that only AEOs that fulfil the security and safety criterion shall benefit from fewer physical and document-based controls **that are related to security and safety.** Under existing legislation, this particular element of the benefit is not available to AEO authorised economic operators.

1.5.9 On the other hand, all AEOs should be able to benefit from fewer physical and document-based controls related to measures, other than security and safety, provided for in customs legislation. This includes fewer controls at the Border Crossing Points (BCPs) 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 system, as described in paragraph 1.5.3. 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.

1.5.10 It has to be also taken into account that this benefit is related to the overall risk assessment done for a particular transaction. Thus, although the AEO status should always count for favourable treatment, other risk indicators, such as country of origin, specific type of goods, etc. might trigger the necessity for a control to be carried out.

1.5.11 Taking the theme in paragraph 1.5.8 into consideration, the following are examples of potential situations. It is noted that most of these examples apply to stakeholders with AEO (security and safety) certification.

entry summary declaration (ENS)

1.5.12 In most cases, the requirements and responsibilities for submitting an ENS are for the carrier. In such cases and if it is the holder of an AEO (security and safety) certificate, the carrier is directly entitled to receive lower risk scores as its systems and procedures related to the security of conveyance, business partners, employees, etc. have already been examined and positively confirmed by the Customs Authority. If, in addition to the carrier, the consignee is also the holder of an AEO (security and safety) certificate the level of controls applied by the Customs Authority could be further reduced. **It must be recalled that this scenario cannot apply under existing legislation**.

1.5.13 Furthermore, if the declared consignor also holds an AEO (security and safety) certificate issued by a Customs Authority in a third country that is recognised under a Mutual Recognition Agreement (MRA), all parties declared in the ENS, including those that have direct information of the goods involved, would have had their security and safety systems verified by the various Customs Authorities involved. This would contribute to maximising 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.

1.5.14 There might also be cases where the data necessary for ENS are submitted, by way of a customs declaration, for example, for transit. The level of reductions is assessed in the same way, by taking into consideration what the roles and responsibilities of the parties, involved in this supply chain, are. For example, a freight forwarder - the holder of an AEO certificate – may be the principal in a customs declaration for transit with the data set for ENS. In this case, the type of (AEO) certificate should be considered first. In the case where the freight forwarder is a holder of an AEO (customs simplifications) certificate and is the principal for the transaction, the risk scores related to the customs procedure concerned – customs transit declaration - can be reduced accordingly. The principal has responsibility for the goods carried and for the accuracy of the information given as well as for compliance with the transit rules from the office of departure until the office of destination. However, for any possible reductions of risk scores related to security and safety controls, the principal must be the holder of AEO (security and safety) certificate.

declaration with security / safety data for exit summary declaration (EXS) included

1.5.15 The exporter provides the security and safety data through the export customs declaration in most cases. Therefore, in general, if the exporter is a holder of an AEO (security and safety) certificate, a higher level of reductions, in terms of security and safety controls will be applied.

declaration with security / safety data for ENS/EXS excluded

scenario 1

1.5.16 The is where the holder of an AEO (customs simplifications) is a customs broker and the client it represents is a non-AEO economic operator and the AEO customs broker is lodging a customs declaration for free circulation (whereby duties and taxes, if due, are payable on importation of goods).

1.5.17 In general, the Customs Authority should lower the risk score in accordance with the degree of the AEO customs broker's involvement in the representation of his client. This depends on the type of representation, that is to say, whether it is *direct* representation or *indirect* representation.

1.5.18 The allocation of benefits is related to the notion of 'declarant'. It is important to note that, usually, the 'declarant' means '*the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, a re-export declaration or a re-export notification in its own name or the person in whose name a customs declaration is lodged*'.

1.5.19 Developing the concept of 'declarant' further, in the case of direct representation, the customs broker is a direct representative of the importer. This means that the customs broker acts in the name of the importer. Thus 'the AEO holder' (the customs broker) and 'the declarant' (the importer who is not an AEO) are not the same entities.

1.5.20 Taking into consideration that the Customs Authority would have checked the customs routines and procedures of the customs broker, its AEO status should be positively taken into account. However, at the same time, it should also be taken into account that, in this case, the entity;

- 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.

scenario 2

1.5.21 In the case of indirect representation, the customs broker, who is the holder of the AEO (customs simplifications) certificate, acting in its own name, is the 'declarant' and has had its procedures for discharging its related responsibilities, audited, verified and confirmed by the Customs Authority.

1.5.22 In this case, the holder of an AEO (customs simplifications) is an importer that works with a customs broker that is not an AEO. The importer is lodging a customs declaration for free circulation (whereby duties and taxes, if due, are payable on importation of goods).

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1.5.23 As in the situation, outlined in scenario 1, the management of the risk should also be treated in accordance with the degree of involvement of the customs broker (not an AEO but is the declarant) in its client's dealings (the importer that is an AEO but not the declarant) with Customs Authority.

priority treatment for control

1.5.24 This benefit is applicable to all categories of AEO. Article 12 c) of the MO lays down that, where consignments declared by an AEO have been selected for physical or document-based control, those controls shall be carried out as a matter of priority.

1.5.2 The granting of this benefit is obviously directly related to, and dependent upon, the mode of transport involved and the infrastructure of the port / airport facility or other BCP.

prior notification

1.5.26 This benefit is applicable to holders of CAEO-E, CEO-I or the combination CAEO-EI and is provided for in Article 12 d) of the MO. When an entry / exit summary declaration has been lodged by an AEO, the competent local office of the Customs Authority may, before the arrival / departure of the goods, 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 AEOs operating at large ports as it will allow for better planning of their business.

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

choice of place of controls

1.5.28 This benefit is not currently available under the terms of the current legislation. However, other relevant legislative provisions or local arrangements may apply, allowing for the clearance of goods at a place more suitable to the importer and / or exporter.

1.5.29 There is a possibility that the Customs Authority, on a request from an AEO may allow that the controls of a consignment of goods be carried out at a place other than the place where the goods were first presented to the Customs Authority. This alternative location might offer a shorter delay and / or lower costs to the AEO. However, this facility would be subject to individual agreements with the Customs Authority. The selected place for control should always allow the Customs Authority to carry out the necessary controls and not jeopardise the results of the controls.

1.5.30 It should be especially noted that, although the possibility for choice of the place of controls may also be provided to all economic operators, under condition and procedures in force, there is a distinction between these general provisions and the specific provision in the form of a benefit for AEOs, as the Customs Authority can take particular account of the (AEO) status in determining whether to grant the request.

1.5.31 Several practical situations may appear in relation to the AEO arrangement. As a simple example, an AEO could request, on a case by case basis, another place where the controls are to be carried out for particular transactions. In this scenario, the AEO status shall be taken into account by the Customs Authority. If there are no other circumstances that could prevent it, the Customs Authority has to allow the control to be carried out in the place chosen by the AEO. These are situations where the status of the AEO and the knowledge that the Customs Authority has about the former's customs-related business activities can be used as a benefit that is not enjoyed by other economic operators.

acceptance as secure and safe business partner

1.5.32 An AEO that meets the security and safety criterion is considered to be a secure and safe partner in the national and international supply chain. This means that the AEO is doing everything possible to reduce threats in the supply chains in which it is involved. Being granted AEO status enhances the reputation of the AEO itself.

1.5.33 While it is not necessary to work only with AEOs, the status of an AEO will have a positive influence when new business relationships are established. It is noted that economic operators should be able to check the list of AEOs that have given their consent for the publication of their data on the Customs Authority website.

improved relations with authorities

1.5.34 The established partnership, between the AEO economic operator and the Customs Authority, during the authorisation process and continuous cooperation will help to better understand each other and find jointly-tailored solutions to difficulties and problems relating to controls beneficial for both sides.

1.5.35 An AEO should have a designated contact point in the Customs Authority to whom 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 who to further contact, if necessary.

1.5.36 The AEO status is gaining wider recognition and importance. Currently, there are a number of certificates or authorisations, issued by State or other recognised independent third party entities, in relation to, for example, security standards, for which the related requirements are either one or more of the AEO criteria, or, directly, the AEO status itself. This situation encourages cooperation, not only between the Customs Authority and other State authorities but, also between the economic operators concerned and all these Authorities.

indirect benefits

1.5.37 It is important to highlight that, in addition to the direct benefits provided for in the legal provisions, an AEO may derive benefits from advantages that are not directly linked to the customs side of its business activities and related administration. Although considered as 'indirect' benefits and, therefore, not explicitly reflected in the legislation, they are important as they may have a highly positive effect on those same business activities and administration of the AEO.

1.5.38 The AEO approach helps economic operators to analyse in detail all their related international supply chain processes. The activities of all departments in the company that impact directly or indirectly on the supply chain are generally assessed during the preparation of the AEO application. In most cases, efficiency and cooperation between these departments are optimised so as to obtain more transparency and visibility of the supply chain.

1.5.39 Investments by economic 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.

1.5.40 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.

1.6 Cooperation between authorities

1.6.1 Cooperation between the Customs Authority and other State competent authorities that have an involvement in customs-related activities and alignment of their respective programmes have been identified and recognised as a key element for the further development of a robust AEO programme. The objective of such cooperation is to ensure global supply chain security and to avoid duplication of efforts and costs for the concerned authorities and economic operators. As such, it has been incorporated, since the beginning, at international level in the WCO SAFE. It is likely that it will be incorporated into national legislation at some future date.

1.6.2 At EU level, as an example, work has been initiated in a number of areas (e.g. aviation security, maritime, export controls, etc.) with a view to identifying synergies and to avoid duplication of administrative burden. The EU Strategy and Action Plan for customs-risk management and, in particular, the inclusion of a specific objective related to inter-authority cooperation and information sharing between the Customs Authority and other State authorities, had a crucial role to play in this area.

certificates

1.6.3 Besides, there are a number of certificates or authorisations in other policy areas for which the requirements are either one or more of the AEO criteria, or directly the AEO status:

- civil aviation legislation

1.6.4 If a holder of an AEO for security and safety applies for the status of Regulated Agent (RA) or Known Consignor (KC), the respective security requirements are deemed to be met to the extent that the criteria for issuing the AEO status are identical or correspond to those for RA or KC status. The same principle applies, vice versa.

- others

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

1.6.6 At the same time, certificates and authorisations granted by the Customs Authority or other State authorities facilitate the authorisation procedure.

1.7 Preparation for application

overview

1.7.1 The preparation of the AEO application, as well as the authorisation process and the maintenance of the AEO is a time-consuming process for the economic operator applicant. Thorough preparation is the key ingredient for success. It is expected that the applicant that wants to become an AEO is in control of the business.

1.7.2 This means that, depending on the type of an AEO applied for and the economic operator's business activities and business model, the economic operator should have in place the appropriate organisational measures in the various areas within the company - departments / units / sections - of the economic operator will be engaged in the process, related to the AEO criteria, aimed at ensuring that risks linked to its customs-related activities may be identified and avoided and / or minimised.

1.7.3 To better understand what the Customs Authority means by this and to speed up the process, the use of the SAQ is mandatory. The SAQ is a tool to structure the preparation to be carried out by the economic operator, to identify the organisational departments / units / sections within the company to be included and to understand the necessary depth of preparation that will be required.

1.7.4 To ensure close cooperation between the Customs Authority and the applicant economic operator, contact should be made with the appropriate section within the Customs Authority, at an early stage, and to maintain that contact even beyond the application process. This can assist in avoiding misunderstandings on both sides and gives support as any questions arise in relation to any aspect of the AEO programme.

1.7.5 Before submitting the application, it is very important that the economic operator takes the following steps:

contact with Customs Authority

1.7.6 Contact should be initiated by the applicant economic operator with the Customs Authority when it has been decided to explore the possibility of seeking AEO status, an early exchange of information and discussion with the Customs Authority will save a lot of time, once the formal AEO procedure starts.

types of certificate

1.7.7 Article 1 (c) of the MO defines an AEO as... *'a reliable and trustworthy economic operator that may benefit from additional advantages in the customs clearance process within the scope of its business activity as an importer and / or exporter*'. The status of 'authorised economic operator' can be granted to a commercial company or public company, in accordance with Article 4 of the MO, subject to the criteria, provided for in the legislation. It is to be especially noted that, in the case of a single-person limited company, the AEO certificate cannot be extended or transferred to a family member or his legal representative, according to Article 4.2 of the MO.

1.7.8 AEO status is granted in the form of a certificate as laid down in Article 5 (a), (b) or (c) of the MO, as appropriate. There are three different types of authorisations available:

a) An AEO status in the form of a CAEO-E may be granted to economic operators engaged in exporting goods from Mozambique that meet the conditions and criteria set down by the Customs Authority.

b) An AEO status in the form of a CAEO-I may be granted to economic operators engaged in importing goods into Mozambique that meet the conditions and criteria set down by the Customs Authority.

c) An AEO status in the form of a CAEO-EI may be granted to economic operators engaged in importing goods into and / or exporting goods from Mozambique that meet the conditions and criteria set down by the Customs Authority.

1.7.9 At the moment, it is quite straightforward for any economic operator seeking AEO status because it is confined to importers and exporters. In addition, because the 'security and safety' criterion - so necessary in the context of the international movement of goods - is not currently included under the terms of the MO, it is not checked during the screening and evaluation phase ('acceptance'), and the survey and inspection phase ('audit') carried out by the Customs Authority. In effect, the AEO programme that is available is concerned with benefits relating to the customs clearance process only.

1.7.10 However, if 'security and safety' were to be added to the list of conditions and criteria. the Customs Authority would then have the option, if it so decided, of having three different types of certificate models:

- AEO (customs simplifications) in respect of imports and exports (currently available under existing legislation).

- AEO (security and safety) in respect of the movement of goods in the international supply chain.

- AEO (customs simplifications and security and safety) in respect of the movement of goods in the international supply chain.

1.7.11 In those circumstances, the economic operator would have to be fully cognisant, from the beginning, of the different types of possible AEO certificates available and their related requirements and, following an adequate assessment, submit an application for the type of AEO certificate that is the most appropriate for its business activity. While making this assessment, the main questions to be answered relate to the kind of customs activities that the economic operator is involved in and in what aspects a particular type of AEO certificate can be beneficial.

nomination of contact

1.7.12 During the different stages of the application process, various units / departments / employees of the economic operator will be engaged in the process. In addition, Article 9.1 (g) of the MO requires the appointment of a person, from within the business, to act as a representative on behalf of the economic operator and as a contact point for the Customs Authority. It is strongly recommended that this is done even before the formal submission of the application. This is particularly so in the case of large businesses, where the person appointed must be at a senior level, with the necessary authority to take decisions, to supervise and co-ordinate the application process.

consolidation of information of different units / departments

1.7.13 Responsible units / departments / employees should be aware of their specific responsibilities regarding the overall AEO requirements and the related process, including reviewing the relevant documentation and preparing the information required.

self-assessment and criteria

1.7.14 It is strongly recommended that the SAQ tool, attached as Annex 11 of the MO, is used to assess the readiness of the economic operator to meet the AEO criteria. Before answering the questions in the SAQ it is advisable to examine the Instructions for completing the SAQ.

finalisation of documents

1.7.15 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 Authority are taken into account at this stage.

1.7.16 In addition to preparing the application form, attached as Annex 1 to the MO, the economic operator must also complete the SAQ and submit both, together with the list of documents listed in article 9.1 (a) to (i) of the MO.

submission of application

1.7.17 The Customs Authority will examine the application and carry out the acceptance checks – screening and evaluation - of the application, SAQ, and other supporting documents. There is no time limit set down in the MO for this action. However, it is understood that this part of the process should be completed within **ten** working days. After acceptance of the application, the Customs Authority will then carry out the audit - survey and inspection procedures - to verify if the conditions and criteria for AEO status are met. In this regard, there is also no time limit provided in the MO. However, it is understood that this part of the application process should take no longer than **thirty** working days.

1.7.18 Therefore, a decision must normally be taken **forty working days** from the date of receipt of the application, although this period can be extended by the Customs Authority by a further **thirty working** days in duly justified circumstances. The period can be also extended, on request, by the applicant and with the agreement of the Customs Authority.

CHAPTER 2 AEO Criteria

2.1 Introduction

law

2.1.1 The conditions and criteria to be complied with by an economic operator in order to be granted AEO status are set out in Article 7.1, 7.2, 7.3 and 7.4 of the MO. There are three criteria and each is reviewed in this Chapter.

additional criteria

2.1.2 The opportunity has been taken, in preparing the Manual, to include information relating to the security and safety criterion, which is so vital in the context of the international supply chain, although it is not, as yet, included in the legislation. The main reason for including the criterion is that it will raise the awareness of the Customs Authority and affected stakeholders of the extent and nature of the requirements that must be met, in the event of the current legislation being amended to include this criterion.

2.1.3 An additional criterion that is also being examined in this Chapter and that may be applied by the Customs Authority to all AEOs relates to practical standards of competence or professional qualifications directly related to the activity carried out. (This criterion is already applied by all Member States of the EU to holders of AEO (simplifications) certificates / authorisations.)

2.2 Compliance with customs legislation and taxation rules, including no records of serious criminal offences relating to the economic activity of the applicant (Criterion 1)

law

2.2.1 This criterion is referred to specifically in Article 7.1 (a) of the MO and is amplified further in article 7.2 which states that compliance with customs and tax obligations is regarded as adequate where the applicant, during the previous three years prior to the submission of the application for AEO status, has not committed serious violations of customs or tax legislation, in particular, **customs crimes and tax crimes.**

2.2.2 Article 8 of the MO further states that AEO status will not be granted in any case where a director, administrator or manger (with sufficient power) while representing the applicant;

a) has been convicted of an offence, punishable by a prison sentence, of a crime related to customs legislation or taxation rules;

b) is the subject of bankruptcy proceedings at the time of submitting the application;

c) performs functions or occupies positions blatantly in conflict with the objectives of the AEO programme.

2.2.3 Therefore, this criterion is deemed to be fulfilled if no serious infringements of customs legislation or taxation rules have been committed over the three years prior to the submission of the application for AEO status and if there is no record of serious criminal offences relating to the economic activity of the applicant.

overview

2.2.4 A **definition of customs legislation is set out in the Customs Code**. 'Taxation rules' is to be understood in a broader perspective and not limited to those taxes related to the import and export of goods, for example VAT, corporation taxation, excise duties, etc.

2.2.5 The record of compliance with customs legislation and taxation rules may be considered as appropriate if the infringements are considered to be of minor importance, in relation to the number or size of the customs-related operations, and the Customs Authority has no doubt as to the good faith of the applicant.

2.2.6 If the applicant has been established for less than three years, the Customs Authority shall assess the compliance with this criterion on the basis of the available records and information. Equally, if the persons exercising control over the applicant company are established or resident in a third country, the Customs Authority shall assess the compliance with this criterion on the basis of the available records and information.

infringements (sub-criterion (a))

2.2.7 The following common specific circumstances should be taken into account in the evaluation of an infringement by the Customs Authority;

- the assessment of compliance should cover all customs activities, including all taxation elements and considering the record of serious criminal offences in the economic activity of the applicant,

- the term 'infringement' shall refer not only to the acts that are discovered by Customs Authority on the occasion of checks carried out at the time when the goods are imported or placed under a customs procedure. Any infringements of the customs legislation, taxation rule or criminal laws, 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 are discovered through the use of other customs authorisations and any other source of information available to the Customs Authority,

- infringements made by freight forwarders, customs brokers or other third parties, acting on behalf of the economic operator applicant must also be taken into account. The applicant should show evidence that appropriate measures have been put in place to ensure the compliance of individuals / entities acting on its behalf, such as the provisions of clear instructions to those parties, monitoring and checking the accuracy of declarations made by these parties and remedial action when errors occur,

- failures to comply with domestic non-customs legislation by the applicant are not to be ignored, although in this case, those failures should be considered in the light of the economic operator's good faith and relevance for its customs activities,

- where penalties related to a specific infringement are revised by the Customs (or other competent) Authority following an appeal or review, the 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 Customs (or other competent) Authority, the infringement shall be deemed not to have taken place.

minor infringements (sub-criterion (b))

2.2.8 Infringements of minor importance are those acts that, even if there was an actual infringement of any aspect of the customs legislation and taxation rules, are not sufficiently important to be considered as a risk indicator with regard to the international movement of goods, security issues or payable customs debts.

2.2.9 In order to establish what may be regarded as an infringement of minor importance, the first point to note 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 minor importance, the economic operator must show evidence of intended measures to be undertaken to reduce the number of errors occurring in its customs operations.

2.2.10 The following indicative checklist may assist the Customs Authority, when evaluating whether an infringement could be regarded as being of minor importance;

- there must be no deliberate fraud intended,
- infringements should be looked at on a cumulative basis but relative to the total volume of operations,
- establishing whether the infringement was an isolated or sporadic act by one individual within the general organisation of the company,
- the context of the infringement 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 itself as a result of its own internal checks and whether they were immediately notified to the Customs Authority,
- if the applicant has taken immediate measures to correct or avoid those acts in the future,
- the Customs Authority should take into account the nature (type and size) of the infringement. Some errors can be defined as 'of minor importance' because they have no impact on the amount of customs duties to be paid. An example would be an incorrect classification between two commodities with the same duty rate and where there are no differences between the other measures applicable, such as prohibitions and restrictions (Ps & Rs). 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.

2.2.11 If, as a result of the evaluation, the infringements committed have been considered as being of minor importance, the record of compliance shall be considered as appropriate.

2.2.12 Taking the above-mentioned into consideration, and providing that, in each case analysed, there are no other circumstances to be taken into account, the following infringements could be given as examples of customs infringements of minor importance;

- failures that are considered to have no significant effect on the operation of certain customs procedures,
- minor failures 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 customs debt that is due for payment,
- isolated, non-recurring, errors incurred by the economic operator when completing the data included in the customs declarations filed, provided such errors did not result in an incorrect assessment of the customs debt that is due for payment.

2.2.13 Infringements of minor importance regarding taxation rules are to be defined by the Tax Authority.

repeated infringements (sub-criterion (c))

2.2.14 In case of infringements that could initially be considered as minor or being of minor importance, the Customs Authority should establish whether there has been a repetition of infringements that are identical in nature. In this regard, the Customs Authority should analyse whether the repetition is the result of the action of one or several particular individuals within the applicant's company or if it is the result of structural deficiencies within the applicant's systems.

2.2.15 The Customs Authority should also detect if the type of infringement is recurring or if the cause of the infringement has been identified by the applicant and addressed and will not happen again in the future. On the other hand, in case the infringement recurs in different time periods, this could be an indication of inadequate

internal management within the company as far as the adoption of measures to prevent the repetition of such infringements is concerned.

2.2.16 Before a decision is taken as to whether the criterion of record compliance is fulfilled, it is necessary to compare the total number of infringements committed by the applicant against the total number of customs operations carried out by the applicant in the same period of time to establish appropriate ratios. In this context. the different types of activities and volume of operations of the applicant must be taken into consideration.

2.2.17 Repeated infringements regarding taxation rules are to be defined by the Tax Authority.

serious infringements (sub-criterion e))

2.2.18 The following elements, detailed in paragraphs 2.2.19 to 2.2.22, should be taken into account when assessing serious infringements:

2.2.19 **Deliberate intent or fraud** by the applicant, the persons in charge of the applicant or exercising control over its management or the person in charge of the applicant's customs matters should be considered as a more serious infringement than the same case under other circumstances, even if the nature of the error could be considered to be 'of minor importance'.

2.2.20 Where **the nature of the infringement** is of such a character that it can be considered a serious infringement of the customs legislation and taxation rules and which requires the imposition of a significant penalty or referral for criminal proceedings.

2.2.21 The following three factors that should be taken into account in assessing whether an act committed by the economic operator business has been **obviously negligent**;

- the complexity of the customs legislation,
- the care taken by the company and
- its experience.

Where the Customs Authority has established that the company has been obviously negligent this can be an Indicator that the infringement may be deemed to be serious.

2.2.22 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, taxation rules and criminal offences relating to the economic activity**.

2.2.23 Taking the above-mentioned four elements into consideration, and providing that, in each case analysed individually, there are no other circumstances that should be taken into account, the following infringements could be given as examples of serious infringements;

- ***customs legislation***
  - smuggling,
  - fraud, for example, deliberate misclassification of goods, undervaluation and overvaluation goods or false declared origin of goods, to avoid payment of customs duties,
  - infringements related to Intellectual Property Rights (IPR),
  - infringements relating to Ps & Rs,

- counterfeiting,
- any other offence related to customs requirements.

- ***taxation rules***
  - tax fraud,
  - tax evasion,
  - VAT fraud.

- ***excise duties***
  - criminal offences relating to illegal manufacturing or refining of mineral oil and extraction.

- ***serious criminal offences relating to the economic activity of the applicant***
  - bankruptcy (insolvency) fraud,
  - any infringement against health and environment, for example, illegal cross-border movement of hazardous waste,
  - participation in a criminal organisation,
  - bribery and corruption,
  - fraud,
  - cybercrime,
  - money laundering.

2.3 Satisfactory system of managing commercial and, where appropriate, transport records that allows appropriate customs controls (criterion 2)

overview

2.3.1 The objective of this criterion is to enable the Customs Authority to establish that the applicant has a high level of control of its operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows for appropriate customs controls,

2.3.2 The applicant shall fulfil all the requirements laid down in Articles 7.1 b) and 7.3 a) to e) of the MO. Specifically, this criterion is referred to in Article 7.1 (b) of the MO, which states that the applicant must meet the requirement of having a satisfactory management system of the commercial books and records that allow for customs and tax controls.

2.3.3 This is amplified in Article 7.3 a) and b)' of the MO which states that the applicant shall

- '*maintain an accounting system that is compatible with the generally accepted accounting principles and that facilitates customs controls by means of audits'* and that also allow the Customs Authority.

- '*physical or electronic access to its customs records by the Customs Authority*'.

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

- It should be checked against all the customs-related activities of the applicant.
- The Customs Authority 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 – say within the last six to nine months - and there have been no subsequent changes. However, it must be ensured that all different aspects / sub-criteria have been covered during that previous audit by the Customs Authority.
- It is recommended that part of the verification is done on the spot by the Customs Authority during the audit at the premises of the applicant.
- whilst the audit is being carried out at the applicant's premises there are several crucial elements to be considered;
  - verification that the information given in the application and the other documents is correct;
  - the routines / procedures described by the applicant are documented and implemented in practice,
  - transaction tests are undertaken to ensure that there is an audit trail in the records,
  - verification that the IT system used is reasonably protected against intrusion, manipulation, and
  - historic events are logged in the system so that changes can be monitored if necessary.

2.3.5 With regard to checking the specific requirements, the Customs Authority has to take into account the specific nature of the business activity of the economic operator, bearing in mind also a number of common considerations, as described in paragraphs 2.3.6 to 2.3.13.

accounting system (sub-criterion (a))

2.3.6 Article 7.3 a) of the MO requires that the applicant maintains *'an accounting system which is consistent with generally accepted accounting principles applied, allows audit-based customs controls and maintains a historical record of data that provides an audit trail from the moment the data enters the file*'.

2.3.7 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 entering, being processed and leaving the premises of the economic operator. Many businesses and organisations require an audit trail in their automated systems for security reasons.

2.3.8 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.

2.3.9 It is also important 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.

2.3.10 Transaction tests should reflect both these issues when done and also make sure that the economic operator follows the given routines at all times. The audit trail maintains a historical record of the data that enables the Customs Authority to trace a piece of data from the moment it enters the data system to the time it leaves.

records integrated into accounting system (sub-criterion (b))

2.3.11 There is an implied requirement, under article 7.1 b) and 7.3 a), that records kept by the applicant for customs purposes are integrated in its accounting system or allow cross checks of information with the accounting system to be made.

2.3.12 Some economic operators use an Enterprise Resource Planning (ERP) software to map their core business processes. The records kept for customs purposes can be integrated or linked electronically in this ERP.

2.3.13 There is no need, especially for SMEs, to use one single integrated system but to allow the possibility of cross checks between customs records and the accounting system. This can be achieved via an automated link, interface or even cross references in both systems or documentation.

access to records (sub-criteria (c))

2.3.14 Article 7.3 b) of the MO requires that the applicant *'allow the Customs Authority physical or electronic access to its business records (customs and, where appropriate, transport related)*'.

2.3.15 Access to an economic operator's records is defined as the possibility of getting the required information, no matter where the data is physically stored. Required information includes the economic operator's records as well as other relevant information, which is needed to perform the audit by the Customs Authority. 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 occur, for instance, when annual accounts are checked,

- **portable data storage devices**: a copy of the required information is handed out on CD-ROM or similar media. The situation is appropriate when a larger quantity of information is involved and data processing is needed;

- **on-line access:** through the economic operator's computer system, in the case of a site visit by the Customs Authority, using electronic channels for exchange of data, including the internet.

2.3.16 No matter which way data is accessible, the Customs Authority should have the possibility of data interrogation and analysis. This means that the Customs Authority should be able to work on the data. It is also important that the data provided are always up to date.

2.3.17 For this particular sub-criterion the nature of Small and Medium Companies (SMEs) has to be taken into account. For example, while all applicants seeking AEO 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 company applicant, it might be necessary to have integrated electronic record-keeping system directly facilitating the Customs Authority to audit while for an SME, having only a simplified and paper-based system of record-keeping, might be regarded as sufficient if it allows the Customs Authority to do the relevant controls.

logistical system (sub-criterion (d))

2.3.18 Article 7.3 c) of the MO requires that the applicant has *'a logistical system which identifies between goods that 'benefit from AEO status and those that do not and indicates, where appropriate, their location*'. It has to be assessed how the non-AEO goods or goods subject to customs control are distinguished from AEO goods.

2.3.19 As far as SMEs are concerned, the fulfilment of this sub-criterion may be regarded as satisfactory if the distinction between AEO and non-AEO 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.

administrative organisation (sub-criterion (e))

2.3.20 Article 7.3 d) of the MO includes two important requirements, that is to say, the applicant;

- '*has an administrative organisation that is suitable for the management of the flow of goods', and*
- *'has internal controls capable of detecting illegal or irregular transactions'.*

It is self-evident that the administrative organisation and internal controls should correspond to the type and size of business.

2.3.21 It has to be taken into account that no 'standard rule' for administrative organisation exists. The most important point to be demonstrated by the applicant is that the administrative organisation 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', such as a minimum number of employees, etc. is not appropriate.

2.3.22 Notwithstanding the above, written procedures and working instructions with clear descriptions of the processes, the competences and representation in case of absence must be prepared and be properly implemented. For micro and small businesses, such procedures and instructions can also be met by other appropriate measures that must be demonstrated to the satisfaction of the Customs Authority.

2.3.23 Internal control procedures impact not only the everyday functioning of the department(s) responsible for the operations covered by customs legislation but also all the services involved in managing those activities related to the international supply chain in which the applicant is involved. Examples for internal control are various and lead from a simple 'two-man rule' to complex electronic plausibility checks.

2.3.24 Customs infringements can also be an indicator that the internal control system is not being effective. Thus, every customs infringement has always to be scrutinised also with respect to this sub-criterion in order to take necessary action to improve the internal control system and, therefore, avoiding the repetition of the infringement.

archiving and protection of records and information (sub-criterion (f))

2.3.25 Article 7.3 e) of the MO 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'*.

2.3.26 Procedures for archiving and retrieving the applicant's records and information have to be assessed, including the matter of 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.

2.3.27 An 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 exists, 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 do not work should be checked.

licences and authorisations (sub-criterion (g))

2.3.28 Although not specifically dealt with in the MO, it is recommended that the applicant has satisfactory procedures in place for the handling of import and export licences connected to Ps and Rs, including measures to distinguish goods subject to the Ps & Rs from other goods and measures to ensure compliance with those Ps & Rs.

2.3.29 Based on the information provided in the SAQ and any other information available to the Customs Authority, 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 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 at the premises of the applicant economic operator by the Customs Authority during the audit.

2.3.30 In case of trade in specific goods subject to any licences issued by other competent authorities, it is advisable that the Customs Authority consult them for any feedback / background information on the applicant.

2.3.31 The procedures, referred to in paragraph 2.3.28, should be capable of;

- handling licences and all related activities,
- handling other goods that are subject to restrictions and related activities,
- handling goods subject to an embargo and all related activities,
- distinguishing goods subject to non-fiscal requirements and other goods,
- checking if the operations are carried out in accordance with current (non-fiscal) legislation,
- identifying potential dual-use goods and routines attached to their handling.

2.3.32 With respect to this sub-criterion it is crucial that the employees of the economic operator are aware of the importance of non-fiscal requirements, the correct classification of goods and keeping the master data up to date. Regular training of the developing legislation is mandatory for businesses dealing with above-mentioned goods.

2.3.32 Besides, it is vital for the economic operator to contact the competent national authorities for non-fiscal requirements, if any questions arise at an early stage. This is especially so for start-up companies or in case economic operators are enlarging their portfolio.

2.3.34 When assessing this sub-criterion, the Customs Authority should consult other involved competent authorities to get as much information about the economic operator's processes as possible.

securing IT system (sub-criterion (h))

2.3.35 Although not specifically referred to in the MO, the terms of articles 7.1 b) and 7.3 a) to e) imply that procedures for protecting the computer system from unauthorised intrusion and securing data must be in place.

2.3.36 Procedures 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. Those security measures should not only cover hardware kept in the premises of the applicant, but also mobile devices, allowing access to the applicant's data, for example, hard drive encryption for laptops, passwords for smartphones.

compliance difficulties (sub-criterion (i))

2.3.37 Article 13 d) of the MO requires the applicant to inform the Customs Authority, whenever compliance difficulties are discovered that could impact on the continuance of its AEO status and to establish suitable contacts with the Customs Authority to ensure that such information is passed on. It follows that the applicant's employees are also made aware of the need to inform the Customs Authority in those circumstances.

2.3.38 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).

2.4 Proven financial solvency (criterion 3)

overview

2.4.1 This criterion is referred to in Article 7.1 (c) of the MO and states that the applicant for AEO status must have '*proven financial stability*'. This is amplified in Article 7.3 of the MO, which states that '*proven solvency is considered to be the financial situation sufficiently strong for the economic applicant to be able to comply with the commitments made, taking into account the characteristics of the business activity undertaken and which can be substantiated by financial accounts of the economic operator over the previous three years'.*

2.4.2 An economic operator applicant for AEO status must prove that it has good financial standing, which enables it to fulfil its (financial) obligations, taking into account to the type of business activity in which it is involved. If the applicant has been established for less than three years, the financial solvency has to be judged on the basis of records and information that are available.

2.4.3 To check if the applicant meets this criterion, the Customs Authority shall take into consideration the following;

a) the applicant is not subject to insolvency proceedings at the time of submitting the application for AEO status,

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 having equivalent effect that are collected on, or in connection with, the importation or exportation of goods,
)

c) the applicant can demonstrate, on the basis of the records and information available for the last three years preceding the date of submission of the application, that it has sufficient standing to meet its obligations and fulfil its commitments, having regard to the type and volume of the business activity, including having no negative net assets, unless where they are or can be covered,

(d) the previous three years' audited accounts of the economic operator applicant.

2.4.4 The term 'insolvency' is not to be regarded as an equivalent to 'bankruptcy'. Bankruptcy means a legally declared, usually by a court, inability or impairment of ability of a company to pay its creditors. Accordingly, an application for AEO status must be not accepted because of bankruptcy. Such non-acceptance should have been notified to the applicant before the Customs Authority starts the 'acceptance' and 'audit' process.

2.4.5 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 (sub-criterion (a))

2.4.6 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 AEO status, the economic operator concerned will be able to continue to fulfil its obligations.

2.4.7 The Customs Authority can rely on various sources of information to assess this criterion, such as;

- official records of insolvencies, liquidations and administrations,
- the record of payment of customs duties and all other duties, taxes or charges having equivalent effect, 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 previous three years in order to analyse the applicant's ability to pay its 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 / 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, credit protection associations or any relevant State authorities' rating,
- any accessible financial information such as legal records, on line databases, financial news, etc.,
- 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.

2.4.8 With regard to the various sources of information that are available, the following shall be taken into account and they are described in paragraphs 2.4.9 to 2.4.30.

insolvency proceedings (sub-criterion (b))

2.4.9 If the applicant is subject to bankruptcy proceeding or liquidation, the criterion of financial solvency is not met. The application for AEO status is rejected automatically by the Customs Authority and the economic operator applicant informed of the decision, with reasons, in writing, immediately.

2.4.10 If the applicant is subject to any form of insolvency, compliance with this criterion has to be further explored, for instance, controlled administration by a third party selected by the judge. Information should be gathered on the circumstances that led to the initiation of the proceedings (economic recession, collapse of subsidiaries, temporary and unexpected changes in market trends), as well as the amounts due.

2.4.11 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 into 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.

paying duties and taxes (sub-criterion (c))

2.4.12 The Customs Authority can establish whether the applicant has paid or was late in paying the customs duties, all other duties, taxes and charges having equivalent effect that are collected on or in connection with the import or export of goods, that are legally payable in the last three years. This excludes amounts that are not yet legally due or are under appeal.

2.4.13 In the case of an appeal, where the relevant decision is suspended by the Customs Authority, it should be checked whether a guarantee covering the customs debt was provided. Should it not have been provided, as requested, the report justifying this release should be consulted.

2.4.14 Generally, where the applicant has not paid amounts that are legally due, the proven solvency criterion will not be met and the application for AEO status rejected. However, the reasons for the non-payment or late payment should be examined to determine whether there are acceptable mitigating circumstances. Examples of such 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 its compliance with this criterion.

2.4.15 There may be a possibility for an economic operator to apply for deferred payment facilities. 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.

2.4.16 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 under which electronic declarations are dealt with by the Customs Authority shall be considered related not only for the payment itself but also regarding 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.

sufficient financial standing (sub-criterion (d))

2.4.17 The applicant must be able to demonstrate sufficient financial standing to meet its obligations and fulfil its commitments. The Customs Authority has to be able to establish, whether the applicant is able to meet its legal debts to third parties, by checking the applicant's full sets of financial statements due for the previous 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 economic operator's business may have problems with its records or be in financial difficulties. Where the time limits have not been met the Customs Authority 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 Authority should investigate the reason for the comment with the auditors or directors and consider its significance for the business,

- any contingent liabilities or provisions, particularly if significant, will give an indication of the applicant's ability to pay future debts,

- any additional financial documents, such as income statements or cash flow statements can be used to assess the finance standing of the economic operator applicant,

- any ratio analysis, if available (for example, current ratio (current assets divided by current liabilities), which measure the company's liability to meet present obligations from its liquid assets,

- any other conclusions provided by financial or research institutions.

2.4.18 If the applicant uses a customs suspensive procedure such as transit or customs warehousing, the applicant should already have demonstrated that it has sufficient financial resources to cover its obligations under these procedures. For example, for 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 the Customs Authority as it 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 the Customs Authority to re-examine or duplicate checks that have already been carried out.

negative net assets (sub-criterion (e))

2.4.19 The applicant must not have negative assets except where they can be covered. The Customs Authority 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 Authority 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, further examination would need to be undertaken, if the net current assets move from a positive to a negative situation or the net current assets are becoming increasingly negative. However, this may be due to the impact of falling turnover or adverse trading conditions or increased costs. The Customs Authority 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 that 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 Authority should consider whether these intangible assets have any real market value. The Customs Authority 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 corporation 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 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.

2.4.20 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.

2.4.21 In case of 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.

loans (sub-criterion (e))

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

2.4.23 However, the Customs Authority 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 Authority should check that the position recorded in the accounts is consistent with the undertaking or bank facilities letter. If the applicant is a sole proprietor and personal assets are being used to support the solvency of the business, the Customs Authority should obtain a list of any personal assets and satisfy itself that the list is credible.

2.4.24 The applicant may be requested to provide additional information regarding a loan, such as the name of the creditor, the purpose of the loan and the related conditions. The information should be checked and compared with other financial documents, such as balance sheet and / or profit and loss statement, in order to assess the global financial situation of the economic operator.

letters of comfort and guarantees (sub-criterion (f))

2.4.25 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 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 economic operator but are not necessarily legally binding.

2.4.26 When judging the proven financial solvency of a subsidiary, it should be taken into account that a subsidiary may operate under a guarantee from the parent company and the Customs Authority should look into the accounts of that parent providing support to ensure it has the facilities to do so.

2.4.27 However, it is to be noted that 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 Authority 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, 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.

applicant established less than three years (sub-criterion (g))

2.4.28 Where the economic operator applicant has been established 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 Authority. In these circumstances, proven financial solvency will be judged, 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 / sole proprietor.

2.4.29 The Customs Authority should also be alert to applications from economic operators that have gone into liquidation to avoid their liabilities and have started up again under a different name. Where the Customs Authority has information showing that the individuals 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 company that went into liquidation, this information can be used to challenge whether the applicant has sufficiently good financial standing to satisfy the proven financial solvency criterion.

2.4.30 The Customs Authority, on the other hand, should consider the case where the applicant had been established for less than three years, as a result of a corporate re-organisation but the economic activity remains the same. In order to evaluate this criterion, the Customs Authority could consider the company accounts, management accounts, financial statements or any other relevant documents of the pre-existing company, provided that the economic activity has not changed.

2.5 Practical standards of competence or professional qualifications

overview

2.5.1 An additional criterion that could be applied by the Customs Authority to all AEOs concerns;

- practical standards of competence, or
- professional qualifications

directly related to the activity carried out. (This criterion is already applied by all Member States of the EU to holders of AEO (simplifications) certificates.)

2.5.2 The criterion is considered to be fulfilled if any of the following conditions are met:

- The applicant or the individual in charge of the applicant's customs matters complies with one of the following practical standards of competence:
  - A proven practical experience of a minimum of three years in customs matters.
  - A quality standard concerning customs matters adopted by an internationally-accepted Standardisation body (similar to a European Standardisation body).
- The applicant or the individual in charge of the applicant's customs matters has successfully completed training, covering customs legislation, consistent with and relevant to the extent of his involvement in customs-related activities, provided by any of the following:
  - The Customs Authority.
  - An educational establishment, recognised for the purposes of granting such qualification, by the Customs Authority or a body, responsible for professional training, in the State.
  - A professional or trade association recognised by the Customs Authority or accredited in the State, for the purposes of granting such qualification.

2.5.3 Where the applicant uses a contracted individual, the criterion shall be considered to be fulfilled if the contracted individual is an AEO (customs simplifications).

2.5.4 All practical possibilities to demonstrate compliance with any of the two sub-criteria, listed in paragraph 2.5.2 are equally sufficient and can be chosen by the applicant. However, in relation to the applicant, they have to reflect;

- his specific involvement in customs-related activities,
- his role in the supply chain,
- his status, and
- his business organisation process set-up.

2.5.5 It should be noted that the individual in charge of the applicant's customs matters can be an employee of the applicant or a contracted individual. The applicant has to prove that the contracted individual is actually the one dealing with its relevant customs activities.

practical standards – proven practical experience over three years

scope

2.5.6 Practical standards mean that the applicant or the individual in charge of the applicant's customs matters must demonstrate that they have acquired experience in dealing with customs matters. Purely theoretical knowledge of the customs legislation is not sufficient. For this purpose, the three years standing practice shall also take into account the role of the applicant in the supply chain as referred to in chapter 1.4. of the Manual. For example:

- An exporter / manufacturer, as defined in paragraphs 1.4.6 and 1.4.7, can prove the three years of practical experience by;
  - being a holder of an authorisation for a simplified procedure, for example, local clearance for the use of the export customs procedure for a period of at least three years, or
  - performing the role of 'exporter' in a normal export customs procedure over the last three years.
- A customs broker, as defined in paragraphs 1.4.15 and 1.4.16, can prove the three years of experience by;
  - having an authorisation on customs simplifications, where applicable, or
  - being contracted in this area for a period of at least three years.
- A carrier, as defined in paragraphs 1.4.17 and 1.4.18**,** can demonstrate its practical experience if it has been;
  - the holder of an authorisation for a simplified procedure in relation to customs transit, or
  - an authorised consignee under the TIR Convention within the last three years, or
  - under contract and issued transport documents and summary declarations for the last three years.

verification

2.5.7 It is to be noted that verification of fulfilling this requirement only relates to the duration of the professional experience. Infringements or compliance deviations do not affect the three years' professional experience. However, they have to be considered, when examining the fulfilment of the criteria on compliance with customs legislation and taxation rules and internal control systems, addressed in chapter 2.2 and 2.3 of the Manual.

applicant

2.5.8 In the case where the individual, who has to comply with the condition of three years' proven practical experience in customs matters, is the applicant in the form of either a legal entity or individual, meeting this condition can be demonstrated by one or more of the following possibilities;

- carrying out, on a regular basis, customs activities, for example import / export / transit, or customs formalities for three years at least. In this case, the proof can also be established

  - by the presence of the applicant's Unique Tax Identification Number (NUIT) or other appropriate identification number in the appropriate boxes of the customs declarations, or

  - by the payment of customs duties.

  It should be noted that the simple presence of the applicant's identification number in one of the boxes of the customs declarations does not mean that he is directly involved in performing customs formalities. In this case, it is important for the Customs Authority to know if the customs formalities are directly performed by the applicant (inside the company) or by third parties, such as customs brokers. In the latter case, the applicant is not exempted from having to take care that the formalities are carried out properly, for example, by having internal control procedures in place in order to file all the documentation (copies of the electronic declarations sent by the third parties to the Customs Authority, related to the customs operations, to make sure that the export / import procedure has been finalised, etc.).

- being a holder of a particular authorisation, granted under the national legislation for at least three years, and related to the customs activities carried out.

2.5.9 Proof can be established, through customs declarations and all the other necessary documents, such as evidence of payment of customs duties, etc., presence of the NUIR or other identifying number in appropriate boxes of the customs declarations that and entity has been carrying out customs brokerage services for at least three years.

2.5.10 In relation to organising the transportation of goods in international trade on behalf of an exporter, an importer or another individual, obtaining, checking and preparing documentation to meet customs requirements and / or acting as carrier and issuing its own transport contract can be checked by way of the bill of lading or air waybill to ensure compliance with the 'three years' requirement.

2.5.11 The Customs Authority should use all available information and knowledge of the authorisations already granted to the applicant and the declarations submitted, using its own databases and electronic systems. The Customs Authority should take into account the official document of the applicant that clearly defines its economic activity and the general objective of its company, such as an extract from the official register, if necessary.

2.5.12 In any the case where the applicant is established for less than three years as a result of a corporate re-organisation, the Customs Authority shall consider the customs activities performed by the pre-existing company, provided that they are unchanged.

employee

2.5.13 The criterion can also be fulfilled by the applicant's employee(s) in charge of the applicant's customs matters. The employee is;

- the individual who covers the position(s) created inside the organisation of the applicant (defined through, for example, organisational structure, functional structure, divisional structure, working instructions or other organisational measures), or

- an individual responsible for customs matters being, for instance,

  - an employee responsible for the import / export office, or

- an employee of the office, managing customs matters, or
- a 'customs manager'.

scope

2.5.14 In case the individual who has to comply with the condition is the applicant's employee in charge of customs matters, there must be an employment relationship that creates a legal link between the employer (applicant) and the employee. This means that the employee performs, for the applicant, work or services on customs matters, under certain conditions in return for a remuneration. Because of this relationship, the employee does not act as a customs broker / representative (direct or indirect) of the applicant (the relevant boxes of the export customs declaration includes only the NUIT number of the applicant / exporter). As a result, it is the applicant who is the individual responsible, as far as the financial and legal liability is concerned and in the case of infringements of customs laws occurring in performing the duties.

2.5.15 It should be noted that, depending on the internal organisation of the applicant, more than one employee can be in charge of the customs activities. In this case the condition has to be fulfilled by all employees in charge.

2.5.16 Should another employee become in charge of the applicant's customs matters, the economic operator has to inform the Customs Authority who can evaluate the real necessity to assess the new situation, on the basis of the information provided, for example, the name of the individual(s) involved in the rotation and their experience in customs matters inside the company.

verification

2.5.17 If the employee in charge of the applicant's customs matters is working for the applicant for less than three years, the employee can demonstrate compliance with the criterion by providing evidence of having previously worked on relevant issues in another company. In this case, the proof of compliance will have to be provided;

- by way of the previous work contract or the organisational structure of the other company,
- by a statement from this company, clearly indicating the employment status of the employee within this previous company, or
- other proof held by the employee and recognised by the Customs Authority.

In the case where the applicant is an SME, especially a micro or small company, for example, a family business, it can have a different management and organisational structure without a real distinction of the internal roles or working position. In this case, the applicant`s formal statement can be considered sufficient.

contractor

2.5.18 The criterion can be fulfilled by an individual outside the applicant being in charge of the applicant's customs matters, only in those cases where their handling is outsourced.

scope

2.5.19 In this case the applicant is represented directly (in its own name and on its behalf) or indirectly (on its own behalf) by a third party regarding the customs formalities. An example is where the applicant outsources the customs formalities to a customs broker or a freight forwarder.

2.5.20 The criterion cannot be fulfilled by contracted individuals to whom the applicant has outsourced activities other than customs-related such as, for instance, information technology.

2.5.21 In any case, there is always a contract in return for a remuneration that defines the services that the contracted individual has to provide. This contract usually includes a draft set of terms and conditions. The length of the contract is determined at the outset as an integral part of the business case for the outsourcing activity.

2.5.22 There are different reasons to outsource the customs activities. For example, SMEs often, for economic and management reasons, outsource important functions to specialised companies having a degree of technical knowledge that cannot be achieved by the applicant. Some examples of outsourcing include:

- **Customs agents,** in order to perform customs formalities. The complexity and continuous development of the customs legislation is forcing companies to turn to outside professionals. This option may be more cost-effective than in-house operations for reasons of economies of scale, expertise, technology, and the stimulation provided by competition in the private sector.

- **International freight forwarders**, in order to perform customs and logistic formalities. A forwarder acts as an expert in the logistic network. A forwarder contracts with carriers to move the goods and has additional experience in preparing and processing customs and other documentation and performing activities pertaining to international shipments.

2.5.23 Special attention is drawn to the fact that, in the of case strategic services being outsourced to contracted individuals, the applicant has to ensure that the knowledge and competencies required to deliver the service are constant during the contracted period. The individual fulfilling the criterion and the applicant cannot be dissociated, as it is stipulated that the criteria must be met by the economic operator that is applying for AEO status. The economic operator, therefore, has to be aware that it is possible to outsource 'activities' but not the responsibility. As already stated, low quality of service can eventually result in problems relating to the fulfilment of the other criteria, eventually resulting in suspension or revocation of the (AEO) authorisation.

2.5.24 In this regard, where the applicant outsources the handling of customs matters to a contracted individual, the contract or any other type of agreement between the applicant and the contracted individual must be made available to the Customs Authority to clarify the capacity and responsibility of this contracted individual and to consequently prove compliance with the criterion.

verification

2.5.25 If the customs activities are outsourced to a contracted third party, the Customs Authority has to check the fulfilment of the sub-criterion by verifying;

- if the applicant has more than three years' established relationship with the contracted individual. To prove this, the Customs Authority can check the existence of a contract, mandate or any other type of agreement (a copy of which should be held by the applicant) between the applicant and the contracted individual that clearly states the activities and responsibilities the contracted individual performs on behalf of the applicant,

- if the contracted individual has an authorisation for customs simplifications, and / or had carried out customs formalities over the last three years.

2.5.26 The condition of 'practical standards of competence' shall be considered fulfilled if the contracted individual is an AEO (simplifications).

2.5.27 In case of outsourced customs activities, it is sufficient that either;

- the applicant,

- the applicant's employee in charge of customs matters, or

- the contracted individual,

fulfils the criterion. If the applicant outsources its customs activities to more than one contracted individual, the criterion must be fulfilled by all of them.

practical standards - quality standards

2.5.28 It is noted that, as yet, no internationally-accepted Standardisation body has developed standards applicable to 'customs matters'.

professional qualifications

scope

2.5.29 This criterion shall also be considered to be fulfilled if the applicant or the individual in charge of the applicant's customs matters has successfully completed training covering customs legislation consistent with and relevant to the extent of his involvement in customs-related activities, provided by any of the following:

- The Customs Authority.
- An educational establishment, recognised for the purposes of granting such qualification, by the Customs Authority or a body, responsible for professional training, in the State.
- A professional or trade association recognised by the Customs Authority or accredited in the State, for the purposes of granting such qualification.

verification

2.5.30 Public or private institutions such as universities, customs schools, other specific schools or professional or trade associations provide different courses to prepare for the recognition of a specific professional authorisation / accreditation for specific economic operators, for example, the profession of customs broker.

2.5.31 The training body has to certify the successful completion of the course by the trainee.

2.5.32 The applicant or the individuals in charge of the applicant's customs matters who are authorised or certified or have a licence for the exercise of the professional activity related to customs matters, for example a customs broker or freight forwarder, can demonstrate the respective proof to meet the criterion of a successful completion of a training covering customs matters.

2.5.33 It is also possible that the State may not have any accreditation programmes but, instead, have specific training in customs matters, for example, education offered at a secondary school level or agreements with public bodies providing educational services. This type of training should be recognised by the Customs Authority as sufficient in a specific professional context. The State should be encouraged to further develop such training schemes.

2.5.34 The Customs Authority or public or private sectors listed in paragraph 2.5.29, second and third indents, wishing to implement training for the fulfilment of the condition of professional qualification could consider the EU Customs Competency Framework for the Private Sector.

2.5.35 This tool is underpinned by a set of core values, which should be demonstrated by any economic operator or any individual working within the private sector and interacting with the Customs Authority.

2.6 Appropriate security and safety standards (criterion 4)

overview

2.6.1 It is noted that the current legislation, as set out in the MO, does not include this criterion. The main reason for including the criterion in the Manual is that it will raise the awareness of the Customs Authority and affected stakeholders to the extent and nature of the requirements that must be met, in the event of the current legislation being amended to include it. By including the security and safety criterion now, the need to amend the Manual or, alternatively, to prepare a separate manual to deal with it will not arise.

2.6.2 The conditions of security and safety shall be deemed to be met if the applicant complies with all, where appropriate, requirements as indicated in Appendix 1V of the SAFE Framework. It has to be clearly understood, that the criterion of security and safety is only relevant if an economic operator applies for an AEO authorisation catering for security and safety.

2.6.3 It is important to know that an examination of the security and safety criterion is carried out by the Customs Authority, in respect of all the premises that are relevant to the customs-related activities of the applicant. For example, a warehouse, where goods that are not under customs supervision but which are intended to be exported (and, as a consequence, entering an international supply chain) are stored, has to be secure. On the other hand, a warehouse where only goods in free circulation (home produced or duty paid are stored and that will be sold in the internal market might not be relevant for security purposes. Thus, while preparing their applications, economic operators must be able to identify activities in all their premises.

2.6.4 Only in the case of a large number of premises, where the time 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 that are commonly used in all its premises, it may decide to examine only 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.

2.6.5 Because each economic operator is structurally different from another, each having its own business model, the security and safety measures implemented by applicant AEO economic operators have to be considered on a case by case base by the Customs Authority. 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 this AEO criterion 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 Instructions on completing the SAQ and relevant chapters in the Training Manual.

2.6.6 When preparing the AEO application, it is very important to read the material dealing with each of the specific sub-criteria for AEO status, in parallel with the related Instructions on completing the SAQ, with particular reference to the security and safety criterion.

2.6.7 The applicant's security and safety standards shall be considered to be appropriate only where all the sub-criteria listed in Chapter 2.6 can be verified by the Customs Authority and deemed to be fulfilled. However, for the purpose of establishing compliance, minor shortcomings in one sub-criterion may be overcome by strengths in another sub-criterion. The ultimate objective 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 workers. However, where the situation is recognised, the applicant and can effectively manage this risk by putting in place appropriate access controls to ensure that those temporary workers do not have unsupervised access to goods in / entering the supply chain or to security sensitive areas of the business.

2.6.8 It should also be noted that good awareness and practical application of the AEO concept by the applicant and its employees may avert a minor risk due to a 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.

2.6.9 While some of the criteria presented in Chapter 2 of the Manual may be checked, both on the basis of documentation presented or on the spot, the security and safety criterion will always include physical checks at the (various) premises of the applicant.

2.6.10 Due account has to be taken also of AEO applicants that have been already approved as RA or KC. In those cases, the security and safety conditions and requirements are deemed to be met in relation to the premises and the operations concerned for which the RA or the KC status has been granted.

2.6.11 Details for each of the sub-criteria are set out in paragraphs 2.6.11 to 2.6.69.

building security (sub-criterion (a))

2.6.12 To prevent tampering with goods but also to protect sensitive data and documentation, 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'.*

2.6.13 The aim of security measures to secure buildings is to prevent unlawful intrusions. In the particular case of intrusion of the perimeter fence / building, the aim is;

- to delay and deter the intruder (i.e. grids, codes, external and internal windows, gates and fences secured with locking devices),

- to detect, as rapidly as possible, the intrusion, that is to say, access monitoring or control measures such as internal / external anti-burglar alarm systems or close circuit TV systems (CCTV),

- fast reaction to the intrusion, that is to say, remote transmission system to a manager or to a security company in case the alarm goes off.

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

2.6.15 Moreover, for risk analysis purposes, both applicants and the Customs Authority shall take into account the particular characteristics of each location. In some cases, a premises will only consist of a building that serves at the same time as an external boundary for the premises of the economic operator. In other cases, a premises will be situated in a well secured industrial or business park. In some cases, even the loading ramp for incoming or outgoing goods will be part of the outer shell.

2.6.16 Even the premises layout, for example, surrounding an area of 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 in relation to *'building security'* and *'access controls'*. Factors to be taken into account when assessing this sub-criterion may, for example, be that a fence has been erected 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.

2.6.17 In the case of an applicant that has been already approved as a RA or a KC, the Customs Authority shall consider this sub-criterion as met for AEO status purposes in relation to the premises and the operations concerned for which the RA or the KC status has been granted.

2.6.18 While checking this sub-criterion, due account should be taken that each applicant must ensure the security of its buildings and access control. However, when assessing the way that it is achieved, the specific characteristics of SMEs shall be taken into account. For example;

- a large manufacturer might need to have a perimeter wall / fence, security guards and CCTV, cameras, etc.,

- a customs broker, operating from a single room in a building, might need to have locks on doors, windows and filing cabinets and have a clear procedure for access control, including responsibilities.

access controls (sub-criterion (b))

2.6.19 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.

2.6.20 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).

2.6.21 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 business park, goods are not stored outside and the other physical security requirements, such as building security and the like are of high standard.

2.6.22 All security sensitive areas, where cargo is processed or stored, must be protected against unauthorised access not only from third parties but also from the applicant's own employees who have no competence or appropriate security clearance to access those areas. This includes not only access control of unauthorised individuals but also of unauthorised vehicles and goods.

2.6.23 There should be routines in place as to how to respond to security incidents in the case of an unauthorised access or attempt to access the premises, such as contacting local police, internal security staff and, as the case may be, the Customs Authority).

2.6.24 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, in a very fundamental way, on the security and safety of the international supply chain. An example of such a situation may be a CCTV system that only records but is not monitored. Even though that standard may be adequate for other purposes, it may not be sufficient for the grant of AEO (security and safety) status.

2.6.25 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 company, with regard to the internal control procedures for access, different solutions may be suitable for them (concerning access controls). A couple of examples are;

- most of the time, small businesses and micro-companies do not have enough resources to dedicate employees to monitor the access control to the site. In that situation, an enclosed fence equipped with an intercom should allow access remote control to the site should suffice,

- an instruction recalling the obligation to maintain the doors lock closed in the shipping areas and that the doors must be equipped with a bell for drivers who want to access the shipping area, should prevent unauthorised access to cargo areas.

2.6.26 In cases where the applicant has been already approved as a KC or a RA, the Customs Authority shall consider this sub-criterion as met in relation to the premises and the operations concerned for which the KC or RA status has been granted.

cargo security (sub-criterion (c))

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

2.6.28 These measures, where appropriate to the business concerned, shall include / contain;

- integrity of cargo units, including usage of seals and seven-point 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, and
- loading of goods (including checking quality and quantity and sealing/marking).

2.6.29 Where appropriate and feasible, the above measures must be documented and recorded. Again, breaches of the integrity of the cargo / cargo units should be recognised at the earliest possible stage, reported to the designated security department or member of staff, investigated and recorded in order to take necessary countermeasures. Thus, it is also essential that competences and responsibilities between sections and parties within the company are clearly described and known.

2.6.30 As mentioned in sub-criteria a), cargo security is inseparable from building security and access controls. This is because the aim of security and safety measures is, in the final analysis, to secure goods by preventing, in particular, unauthorised access to cargo (shipping areas, loading docks and cargo areas).

2.6.31 Moreover, while checking this sub-criterion, due account should be taken off the specific characteristics of SMEs. Two examples are adduced;

- closed doors / railings, propitiatory signs and instructions may be sufficient to limit access to authorised personnel only to restricted areas. These instructions may be incorporated into the general security and safety procedure dealing with all the sub-criteria in Chapter 2.6,
- to prevent unauthorised access in manufacturing areas, shipping areas, loading bays, cargo areas and offices, visitors should be escorted systematically throughout the premises and sign a register at the entrance.

2.6.32 Finally, cargo security is also inseparable from sub-criterion f), 'Business Partner Security', because when goods in cargo units enter the supply chain, they are often placed under business partner responsibility.

2.6.33 In case the applicant has been already approved as a RA or a KC, the Customs Authority shall consider this sub-criterion as met in relation to the premises and operations concerned for which the RA or KC status was granted.

export / import licences (sub-criterion (d))

2.6.34 To prevent misuse and unlawful delivery of security and safety 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.*

2.6.35 The procedures, referred to paragraph 2.6.34, should be capable of;

- handling licences and all related issues,
- handling goods subject to an embargo and al related issues,
- handling other goods that are subject to restrictions and related issues,
- distinguishing goods subject to non-fiscal requirements and other goods and related issues,
- checking if operations are carried out in accordance with current (non-fiscal) legislation and related issues,
- identifying potential dual-use goods and routines attached to their handling and related issues.

identity of business partners (sub-criterion (e))

2.6.36 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, what is relevant are business partners with direct involvement in the international supply chain.

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

2.6.38 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, and
- the measures to be implemented,

by the AEO to mitigate the risks identified.

2.6.39 The responsibilities of the AEO's business partners could be, for example, the following;

- **manufacturers and warehousekeepers** 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 brokers** 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 and protected against unauthorised interference.

2.6.40 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. 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 these service providers, similar to those that should be applied to the business partners.

2.6.41 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 it is simply a statement of fact or intention). There may also be relationships where one party, for example, the State, owning and operating transport infrastructure and facilities, essentially determines the service parameters that another party, such as a carrier, may provide. In this situation, the carrier, can either accept or not these parameters and it has very little, if any, influence over them (the parameters).

2.6.42 From an AEO perspective, business partners may have the option of applying for AEO status, but if they choose not to exercise that option, they should provide adequate evidence to their AEO partner that they can meet acceptable level of security and safety standards. The ideal scenario would be that the maximum number of participants in the international supply chains should hold AEO status or equivalent.

security requirements for business partners (sub-criterion (f))

2.6.43 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.'*

2.6.44 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 economic operator that applied for it. However, AEOs are 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, therefore, that AEOs are 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.

2.6.45 It is expected that any would-be AEO applicant will ensure that its business partners are aware of their security and safety obligations and requirements and will 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 its 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.

2.6.46 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 its AEO status. A specific approach towards the security requirements for service providers is necessary, 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 by the Customs Authority. A typical example is the sub-criterion for access control, when the AEO applicant has contracted a security company to fulfil its obligations in this area. The access control sub-criterion has to be verified, by assessing the way the service provider fulfils the related obligations 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 act on its behalf, is and remains responsible for compliance with the AEO criterion and ensuring that the service provider complies with the requirements.

2.6.47 Some examples of how an AEO could enhance its supply chain security include;

- working together with other AEOs or equivalent,

- entering into contractual arrangements on security with its business partners, where appropriate and feasible, according to its business model,

- choosing sub-contractors, for example, transporters, hauliers, etc., on the basis of their adherence to certain security rules and, sometimes, applicable mandatory international requirements, in particular, if they have been already approved under other security schemes such as KC or RA,

- concluding contracts that contain clauses preventing the subcontractor from further subcontracting the work to parties unknown to the AEO, for which the procedure in place for identification and appropriate security measures cannot be proved by the subcontractor. This should always be the case where secure air cargo / air mail is being transported from a KC,

- using seals for all modes of transport, whenever possible, to detect intrusion through the entry point(s) into the cargo compartment. In this regard, loaded containers should be sealed by the party stuffing the container immediately upon completion of the stuffing process with an ISO17712 compliant seal,

- inspecting loaded containers at the subcontractor's premises, the terminal and recipient premises to verify that they have been properly sealed,

- taking into account general information from bodies responsible for the registration of companies (where possible) and the partner's products (risky and sensitive goods etc.) before entering into contractual arrangements,

- carrying out or requiring third party security audits of the business partner to ensure its compliance with the security obligations and requirements,

- seeking a security declaration reflecting both parties' respective business models, roles and responsibilities, where appropriate and feasible, considering its business model.

2.6.48 Developing the last bullet point in paragraph 2.6.47, where the applicant has met the requirements of implementing measures allowing for a clear identification of its business partners in order to secure the international supply chain, it can seek a security declaration from the particular business partner concerned. Where 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 verifiably in place and observed by the relevant business partner. In this situation, the AEO;

- uses carriers, hauliers and / or facilities that are regulated by international security certificates, for example, ISPS Code and RA.

- 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.

2.6.49 Both the Customs Authority 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 in the supply chain and the associated risks and its business model.

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

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

2.6.52 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 type of transaction to an acceptable level. For example, where air cargo / air mail arrives from an unknown trading partner for which the procedure in place for identification and appropriate security measures cannot be proved, it should be screened by a RA. 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.

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

2.6.54 If the AEO discovers compliance difficulties, the Customs Authority should be contacted with details of such occurrences.

personnel security (sub-criterion (g))

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

2.6.56 To prevent infiltration of unauthorised workers that could pose 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 Authority and by the applicant;

- all economic operators should have in place appropriate systems / procedures to comply with this requirement and the Customs Authority has to be able to verify this during the audit,

- it is the applicant, being the employer, that is responsible for conducting these checks while the Customs Authority verifies whether they are done and whether they are sufficient to ensure compliance, taking into consideration the prevailing legislation,

- the scope and purpose of the checks should be clear. The proportionality principle should be respected, that is to say, 'action should not go beyond what is necessary with regard to the purpose'. The extent and evaluation of the fulfilment of this sub-criterion 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;

  - the employment policy of the economic operator,

  - employees working in security sensitive areas, and

  - procedures, when staff leave or are dismissed.

  These areas are dealt with, in greater detail, in paragraphs 2.6.57 to 2.6.66, following.

employment policy

2.6.57 The general organisation and procedures for the recruitment of new employees have to be clear, including the responsible department and official(s). The applicant's policy should particularly reflect all reasonable precautions to be taken into account when recruiting new employees to work in security sensitive positions to verify that they have not been 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 employees in security sensitive positions with the same intent – in both cases to the extent permitted by national legislation.

2.6.58 Methods of security checks may comprise basic checks, such as 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.

2.6.59 The applicant should also have security requirements in place regarding the use of temporary and agency workers. Similar security standards for permanent employees, as well as temporary and agency workers are required, taking into account the security sensitivity of the positions. If an employment agency is used to recruit personnel, the applicant should specify, in contracts with the agency, the level of security checks to be performed on workers prior to and after recruitment to security sensitive positions. The Customs Authority auditors may ask to verify how the AEO applicant checks on external workers are carried out. In this respect, the AEO applicant should maintain evidence of the applied standards in its records.

security sensitive positions

2.6.60 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, storage 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 related to incoming / outgoing goods and storage.

2.6.61 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.

2.6.62 For high and / or critical security posts, police-checks on court convictions could be required. Appointed employees should inform their employer (the AEO applicant) of police caution / bail, pending court proceedings and / or convictions. They should also disclose any other employment or any activity subject to any security risks.
It is also recommended that a check be undertaken to confirm that any employed personnel are not listed in one of the blacklists that are established by national or international law.

2.6.63 Any checks to be done have to be in conformity with national law and / or international obligations on personnel data protection that regulates the processing of personnel data under different conditions. Thus, in order to facilitate the process for some of the positions, a special clause may need to be included in the contract that asks the personnel concerned to give his /her consent for doing these background checks.

personnel departures

2.6.64 The applicant should have procedures in place to expeditiously remove access to identification, premises and information systems for employees whose employment has been terminated or in circumstances where they leave the employment voluntarily.

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

2.6.66 In cases where the applicant has been already approved as a RA or KC, the Customs Authority shall consider this sub-criterion to be met, in relation to the premises and the operations concerned for which the RA or KC status has been granted.

security awareness programmes (sub-criterion (h))

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

2.6.68 The applicant should particularly;

- educate its personnel, whether permanent employees or temporary workers 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 an individual (internal or external to the company) should be responsible for training employees,

- make employees aware of the procedures that 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. The content of training programmes should reflect any particular requirement related to the specific business activity of the economic operator, for example, air cargo / air mail,

- there is no mandatory frequency in which security and safety training should be repeated. However, as from one year to another, employees, 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 company. For example, for micro SMEs, oral training, however documented and 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 the Customs Authority.

2.6.69 At the same time, the frequency and the intensity of the security and safety training may vary between different employees in one company due to their responsibility and their individual ability to influence the security of the international supply chain.

CHAPTER 3 Process of Authorisation

3.1 Receipt and acceptance of the application

3.1.1 This chapter focuses on the process of handling the application, including deciding on whether the application should be authorised. **The process is illustrated in the attachment**.

3.1.2 When the application form, SAQ and all supporting documents has been received, the Customs Authority shall carry out a screening and evaluation of the paperwork. Following that, the Customs Authority shall decide on the acceptance or non-acceptance of the application. The following common general considerations have always to be taken into account;

- the application, SAQ and supporting documents should be lodged, either in writing or by electronic means,
- supporting documents as listed in article 9.1 a) to i) of the MO. These documents include, inter alia, a certificate of criminal clearance, a certificate of good standing, a tax clearance certificate, etc. Because of their number, care should be exercised by the applicant to ensure that all are in order and present. The presence of these documents must be confirmed in the SAQ
- the supporting documents should be capable of being verified by the Customs Authority independently, by accessing the relevant competent State authorities' databases,
- whenever appropriate, the Customs Authority should be in a position to access and use other available sources of information, for example, common databases, contacts with State authorities, information from the applicant's web page, etc.,
- in the case of additional information being required, the Customs Authority must request it from the applicant as soon as possible **but no later than 15 calendar days from the date of receipt of the application.** Where the MO does not indicate a deadline for the applicant to submit any additional information requested, the national (customs) administrative provisions should apply. However, that notwithstanding, it should be noted that, without the additional information requested, the application cannot be processed further,
- The Customs Authority must always inform the applicant in relating to the formal 'acceptance' of the application within **15 calendar days** of its receipt. In the case of non-acceptance of the application, the reason(s) for such non-acceptance should be communicated, within **15 calendar days,** to the applicant.

3.2 Risk analysis and audit process

Information collection and analysis

3.2.1 This process is facilitated by the obligation of the economic operator to fully complete and submit the SAQ with the application form and other supporting documents. To carry out risk analysis and prepare an effective survey and inspection (audit) of the premises and business records, the Customs Authority must collect all relevant information about the economic operator so as to;

- better understand the business of the economic operator,
- get the best possible overview of an economic operator's business organisation, processes, and procedures,
- prepare the audit plan, according to the risk evaluation results,

- prepare the audit, dealing with such issues as optimum audit team, focus of the audit, etc.,
- verify the fulfilment of the criteria, insofar as possible.

3.2.2 This information that can be obtained by the Customs Authority from various sources includes the following;

- internal databases maintained by the Customs Authority,
- other internal information held by the Customs Authority, such as result of previous checks and / or audit; other authorisations granted or revoked, review of previously submitted customs declarations, etc.,
- risk indicators, prepared by the Customs Authority,
- information requested from and provided by other State authorities,
- other information from and consultations with other competent administrations in third countries, as necessary,
- information provided by the economic operator itself (and not just limited to the SAQ),
- publically available information (news, internet, studies, reports, etc.),
- any other relevant information including images, photos, videos, premises' plan, etc.

3.2.3 All the information collected has to be carefully evaluated by the Customs Authority auditors in order to assess its accuracy and relevance to the objectives of the audit. It should be clearly appreciated that collecting information is a dynamic process and it could well happen that 'information asks for more information'. The applicant needs to be aware of this and be ready to provide the Customs Authority with any additional information needed. Even once the examination has commenced, the Customs Authority can ask for and collect additional relevant information that adds value to the audit.

3.2.4 It should also be noted 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 most up-to-date information. To ensure that the Customs Authority 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 that can capture information from and communicate with the applicant, where such information is needed.

3.2.5 The size of the economic operator, its specific business activity, and cases where it has gone through other relevant customs accreditation processes could also result in speeding up the process.

small and medium-sized companies

3.2.6 SMEs are defined as 'micro' and 'small and medium-sized companies'. However, it should also be taken into account that, for the purposes of AEO certification and compliance with the related requirements, this distinction is not the only relevant one. While this might be sufficient for separate economic operators considered as SMEs according to this classification system, however, for an SME, that is part of a bigger multinational company with common security standards and procedures, also has a different role to play and has to be treated accordingly.

3.2.7 SMEs are different in terms of size, complexity of the business, type of goods handled, position in the international supply chain etc. A couple of examples should help illustrate the differences;

- an AEO applicant with, say, 53 employees importing footwear will be dealt with differently than an AEO applicant with 249 employee importing dual use goods or weapons and which has already implemented various security measures,

- a customs broker with 4 employees, acting as a subcontractor for a 150-employee manufacturer.

3.2.8 SMEs represent a large part of all businesses in the State and the vast majority of SMEs are actually micro companies with less than 10 employees. 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.

3.2.9 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, the necessary flexibility should be adopted by the Customs Authority to minimise costs and burdens of the application process.

3.2.10 Even though the AEO criteria apply to all businesses regardless of their size, it is generally accepted that 'the Customs Authority will take due account of the specific characteristics of economic operators, in particular, SMEs.

specific economic activities

express operators

3.2.11 The role of a carrier within the international supply chain is described in Chapter 1.4.17 and 1.4.18 of the Manual. 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 countries, this sub-sector accounts for up to a third of all consignments at import and about half of all consignments at export.

3.2.12 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 broker, in addition to the role of carrier,
- as the mode of transport is mainly air freight, these economic operators will operate as Regulated Agent (RA) or Known Consignor (KC), as referred to in the WCO SAFE Framework and fulfil related legal requirements in relation to the majority of their business operations / activities,
- carrying packages and freight on their own aircraft or providing loaded bags and loose packages for other air carriers,
- the affected economic operators often hold authorisations from the Customs Authority to use simplified customs procedures.

3.2.13 Given these distinct features, there are a number of specific risks for this sub-sector that particularly need to be considered by the Customs Authority, when the economic operators apply for AEO status, such as;

- the level of infringements in assessing the customs compliance criterion. The Customs Authority will need to take into account the high volume of transactions and assess whether infringements are systemic, the

quality of the economic operators' internal controls and the procedures to identify and correct errors, as set out in Chapter 2 ('AEO criteria') of the Training Manual,

- the security of data held by the economic operator. The Customs Authority must be especially cognisant of this aspect, when assessing the express operator's system of managing commercial and, where appropriate, transport records. Given the high volume of data held, the Customs Authority will need to consider the measures in place to protect the economic operator's systems against unauthorised access or intrusion and access to documentation and the procedures for processing the information into the systems used by the express operators.

3.2.14 In assessing appropriate security and safety standards, issues to be conscious of include;

- locations or activities that are not covered by the status of RA / KC,
- breaches of agreed security arrangements. with the resultant risk of delivering unsafe or unsecured goods.
- given the wide range of business partners, the Customs Authority will;
  - need to assess the procedures for selecting business partners, and
  - be able to manage the risks associated with known and unknown trading partners,
- individuals infiltrating the business that could pose a security risk. Given the high volumes of business, the Customs Authority will need to assess the procedures for performing background checks on new personnel (permanent employees and temporary workers),
- inadequate awareness of security requirements. The Customs Authority will need to assess the procedures for providing appropriate training, covering the security and safety risks associated with the movement of express consignments.

postal operators

3.2.15 A postal operator has its own particular peculiarities and it is necessary to take into consideration its characteristics and the associated risks. As it can be assumed that the criterion on proven solvency shall be assessed in the same way as for the other economic operators, the focus, in paragraphs 3.2.16 to 3.2.28, will be on some specific issues related to the other AEO criteria.

Compliance with customs legislation (and taxation rules)

3.2.16 A postal operator is responsible for a delivery / dispatch service to and from a multiplicity of small clients and users, whose reliability is not very easy to control. The consequences of that unreliability relate to possible problems regarding the payment of the correct amount of customs duties and other related import taxes, proper enforcement of Ps & Rs, etc. (in addition to security and safety compliance). Some examples of risk areas related to customs operations could be the following;

- the high number of 'small' - low weight, low value – shipments,
- the unreliability of the statements / declarations made by the customers (mostly individuals), in particular, errors and omissions relating to the value and quality description of the contents of shipments, lack / inadequacy of the supporting documents in relation to certificates / licences, etc., accompanying the customs declarations and the consequent difficulties in meeting specific or general customs requirements,
- delays in delivery caused by the carrier,

- high risk of 'mishandled' (lost) shipments.

3.2.17 Therefore, during the audit by the Customs Authority, inter alia, even taking into account the size and type of the economic operator concerned, the annual number of infringements related to customs declarations lodged should always be examined and compared with the annual total number of transactions dealt with, in order to evaluate potential risks, including those with a customs duty payment impact. The management of any local customs clearance procedure and customs warehouses in which the goods are stored is the most important element to be audited whilst, at the same time, also checking the remaining risks.

accounting and logistic systems

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

3.2.19 Such an operational situation requires the possibility, if not probability, 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.

3.2.20 When assessing the effectiveness of the internal control system, it is important to check, in addition to the segregation of (work) duties, if there are employees 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 economic 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.

3.2.21 Besides, 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.

3.2.22 Another aspect that 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 who retrieve packages.

security requirements

3.2.23 In this context, personnel recruitment should be carefully considered. For example, it is important to consider the percentage of occasional workers with regard to the total number of all workers, 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 personnel to be assigned to special operations, such as those in direct contact with sensitive goods in storage places or high risk areas, have to be carefully evaluated.

3.2.24 It is also necessary, to control the frequency with which this economic operator monitors personnel, mindful of the need to respect employee protection legislation. It is very important, in this context, to consider the procedures for managing the contracts with employment agencies.

3.2.25 All employees, 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 also necessary to provide an adequate level of training, including the employees dedicated to the scanning of particular goods to be shipped.

3.2.26 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 employees 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 updated information on how to identify potentially dangerous shipments, bearing in mind 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, for example, presence of unusual odours, loss or spread of contents, packaging discolouration, oily spots, noises from inside, etc.

3.2.27 A postal operator must also take 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 where 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.

3.2.28 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

- to put in place reliable arrangements in terms of customs compliance, logistic and accounting systems and security and safety measures,

it is essential that all procedures are strictly standardised, with detailed internal procedural protocols, which are actually made operational in everyday practice.

rail carriers

3.2.29 In general, the audit of a rail carrier does not significantly differ from other carriers. It can even be 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), which usually impose requirements related to seals and cargo integrity as well as responsibility for goods during transport,

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

- rail carriers operate in a fragmented environment from a regulatory point of view and they may be regulated and monitored by several different national authorities,

- the operating environment contains several elements that 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, with many premises and a wide range of operations, divided into passenger and cargo segments,

- 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 the responsibility of the carrier.

- loading and unloading of goods is regularly the customer's responsibility as railway carriers regularly do not load or unload cargo units by themselves or by third parties. However, they have the operational responsibility for the handling of the goods only if they offer a parcel service and additional other logistical services by themselves,

- during transport, several individuals 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 then handle the goods in load transfer points, logistic centres or warehouses.

3.2.30 Points of attention to be dealt with by the Customs Authority, during risk assessment and audit of a rail carrier applying for an AEO, include;

- the Customs Authority should ask the applicant to give a short presentation on the regulations, agreements and conventions they are bound by, before the commencement of the audit, to better understand the business environment,

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

- 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 cameras) and halts, weighing of cargo and seven-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 by including these requirements in 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.

3.3 Factors facilitating authorisation process

General

3.3.1 The various economic operators, due to their different economic activities may have to fulfil different standards and comply with different regulations besides the AEO requirements. One of the fundamental principles of the AEO programme is that it tries to consider and rely on already existing standards and certifications, without including a requirement to have any additional certifications to become an AEO.

3.3.2 In order to speed up the processing of applications, the Customs Authority should use, wherever possible, information they already hold on file or in its databases 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 that has already been communicated to the Customs Authority or other State authorities and available / accessible to the Customs Authority,
- 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 relevant experts in relation to the criteria for AEO status, other than compliance with customs legislation and taxation rules.

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

3.3.4 Specific attention shall be paid to the cases, where legislation provides for automatic recognition of security and safety standards, such as;

- a Regulated Agent, (see also 3.3.13 to 3.3.17 of the Manual),
- a holder of any of the following;
    - an internationally recognised security and / or safety certificate, issued on the basis of international conventions or internationally accepted national legislation,
    - an International Standard of the International Organisation for Standardisation or a European Standard of the European Standards Organisations.

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

3.3.5 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 security and safety standards which the Customs Authority may accept. 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 Customs Authority to determine whether and to what extend the criteria are fulfilled.

3.3.6 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 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 a State authority or by a third party? Is the third party internationally accredited?
- in what way is the certificate granted? Are there checks done by a State authority, by self-assessment of an economic operator or is there a verification done by an independent and accredited third party?
- was there an on-site audit carried out or was it a documentary verification only?
- what are the reasons for the economic operator applying 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?

3.3.7 The list of known standards and certificates, as described in paragraphs 3.3.11 to 3.3.35, following, 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, an AEO applicant can submit information to the Customs Authority (with the application form, etc.), on every standard it has fulfilled or certificate it holds that impact to the AEO criteria. Then the Customs Authority will check whether it can be taken into account and to what extent.

3.3.8 This is also valid if the economic operator was advised by an independent authority / institution in cases influencing the AEO criteria without leading to a certification, such as individual guidance provided by the local police in crime prevention on site, training programmes, etc.

3.3.9 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 advised but if there are any certificates granted to the applicant, it could be useful information to the Customs Authority and could result in speeding up the process. (See also Instructions on completing the SAQ, in relation to relating to accounting / logistical systems and to security and safety requirements).

3.3.10 It must be remembered that it is always the responsibility of the applicant to demonstrate that the AEO criteria are fulfilled.

certificates / authorisations

(a) existing customs authorisations

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

(b) certificates granted by aviation agencies or authorities

3.3.12 Aviation authorities approve entities that are involved in the handling of air cargo. Depending on their role in the supply chain, entities can be granted the status of a Regulated Agent (RA) or Known Consignor (KC) by such mentioned authorities.

3.3.13 RAs 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 State authority in respect of cargo, courier and express parcels or mails.

3.3.14 A KC is a consignor that originates cargo or mail for its own account and whose procedures meet common security rules and standards, sufficient to allow carriage of cargo or mail on any aircraft.

3.3.15 The criteria laid down for a RA and a KC, in respect of security and safety, shall be deemed to be met in relation to the premises and the operations concerned for which the economic operator has obtained the RA or the KC status. Unlike the AEO programme, both the KC and the RA status are always given to a specific site. It should also be noted that the KC and RA status, in principle, only applies to outgoing goods transported on board an aircraft. For incoming goods, the processes are not examined and approved.

3.3.16 Therefore, in that respect when the AEO applicant for AEO status (to include security and safety) has been already approved as a KC or as a RA, it should be properly assessed whether the applicant has other business activities and if so, they also have to be examined. There should not be, on the one hand automatic recognition of the security and safety examinations but, at the same time, duplication and re-examination of the same areas and operations should be excluded.

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

3.3.17 The IMO has adopted the International Ship and Port Facility Security Code (ISPS Code), 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. It prescribes responsibilities to

- States,
- 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.

3.3.18 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 duly documented in a security plan that 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 the Customs Authority as compliance with these sub-criteria.

3.3.19 While ships and port facilities meeting the applicable ISPC Code requirements are being issued with 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. Such authoritative validation of the shipping company should, therefore, also be considered in the context of the AEO authorisation.

(d) *Central Bank credit assessment*

3.3.20 The State Central Bank defines the procedures, rules and techniques that ensure that its requirement of high credit standards for all eligible assets is met. In the assessment of the credit standard, the Central Bank takes into account institutional criteria and features guaranteeing similar protection for the instrument holder such as guarantees. Eligibility is certificated by the Central Bank. The Central Bank'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.

3.3.21 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)*

3.3.22 The SOX is a United States federal law, which sets out enhanced standards for all U.S. public company boards, management and public accounting firms. It is also applicable to 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.

3.3.23 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 or similar programmes in third countries*

3.3.24 In some countries, there is a security and safety programme installed that is in line with the AEO concept of WCO SAFE Framework. Even if there is no mutual recognition with a particular third 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 Customs Authority in the examination process for granting AEO status to an economic operator applicant.

(g) *TIR (Transports Internationaux Routiers)*

3.3.25 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, which 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.

3.3.26 Of particular interest for the purpose of 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, access to TIR procedures shall be granted by a national competent authority only to transport operators that 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 legislation or tax rules,

- 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.

3.3.27 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, the relevant national approval or inspection authorities issue so-called approval certificates for road vehicles or containers.

(h) *others*

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

commercial standards and certifications

(a) certificates according to ISO 27001

3.3.29 The ISO 27001 is a worldwide standard by the ISO for the safety of information technology and the protection set down for 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 systems. Thus, an ISO 27001 certification is applicable to different sectors, for example, the wording of requirements and aims for information security and cost-efficient management of safety risks, ensure compliance with law and regulations.

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

3.3.30 The ISO 9001 standard created by the ISO includes substantial proposals for the improvement of quality management in companies. 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.

3.3.31 For the AEO application procedure an ISO 9001:2008 certification can be useful, for example, in respect of the assessment of the internal control system.

(c) ISO 28000: 2007

3.3.32 Pursuant to ISO 28000:2007, companies can be certified as having an adequate security management system regarding the security of the international supply chain. This is a framework standard and the requirements for security and safety in this particular standard are very general.

3.3.33 However, another ISO standard in the ISO 28000 series is ISO 28001:2007, which 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, be considered by the Customs Authority in the context of the AEO authorisation.

(d) TAPA Certificates

3.3.34 TAPA is an incorporation of individuals 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.

3.3.35 TAPA certificates are granted on the basis of cargo security standards developed by the TAPA organisation. 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 concerned (TAPA certificate C). The TAPA cargo security standards include instructions for security concerning buildings, equipment and processes during storage and transportation of goods.

3.3.36 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.

parent / subsidiary companies with common system / procedures

3.3.37 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 Chapter 2 'AEO Criteria' of this Manual. The same principles are applicable, if activities are outsourced within a group of affiliated companies.

3.3.38 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 actual connection has to be clarified and the extent to which, if any, it has influence on the administrative and / or operative processes.

3.3.39 There are cases in which a subsidiary has been granted independence by the parent company. Frequently there are some cases where, at the very minimum, profit transfer agreements or similar arrangements between affiliated companies are in place. In other cases, specific activities are outsourced within the group by way of a contract, which can lead to a company not having any of its own personnel at all. In other cases still, specialised units fulfil tasks (shared services) for all companies belonging to a group.

3.3.40 In all these cases, listed at paragraphs 3.3.38 and 3.3.39, the connection between parent and subsidiary and other affiliated companies can influence the likelihood of a risk occurring and its impact, both positive and negative, depending on the particular circumstances of that connection. Therefore, during the course of the audit (examination) by the Custom Authority of the AEO application that, where there are instances of common processes of connected companies, of practical importance is the fact that, often, it might be sufficient to check these processes only once.

3.3.41 This is also the case where one unit within the group conducts particular activities for all affiliated companies (shared services) or 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 also always 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 automatically be assumed to have failed also, but the Customs Authority may decide to review those other systems (in whole or in part).

risk analysis

managing risk of economic operator

3.3.42 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 and ensure 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.

3.3.43 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 and related strategies, the objectives of being compliant with customs legislation and taxation 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.

All of this 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.

3.3.44 The more an organisation is aware of its processes and the risks related to its activities, the more it is possible that processes can be managed, according to pre-set 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-implementing process and / or redesigning procedures) and have implemented the relevant procedures to cover the most important risks.

3.3.45 Within the economic operator organisation, there should be a responsible employee 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, taking 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.

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

risk analysis and auditing by customs

3.3.47 As seen in paragraphs 3.3 42 to 3.4.46, the economic operator concerned is the one that is in the best position to assess its own risks and to take action to cover them. The role of the Customs Authority is to perform audits to assess how effectively the economic operator tackles these issues. The basic issue for the Customs

Authority is whether the applicant is aware of the most important risks and is taking adequate measures to cover them.

3.3.48 To carry out this evaluation and take the appropriate decision as to whether to grant the AEO status or not, the Customs Authority auditors 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(s) with the economic operator,
- take the appropriate decision, by either granting the AEO status or not,
- monitor, and if necessary re-assess, the economic operator concerned.

3.3.49 The economic operator should have implemented adequate procedures and measures at management level to deal with the risk(s) that are 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 appropriate evidence to the Customs Authority in that regard.

risk assessment of a specific economic operator

3.3.50 For the Customs Authority, the first step is to collect as much relevant information as possible to understand the economic operator's business (see paragraphs 3.2.1 to 3.2.5). Once this has been done, the Customs Authority can proceed with the risk assessment, elaborating an audit plan and conducting the audit. Using all available information, a risk assessment is undertaken on all the relevant risk areas of the economic 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 the Customs Authority auditors in preparing the audit plan.

AEO COMPACT Model

3.3.51 In the WCO 'Risk Management Guide', the risk from a customs perspective is generally defined as: '*the potential for non-compliance with customs laws'*. However, in the context of this Training Manual, 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, Firstly, the likelihood that an event occurs and, secondly, its impact. Thus, 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: **to be inserted**

	High	***Low***	***Medium***	***High***
Likelihood	***Medium***			
	low			

Impact (consequences)

3.3.52 A risk can never be totally eliminated, except when a process is aborted totally. This matrix shows that 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.

3.3.53 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 into the green area, either mitigating the impact or reducing the probability that it occurs,
- 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.

3.3.54 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 the Customs Authority could have a different understanding of the concept of security. In this case, the objective of the economic operator could be to secure the cargo against the risk of theft, while the Customs Authority 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 that are 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.

3.3.55 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 that the economic operator should monitor, on regular a basis, the relevant processes, checking whether the procedures in place are adequate to assure customs legislation 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 the Customs Authority.

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

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

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

risk based audit

preparing audit plan

3.3.58 The Customs Authority auditors have the responsibility to plan and perform the audit to obtain reasonable assurance as to 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 allocating resources should be based on the following principle: 'the greater the risk, the greater the level of scrutiny'.

3.3.59 The audit plan should be drawn up, 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 employees to interview,
- what, how and when a specific transaction / security test should be done.

undertaking audit

3.3.60 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, reducing or mitigating the risk related to the specific activities, carried out by the economic 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.

3.3.61 The economic operator should have committed to assess, reduce and mitigate the risks identified in respect of its business and to document this. It is also important to bear in mind that, for SMEs, the level of internal control and documentation required should be appropriate for the level of risk, depending on the scope and size of their businesses. However even where the economic operator has carried out a risk assessment, the assessment may not always correspond with the threats and risks identified by Customs Authority.

3.3.62 Audit should always be risk-based and focused on the 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 analysis, and
- develops audit programmes

that allocate a larger portion of audit resources to high-risk areas.

3.3.63 This is important because the Customs Authority auditors may not be able to perform detailed audit procedures in all of the areas that they would like examine, particularly in the case of large multinationals, where, for example, there would be 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'.

managing residual risk

3.3.64 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 legislation and taxation

rules compliance and security and safety, but could put in danger the economic operator's operational strategies and performance in the long run.

3.3.65 A good risk analysis provides a framework for assurance in performance auditing. The Customs Authority 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 in practice. 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.

3.3.66 The use of the 'Guide on Managing Risks in the AEO Programme', published as a separate document, is strongly recommended.

3.3.67 RBA consists of four main phases, as set out as follows;

- identification and prioritisation of risks,
- determination of residual risk,
- reduction of residual risk to an acceptable level, and
- the reporting of audit results to the economic operator.

3.3.68 These phases are achieved, through the following actions;

- establish the various operations of the economic operator in order to identify and prioritise risks, including an examination of the security plan (if there is such) and threat assessment and identifying the measures taken and internal controls,
- confirm the economic operator's management strategies and procedures and evaluate controls to determine residual audit risk and, where appropriate, testing those controls,
- manage any residual risk to reduce it to an 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, with a view to locating all the risks in the green area),
- inform the economic operator of audit results and, in that context, the auditors should clearly indicate the risks identified to the applicant, including also recommendations on how they can be overcome,
- monitor and, if necessary, re-assess criteria and requirements.

final report

3.3.69 The verification and checks carried out during the audit by, and the conclusions of, the Customs Authority 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 the Customs Authority throughout the authorisation process, and the subsequent management of the authorisation. It is also equally important for the economic operator.

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

- a clear overview of the economic operator (business, role in the supply chain, business model, customs-related activities, etc.)

- a clear description of all risk areas considered and checked and any follow-up actions suggested to the AEO applicant,

- a clear report of any action or reaction the AEO applicant has undertaken or expressed to the auditors,

- the clear recommendation about whether to grant the status or not, based on the result of auditing activities,

- in case AEO status is not granted, detailed justification as to why it is not granted, including any information received, stating whether it has been obtained through **the 'information' and / or 'consultation'** procedure,

- an overview regarding the AEO risk profile and, in case the AEO status is granted, any recommendations for subsequent monitoring and / or reassessment;

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

3.3.72 Monitoring and reassessment of the (already granted) AEO authorisation is explained in detail in Chapter 4 'Management the Authorisation' in this Manual. However, as they are directly related with the risk analysis concept, it has to be highlighted that these two concepts – monitoring and reassessment - are quite different.

3.3.73 Monitoring is done on a continuous basis by the Customs Authority, and includes monitoring the day-to-day activities of the AEO, visits to its premises, with the ultimate aim of early detection of any signal of non-compliance and taking prompt action to ensure regularisation.

3.3.74 Reassessment 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.

3.3.75 Therefore, any plan for monitoring should be primarily based on the AEO risk profiles, as assessed by the Customs Authority during the audit of the AEO application and included in the final report.

3.3.76 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.

3.4 Decision on granting status

factors considered

3.4.1 The decision of the Customs Authority is based on the information collected and analysed, through the different stages of the authorisation process, from receipt and acceptance of the application submitted through to when the audit process has been fully completed.

3.4.2 To enable the Customs Authority to make the decision, the following factors should be taken into consideration;

- all previous information known about the applicant by the Customs Authority, including the AEO application form along with the completed SAQ, and all other supporting information submitted by the economic operator applicant. This information may need to be rechecked and, in some cases, updated, in order to take account of possible changes that may have occurred, in the period from the date of receipt and acceptance of the application to the end of the authorisation process and the issuing the final decision,

- all relevant conclusions arrived at by the Customs Authority auditors during the audit process should be recorded. The Customs Authority should prepare and implement the most efficient methods of internal communication of the audit results, which have emanated from the auditors to any other office(s) of the Customs Authority and any competent State or third country authority that may have had an involvement in taking the decision. A full and complete 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 should also be noted.

3.4.3 At the end of the process, the Customs Authority, before taking the final decision, will inform the applicant, in particular, where those conclusions are likely to result in a negative decision. The Customs Authority 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.

3.4.4 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 period **should be 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 an individual 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.

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

taking the decision

3.4.6 The following factors have to be taken in consideration;

- the Customs Authority determines, within its internal organisation, the specific division / unit / section that has the competence to decide on whether to grant the AEO status or not,

- when the decision is taken, the final report of the auditors should play an essential role in relation to the compliance or not with the specific AEO criteria, as detailed above;

- The Customs Authority has **60 calendar days** to take the decision. The time limit can be extended in two cases,

  - by the Customs Authority for another **60 calendar days,** if it is unable to meet the original deadline of 60 calendar days and, before its expiry, the applicant has to be informed of the extension,

  - on request by the applicant and subject to agreement with the Customs Authority. 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, bearing in mind the nature of the adjustments to be done.

informing the applicant

3.4.7 Once the decision is taken, the Customs Authority will inform the applicant in writing. A decision to reject an application must detail the reasons for rejection and include a reference to any right to appeal, if provided for in the appropriate customs legislation.

appeals

3.4.8 Any entity / individual who is aggrieved by a written decision related to customs matters covered by legislation may appeal such decision. The national customs legislation provides that any entity shall have the right to appeal against decisions taken by the Customs Authority that relate to the application of customs legislation, and that concerns it directly and individually. The entity / individual 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, which has issued the decision subject to the appeal.

Chapter 4 Controlling the AEO

4.1 Monitoring

General

monitoring by economic operator

4.1.1 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 of its customs-related activities is performed and show the results. The economic operator should review its processes, risks and systems in order to reflect any significant changes in its operations.

4.1.2 The Customs Authority should be informed about these changes. This is reflected in the legal requirement, laid down in Article 13 d) of the MO, which states that the AEO '*shall inform the Customs Authority of all factors arising after the certificate is granted that may influence its continuation or content*'.

4.1.3 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 the Customs Authority in the following cases;

- changes related to any data in the application form, SAQ, etc., such as, legal status, business name, etc.,
- changes in the nature and structure of the business in respect of;
  - 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 / role(s) in the international supply chain included in the application, for example, its role as a manufacturer, exporter, etc.,
  - its main business partners,
- significant changes in its financial standing,
- reports of any customs errors and any significant security incidents,
- reports of any indications of failure to comply with the criteria.

4.1.4 The AEO must inform the Customs Authority of any changes related to any other relevant approval, authorisation or certification granted by other State authorities that may have an impact on the AEO authorisation, for example, withdrawal of a RA or KC status.

4.1.5 The AEO is required to ensure that it maintains safely the original documentation, including documented findings and reports from revalidations, as this may be requested by Customs Authority.

4.1.6 To ensure that AEOs are aware of this obligation, the Customs Authority may, for example;

- give examples of information that should be communicated to the Customs Authority in a written decision, a separate letter, etc., which is sent to the AEO, after issuance of the AEO certificate,
- send an e-mail message to the AEO contact person in the company, stressing this obligation and giving the possibility to communicate relevant changes,
- 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 the Custom Authority), particularly in a case where an unannounced change is discovered by the Customs Authority,
- send regularly, such as an annual or half-yearly short questionnaire 'reminder' (using some questions from the SAQ) to the AEO contact person (via e-mail) asking about possible changes regarding relevant criteria.

monitoring by customs

4.1.7 Article 14 of the MO states that '*within the scope of its activity, the AEO is subject to audit and inspections in accordance with applicable legislation*'. In simple terms, this means that the Customs Authority shall monitor compliance with the conditions and criteria to be met by the AEO-approved economic operator, by way of on-site visits to AEO premises and undertaking inspections of (relevant parts of) the premises and customs-related documentation. Furthermore, taking into consideration that the period of validity of the AEO certificate is limited to three years, it is of great importance that the criteria and conditions of the AEO status are evaluated on a regular, consistent basis.

4.1.8 Monitoring will also lead to a better understanding of any particular AEO's business, which could even lead to the Customs Authority recommending to the AEO, a better, more efficient way of using customs procedures or the customs rules in general.

4.1.9 Thus, it is significant for the Customs Authority to ensure that a system for monitoring compliance with the conditions and criteria of the authorisation is developed in conjunction and in cooperation with the AEO-approved economic operator. Any control measures undertaken by the Customs Authority should be recorded.

4.1.10 Although the legislation does not require a specific form for establishing the monitoring system in general, the most appropriate way is that the Customs Authority should draw up a monitoring plan. Regardless of the way the Customs Authority decides to organise the monitoring - 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 the Customs Authority auditors during the auditing phase of the application process, including any measures recommended to be taken by the AEO.
- **status of RA, KC, etc.;** AEOs may be holders of an internationally recognised security and / or safety certificate issued, on the basis of fulfilling the requirements provided for in relevant national legislation or on the basis of international conventions or in an International Standard of the International Organisation for Standardisation, etc. These are important situations to be taken into account, as in these cases, the other relevant authorisation or certification, such as RA, KC, etc. is granted by other State authorities.

- **early warning signals** – as mentioned in paragraph 4.1.2, earlier, the AEO is legally obliged to inform the Customs Authority of any significant changes. It is possible that changes made by the AEO may lead the Customs Authority to decide on the necessity for reassessment. It is important that the AEO has a clear understanding of its obligations and the way to communicate any changes to the Customs Authority.

4.1.11 Developing the point in relation to 'early warning signals', it is necessary that the Customs Authority has the possibility to continuously check thoroughly that the economic operator is still in control of its business, whether there are any risks identified or if there are any changes in the situation. Questions such as whether there are any new risks or whether the quality of the administrative organisation and the internal control system are still as good as they were during the time of the audit need to be asked and answered? There are various ways that would allow the Customs Authority to have early indications of any new risks or acquire relevant information, by;

  - carrying out random checking of declarations of the AEO,
  - undertaking physical inspections of goods of the AEO, either at the place of importation or at its premises,
  - analysing relevant information available in internal customs databases,
  - utilising the results of any audits carried out, other than AEO monitoring or reassessment audits, for example, relating to a simplified procedure or in relation to an application for authorised warehousekeeper status,
  - evaluating any changes in the 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 economic operator is not or is no longer adequately addressing identified risks, the Customs Authority will inform the economic operator about that conclusion. The economic operator should then 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.

4.1.12 The monitoring activities to be planned should be based on risk analysis performed at the various stages, as follows - examinations before granting the AEO 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 may often require an on-site visit to the premises,
  - the stability of the economic operator – whether there are frequent changes to locations, markets, key personnel, IT systems, etc.,
  - the size of the business and number of locations involved,
  - the role of the AEO within the supply chain – whether the AEO has physical access to goods or acts, for example, as a customs broker,
  - 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.

4.1.12 Consequently, the frequency and nature of monitoring activities may vary, depending on the AEO concerned. However, considering the fact that the AEO certificate is valid for three years only, at least one annual on-site visit to the premises is recommended.

4.1.14 Special attention must also be given to the cases where the economic operator being granted the status of an AEO has been established for less than three years. In these cases, the Customs Authority is required to carry out close monitoring during the first year after the granting of the AEO status.

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

4.1.16 In the cases of RA and KC, any information available from other State authorities can also be used when planning any monitoring activities with a view to avoiding duplication of examinations of business records and inspections of premises, both for the Customs Authority and economic operators.

Authorisation covering several branches

4.1.17 The general principles for monitoring, as described in chapter 4.1 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 Customs Authority is competent to grant AEO status and has the leading role in the process should always be maintained for the phase of management of the issued authorisation.

4.1.18 Bearing this in mind and in order to have an efficient management of the authorisation when any monitoring activities are developed for the separate PBEs / branches, it is recommended that one single general monitoring plan is developed for the AEO in whose name the status is granted.

4.2 Re-assessment

overview

4.2.1 Whilst it is not provided for in the legislation (MO), the Customs Authority will always re-assess whether an AEO certificate holder continues to comply with the conditions and criteria of AEO where there are;

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

following legislative changes

4.2.2 A re-assessment shall be required, if there are major changes in the customs legislation specific to and having an impact on the conditions and criteria for granting AEO status. An example would be fundamental changes to the AEO criteria, as set out in the MO. Usually, any such change in the legislation will require the re-assessment to be carried out within a specified transitional period.

criteria not met

4.2.3 The starting point for taking a decision for reassessment is that *'there is reasonable indication'* that the criteria are no longer being met by the AEO. This indication may arise from different situations;

- monitoring that the Customs Authority carries out,

- information received from another Customs Authority or State authorities or from other acceptable sources,

- major changes in the activity of the AEO, etc.

4.2.4 Therefore, it is the responsibility of the Customs Authority 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 an indication of non-compliance. It is always possible to discover, even during the re-assessment of one of the criteria, that (some of) the others should also be rechecked.

4.2.5 The re-assessment shall be made by the Customs Authority. However, a Customs Authority in a third country may have a reasonable indication that some of the criteria are no longer met by the AEO. This can occur, for example, if the economic operator concerned carries on its activities as an AEO in that country, in addition to the AEO status granted nationally. In these cases, the Customs Authority of that third country, where this indication of non-compliance has been found out, should inform the Customs Authority about the facts and which should decide whether commencing a re-assessment shall be carried out or not.

4.2.6 In the case of the parent company establishing a new PBE / branch or the parent undergoes a restructuring process that has an impact of PBE / branches, it shall inform the Customs Authority, which will take the necessary measures including starting a re-assessment, if necessary.

common elements in re-assessment

4.2.7 Although, in general, the re-assessment to be done may vary from case to case, the common elements, listed in paragraph 4.2.8 to 4.2.14, should be taken into account.

(a) scope

4.2.8 This may involve only a documentary check or the documentary check may need to be combined with an on-site visit to the AEO premises, where appropriate, for the specific criteria to be re-assessed.

(b) time limit

4.2.10 There should be no time limit specified for conducting a re-assessment. However, it has to be decided, depending on the number of the criteria to be checked, whether an on-site visit to the premises of the AEO is envisaged and, normally, it should not go beyond the same time limits that applies for the original AEO decision. The initial reason for starting the re-assessment should also be taken into account.

(c) other customs authorisations affected

4.2.11 When a re-assessment is carried out, it should be established whether the AEO holds other authorisations, such as for a local clearance procedure or for simplified declarations for export, that are conditional on compliance with AEO criteria. 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.

(d) report

4.2.12 In terms of reports and documentation, a similar approach, as applied in respect of the original audit should apply. It is important that any subsequent action proposed is reflected in the report, that is to say, whether suspension, revocation or other measure(s) should be taken.

(e) availability of results

4.2.13 It is necessary to make the results of the re-assessment available to other relevant State authorities, using the appropriate communication system

4.3 Suspension

law

4.3.1 Suspension of the AEO status means that an assigned certificate is not valid during a specific period, which shall be for a maximum period of ninety days. This is provided for in article 15.1 of the MO. During this period the holder may not have access to the benefits that the status provides, which can have serious consequences to it.

4.3.2 According to Article 15.1 a) and b) the status of the authorised economic operator shall be suspended by the issuing customs authority where;

- non-compliance with the conditions or criteria for the AEO certificate has been detected. It has to be taken into account that the reference to 'non-compliance' also covers also cases where the criteria have been considered as met, based on the economic operator's status as a RA and / or KC,

- the AEO has committed more than three violations of customs regulations within the scope of its activities in a fiscal year.

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

deficiencies and corrections

4.3.4 Suspension can be a potential consequence of an examination done during the monitoring where serious deficiencies have been discovered. This means that the holder of the certificate, from a risk perspective, cannot have the status of AEO under the present circumstances. This indication of 'non-compliance' may arise also as a result of information received from other State authorities, such as civil aviation authorities.

4.3.5 However, according to the provisions of article 15.2 of the MO, the Customs Authority must notify the AEO of the findings and assessments made that justify the suspension of the certificate. The AEO is given the opportunity to correct the situation (as well as the right to be heard). The timescales, for any corrections of the shortcomings identified to be carried out by the economic operator itself, is 90 calendar days from the date of communication by the Customs Authority.

4.3.6 Corrections, if any, carried out and any reply from the economic operator concerned should be carefully assessed from a risk perspective by the Customs Authority. Where the reason to suspend has been removed, the suspension will be lifted and the certificate reinstated, in accordance with article 15.3 of the MO, in the case where the economic operator concerned corrects the shortcomings that led to the suspension, in a satisfactory manner. If the period of suspension has elapsed without the corrections and shortcomings being remedied by the economic operator concerned, the AEO certificate will be considered as revoked, in accordance with article 15.4 of the MO.

request for suspension from AEO holder

4.3.7 According to Article 16.1 a) and 16.3 of the MO the initiative for suspension of the status may also come from the holder of the certificate when it is temporarily unable to meet any of the AEO criteria. The AEO should present the reasons(s) for the request and, where appropriate, propose an action plan showing the measures to be taken and the expected time frame for the work to be carried out. For example, the economic operator concerned would seek a suspension and propose a timetable for implementation of its proposals where it is

optimising or changing its computer-integrated manufacturing processes and, for a while, is not able to follow the goods in the international supply chain.

4.3.8 In the circumstances set out in paragraph 4.3.7, it is likely that the request for suspension would be approved by the Customs Authority. If the request is not approved, a revocation of the certificate on the demand of the holder should be discussed as a possibility.

4.3.9 However, it has to be taken into account that there is a distinction between suspension on the initiative of the Customs Authority and that on the initiative of the AEO economic operator. In the former case, it is provided for under articles 15.1 a) or b), 15.4 and 16.1 a) and16.4. In the case of the latter, it is provided for under Article 16.1 c) and 16.3.

automatic termination

4.3.10 The AEO status can terminate simply by 'expiry', when the period of validity has run out. In this case, the economic operator concerned does not seek a renewal of the certificate. From a compliance perspective, the economic operator may not have violated any of the criteria. It is noted that the Customs Authority has no active involvement in this process.

role of customs

4.3.11 The Customs Authority 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.

4.3.12 As a general principle, the suspension applies only to the AEO status but, depending on the type of deficiencies, it may have a 'knock-on' effect on other customs decisions, especially if they have been granted, based on the AEO status 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.

Comment

4.3.13 Were it to be provided for in national legislation, it has always to be taken into account that for an AEO (security and safety), if the criterion that the economic operator fails to fulfil is only the security and safety criterion, the status of the economic operator shall only be partially suspended. For the duration of the suspension, the economic operator could have an AEO (simplifications), if it so wishes.

4.4 Revocation

law

4.4.1 The provisions on revocation of the certificate and cases that could lead to the revocation are laid down in Article 15.4 of the MO.

4.4.2 The initiative for revocation may also come from the holder of the certificate, as set out in article 16.3 of the MO. In this case, the economic operator may submit a new application for an AEO certificate, as soon as its situation relating to compliance with the criteria is stabilised.

role of customs

4.4.3 If a revocation is decided by the Customs Authority, the economic operator may not be allowed to submit a new application for an AEO certificate **within three years** from the date of revocation.

4.4.4 However, it has to be taken into account that the distinction between revocation on the initiative of the Customs Authority and revocation 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 of avoiding a revocation by the Customs Authority with the potential consequence of a three-year ban.

comment

4.4.5 It has always to be taken into account that, provided the legislation is amended to include security and safety as a criterion, the economic operator fails to fulfil the terms of that criterion, the status of the economic operator shall be only partially suspended. For the duration of the suspension the economic operator could retain AEO (simplifications), if it so wishes.

CHAPTER 5 Mutual Recognition Agreements and Exchange of Information

5.1 Mutual recognition

overview

5.1.1 The WCO SAFE Framework identifies mutual recognition as a key element to strengthening and facilitating the end-to-end security of international supply chains and as a useful tool to avoid duplication of security and compliance controls. A Mutual Recognition Agreement (MRA) can contribute greatly to facilitation and risk management and grant substantial, comparable and, where possible, reciprocal benefits to reliable international partners and economic operators.

5.1.2 Mutual recognition means that a Customs Authority that has an AEO programme in place recognises the compatibility of another Customs Authority's AEO or trade partnership programme. Each party agrees to treat economic operators that are members of the other Customs Authority's programme in a manner comparable to the way it treats members in its own trade partnership programme, to the extent practicable and possible.

5.1.3 This favourable treatment includes taking the AEO status of an economic operator, authorised by the other Customs Authority favourably into account, in the risk assessment to reduce inspections or controls for security and safety purposes. Currently only AEOs, authorised for security and safety, will be recognised and receive benefits within an MRA.

5.1.4 Many countries, such as the EU, Japan, USA, Canada and Korea have already entered into a number of MRA with their trading partners. The objective is to reach mutual recognition with main trading partners that have also established their own AEO programmes. Details of such MRAs, (and other information about the AEO, can be found in the WCO Compendium on AEOs, published annually**.**

Recognising other State's AEOs

5.1.5 For a Customs Authority to deliver the benefits associated with mutual recognition, it is imperative that it can recognise each other's AEOs. Usually a unique number, assigned to each economic operator can be used to validate AEO status. Other Customs Authorities have similar processes whereby their 'customs registration' number is used to validate their AEOs. It should be clearly noted that the characters used and the length of such 'trader identification numbers' can differ from country to country.

5.1.6 The issue of a common data set for trader identification numbers has been raised with the WCO. Until a universal standard is agreed, the method of trader identification of an AEO is normally established between the countries concerned, as part of each MRA.

5.1.7 To comply with data protection legislation, AEOs will have to provide their written consent before their authorisation details can be exchanged with the Customs Authority of the partner country and the resultant benefits of the MRA are delivered. At any time, it is possible for the AEO to withdraw or to re-instate its consent.

benefits

5.1.8 Many benefits accrue to AEOs, from a national perspective in relation to the importation and exportation of goods. These benefits have been listed and described in Chapter 1.5 in the Manual. Additional benefits can accrue when a State enters into an MRA with another State. Many such agreements or arrangements have already been signed and more continue to come on stream.

5.1.9 Each individual MRA sets out the specific benefits within the agreement. These benefits depend on the type of the MRA. However, the reduced risk scores and, therefore, reduced controls on AEOs, are benefits that 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 international trade.

5.1.10 Furthermore, a major benefit stemming from mutual recognition of AEO status is that AEOs throughout the trading world, may primarily seek cooperation with other AEOs to secure, more tangibly, the end-to-end supply chain.

5.1.11 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 through the clearance process to the extent possible by the Customs Authority.

5.1.12 In negotiations on mutual recognition, many countries are emphasising the need to develop further benefits under MRA. Therefore, normally a clause is included in the arrangements / agreements stating that both sides will work towards further benefits being granted to AEOs.

5.2 Exchange of information

overview

5.2.1 In the framework of the AEO authorisation process, exchange of information between the Customs Authority and other State authorities can be very important.

5.2.2 Depending on the specific case and the respective legislation regulating it, the level and form of consultation and / or exchange of information between the Customs Authority and other State authorities can be different.

5.2.3 The first case is the general condition that AEO status may be granted by the Customs Authority, if necessary, following consultation with other competent authorities. The necessity for such a consultation depends on a number of issues, for example;

- the type of economic activity of the applicant and the goods involved,
- the possibility of checks by the Customs Authority, based on the information available to them,

in order to establish whether the applicant complies with any obligations it might have under other relevant legislation, such as commercial policy measures, specific Ps and Rs.

5.2.4 The second situation where exchange of information with other competent authorities may be necessary is when other legislation provides for recognition of the AEO status. In these cases, it is also the customs legislation that defines who these competent authorities are and the cases where exchange of information with them is obligatory in order to ensure the proper implementation of the respective recognition envisaged.

information exchanged from customs

5.2.5 Arrangements can be put in place to facilitate the exchange of information between the Customs Authority and the appropriate national authority responsible for civil aviation security related to common rules in the field of civil aviation security.

5.2.6 Usually an agreed minimum information should be exchanged from the Customs Authority with the appropriate national authority responsible for civil aviation security necessary to ensure the proper implementation of the civil aviation legislation and, in particular, the recognition of the AEO (security and safety). This includes;

- information about the AEO (security and safety) certificate, including the name of the holder of the certificate, and, where applicable, their amendment, revocation, or suspension of the status of authorised economic operator and the reasons for the change(s),

- details as to whether the specific site concerned has been visited by the Customs Authority, the date of the last visit and the purpose for the visit (authorisation process, reassessment, monitoring), and

- re-assessment of the AEO (security and safety) certificate and the results thereof.

5.2.7 The modalities for the exchange of this information shall be established and agreed between the Customs Authority and the appropriate national aviation authority.

information exchanged from other authorities

5.2.8 Exchange of information is also necessary from the appropriate national authority responsible for civil aviation security to the Customs Authority to ensure that the status of RA or KC and any changes relating thereto are appropriately considered for the purposes of granting and managing the AEO status.

5.2.9 It is envisaged that the appropriate authority shall make available to the Customs Authority any information related to the status of RA or KC, which could be relevant in respect of holding the AEO (security and safety) certificate.

5.2.10 The modalities for the exchange of this information shall be established and agreed between the Customs Authority and the appropriate national aviation authority.