CLECAT
european association for forwarding, transport, logistic and customs services

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Discussion Paper

AUTHORIZED ECONOMIC OPERATOR

Use of maintaining three different types of AEO

The creation of three distinctive types of AEO (AEO/C, AEO/S and AEO/C + S) seems to be embedded in Regulation 2005/648. However we understand that the need for three distinctive types of AEO is still questioned.

We understand that the conditions for AEO/C status reflect the conditions common to the ones which are currently required for obtaining (national) simplifications, i.e. record of compliance with Customs requirements, satisfactory system of managing commercial and where appropriate transport records and financial solvency. In other words, AEO/C can be considered as the common core of conditions and requirements for obtaining Customs simplifications. Furthermore, in the light of progressing E.U. Customs integration and the use of "single European authorisation" we also need a Common core (with capital C), which is accepted and applicable in all the Member States.

CLECAT supports E.U. Customs integration through the granting of single European authorizations. We are therefore of the opinion that AEO/C is a sound concept in as far as it facilitates the application and validation of single European authorizations.

Whether this common and Common European core is called AEO/C or something else is irrelevant. What is relevant is that a clear distinction is made between conditions and requirements for simplifications provided for in the Customs code, on the one hand, and the conditions and requirements for facilitation in respect of security related controls on the other. The former being fiscally related, the latter are transport security related.

Pitfalls of harmonisation

In time, the AEO/C concept will entail a harmonisation of the common core conditions and requirements for obtaining both national and single European authorizations for simplifications as provided in the Customs code. This *harmonisation should enhance the facilitation process to the benefit of trusted operators all over the E.U.*, i.e. the harmonisation process should not lead to

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the imposition of conditions and requirements which are stricter and less flexible than what is currently applicable at national level in the most progressive EU Member States. Existing flexibility and efficiency should not be lost in the harmonization process. The AEO has been created as instrument to facilitate trade at a European scale. It is therefore imperative that existing facilitation is not lost in the harmonisation process.

Records and documentation to be submitted with the application
MS were the application should be submitted

The draft implementing rules for Reg. 648, Revision 4 document 1250 provide that the application shall be submitted to the Customs authority of the Member State where the applicant's main accounts are held or may be accessible, including records and documentation enabling the Customs authority to verify and monitor the conditions and the criteria necessary for obtaining AEO status.

This working procedure seems very cumbersome, in particular because many of the documents Customs may want to have a look at will be original paper documents, which for most companies will rest in the job file at the branch office responsible for the job. Will the officer make a visit? More likely the document will have to be sent to him/her in some form. In such cases who will carry the cost and the risk/liability of loss of such documents?

In principle, the very discussion on where, in which MS the application for AEO has to be submitted, should not be an issue if one accepts that just as the proposed new arrangements will serve to intensify competition in the private sector, the public sector could also be exposed to the same, in terms of competition between MS in the quality and efficiency of their regulatory performance. Hence the ability of companies to go submit the application in the Member State of their choice, could prove an important public policy 'driver' to speed up real practical Customs harmonization/ integration within the Single Market, across the 25 MS, and guarantee harmonization upwards rather than downwards. This is because presumably, the rules being harmonized at European level, business will gravitate towards the EU MS of the best performing regulatory authorities.

AEO benefits

At this point in time there appear to be few appreciable benefits coming out of the AEO status in Regulation 648.

One clear appreciable benefit for an AEO/C would be a guarantee waiver. Another appreciable benefit for an AEO/S or AEO/C+S would be the possibility for the declarant to be notified of the results of the risk analysis. The supply-chain needs maximum predictability. Further debate will be necessary on how and when (at what point in time) the pre-arrival notification might possibly be issued, as well as on the conditions

AEO and centralised clearance - SEA

In addition, the question of whether future 'centralised clearance' should be reserved for AEO/C (or AEO/C+S) operators is still up for discussion.

In our opinion a distinction should be made between declarations under a simplified procedure and declarations under the normal procedure. Today, the use of the simplified procedures, at national level, is subject to a national authorization, in which case it should make no difference if

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instead of a national authorization a single authorization was used. SEA (single European authorisation) should be looked at as no more than an extension of a national authorisation so that it is valid in more than one MS or EU-wide. Where Member States co-operate to their mutual satisfaction, there should be no reason for additional restrictions. Therefore, there is no reason to reserve declarations under the normal procedure to AEO operators.

Centralised clearance – SEA and the customs representative – forms of representation

Today Customs representatives can submit Customs declarations under the simplified procedure on behalf of their customers. In such cases, they often act as direct representatives, i.e. on behalf and in the name of their customer. Such is justified either on the basis of long established trust and possibly accreditation, or on the basis of a financial guarantee which the representative is allowed to lodge on behalf of his customer.

The possibility for AEO/C Customs representatives to submit on behalf of their customers Customs declarations under a single European authorisation for a simplified procedure is a matter of course and there is no reason to distinguish between direct and indirect representation in cases where a financial guarantee has been lodged.

Direct or indirect representation should not be an issue either, where by virtue of his AEO/C status, the Customs representative benefits from a guarantee waiver, because an AEO is by definition a trusted operator. His AEO status should thus be considered a system-based guarantee because the risk to Customs would be minimal, given that the AEO Customs representatives would not want to jeopardize its prized status.

Customs representatives should be able to utilize AEO status selectively per client. Those clients where Customs representatives assess the commercial risk of default to be minimal would then have access to AEO status via the Customs representative. Those clients whose risk profile is significant would either have to become AEO themselves, or their movements would be handled via the normal rather than simplified process. Such an option would build an important 'flexibility' into the AEO regime to the benefit of SME exporters and importers.

AEO/S in the supply chain

We understand that the AEO status of one or more parties in the supply-chain, including freight forwarders and customs agents, will constitute *an element* in risk analysis. The more parties involved in the supply-chain are AEO, the more weight this element would carry. This seems to suggest that there will inevitably be distinct levels of facilitation depending on the perceived security level of the supply-chain as a whole. In order to enjoy the full benefit AEO's must either control the entire supply chain, which for the most part is rather academic, or be part of a chain of AEO's that have full control of their part of the chain. Clarification is needed as to what the actual weight of AEO/S status will be in the risk analysis, i.e. how it will be balanced against other elements.

Article 14i – 1e, document 1250 – Revision 4, stating that the *AEO/S applicant has to implement measures allowing a clear identification of his trading partners in order to secure the international supply chain* leaves much room for interpretation. Does it mean that the ability to indicate that the applicant's trading partners have AEO/S (or equivalent?) status is a condition for obtaining the AEO status? This looks like catch 22, i.e. inherently illogical. Who of both trading

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partners should then be the first to obtain AEO status? Will the AEO be prohibited from doing any business with non-AEO trading partners, on penalty of losing his AEO status?

AEO for groups of companies

The Commission's discussion paper on applications for AEO status in the name of groups of companies (non paper dated 10 March 2006) is a good basis for discussion.

In relation to the AEO/C, we agree that for a group of Companies wishing to benefit from simplified procedures, the use of the SEA (single European authorization) may provide the appropriate solution.

Unfortunately the non paper makes reference to carriers and importers/exporters making relevant declarations but not to freight forwarders and Customs representatives. In this context we observe that, although it may be correct that in a functional analysis freight forwarders can be considered either as (representatives of) carriers and/or as (representatives of) importers/exporters, it would be advisable to make explicit mention of freight forwarders and Customs representatives.

The recognition of EEIG risk introducing certain additional rigidities into EU commerce. How easy would it be to change components in any given supply-chain for commercial reasons?

In practice, introducing declarations for groups of companies can be seen as equivalent to performing the activity of Customs representative. Whilst Clecat has a very open approach in granting access to this profession on a pan-EU level, it must be contrary to ex tempore groupings gathered around competing software systems. This would not only create confusion in the public administration, but it could dispose of Customs representatives' reliability for good.

Assessment and validation procedures – additional cost

Economic operators will be required to make considerable investments in order to comply with the proposed new security standards and procedures. The assessment and validation procedure should not add yet more cost, particularly as security is a matter of broad public interest.

Given the workload and the broad range of expertise involved, Member States may be inclined to outsource the validation and the necessary audits. This should not add yet more cost. Furthermore strict neutrality has to be guaranteed, there should be no conflicts of interest. The task should not be outsourced for instance to parties that deliver commercial services to the subject which they are supposed to validate and vet

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