

# **Instruction Manual**

## **on**

# **Authorised Economic Operators**

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This instruction, which has immediate effect, provides a guide to the interpretation of the law governing AEOs.

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## ABBREVIATIONS USED

AEO	Authorised Economic Operator
CAP	Common Agricultural Policy
UCC	Union Customs Code (Regulation 952/2013)
IA	Implementing Regulation (2447/2015)
DA	Delegated Regulation (2446/2015)
EORI	Economic Operators Registration and Identification
IT	Information Technology
MRA	Mutual Recognition Agreement
MS	Member States
PWEI	Procedure with Economic Impact
SAQ	Self-Assessment Questionnaire
SME	Small/Medium Enterprises
VIMA	VAT, Intrastat and Mutual Assistance
TAPA	Transport Asset Protection Association

# 1. Introduction

## 1.1 What is an AEO?

The Community Customs Code (CCC) which preceded the Union Customs Code (UCC) introduced measures to protect the movement of goods from terrorist exploitation. To minimise any slowdown in the movement of goods resulting from these measures, a trade facilitation programme known as the Authorised Economic Operator (AEO) was introduced for secure and compliant traders with effect from 1 January 2008.

An AEO can be defined as an economic operator who is reliable in the context of their customs related operations, and therefore is entitled to enjoy benefits throughout the Community.

## 1.2 Where is the legal basis for the AEO programme?

Articles 38 to 41 of the UCC, Articles 8(1), 11, 12, 13, 15, 15(2), 16, 17, 18, 24(1), 24(2), 24(4), 26, 27, 28, 29, 30(3) and Annex A of the DA, Articles 10, 11, 12, 14, 15, 22 and 24 to 35 of the IA contain all of the AEO provisions.

## 1.3 Who can apply for AEO status?

In accordance with the provisions of Article 38, 39 of the Union Customs Code, AEO status can be granted to any economic operator established in the customs territory of the Community.

Article 5 (5) of the UCC defines an “Economic operator” as: a person who, in the course of his business, is involved in activities covered by customs legislation.

Pursuant to Article 5(4) of the UCC, a “person” means a natural person, a legal person and any association of persons which is recognised under Union or national law as having the capacity to perform legal acts.

*Applications for AEO status may only be accepted from an economic operator who in the course of his business is involved in activities covered by customs legislation. On the basis of this definition there are number of situations where the economic operator cannot apply for AEO status as they are not involved in customs activities, for example:*

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

The definition of economic operator does not restrict the notion of "involvement in activities covered by customs legislation" to direct involvement only. A manufacturer producing goods to be exported can apply for AEO status even if the export formalities are performed by another person.

The concept of AEO Security and Safety (AEOS) is closely linked to supply chain management. Operators who are handling goods subject to customs supervision or handling customs related data regarding these goods can apply for AEOS.

However, each case has to be treated separately with due consideration given to all circumstances unique to the particular economic operator.

Some definitions and examples of economic operators and their roles in the supply chain are to be found in the [EU AEO Guidelines](#)

## 1.4 International Supply Chain

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 party to whom the goods are consigned in another customs territory.

## 1.5 How do Parent/Subsidiary companies apply?

Multinational companies usually consist of a parent company and subsidiary companies or/and branches. A subsidiary is an individual legal person, i.e. an individual legal person or an association of persons. Therefore, if a parent company wishes to achieve AEO status for a part or all of its subsidiaries, AEO applications must be submitted by all the separate subsidiary companies wishing to achieve AEO status. However, if the subsidiary companies are applying the same corporate standards/procedures for their customs related activities, the self-assessment questionnaire may be completed by the parent company on behalf of all the subsidiaries that have submitted an application. However, if some of these subsidiaries are in other member states then it should be noted that they might request all documentation in their own native language.

A "branch", on the other hand, is a simple sub office of the company itself and forms part of the company's total assets and thus is not an individual legal person. In this case a single application, covering all the EU branches that are not individual legal persons, has to be submitted by the parent company wishing to acquire AEO status.

## 1.6 Criteria for granting AEO status

Any operator applying for AEO status must fulfil the following criteria in order to qualify for an AEO authorisation:

- have an appropriate record of compliance with customs requirements;
- have a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- demonstrate, where appropriate, proven financial solvency; and
  - for AEOC practical standards of competence or professional qualifications directly related to the activity carried out.
  -
- for AEOS meet appropriate security and safety standards.

## 1.7 Types of Authorisations

There are two types of AEO authorisations and the qualifying criteria will depend on the type of authorisation applied for:

### **AEO – Customs Simplifications (AEOC)**

An AEO customs simplifications authorisation is issued to an economic operator who fulfils the criteria of customs compliance, appropriate record keeping standards, financial solvency and practical standards of competence/professional qualifications.

The holder of this authorisation is entitled to:

- easier admittance to customs simplifications mentioned in Article 38(5) of UCC –see list of relevant customs simplified procedures at appendix 5;
- fewer physical and documentary based controls;
- priority treatment if selected for control;
- possibility to request a specific place for any physical controls to be carried out;
- priority handling of applications for authorisations for other Customs decisions.

As the criteria used to qualify for AEOC status applies to almost all customs simplifications, obtaining AEOC status makes it easier for the economic operator to gain access to the various simplifications. Commission Regulation 1192/2008 introduced harmonised rules for simplified procedures and these rules aligned the criteria for granting both the AEOC and authorisations for simplified procedures. These were subsequently updated as part of the introduction of the UCC.

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

### **AEO – Security and Safety (AEOS)**

An AEO Security and Safety authorisation is issued to an economic operator established in the Community who fulfils the criteria of customs compliance, appropriate record keeping standards, financial solvency and maintains appropriate security and safety standards.

The holder of this authorisation is entitled to:

- the possibility of prior notification of a control as described in Article 24(2) of DA,
- fewer physical and document based controls in respect of security and safety;
- priority treatment if selected for control;
- possibility to request a specific place for any physical controls to be carried out.

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

The WCO SAFE existing international mandatory security standards for maritime and air transport and ISO/PAS 28001 have been taken into consideration when framing the AEO security and safety requirements. Integration of the WCO SAFE was very important, as mutual recognition of secure AEO status could not be ensured without a globally recognised common standard.

## **1.8 What part of an applicant's operations does an AEO authorisation cover?**

AEO's can only be held responsible for their part of the supply chain, for the goods in their custody and for the facilities they operate. When making an application, economic operators cannot select premises for inclusion under their authorisation, all premises under their control must be included. During an evaluation - in the case of a large number of premises – an officer may decide to only physically examine a representative proportion of those premises where, for example, the applicant maintains corporate security standards which are commonly used in all their premises. There are many variations to the type of business organisation that could be encountered, from one corporate entity with several independent sites to several corporate entities forming part of one business venture.



## 1.9 Which MS should process the application?

If an applicant has business in more than one MS the question of which MS customs authority should process the application will arise. All applications submitted to Authorisations & Reliefs Unit will be checked to ensure that they are proper to Ireland before they are referred to the relevant District for evaluation. If, during an evaluation an officer considers that the application should have been dealt with in another MS they should contact this Unit for guidance.

Article 22(1) in the UCC, Articles 12, 27 of the DA sets out the criteria for deciding which MS should process an application. In general the application should be submitted to one of the following:

- The MS where the applicant's main accounts related to the customs arrangements are held, and where at least part of the operations to be covered by the AEO authorisation are conducted;
- The MS where the applicant's main accounts related to the customs arrangements involved are accessible in the applicant's computer system by the competent customs authority using IT and computer networks, and where the applicant's general logistical management activities are conducted, and where at least part of the operations to be covered by the AEO authorisation are carried out.

## 2. Benefits

The following benefits are granted to the economic operator concerned.

### 2.1 Easier admittance to customs simplifications

Economic operators do not need to have AEO status in order to get an authorisation for a simplification provided for under the customs rules. However, if the operator requesting a simplification is the holder of an AEO Customs Simplifications authorisation or an AEO Safety and Security authorisation the customs authority does not need to re-examine those conditions that have already been examined when granting the AEO authorisation.

The list of simplifications covered by this provision is set out in appendix 5. Based on this benefit, regional officers should be aware that when we approve an operator for AEO status we are effectively stating that their business is suitable to be granted any of the simplified procedures mentioned in the list at appendix 5.

AEO status was introduced in the CCC and CCIP after the other simplifications and therefore the majority of economic operators have already been authorised before they apply for AEO status. Nevertheless, this particular benefit is still very important for AEOs, or those considering applying for AEO status and also for Revenue. When planning any monitoring activities for an AEO, they should be coordinated with controls for other authorisations granted to avoid duplication. In order that this benefit is used in the most efficient way both for AEOs and for Revenue, the following should be taken into account:

- as simplifications are conditional on compliance with certain AEO criteria, the relationship between the specific authorisation and AEO status needs to be considered throughout the process, covering not only the application phase but also monitoring and/or reassessment once status has been given;
- examination of the relevant AEO criteria before granting the status of an AEO is not an independent exercise and it can only be done by taking into consideration the particular business activities that the economic operator is involved in. Therefore, when an application for a specific authorisation is submitted, Customs should not re-examine the criteria that have already been checked but should instead focus only on any new elements/requirements.

Further details relating to simplified procedures can be found by reading the [Guidelines](#) on simplified procedures/Single authorisation for simplified procedures.

## 2.2 Prior notification

This benefit is only applicable to holders of AEO Security and Safety authorisation.

When a summary declaration has been lodged by an AEO, the competent customs office may, before the arrival/departure of the goods into/from the Community, notify the AEO when, as a result of security and safety risk analysis, the consignment has been selected for further physical control.

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

## 2.3 Fewer physical and document based controls

This benefit is applicable to all categories of AEO. Article 38(6) of the UCC and Article 24(1) of DA lays down that an AEO shall be subject to fewer physical and document based controls than other economic operators. However, the customs authorities may decide to control shipments of an AEO in order to take into account a specific threat, or control obligations set out in other Union legislation (i.e. related to product safety etc.).

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

Consequently only AEOS who fulfil the security and safety criterion will benefit from fewer physical and document-based controls related to security and safety.

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

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

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

Authorisations & Reliefs Unit (AEO section) has input details of all authorisations issued to Irish based applicants in CRS. Officers at Ports and Airports should - if a consignment is selected for documentary or physical examination – check the authorisations screen in CRS to establish if a trader holds AEO status using their EORI number as a reference. This can also be verified through the AEP system. If AEO status has been achieved, due consideration and priority should be given before proceeding with the examination, in particular the role of the AEO in the supply chain and whether other economic operators mentioned on the SAD are also AEO's.

If a foreign AEO (consignor) has identified themselves by the use of box 44 code Y031 (from one of the mutual recognition agreement countries) together with their AEO identification number, due account must be taken of their AEO status before proceeding with the examination, as outlined in the

preceding paragraph. A list of MRA AEO's has been provided to Authorisations & Reliefs Unit (AEO Section) by the European Commission. Any doubts about possible eligibility can be verified by contacting this Unit.

This benefit is factored into all of Revenue's transaction systems. However, import stations should take AEO status into consideration when making any decision in relation to controls.

## 2.4 Priority treatment of consignments if selected for control

This benefit is applicable to all categories of AEO. Article 24 (4) of DA states 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. This means that the consignment should be the first to be controlled if others are selected from non- AEO's.

## 2.5 Choice of the place of controls

This benefit is applicable to all categories of AEO. Article 24 (4) of DA provides the possibility that an AEO can request that customs control be diverted to an alternative location which might offer a shorter delay and/or lower costs. However, this is subject to individual agreements with the customs authority concerned. The selected place for control should always allow Customs to carry out the necessary controls and not jeopardise the results of the controls.

Although the possibility for choice of the place of controls is also provided for all economic operators under other conditions and procedures, there is a distinction between the general provisions and the provision in the form of a benefit for AEOs, as Customs can take account of the status in determining whether to grant the request. The movement of any goods from the point of import to the place of control can only take place under Customs supervision and control.

## 2.6 Indirect benefits

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

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

Investments by operators in increasing their security and safety standards may yield positive effects in the following areas: visibility and tracking, personnel security, standards development, supplier selection and investment, transportation and conveyance security, building organisational infrastructure awareness and capabilities, collaboration among supply chain parties, proactive technology investments and voluntary security compliance.

Some examples of the indirect benefits that may result from these positive effects could be as follows:

- reduced theft and losses;
- fewer delayed shipments;

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

## 2.7 Recognised as a secure and safe business partner

An AEO who meets the security and safety criterion is considered to be a secure and safe partner in the supply chain. This means that the AEO does everything in their power to reduce threats in the supply chains where they are involved. The AEO status, including the possibility to use the AEO logo enhances the reputation of the operator.

The AEO logo is copyrighted by the EU. An economic operator who wants to use it has to request permission from the competent customs authority (generally the one who has issued the status). The AEO logo can be used under the following conditions:

- the right to use the logo is subject to the condition that a valid AEO authorisation is held and only the holder of the AEO authorisation can use it;
- the AEO must stop using it as soon as its AEO status is suspended or revoked;
- any abuse or misuse of it will be subject to prosecution by the EU.

## 2.8 Improved relations with Customs

An AEO has a designated contact point in Customs to which it can address its questions. The contact point might not be able to provide all answers on all questions but would guide the AEO on how best to proceed and to whom further questions can be addressed. The designated contact point is the AEO Helpdesk.

## 2.9 Requirement for Financial Security may be waived

Some customs procedures require the provision of financial security before an authorisation is issued in accordance with the requirements of the Union Customs Code. An AEO certified trader who holds such authorisations may have the requirement to provide security waived or reduced. A decision on the waiving of the security requirement will be taken by Authorisations & Reliefs Unit following receipt of an application for a comprehensive guarantee and waiver/reduction.

## 2.10 Mutual Recognition of Trade Partnership Programmes

Benefits are available to EU AEOs who are exporting goods to third countries where these countries have signed a Mutual Recognition Agreement with the EU. This involves the recognition by the third country of the operator's AEO status and similarly the recognition in the EU of the third country AEO status of the operator.

In order to receive the benefits, the EU operator must have given their consent for the exchange of relevant information (basic identification details) with the Customs Authority in the third country. Consent for the exchange of information will be sought at AEO application stage (as part of the self-assessment questionnaire).

The EU has already concluded agreements with Japan, Norway, Switzerland, China and the United States.

## 3. Application Process

### 3.1 Application Form, accompanying annexes and Self-assessment questionnaire

The application form and explanatory notes are at <http://www.revenue.ie/en/customs/forms/aeo-application.doc>. - see Appendix 1. Completed application forms should be submitted to Authorisation & Reliefs Unit, AEO Section, Corporate Affairs and Customs Division, Nenagh, Co. Tipperary. The application form must be accompanied by the [Self Assessment Questionnaire](#). In this regard the economic operator should create a tabulated folder of their procedures cross-referencing it with the relevant questions in the self-assessment questionnaire. The completed questionnaire should be submitted with the application form. Any supporting documents should be retained by the economic operator at their premises for evaluation by the local officer.

### 3.2 Conclusions provided by an expert

Customs administrations may accept conclusions/submissions provided by an expert in the relevant fields referred to in the logistical/management, financial solvency and safety and security criteria.

### 3.3 Acceptance of an application

Before an application is accepted a number of preliminary checks must be undertaken. All of these checks will be undertaken by Authorisations & Reliefs Unit (AEO Section) before applications are referred to the relevant District for evaluation. The section will check that:

- The application has been submitted to the correct MS;
- The applicant's EORI number has been quoted;
- The applicant has not been convicted of a serious criminal offence linked to the economic activity of the applicant nor is subject to bankruptcy proceedings at the time of the submission of the application;
- The applicant does not have a legal representative in customs matters who has been convicted of a serious criminal offence related to an infringement of customs rules and linked to his/her activity as legal representative;

If the application does not contain all of the particulars required, Authorisations & Reliefs Unit (AEO Section) must within 30 calendar days ask the economic operator to supply the relevant information, stating the grounds for its request.

Applications may be rejected at this preliminary stage if any issues arise during the above checks. Written acknowledgment of accepted applications will be issued to the applicant by this Unit along with the date from which the time limit for processing the application will run – see 3.4 below. If the application is rejected, Authorisations & Reliefs Unit (AEO Section) will notify the applicant in writing stating the reasons for the rejection.

### 3.4 Time limit for processing an application

The time limit for processing an application is 120 calendar days from the date the application is accepted. If the customs authority is unable to meet this deadline this period may be extended by one further period of 60 calendar days.

### 3.5 EU database

Authorisations & Reliefs Unit (AEO Section) must within 5 working days of receipt upload details of all accepted applications to a central EU database. This fulfils the requirement to communicate details of all accepted applications to all other MS customs administrations.

When an accepted application is uploaded to the central EU database, other MS authorities have 35 days to convey prejudicial information to the MS authority that is evaluating the application. MS are only obliged to respond under this provision if they discover prejudicial information. This procedure is commonly referred to as the “non-mandatory consultation”. This Unit will refer any information it receives under this provision to the District that is evaluating the application – see 3.6.

## 3.6 Referral of applications to the Regions/LCD

Following acceptance of an application –Authorisations & Reliefs Unit (AEO Section) will copy the application form, accompanying annexes and self-assessment questionnaire to the relevant District for evaluation. On receipt, the officer should contact the applicant and request them to submit any documented procedures - see para. 3.1. The evaluating officer should also acknowledge receipt of the application and accompanying papers back to Authorisations & Reliefs Unit (AEO Section).

## 4. Evaluation of the Criteria

### 4.1 General

On submission of the relevant documented procedures by the economic operator the evaluating officer(s) should undertake a general check on the contents of the submission in conjunction with the self-assessment questionnaire. If the questionnaire has been completed correctly it should be possible to verify compliance with certain parts of the criteria before conducting the physical examination at the operator's premises. If gaps are identified in the documentation, the operator should be requested to address the gaps and provide the required information before undertaking the physical visit.

The company information provided in Section 1 of the questionnaire should give the officer(s) a "picture" of the applicant and their activities. Some of this information may have already been provided by the applicant if s/he has applied for other customs procedures and the applicant may indicate this in their responses. Officers should avoid as far as possible going back over ground that has already been covered with the applicant regarding recent applications for other customs procedures. In this regard any internal files relating to recent customs audits or inspections should be requested by the officer(s) and any relevant information extracted.

Different economic operators, due to their economic activities, have to fulfil different standards and regulations apart from AEO requirements. The AEO programme tries to rely on and give credit for already existing standards and certifications, without including a requirement to have any additional certifications to become an AEO.

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

- previous applications for customs authorisations;
- information which has already been communicated to customs or other public authorities and available/accessible to customs;
- customs audits;
- customs procedures used/declarations made by the applicant;
- self-assessment carried out by the applicant before submitting the application;
- existing standards applicable to and certifications held by the applicant.

However, depending on the circumstances of each individual case and taking into consideration the time period to which this information is related, officers may need to re-examine or seek confirmation from other authorities that the information is still valid.



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

- Article 28(3) of IA see also Part 3, Section III, point 4.2. (b) of the [EU AEO Guidelines](#);
- Article 28(2) of IA, security and safety criteria shall also be deemed to be met to the extent that the criteria for issuing a authorisation are identical or correspond to those laid down in the IA, if the applicant, established in the Community, is holder of the following:

- an internationally recognised security and/or safety certificate issued on the basis of international conventions;
- an European security and/or safety certificate issued on the basis of Union legislation;
- an International Standard of the International Organisation for Standardisation;
- a European Standard of the European Standards Organisations.

This only applies for certifications issued by internationally accredited certifiers or national competent authorities.

There are also 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 evaluating officer(s) may accept according to Article 29 of IA. 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 officer(s) to determine whether and to what extent the criteria are fulfilled.

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

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

All applicants are required to have documented procedures in place for dealing with classification, origin and valuation of their goods. Verification of procedures in this regard should be undertaken during the physical inspection of the premises. The results of these checks should also influence the applicant's qualification under the four main blocks of criteria.

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

Risk based management systems are the disciplines by which economic operators in any industry assess, control, monitor and address risks. For an AEO, this means that the economic operator has to set out clearly in its policies/strategies the objectives of being compliant with customs rules and of securing its part of the supply chain according to its business model. The management system should allow for:

- a continual cycle of identifying needs or requirements,
- evaluating the best means for complying with the requirements,
- implementing a managed process for applying the selected management actions,
- monitoring the performance of the system,
- maintaining evidence of the application of processes used to meet business objectives, and identify functional or business improvement opportunities, including reporting mechanisms on gaps, incidental mistakes and possible structural errors.

This all has to be seen within the framework of complying with the legal and regulatory requirements to which the organisation subscribes or is required to comply.

The more an organisation is aware about its processes and the risks related to its activities, the more it is possible that processes can be managed according to the predefined intentions and improved as objectives are achieved. This means that an organisation should be aware about concepts such as: risk management; governance; control (monitoring, re-assessment; reimplementation processes and/or redesign procedures) and have implemented the relevant procedures to cover all important risks.

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

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

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

It is the responsibility of the evaluating officer(s) to plan and carry out the evaluation with a view to obtaining reasonable assurance as to whether the applicant is compliant with the established criteria.

A key element of the evaluation is to assess the effectiveness of the economic operator's risk assessment and internal controls. The operator should be committed to assessing, reducing and mitigating the risks identified to its business and to record these actions. It is also important to remember that for SME's the level of internal control and documentation required should be appropriate for the level of risk depending on the scope and size of their business. However even where the operator has carried out a risk assessment, their assessment may not always correspond with the threats and risks identified by Customs.

The evaluation should always be risk-based and focus on high risk areas to be able to meet the objectives of the evaluation in relation to the particular economic operator. This is important because an evaluator may not be able to perform detailed checks on all areas, particularly in the case of large multinationals (where there are several sites). The evaluation should focus primarily on the identification and assessment of the greatest risks and on the internal controls and countermeasures

taken by the applicant. This should provide a framework to reduce the impact of these identified risks to an acceptable level before granting the AEO status.

It is important that evaluating officers should be familiar with the [EU AEO Guidelines](#) and consult them as necessary. In particular, [Annex 2](#) of these Guidelines titled “Threats, risks and possible solutions” should be consulted during the evaluation process.

## 4.2 Dealing with any issues arising

If issues of non-compliance with the qualifying criteria are discovered under any headings during the preliminary checks or during the physical inspection the applicant should be given an opportunity to address the issues. In these circumstances, the time period mentioned in para. 3.5 may be extended indefinitely. However, for administrative reasons it is recommended that the officer agree a set period within which the issues must be sorted. If the applicant does not return within this period the officer may recommend rejection of the application. The applicant may also decide to withdraw their application at any time during the evaluation process.

If an application is rejected or withdrawn by the applicant, AEO Section will inform all other MS customs authorities of the rejection or withdrawal through the central EU database.

## 4.3 SME's

Article 29 (4) of the IA lays down the legal obligation that *‘the customs authorities shall take due account of the specific characteristics of economic operators, in particular of small and medium-sized enterprises, when examining the fulfilment of criteria laid down in Article 39 of the Union Customs Code .’*

While the AEO criteria applies equally to all businesses regardless of their size, officers should note that the means to achieve compliance will vary from business to business and will be in direct relation to the size and complexity of the business, type of goods handled etc.

For example, all applicants seeking a Security and Safety authorisation will have to demonstrate the adequacy of the physical security of their premises. This may include:

- A large manufacturer with a perimeter wall/fence, security guards, and CCTV (close circuit TV systems) cameras etc.;
- A customs agent operating from a single room in a building with locks on doors, windows and filing cabinets;

As a further example, the requirement of identifying authorised persons (employees, visitors) could be achieved by an SME by means other than the use of ID badges.

## 4.4 Consultation with another MS

When carrying out an evaluation of an application where the applicant has a premises in another MS, it may be necessary to consult with the other MS customs authority in order to fully evaluate the applicant's standards under one or more of the qualifying criteria. Any such consultations must be directed to the other MS authority via AEO Section. The request for the consultation must include the legislative provision applicable to the criteria for which the consultation is being made.

AEO Section will forward the consultation request to the other MS. The MS has 60 calendar days to respond to the request. If no response is received within the timeframe it may be assumed that the criteria for which the consultation was requested are fulfilled. AEO Section will monitor the timeframes.

If the response from the other MS indicates that the criteria has not been met and recommends that the application should be rejected, the officer should present the applicant with the results of the consultation. The applicant should then be given an opportunity to rectify the issue within a reasonable period of time –Article 8 (1) of DA. When the issue has been rectified the applicant is obliged to inform the local officer and the consulted MS authority. If the applicant does not rectify the issue the local officer should recommend rejection of the application. The applicant may also be given an opportunity to withdraw their application.

Following rejection or withdrawal of an application the operator may re-apply at any time if they are reasonably satisfied that they can meet the qualifying criteria.

## 4.5 Consultation received from another MS

AEO Section may receive requests from other MS customs authorities to carry out evaluations of criteria for premises that are located in Ireland and where the application has been lodged in another MS. All such requests will be forwarded to the District where the premises are located. The same time limits as in 4.4 above will apply. AEO Section will monitor the time limits for a response.

# 5. Customs Compliance Criterion

## 5.1 The Criterion Article 39 (a) of UCC and Article 24 of Implementing Regulation

*Where the applicant is a natural person, the criterion laid down in Article 39 (a) of the Code shall be considered to be fulfilled if, over the last three years, the applicant and where applicable the person in charge of the applicant's customs matters have not committed any serious infringement or repeated infringements of customs legislation and taxation rules and have had no record of serious criminal offences relating to their economic activity.*

*Where the applicant is not a natural person, the criterion laid down in Article 39(a) of the Code shall be considered to be fulfilled where, over the last three years, none of the following persons has committed a serious infringements of customs legislation and taxation rules or has had a record of serious criminal offences relating to his economic activity:*

*(a) the applicant;*

*(b) the persons in charge of the applicant company or exercising control over its management;*

*(c) the person in charge of the applicant's customs matters.'*

*However, the criterion referred to in Article 39(a) of the Code may be considered to be fulfilled where the customs authority competent to take the decision considers an infringement to be of minor importance, in relation to the number of size of the related operations, and the customs authority has no doubt as to the good faith of the applicant.*

## 5.2 Evaluation of the criterion

The following checks should be undertaken by the evaluating officer to check the applicant's compliance history:

- Check the responses in the self-assessment questionnaire;
- Send a memo to relevant import/export stations and check response for any compliance issues. Any memos relevant to Dublin Port or Dublin Airport should be sent to the relevant AP in those locations for attention – appendix 6;
- Send a memo to VIMA and check the response for any compliance issues – appendix 7. Corporate Affairs and Customs Division recommends that this memo is only sent when the officer is ready to finalise their report;
- Check the response from the tax district re Financial Solvency – see para. 7.5;
- If the applicant has a PWEI approval then their compliance with the conditions of approval should be checked, are returns being received on time and are they accurate;
- The results of the checks on the applicant's Classification/Origin/Valuation procedures should be considered under this criterion. Depending on the applicant's volume of business a random sample of SADs should be checked for accuracy. A record of the SADs that have been checked should be recorded on the District file;
- If the applicant has approval for any customs simplifications, their compliance with the conditions of approval should be checked;
- If the applicant is a CAP trader, the officer should check with Support Services and CAP Unit in Corporate Affairs and Customs Division for any irregularities.

If the applicant employs a customs clearance agent to manage the clearance of their goods through customs controls they must have procedures in place to check the quality and accuracy of the work undertaken on their behalf by the customs clearance agent.

When carrying out checks for possible infringements, the following should be taken into account:

- the assessment of compliance should cover compliance across all customs activities of the applicant;

- the term “infringement” refers not only to the acts which are discovered by Customs on the occasion of checks carried out at the time when the goods are introduced into the customs territory of the Community, or being placed under a customs procedure. Any infringements of the customs rules discovered on the occasion of any post clearance control carried out at a later stage, will also be considered and assessed, as well as any infringements that could be discovered through the use of other customs authorisations and any other source of information available to Customs;
- infringements made by freight forwarders, customs agents or other third parties acting on behalf of the applicant must be also taken into account. The applicant should show evidence that appropriate measures have been put in place to ensure the compliance of persons acting on its behalf such as clear instructions to those parties, monitoring and checking of the accuracy of declarations and remedial action when errors occur;
- failure to comply with National non-customs legislation by the applicant should not be ignored, although in this case those failures should be considered in the light of the trader’s good faith and relevance to its customs activities;
- where penalties related to a specific infringement are revised by the 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 the infringement should be deemed not to have taken place.

### 5.3 Minor infringements

In order to establish what may be regarded as a minor infringement, the first guideline to be observed is that each case is different, and should be treated on its own merits against the background and size of the operator concerned. A minor infringement in one business may be a serious infringement in another. It should be established whether the infringements are indicative of an underlying problem of a lack of knowledge of customs rules and procedures by the operator or are the consequence of negligence. Even if a decision is taken that the infringement may be regarded as minor the operator must show evidence of intended measures to be undertaken to reduce the number of errors occurring in their customs transactions.

The following checklist should assist officers when evaluating whether an infringement can be regarded as minor:

- It is recommended that infringements are looked at on a cumulative basis;
- The frequency of the infringement should be examined in relation to the number and size of the customs related operations;
- Errors of negligible importance which have little or no impact on the amount of duty to be paid e.g. incorrect classification between two commodities with the same duty rate and no difference in other measures applicable to them or insignificant difference in the amount of duty between the two commodities;
- There must be no deliberate fraud intended;
- Context should always be considered;
- If the operator’s agent is responsible for the infringements, then the operator must show evidence of intended measures to be undertaken by them to reduce the number of infringements by their agent.

## 6. Accounting and logistical systems criterion

### 6.1 The Criterion Article 25 of IA, 39(b) of UCC and 25 (1) of the Implementing Regulation

The applicant must fulfil the following criteria under Article 25 (1) of IA:

- (a) 'the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;'*
- (b): 'records kept by the applicant for customs purposes are integrated in the accounting systems of the applicant or allow cross checks of information with the accounting system to be made;'*
- (c): 'the applicant allows the customs authority physical access to its accounting systems and, where applicable, to its commercial and transport records;'*
- (d): the applicant allows the customs authority electronic access to its accounting systems and, where applicable, to its commercial and transport records where those systems or records are kept electronically;*
- (e): 'the applicant has a logistical system which identifies goods as Union or non-Union goods and indicates, where appropriate, their location;'*
- (f): 'the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing and detecting illegal or irregular transaction;'*
- (g): 'where applicable, the applicant has satisfactory procedures in place for the handling of licences and authorisations granted in accordance with commercial policy measures or relating to trade in agricultural products;'*
- (h): 'where applicable, the applicant has satisfactory procedures in place for the archiving of its records and information and for protection against the loss of information;'*
- (i): 'the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;'*
- (j): the applicant has appropriate security measures in place to protect the applicant's computer system from unauthorised intrusion and to secure the applicant's documentation;*
- (k): 'where applicable, the applicant has satisfactory procedures in place for the handling of import and export licences connected to prohibitions and restrictions including measures to distinguish goods subject to the prohibitions or restrictions from other goods and measures to ensure compliance with those prohibitions and restrictions.;'*

## 6.2 Evaluation of Article 25 (1) (a), (b) (c) (d) and (e) of IA

The most practical way to evaluate the criterion at para. 6.1 above is to take the first five sections together. This approach is also reflected in our report template.

The following checks should be undertaken by the officer to check compliance with the above. If other checks are necessary officers should refer to the EU AEO Guidelines and discuss the matter with AEO Section:

- Has functionality of the audit trail been established?
- What computer system does the company use? Mainframe, mini, PC Network, or stand alone PC? Does the system suit the volume and type of business being conducted by the operator? It is not a requirement that the system be electronic but it must be capable of carrying out all of the functions described in this section;
- What is the separation of functions between the development, testing and operational areas?
- What is the separation of functions between the different company departments? Who is responsible for what?
- It must be confirmed with the operator that Revenue be given physical or electronic access at all times;
- How is access to various parts of the system controlled? Are different systems used for the Financial and Logistical administration? What software packages are used? Is it bespoke (tailored package) or a standard package?
- Who supplied the package and who provides maintenance? If applicable, does the system separate between Community and non-Community goods? (this is not a requirement for an AEO safety and security c authorisation) What are the links between the Financial and Logistical systems? Where are computer activities undertaken, are any computer or accounting activities undertaken off site?



## 6.3 Evaluation of Article 25 of IA (f) and (g)

The following checks should be undertaken by the officer to check compliance with sections (f) and (g) at 6.1 above. If other checks are necessary officers should refer to the EU AEO Guidelines.

- Check the procedures for staff in the purchase, storage, production and sales department. Does the applicant regularly and fully review/audit procedures? If procedures are changed how are the changes notified to staff?
- Can the applicant provide any evidence of where remedial action was taken to correct deficiencies?
- Have any of these procedures been ISO approved or subject to any external audit?
- What are their procedures for changing standing data?
- What are the applicant's procedures for the purchase of non-community goods and delivery of goods to their premises?
- What procedure has the applicant for controlling stock movements and manufacturing processes?

The most effective way to verify that the procedures presented by the applicant under this criterion are actually being implemented is to do a site tour, starting at the goods inward Department and finishing in the accounts Department, via manufacturing, warehousing and goods outward. During this site tour you should see the following:

- Receipt of goods and how they are recorded into the system;
- How are unexpected deliveries managed;
- Ask to see a copy of recent receipts for goods;
- How is receipt verified before payment is made;
- How are T1 and Community goods identified;
- How are goods tracked into the manufacturing or production process? Check daily production documents;
- How are the finished goods tracked into stocks/storage;
- How are goods released for shipment;
- What accompanies goods to Docks/Customer;
- Who completes Customs documents;
- Who makes Customs Declarations;

- Who arranges/books transport.

## 6.4 Evaluation of Article 25 of IA (h)

The following checks should be undertaken by the officer to check compliance with section (h) of point 6.1 above. If other checks are necessary officers should refer to the EU AEO Guidelines.

- Check the procedures for back up, recovery, fall back, archiving and retrieval of business records;
- How long are records kept?

## 6.5 Evaluation of Article 25 of IA (i)

The following checks should be undertaken by the officer to check compliance with section (i) of point 6.1 above. If other checks are necessary officers should refer to the EU AEO Guidelines.

- Who is responsible for documenting and monitoring procedures for identifying and disclosing irregularities/errors to Customs or other regulatory authorities?
- Have these employees contact numbers for the local customs office. Is there a back up if he/she is on leave?

## 6.6 Evaluation of Article 25 of IA (j)

The following checks should be undertaken by the officer to check compliance with section (j) of point 6.1 above. If other checks are necessary officers should refer to the EU AEO Guidelines.

- Where is the main server located?
- Give details of how the main server is secured?
- In relation to firewalls, virus protection, access and password control, what are the documented procedures?
- What procedures are in place for the protection of documents and paper records?

## 7. Financial solvency criterion

### 7.1 The criterion Article 39 (c) of UCC and Article 26 of Implementing Regulation

*‘The applicant’s financial solvency shall be deemed to have been met if his solvency can be proven for the last three years.*

*Financial solvency shall mean a good financial standing which is sufficient to fulfil the commitments of the applicant, with due regard to the characteristics of the type of business activity.*

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

### 7.2 Provision of evidence of Financial Solvency

The onus is on the applicant to provide evidence of their financial solvency for the three years up to the date of their application. Unless the evaluating officer has reason to doubt the evidence provided by the applicant, or discovers an issue during internal checks that may contradict the evidence in some way, the evidence provided by the applicant should be accepted.

### 7.3 How can the applicant provide evidence of Financial Solvency

Evidence can be provided through any of the following:

- A statement from the applicant’s auditors or an audited report;
- A copy of their finalised accounts (if the accounts have not been audited);
- Evidence from a bank or financial institution;
- A guarantee from a parent company regarding financial support;
- A list of any personal assets that are used to support the solvency of the business.

It is recognised in some circumstances that it may be normal practice for a business to have negative net assets, for example when a company is set up by a parent company for research and development purposes, when the liabilities may be funded by a loan from the parent or a financial institution. In these circumstances negative net assets may not be an indicator that a business is unable to pay their legal debts. However, in these circumstances evidence of an undertaking from a bank/financial institution that guarantees the ongoing viability of the business must be provided. Evidence of an undertaking from a parent company guaranteeing the ongoing viability of the company is also acceptable, provided it is legally binding. If the guarantee covers a specific accounting period the monitoring plan and the conditions must ensure that evidence of future guarantees is provided as required by the authorisation holder.

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

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

When considering the proven financial solvency criterion, it is important that all information is considered in order to get the gain a full overview. One individual indicator should not be considered in isolation and decisions should be based on the overall position of the applicant remembering that the main purpose is to ensure that, once granted the AEO status, the operator concerned will be able to continue to fulfil their obligations.

## 7.4 Insolvency or recovery proceedings

If, during the evaluation, it is discovered that the company is in receivership, examinership, liquidation or bankruptcy, AEO Section should be contacted immediately for further guidance.

## 7.5 Check with applicant's Tax District

If an applicant claims that their business is financially solvent, it follows that their compliance with Revenue across all tax heads should be up to date. On that basis and for all cases, a request must be sent to the applicant's tax District by the evaluating officer asking the following questions:

- Does the tax district have any concerns about the applicant's financial solvency over the past three years?
- Is there anything of concern in the applicant's general compliance history within the last three years?

Any non-compliance issues raised by the tax district or any issue highlighted by the applicant in response to question 4.4 (where the applicant is asked to identify anything that might impact the future solvency of the applicant) in the self-assessment questionnaire should be investigated with the applicant.

## 7.6 Letters of comfort and guarantees from parent companies

Letters of comfort are documents usually issued by a parent (or other group) company acknowledging the approach of a subsidiary company for financing. Letters of comfort may be found where the subsidiary company has negative net assets and are used to support the directors' opinion and the auditor's opinion that the company has adequate financial resources to continue to operate as a going concern. They may be limited to a specific period of time. They represent a written statement of intent to continue with financial support to the applicant company, but are not necessarily legally binding. When judging the proven financial solvency of a subsidiary, it should be taken into account that a subsidiary company may operate under a guarantee from the parent company and officers should look into the accounts of that parent company providing support to ensure it has the facilities to do so. However, letters of comfort are often not legally binding contractual agreements and therefore do not constitute a legally enforceable guarantee. Where the applicant is dependent on the financial support of a parent (or other group) company to meet the proven financial solvency criterion, officers should, where appropriate, ensure the support is provided in a legally binding, contractual agreement. If a guarantee is required as evidence of support from the parent (or other group) company it must be legally binding according to national legislation, 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.

## 8. Practical standards of competence or professional qualifications directly related to the activity carried out

### 8.1 The criterion Article 39 (d) of the UCC and Article 27 of the Implementing Regulation

Article 39 (d) UCC requires an additional criterion for the AEOC authorisation relating to practical standards of competence or professional qualifications directly related to the activity carried out. According to Article 27 UCC IA, the criterion is considered to be fulfilled if any of the following conditions are met:

- *The applicant or the person 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 a European Standardisation body.*
- *The applicant or the person in charge of the applicant's customs matters has successfully completed training covering customs legislation consistent with and relevant to the extent of his or her involvement in customs related activities, provided by any of the following:*
  - *a customs authority of a Member State;*

- *an educational establishment recognised, for the purposes of providing such qualification, by the customs authorities or a body of a Member State responsible for professional training;*
- *a professional or trade association recognised by the customs authorities of a Member State or accredited in the Union, for the purposes of providing such qualification.*

*Where the applicant uses a contracted person, the criterion shall be considered to be fulfilled if the contracted person is an AEOC.*

All possibilities to demonstrate compliance with any of the two conditions (practical standards of competence or professional qualifications) are equally sufficient and can be chosen by the applicant; however they have to reflect the specific involvement of the applicant in customs related activities and his or her role in the supply chain, his or her status and the business organization process set up in the applicant's company.

It should be noted that the person in charge of the applicant's customs matters can be an employee of the applicant or a contracted person. The applicant has to prove that the contracted person is actually the one in charge of the applicant's customs matters.

## 8.2 Practical Standards

### 8.2.1 Proven practical experience of a minimum of three years in customs matters

Practical standards means that the applicant or the person 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. However, the experience of a minimum of three years in customs matters does not refer to the period immediately before submitting an application, but it can be spread over a longer timeframe. The relevance of the experience gained over any period must be assessed by the Issuing Customs Authority

This three years shall also take into account the role of the applicant in the supply chain as referred to in chapter 1.II.4. of the AEO Guidelines, for example:

- An exporter/ manufacturer as defined in chapter 1.II.4. (b)/(a) of the AEO Guidelines, can prove the three years of practical experience being a holder of an authorisation for the entry into the declarant's records with the waiver of the obligation for the goods to be presented for the use of the export customs procedure for a period of at least three years or performing the role "exporter" in a normal export customs procedure over the last three years.
- A customs agent as defined in chapter 1.II.4. (e) of the AEO Guidelines can prove the three years of experience by having an authorisation on customs simplifications (where applicable) or by being contracted in this area for a period of at least three years.
- A carrier as defined in chapter 1.II.4. (f) of the AEO Guidelines can demonstrate his or her practical experience if he or she has been holder of an authorisation for a simplified procedure in relation to customs transit or an authorised consignee under the TIR Convention under the last

three years or has undertaken contract and issued transport documents as well as summary declarations during the last three years.

## 8.2.2 Verifying the criterion

It is to be noted that the verification only relates to the duration of the professional experience. Infringements or compliance deviations do not affect the 3 years professional experience, but have to be considered when examining the criterion on compliance with customs legislation and taxation rules and internal control systems addressed under the AEO Guidelines.

### **a) Applicant**

When the person who has to comply with the condition of three years' proven practical experience in customs matters is the applicant in the form of either legal or natural person, he or she can demonstrate to meet this condition with one or more of the following possibilities:

In case of submitting an application the following alternative elements are to be taken into consideration

- carrying out customs activities (e.g. import/export/transit) or customs formalities for three years at least. For the evaluation of the three years of experience in customs matters, the ICA should take into account the type of the business activity carried out (e.g. permanently or seasonally, few declarations but with a high value). Proof can also be established by the presence of the applicant's EORI number in box 2, 8, 14 or 50 of the customs declarations or by the payment of customs duties and/or guarantee ensured for customs rights. It should be noted that the simple presence of the applicant in one of the mentioned boxes of the customs declarations does not mean that he or she is directly involved in the performing of customs formalities. In this case it is important for customs to know if the customs formalities are directly performed by the applicant (inside the company) or by third parties (e.g. customs agents). If the latter is true, the applicant is not exempted from having to insure that the formalities are carried out properly. In other words, if the customs management/formalities are performed by third parties on an occasional basis and, therefore are not covered by the definition of contracted person, the criterion can be met by the applicant if it has an internal organisation which allows the supervision and control on the customs management/formalities carried out by the third parties. Being a holder of a particular authorisation granted under the UCC and related DA/IA or, until applicable, under the CCIP, for at least three years related to the customs activities carried out must be taken into consideration when evaluating the criterion.
- Carrying out customs brokerage services for at least three years, proof can be established through customs declarations and all the other necessary documents; evidence of payment and/or guarantee ensured for customs rights, presence of the EORI number in box 14 of the customs declarations.
- Organising the transportation of goods in international trade on behalf of an exporter, an importer or another person, obtaining, checking and preparing documentation to meet customs requirements and/or acting as carrier and issuing its own transport contract, this can be checked by e.g. bill of lading, air waybill.

Customs authorities should use all available information and knowledge of the authorisation already granted to the applicant and the declaration submitted on the basis of their data bank and electronic systems.

Another element that customs should take into account is the official document of the applicant that clearly defines his or her economic activity and the general objective of the applicant's company (e.g. extract from official register, if applicable).

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

## **b) Person in charge of the applicant's customs matters**

### **1) the applicant's employee in charge of customs matters**

The criterion can also be fulfilled by the applicant's employee(s) in charge of customs matters. The employee is the person who covers the position(s) created inside the organisation of the applicant (defined through e.g. organisational structure, functional structure, divisional structure, working instructions or other organisational measures) of a person "responsible" for customs matters, being, for instance, the person responsible for the import and export office or an employee of the office managing customs matters..

When the person 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 employer (applicant) and employee. This means that the employee performs, **for the applicant**, work or services on customs matters, under certain conditions in return of a remuneration. Due to this relationship, the employee does not act as a customs representative (direct or indirect) of the applicant (e.g. box 2 and 14 of the export customs declaration includes only the EORI number of the applicant/exporter). As a result, it is the applicant who is the person responsible as far as the financial and legal liability is concerned and in case of infringements of customs laws occurred in performing the duties.

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.

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

### **Verifying the criterion:**

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 to comply with the criterion by providing the evidence to have previously worked on relevant issues in another company. In this case the proof of compliance will have to be provided by 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 means of proof held by the employee and recognised by the customs authorities. In case the applicant is an SME, especially a micro or small company (e.g. 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 could be considered sufficient.



## 2) A person outside the applicant

The criterion can be fulfilled by a person outside the applicant only when the managing/handling of the customs matters is outsourced.

In this case the applicant is represented by a third party regarding the customs formalities (e.g. the applicant outsources the customs formalities to a customs agent or a freight forwarder).

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

In any case there is always a contract in return of a remuneration that defines the services that the contracted person 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.

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 economic 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 freight forwarder does not move the goods but acts as an expert in the logistic network. A freight 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.

Special attention is drawn to the fact that when strategic services are outsourced to contracted persons, the applicant has to ensure that the knowledge and competencies required to deliver the service are constant during the contracted period. The person fulfilling the criterion and the applicant cannot be dissociated, as Article 38 paragraph 1 UCC stipulates that the criteria must be met by the economic operator who applies for the AEO status. The economic operator therefore has to be aware that it is possible to outsource “activities” but not the responsibility. As already stated above, 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 authorisation.

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

## Verifying the criterion:

If the customs activities are outsourced to a third contracted party, the ICA has to check the fulfilment of the condition by:

- 1) Verifying if the applicant has more than three years established relationship with the contracted person. To prove this the ICA can check the existence of a contract, mandate or any other type of agreement between the applicant and the contracted person that clearly states the operations and responsibilities the contracted person performs on behalf of the applicant (the contract or mandate are the copies those held the applicant) or
- 2) in case the established relationship is less than three years, verifying if the contracted person has an authorisation for customs simplifications where applicable, and/or has carried out customs formalities for at least three years

As provided by Article 27 (2) UCC IA, the condition of "practical standards of competence" shall be considered fulfilled if the contracted person is an AEOC.

In case of outsourced customs activities it is sufficient that either the applicant, the applicant's employee in charge of customs matters or contracted person fulfils the criterion. If the applicant outsources its customs activities to more than one contracted person, the criterion must be fulfilled by all of them.

It should be noted that when the applicant has an internal office or department involved in customs matters which allows the supervision and control on the customs formalities that have been outsourced, the criterion can be fulfilled by the applicant.

### 8.2.3 A quality standard concerning customs matters adopted by a European Standardisation body

It is to be noted that the competent European Standardisation Body has not yet developed standards applicable to "customs matters".

### 8.2.4 Professional qualifications

According to Article 27 (1) (b) UCC IA the criterion shall also be considered to be fulfilled if the applicant or the person in charge of the applicant's customs matters has successfully completed training covering customs legislation consistent with and relevant to the extent of his or her involvement in customs related activities, provided by any of the following:

- (i) *a customs authority of a Member State;*
- (ii) *an educational establishment recognised, for the purposes of providing such qualification, by the customs authorities or a body of a Member State responsible for professional training;*
- (iii) *a professional or trade association recognised by the customs authorities of a Member State or accredited in the Union, for the purposes of providing such qualification.*

## Verifying the criterion

Public or private institutions such as universities, customs schools, other specific schools or professional or trade associations may provide different courses to prepare for the recognition of a specific professional authorisation/accreditation/register for specific economic operators (e.g. the profession of customs agent).

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

The applicant or the persons in charge of the applicant's customs matters who are authorised or certified or have a license for the exercise of the professional activity related to customs matters (e.g. customs agents or freight forwarders) can demonstrate the respective proof to meet the criterion of a successful completion of a training covering customs matters.

It is also possible that a person inside the company, who has the legal power to physically represent the company, has successfully passed training in customs matters (e.g. a person in charge of the applicant company providing brokerage services such as the president or a member of the board, has successfully passed an exam as customs agent). In this case the applicant fulfils the condition of professional qualification through this person.

Besides it is further possible that Member States do not have any accreditation programmes or professional register, but have specific training in customs matters (e.g. education offered at a secondary school level or conventions with public bodies providing educational services). This type of training should be recognised by the customs authorities as sufficient in a specific professional context. Member States are encouraged to further develop such training schemes.

Customs authorities or public or private sectors listed in points ii) and iii) above, wishing to implement training for the fulfilment of the condition of professional qualification could consider the EU Customs Competency Framework for the Private Sector published on the TAXUD website:

[http://ec.europa.eu/taxation\\_customs/common/eu\\_training/competency/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/eu_training/competency/index_en.htm)

This tool is underpinned by a set of core values which should be demonstrated by any trader or any individual working sector and interacting with customs administrations of the EU.

## 9. Safety and security criterion

The criterion Article 39(e) of UCC and Article 28 (1), (2) and (3) of Implementing Regulation

### 9.1 General

Before undertaking an evaluation of each part of this criterion a number of general questions should be put to the applicant or ascertained from their responses in the Self Assessment Questionnaire:

- Has the applicant undertaken a recent safety and security assessment to identify risks and put in place appropriate procedures?
- Are there any particular safety and security requirements for the goods the applicant is trading?
- What procedures are in place for the reporting of safety and security incidents? Is there back up if key personnel are out on leave?
- Has the applicant been validated as a recognised supplier under the US C-TPAT programme? If yes, when and what were the results of the validation? Were any particular issues identified during the validation? If yes, have they been resolved?
- Does the applicant's insurance company or customers impose any security requirements on their business?
- Does the applicant have known consignor status under the air cargo security programme managed by the Department of Transport, Tourism and Sport?

### 9.2 Regulated Agents

If the applicant has regulated agent status under the Air Cargo Security Programme managed by the Department of Transport, Tourism and Sport, the safety and security criterion is deemed to be met in relation to the premises for which the applicant has regulated agent status. If the applicant has other premises not covered by their Regulated Agent status or handles goods other than goods to be carried by air transport, the safety and security criterion must be evaluated for these other parts of the business.

Regulated Agent status is granted for a period of five years. Copies of valid certificates should be provided where applicable.

It is the applicants responsibility to inform Revenue of any change in their status as a regulated agent especially if it has any bearing on their application for AEO.

## 9.3 TAPA (Transport Asset Protection Association)

TAPA is an association of security professionals and related business partners, shippers (i.e. manufacturers and distributors) and logistic service providers (freight forwarders, hauliers, airlines, ground handlers, insurance companies and others involved in the movement of goods) who have come together to address supply chain security threats that are prevalent in the high tech industry and high value consumer product sector.

A number of Irish operators have TAPA certification. Applicants may present TAPA certificates as evidence to demonstrate their compliance with the safety and security criterion. The document at Appendix 11 outlines broadly how TAPA works. TAPA certification does not confer automatic compliance with the AEO safety and security criteria but it does indicate that the applicant gives safety and security issues a high priority within their business. You will note from the document that type A and B certificates are issued on the basis of audits carried out by independent organisations whereas type C certs are only based on a self-assessment undertaken by the trader. Copies of TAPA evaluation reports for type A or B certs may be requested from applicants that have TAPA certification.

A copy of the certificate and supporting documentation should always be requested.

## 9.4 Physical Security – the criterion

*28 (1).(a): 'Buildings to be used in connection with the operations relating to the AEOS authorisation provide protection against unlawful intrusion and are constructed of materials which resist unlawful entry.'*

*28 (1).(b): 'Appropriate measures are in place to prevent unauthorised access to offices, shipping areas, loading docks and cargo areas and other relevant places;'*

### 9.4.1 Evaluation

The responses in the SAQ should be checked and relevant documented procedures should be provided by the applicant. As a guide the following aspects should be verified during the physical inspection and noted in the report template. Depending on the size and complexity of the applicants business it may be necessary to verify further elements of their procedures. Part 2 Section 2.4 in the EU AEO Guidelines provides further examples of what can be verified under this criterion:

- How are the external boundaries of the premises secured? (Type of buildings, windows, gates and fences, burglar alarm systems and CCTV systems)
- How many access points to the building are there and how are they controlled? (*Loading bay doors should be locked unless container is present*). Is there key control and key holders? Is there adequate lighting, where required?
- Who controls the codes for alarms?
- How long are CCTV images retained? Who monitors the screens?
- Does the plant operate on a 24/7 basis?

- How is visitor and subcontractor access controlled? Do visitors report to reception and wear badges? Are badges returned? Are there car park controls?
- How would an unauthorised access be handled? Is there internal control of movement of staff and visitors? (Only authorised personnel should have access to loading bays)
- Are there regular checks made on buildings and access controls?

The aim of security measures to secure buildings, is to prevent unlawful intrusions and in case of intrusion to:

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

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

For risk analysis purposes, the particular characteristics of each location must be taken into consideration. In some cases a premises will only consist of a building, which also serves as an external boundary for the premises of the company; in other cases a premises will be situated in a well-secured logistics park. In some cases even the loading ramp for incoming or outgoing goods will be part of the outer shell.

The premises layout (e.g. an area with 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 28 (1) (a) “building security” and (b) “access controls”. Factors to be taken into account when assessing this criterion may, for example, be that a fence is set up at the ridge of a slope or on an embankment which elevates it or bordered by a hedge or a watercourse that makes access to the building difficult. While checking this criterion it is important to take into account that each applicant has to ensure the security of its buildings and access control. However, when assessing the way it is achieved the specific characteristics of SMEs should be taken into account. For example,

- a large manufacturer might have to have a perimeter wall/fence, security guards, and CCTV cameras etc.; while
- for a customs agent operating from a single room in a building with locks on doors, windows and filing cabinets it may be sufficient to have a detailed procedure for access control including responsibilities.

## 9.5 Handling of goods - the criterion

28 (1)(c): *'Measures for the handling of goods have been taken which include protection against the unauthorised introduction or exchange, the mishandling of goods and against tampering with cargo units;'*

### 9.5.1 Evaluation

The responses in the SAQ should be checked and relevant documented procedures should be provided by the applicant. As a guide the following aspects should be verified during the physical inspection and noted in the report template. Depending on the size and complexity of the applicants business it may be necessary to verify further elements of their procedures. Part 2 Section 2.4 in the EU AEO Guidelines provides further examples of what can be verified under this criterion:

- Who owns the cargo units used by the applicant and where are they stored prior to loading? Who maintains the cargo units? How and by whom are the cargo units checked before loading? Depending on the cargo units used, is the 7-point check conducted on containers;
- If the company uses container seals, they must be stored, handled and fixed appropriately. They must be stored under lock and key, removal recorded, and fixed by two persons (where appropriate). In relation to the reporting of incidents with cargo units, incoming goods, storage, and production or outgoing goods, who has responsibility?
- There must be designated areas for all stages. Goods should not be left unsupervised outside of their designated areas;
- The company to move its goods normally uses what means of transport?
- Incoming goods – where and how are they received, are they physically checked, and how are they secured? Is there comparison of the goods with the paper work? Are goods always expected? Do they impose any requirement on their suppliers?
- Storage: are regular stock-takes carried out?
- Production; if parts of the processes are carried out at other premises, is this part of the process secure? Are goods tracked during the production process?
- Outgoing goods; are outgoing goods sealed? Are paper checks undertaken against the physical goods? Do their customers impose any security requirements on the packing and loading of their goods?

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

Cargo security is inseparable from building security and access controls because the aim of security and safety measures is to secure goods by preventing unauthorised access to cargo (shipping areas, loading docks and cargo areas).

While checking this criterion it is important to take due consideration of the specific characteristics of SMEs. For example:

- closed doors/railings, signs and instructions may be sufficient to restrict access to restricted areas to authorised personnel only (these instructions may be incorporated into the general security and safety procedure referred in Article 28 of the IA);
- to prevent unauthorised access in manufacturing areas, shipping areas, loading bays, cargo areas and offices, visitors could be escorted while on the premises and sign in/out at a register at the entrance.

It should also be noted that cargo security is inseparable from “Business Partner Security” because when goods in cargo units enter the supply chain, they are often placed under business partner responsibility.

## 9.6 Business Partners – the criterion

*28 (1)(d): The applicant has taken measures allowing to clearly identify his business partners and to ensure, through implementation of appropriate contractual arrangements or other appropriate measures in accordance with the applicant’s business model, that those business partners ensure the security of their part of the international supply chain;*



## 9.6.1 Evaluation

The responses in the SAQ should be checked and relevant documented procedures should be provided by the applicant. As a guide the following aspects should be verified during the physical inspection and noted in the report template. Depending on the size and complexity of the applicants business it may be necessary to verify further elements of their procedures. Part 2 Section 2.4 in the EU AEO Guidelines provides further examples of what can be verified under this criterion.

- Is the applicant in a position to influence safety and security in the supply chain? If yes, what steps have they taken in this regard? Inserting security clauses in contracts with suppliers and transport operators; does the company maintain lists of approved suppliers?
- Any security firms used must be licensed with The Private Security Firms Authority in Tipperary. A copy of the licence should be provided by the applicant.

## 9.7 Business Partner Security

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

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

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

The relationship with business partners may be contractual where the rights and obligations of both parties are set out in a legal contract. Alternatively, it may be a very loose arrangement without legal basis or it may be somewhere between both of these extremes (where documentation exists but is simply a statement of fact or intention).

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

From an AEO perspective, business partners as mentioned in Article 28 (1) (d) of the IA may have the option to apply for the AEO status, but if they choose not to exercise that option or if established in a country where it is not possible to obtain an AEO status they should provide adequate evidence to their AEO partner that they can meet acceptable level of security and safety standards. The ideal scenario of course would be that maximum number of participants in the international supply chain hold AEO status or equivalent to it granted by the competent authorities of any third country with which EU has MRA.

## Identification of Business Partners

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

- **manufacturers and warehouse-keepers** should ensure and promote the awareness that the premises must meet an acceptable security standard that prevents goods in storage from being tampered with, and prevent unauthorised access;
- **importers/freight-forwarders/exporters/customs agents** should ensure third-party agents have awareness of relevant border procedures and systems, and are familiar with the required documentation that needs to accompany goods in transit and for customs clearance;
- **carriers** should arrange that the transportation of goods is not unnecessarily interrupted, and that the integrity of the goods while in their custody is maintained;

## Security requirements for business partners and service providers

Article 28 (1) (d) of IA stipulates that security and safety standards in relation to business partners will 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.”

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

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

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

A typical example is the sub-criterion for access control when the AEO applicant has contracted a security company to fulfil his obligations in this area. The access control sub-criterion has to be verified by assessing the way the service provider fulfils this on behalf of the AEO. Although the AEO may outsource these activities to a third party, it is up to the evaluator(s) to ensure that the AEO complies with the requirements.

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

- the AEO works together with other AEO's or equivalent;
- the AEO enters, where appropriate and feasible according to its business model, into contractual arrangements on security with their business partners;
- subcontractors (for example transporters) used by the AEO are chosen on the basis of their adherence to certain security rules and sometimes applicable mandatory international requirements;
- contracts contain clauses preventing the subcontractor from further subcontracting the work to parties unknown to the AEO
- seals should be used for all modalities whenever possible to detect intrusion through the entry point(s) into the cargo compartment. Loaded containers should be sealed, by the party loading the container immediately upon completion of the loading process, with an ISO17712 compliant seal;
- loaded containers are inspected at the subcontractor's premises, the terminal and recipient premises to verify that they have been sealed;
- the AEO carries out or requires third party security audits of the business partner to ensure they comply with their security requirements;
- the AEO, where appropriate and feasible considering its business model, asks for a security declaration reflecting both parties' respective business models, roles and responsibilities. (An example of security declaration that can be used is at Appendix 9 for use in cases where the AEO applicant wishes to meet the requirements set out in Article 28 (1)(d) of the IA by means of a security declaration. However, when a security declaration is used, the applicant should ensure that the obligations covered by it are in place and being observed by the business partner concerned.)
- the AEO uses carriers and/or facilities that are regulated by international or European security certificates (for example ISPS Code and Regulated Agent).
- the AEO enters into non-contractual arrangements to specifically identify issues of importance relating to security, especially where potential weaknesses have been identified in a security assessment.

It is important to note that the above mentioned measures are only examples and this list is not exhaustive. The choice of one or another measure or combination of measures depends very much on the role of the particular business partner and its business model.

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

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

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

In case of multiple subcontracting, the responsibility for securing the supply chain is transferred from the AEO (e.g. an exporter) to their business partner (e.g. a freight forwarder). This business partner is the one who has formally committed to securing their part of the supply chain on behalf of the AEO. However, if the "first level subcontractor" (e.g. the freight forwarder) decides to subcontract or use other parties, then they should ensure the implementation of the security measures by the next subcontractor(s) (e.g. the carrier, or other subsequent freight forwarder). The AEO must be aware at all times to whom the work has been subcontracted to.

If the AEO discovers compliance difficulties, they should contact Customs with details of such occurrences.

## 9.8 Security Screening on Employees – the criterion

*28(1)(e): 'The applicant conducts, in so far as national law permits, security screening on prospective employees working in security sensitive positions and carries out background checks of current employees in such positions periodically and where warranted by circumstances;'*

### 9.8.1 Evaluation

The responses in the SAQ should be checked and relevant documented procedures should be provided by the applicant. As a guide, the following aspects should be verified during the physical inspection and noted in the report template. Depending on the size and complexity of the applicants business it may be necessary to verify further elements of their procedures. Part 2 Section 2.4 in the EU AEO Guidelines provides further examples of what can be verified under this criterion.

- The applicant must conduct background checks on prospective employees in security sensitive positions. Check the applicant's employment policy documents;
- Who conducts the background checks? Are CV's requested and how are they checked? If staff are dismissed, all of their access privileges must be removed immediately;
- Employment policy must also make provision for temporary employees;
- If contract cleaners are employed how are they given access and how are they supervised?

The following is a list of ways through which an applicant can satisfy this criteria. Any of the following are acceptable:

- Applicant conducts a background check through An Garda Siochana;
- Applicant employs a recognised consultant that will perform a background check on their behalf;
- Applicant uses a recruitment company that provides assurances that background checks have been undertaken;
- Applicant requests English language CV's with references and undertakes a check on at least one of the references provided.

## 9.9 Security Training for employees - the criterion

*28 (1) (g) the applicant ensures that its staff having responsibilities relevant for security issues regularly participate in programmes to raise their awareness of those security issues;*

## 9.9.1 Evaluation

The responses in the SAQ should be checked and relevant documented procedures should be provided by the applicant. As a guide the following aspects should be verified during the physical inspection and noted in the report template. Depending on the size and complexity of the applicants business it may be necessary to verify further elements of their procedures. Part 2 Section 2.4 in the EU AEO Guidelines provides further examples of what can be verified under this criterion.

- Is safety and security included in the general induction training for all staff?
- Who conducts the training?
- Are staff in security sensitive positions given specialised safety and security training?
- If changes are introduced to safety and security procedures how are the changes conveyed to staff?

## 10. Report template

Based on the applicant's responses in the SAQ and the officer's findings and observations during the physical inspection of the applicant's premises, all sections of the report template must be completed accordingly. Any responses in the self-assessment questionnaire that required clarification should be recorded in the report under the relevant criterion with details of the clarifications. It is imperative that all provisions under the four blocks of qualifying criteria are addressed. The report must clearly state the conclusion of the evaluator(s) and the judgement whether the applicant fulfils or not the criteria or if there is a need for further improvement in some areas. The report should also include judgement on areas that need to be monitored after the authorisation has been issued and areas where the operator has improved their procedures because of the evaluation.

If deficiencies are identified in the applicant's procedures they should be highlighted back to the applicant for attention. The applicant should be given a specific timeframe to address the deficiencies. If, when the timeframe has elapsed, the applicant has still not addressed the deficiencies they may be given a further period in which to address the issues. If at the end of this second period the applicant has still not addressed the deficiencies the applicant should be informed that their application may not be approved. The applicant may decide at this stage to withdraw the application, in which case the applicant should be requested to confirm this in writing to AEO Section.

If the applicant does not wish to withdraw their application, the report template should be completed with the deficiencies highlighted and with a recommendation to refuse the application. The completed report template should then be returned to AEO Section. AEO Section will write to the applicant informing them of their intention to reject the application and granting them the 'right to be heard'. The letter will specify under which legislative provision it will be rejected. Any arguments put forward by the applicant will be considered before a final decision is made.

If the applicant has satisfied all of the provisions under the four blocks of qualifying criteria the report template should be returned to AEO Section with a recommendation to issue an authorisation. In all cases the recommendation should be signed off at AP level within the District. The completed SAQ and documented procedures should be retained and filed within the District.

# 11. Authorisations

## 11.1 Legal effects of the authorisation

In all cases, AEO Section will make the final decision to issue an authorisation or not, having regard to the recommendation of the evaluating officer(s). Where AEO Section decide to approve the application they will issue an authorisation to the applicant in accordance with the certificate set out in Appendix 4.

The AEO c authorisation will take effect on the 10<sup>th</sup> working day after the date of its issue. AEO authorisations have no expiry date.

AEO Section will update the central EU database with details of any authorisations issued within 5 working days of the issue date. If the operator has indicated in their application (Box 19, Annex 11) that they agree with the publication of their authorisation on the Internet, DG.Taxud will add the operator's name, type of cert, the issuing MS and the effective date to the publicly available list of AEOs on the European Commission website.

A re-assessment of the qualifying conditions and criteria must be carried out in the following circumstances:

- Major changes to Community legislation;
- Reasonable indication that the relevant conditions and criteria are no longer met by the authorisation holder.

## 11.2 Set of conditions

In all cases, where AEO Section decide to issue an authorisation the applicant must sign a set of conditions – see standard sample at Appendix 10. The conditions oblige the applicant to inform Revenue of any factors that may arise that could influence the continuation of their authorisation. Officers should inform AEO Section of any specific risks or controls identified during the evaluation that may need to be monitored on an ongoing basis. Specific conditions may then be included in the set of conditions to deal with any such issues. Any such notes should be included in the officer's summary at the end of the report template.

The set of conditions will be sent out to the trader with a letter requesting them to sign the conditions and return to AEO Section within 10 working days. The AEO authorisation will issue when the conditions have been returned.

## 11.3 AEO Authorisation Number

AEO numbers will be constructed as follows:

Part 1: the first two letters will always indicate the MS that issued the authorisation IE

Part 2: the next four letters will indicate the type of authorisation AEOC, AEOS or AEOF

Part 3: the final part of the number will be a series of 8 digits issued automatically by CRS

An example of an AEO number is as follows: IEAEOC00005827

## 11.4 CRS

AEO authorisations issued will be recorded in the CRS by AEO Section. To view AEO authorisations go to 'look up' in the CRS and then 'authorisation'. On this screen you enter the TAN beside the Customer ID box. Details of the AEO authorisation will be visible when you click on the Authorised Economic Operator link underneath the heading 'Authorisation Type'.

## 11.5 Monitoring

Under Article 23(5) of UCC and Article 35 of IA customs authorities are required to monitor the compliance of all AEO's with the conditions and criteria of their authorisation.

In this regard monitoring officers must be aware of any specific conditions set out in the set of conditions signed by the operator when the authorisation was issued. A combined monitoring plan/report form must be completed immediately after the AEO authorisation has issued. This should be used to identify exactly how it is proposed to verify continued compliance highlighting any identified risks or development areas identified during the evaluation process. AEO section will issue a letter to the monitoring officer 12 months after the AEO status was granted and thereafter every 24 months requesting submission of the Monitoring Report.

Any issues that may affect the operator's AEO status and that remain unresolved following notification to the operator should be reported to AEO section immediately for further action.

The monitoring should at least include the following:

- A walk through of the operator's premises to check that the safety and security procedures examined at evaluation stage are still in place and are being implemented;
- Specific risks identified during the evaluation and included in the set of conditions should be checked periodically to ensure they are being adhered to. See para.10.2;
- A random sample of the operator's SADs should be checked for quality and accuracy of data declared on a periodic basis, having regard to the size, type of business, the volume of SADs being submitted and the range of goods being handled;
- The operator's general tax compliance should be checked to ensure that there are no financial solvency issues;
- Reports of any audits, assurance checks or aspect enquiries carried out on the operator should be checked for any issues that might affect the operators AEO status;
- A record of monitoring actions undertaken should be recorded in CRS notes;
- Notification by the operator of any issues that may affect their AEO status should be investigated without delay and forwarded to AEO Section if necessary.



If the operator was established for less than three years at the time the evaluation was carried out the monitoring should be more intensive during the first 12 months of the authorisation.

## 11.6 Suspension

An AEO authorisation must be suspended in the following circumstances:

- Where it is discovered that the AEO no longer meets the qualifying criteria;
- Where there is sufficient reason to believe that an act, which gives rise to criminal court proceedings and linked to an infringement of the customs rules, has been perpetrated by the AEO.

If local officers discover any of the above, AEO Section should be contacted immediately. Depending on the circumstances the authorisation may:

- Be suspended immediately;
- The suspension may be postponed pending a court decision;
- The trader may be given 30 days to regularise or correct the situation. This period may be extended by another 30 days if the trader can provide evidence that they are in a position to regularise or correct the situation within the extended period.

In all of the above situations AEO Section will notify the trader and the relevant District of any actions undertaken. If an authorisation is suspended, AEO Section will notify all other MS Customs Authorities of the suspension through the central EU database.

Suspension will not affect any customs procedure already started before the date of suspension and not yet completed.

Suspension does not affect any other customs authorisation that has been granted without reference to the AEO authorisation unless the reason for the suspension also has relevance for that authorisation.

Suspension does not automatically affect any authorisation for use of a customs simplification that has been granted on the basis of the AEO certificate and for which the conditions are still fulfilled.

Depending on the reason for suspension the trader may be entitled to a partial suspension of their authorisation. For example if they no longer fulfil the safety and security criteria but still comply with all of the other criteria, the AEOF authorisation may be suspended and they could be issued with an AEOC authorisation.

AEO Section will request the relevant District officer to verify that the conditions and criteria have been met before the any suspension is withdrawn. If the trader satisfies the officer that the situation has been corrected or regularised, AEO Section will withdraw the suspension. AEO Section will inform the trader and all other MS through the central EU database that the suspension has been withdrawn.

If the trader fails to take the necessary measures within the suspension period provided, AEO Section will revoke the authorisation. AEO Section will inform the trader and all other MS through the central EU database that the authorisation has been revoked.

Where an AEO is temporarily unable to meet any of the criteria they may request suspension of their authorisation. In such circumstances the trader must specify the reason for the non-compliance, the intended measures to regularise the situation and the time period required to regularise the situation. The time period may be extended if the AEO has acted in good faith. AEO Section will inform all other MS customs authorities of the suspension through the central EU database. If the situation is not regularised within the specified time or after a reasonable extension the authorisation will be revoked as in the previous paragraph.

## 11.7 Revocation

An AEO authorisation must be revoked in the following circumstances:

- Where the AEO fails to regularise the situation within a specified suspension period;
- Where serious infringements related to customs rules have been committed by the AEO and there is no further right of appeal;
- Where the AEO requests revocation of their authorisation.

With regard to the second bullet point above, it may be decided not to revoke the AEO authorisation if it is considered that the infringements are of negligible importance in relation to the number or size of the customs related operations and not to create doubts concerning the good faith of the AEO. If any issues that may lead to revocation of an authorisation are discovered AEO Section should be contacted immediately.

If the reason for the revocation relates to non-compliance with the safety and security criterion the trader may be issued with an AEOC authorisation provided they continue to meet the relevant qualifying criteria.

Revocation will take effect from the day following its notification. AEO Section will inform all other MS customs authorities of the revocation through the central EU database.

In all cases other than where the AEO requested the revocation or the revocation follows a voluntary suspension period the trader may not submit a new application for AEO status within three years from the date of revocation.

## 11.8 Appeals

Any person who is aggrieved by a written decision by the Revenue Commissioners or an officer of the Revenue Commissioners in relation to a customs matter covered by EU customs legislation may appeal such a decision. The procedures attached to such an appeal are set out in Revenue's Public Notice C&E 5.

## 11.9 Information concerning AEOs

It is important that any information pertaining to AEOs which could impact on their AEO status is immediately conveyed to AEO Section (e.g. involvement of AEO in smuggling operations).