

Practical Cases

Case 1: Forwarding agent as AEO

Spedition Heinrichsen (H), a company with its head office in Germany, would like to become an authorised economic operator, both for customs simplifications and for security. H has 80 employees and 30 lorries.

Question: What must the company do to obtain AEO status? What do the customs authorities do and what checks are carried out?

Additional question

H is ISO-certified. Does this make any difference to the checks that have to be carried out by the customs authorities to ensure that the company meets all the requirements for AEO status?

Case 2: Manufacturer as AEO

Fritz (F), a company established in Germany, manufactures vehicle parts for Chrysler, Chevrolet, Peugeot, Renault and Citroën, among others. It is also a supplier for a C-TPAT certified US company. It regularly exports goods to China and has frequent business contacts with Switzerland.

Should it apply for AEO status?

Case 3: Carrier as AEO, Suspension of AEO status/revocation of AEO certificate

Company X, a haulage company, obtained AEO status (security and customs simplifications). Two years after the certificate was issued, the head of the company discovered that during the previous year the company employee responsible for customs matters had clearly been using deliveries to smuggle cigarettes and vodka worth €50 000 a month. He had been working in collusion with a driver, to whom he gave a share of the proceeds. What happens next? What can or should the head of the company do to prevent the AEO certificate being cancelled?

Answers

Case 1: Forwarding agent as AEO

Customs Code (Regulation No 648/05) and CCIP (Regulation No 1875/06) with effect from 1 January 2008

What must Spedition Heinrichsen do? H must apply for an AEO certificate using the form in Annex 1c CCIP. If H were not established in an EU Member State he would not be able to apply for the issue of an AEO certificate (Article 5a of Regulation 648/2005, relating to establishment in the Community). As H's main accounts and all its documents are kept in Aachen, where they can also be consulted, the application must be made in Germany under Article 14d CCIP, electronically if possible.

The Customs Code leaves it to the individual Member States to decide whether the application will be examined centrally (e.g. in Nuremberg for the whole of Germany) or locally; many Member States have set up specialised customs offices to ensure that once AEO status has been introduced the necessary specialist knowledge for dealing with applications can be developed as quickly as possible and the applications can therefore be processed quickly and professionally. In its application the prospective AEO must give the name of the manager responsible and state who in the company is responsible for customs matters; the customs authorities and the applicant both designate contact persons so that dialogue can continue even after AEO status has been granted.

On the basis of the experience gained so far and the rules laid down in the CC, the CCIP and the Guidelines, the customs authorities will examine whether the company meets the necessary conditions for the issue of the AEO certificate. The customs authorities use the Guidelines as a questionnaire and will send them to the company to be answered; the company must answer Sections III and V in particular (self assessment). The Guidelines are also published on the Commission's and Member States' websites. By answering the questions as accurately as possible and returning the completed question form with its application, the company can speed up the granting of AEO status and simplify the customs authorities' task.

The Guidelines are a useful source of information and provide practical examples to help the applicant decide where he should make his application, what the individual criteria mean in practice and what aspects he should bear in mind if he wants to become an AEO. The applicant should understand that he does not have to answer every single question, since many of the questions do not apply to him (e.g. questions about the storage of goods for customs agents). Information is also provided regarding the situation of multinationals or parent companies and their subsidiaries.

It is also important to understand that companies do not have to create Fort Knox, but the list of criteria and questions must be approached with a degree of common sense. While all companies must implement and comply with the same criteria, the measures to be taken will differ from sector to sector and depending on the size of the company (e.g. a family firm will not need security cameras to monitor the movement of people and/or goods entering or leaving the premises).

A relatively simple self-assessment model is set out on the Commission/DG TAXUD website to help the applicant produce his own self-assessment (however, there are also IT-based self-assessment tools which permit a computer-assisted self-assessment and at the same time act as an internal audit instrument; this type of tool can also be helpful). From November, AEOs will also have access to an e-learning tool (interactive computer teaching model) on the Commission/DG TAXUD website. It will be downloadable free of charge and will explain to interested economic operators, by means of interactive examples, how and where to submit an application and what points to bear in mind.

Conditions examined by the customs authorities:
Compliance with requirements in the past (Article 14h CCIP)

This condition must already be met for the purposes of granting authorisation to use simplifications or customs procedures with economic impact (cf. Article 86 CC, Article 264(2) CCIP). In carrying out these checks under Article 14h CCIP the authorities consider not only whether the company itself has complied with requirements in the past but also whether the person or persons in charge of the company have done so. This also applies to the person or persons responsible in the company for customs matters. Among the rules that must have been complied with in the past are all provisions relating to imports and exports, as well as rules on market organisation, dual use goods, military equipment, etc.

The customs authorities decide whether any infringements are such as to justify a rejection of the application for an AEO certificate. They will consider whether any such infringements are relevant. If a large company has committed five customs offences within the last few years it is probably less serious than if a small company has committed two offences. However, it always depends on the seriousness and the consequences of the infringement, and the particular circumstances.

Proper accounting procedures (Article 14i CCIP)

This condition must already be met for the purposes of granting authorisation to use simplifications or customs procedures with economic impact (cf. Article 86 CC, Article 264(1) CCIP), because in the absence of proper accounts and the necessary documents the customs authorities are unable to ensure that the conditions for the granting of simplifications are being met. Under the new

rules, too, therefore, it is a matter of having documents that enable the customs authorities to monitor customs procedures.

Ability to pay (Article 14j CCIP)

This condition is also examined at the present time if customs duties are involved and a decision has to be made about the amount of a security (cf. Article 190 – 192 CC); it is geared to a sound financial situation and there are certain to be variations depending on the size of the firm, the nature of its business, the financial risks, etc.

Security measures (Article 14k CCIP)

This condition is new, since the CC did not previously contain any rules on security. Every part of the supply chain can obtain an AEO certificate – importers, exporters, forwarding agents, customs agents, carriers, warehouse keepers or manufacturers. An AEO must protect the part of the supply chain for which it is responsible.

In the case of a forwarding agent that wishes to be classified as secure, the customs authorities have to satisfy themselves that it can protect the part of the supply chain for which it is responsible (transport and possibly storage); if it is also a declarant (as a representative, for example) the authorities must also check whether the corresponding import and export rules – including any prohibitions and restrictions, export refunds, etc. – are being complied with. For example, the customs authorities will check whether the company has complied in the past with customs and other external trade provisions and can be regarded as reliable in that respect. The authorities will then check whether the measures in place are sufficient to guarantee that nobody will be able to smuggle anything into a container or lorry on the company's land, or when the containers/lorries or being loaded, without being seen. In doing so they will take account of the size and nature of the company (Article 14a(2) CCIP). Although all companies must meet the same requirements, these requirements will be implemented differently in a small firm than in a large company with ten warehouses. Thus, the AEO certificate could still be issued for example even though H employs **agency workers** for certain tasks, including loading lorries, provided that, whenever a lorry is being loaded, one of the two permanent employees responsible for ensuring compliance with the customs regulations is present. This ensures that workers who are taken on for a fixed period, and for whose trustworthiness the AEO cannot vouch (since an employment agency is responsible for employing them), cannot take advantage of the situation. Background screening of the company's **own employees** must take place only if it is permitted in the Member State in question. The point of the exercise is actually to encourage the company to think about whether a potential employee is trustworthy and reliable. As a rule this would also have been the case in the past, since nobody wants to employ smugglers and thieves. When new employees are being taken on, the

human resources manager and one of the two staff responsible for customs matters, for example, should have a discussion with each new colleague in which they make it clear that the company will not tolerate smugglers and petty criminals and smuggling or theft will be punished with immediate dismissal. Staff who are to be involved in customs matters should be sent on training courses and given on-the-job training. As regards the **security of the supply chain**, the forwarding agent will in most cases have known 70% of its business partners for years and will not anticipate any security problems with them. As for the remaining 30%, it must ensure that it does not encounter problems itself by exercising greater vigilance and questioning the business partners it does not know. As stated in the Guidelines (pages 18 and 19), the AEO may, for example, ask for a security declaration or include security clauses in its contracts with its business partners, requiring them to observe certain security standards. H can therefore do business with non-AEOs without jeopardising its own position.

Regarding the **safety of premises**, the forwarding agent must ensure that no unauthorised persons can gain access without being observed. It may, for example, put a fence around its premises, install alarm systems or keep guard dogs. In the case of a large site, the entrance should be manned at all times and only people who can identify themselves should be allowed in. During transport, containers should always be sealed (as protection against theft) and drivers should only use routes on which they have access to supervised parking areas. Computer systems must also be protected against unauthorised access and the company's keys must be kept in a safe place. In a similar case the customs authorities would check that the company is already complying with other security provisions (for the prevention of theft and unauthorised access to premises as well as for insurance purposes).

If the customs authorities conclude that the necessary security measures are in place but feel that the company does not have an adequate overview of the individual measures, they will recommend that the company draws up an internal **plan** listing all the **existing measures** to give it a more comprehensive picture and, if one of the security measures fails, to enable it to replace it with other measures.

Remainder of the procedure

Customs and the company will conduct a joint audit to establish whether the above conditions are met. Since H has applied for the AEO certificate - Customs Simplifications/security and safety, this audit covers all four conditions.

The guidelines, which should be used by Customs and companies as a checklist, provide a good overview of the elements examined.

The German customs authorities will enter the company's application into the AEO database to give other customs administrations an opportunity to respond. For instance, if H has violated customs regulations in another Member State, German customs will be informed accordingly. Customs must grant AEO status

within 90 days. If consultations are required, this deadline can be extended by 30 days, for instance if German Customs is unable to check whether all conditions are met, or if customs procedures carried out in other Member States must also be taken into account. The pilot project conducted earlier showed that the checks take 90 days – and sometimes more – to complete. At the end of the pilot project even the participating companies felt that a shorter deadline would not be realistic. During the two-year transition phase starting 1 January 2008, the deadline within which Customs must grant AEO status will be longer: 300 days instead of 90.

The AEO certificate takes effect ten days after Customs has issued it (Article 14q CCIP). It has unrestricted validity throughout the Community.

Later checks

It should be noted that, after AEO status has been granted to Heinrichsen, Customs will continue to check whether it still meets the conditions. Under Article 14q(4) CCIP, Customs must monitor whether AEOs comply with the conditions and criteria. If there are indications that the AEO does not or no longer does, the Customs authorities must re-assess the situation (Article 14q(5) CCIP). If the company is less than three years old, it will be monitored more closely during its first year as an AEO. The way in which Customs can plan and carry out this monitoring is described on pages 28 and 29 of the Guidelines. Customs may for example set up an audit plan or sign a conversion plan with the AEO, laying down the AEO's responsibilities.

How should H apply for customs simplifications?

H can continue to use its current simplifications without submitting a new application. If H wishes to apply for new simplifications, it should do so in the same way as before. It has no obligation to include new simplifications in its AEO application, it can limit its AEO application to security and safety and apply for the simplifications separately in the usual way. However, if it decides to include the simplifications in its AEO application, the whole procedure will be simplified or at least speeded up, because Customs will look into only those conditions that have not been looked into by other customs authorities, as AEO status is recognised in all Member States.

The CC does not limit procedural simplifications to AEOs. As before, any company can apply for them as long as it meets the appropriate conditions (which are more or less the same as for obtaining AEO status).

Thanks to its AEO status all Member States will consider Heinrichsen as representing a lower safety and security risk and therefore subject it to fewer customs inspections as will be the case in future because of safety and security precautions.

Additional question: the haulage firm Heinrichsen has ISO certification. Does Customs still have to check whether it meets the conditions for AEO status?

ISO certification makes no difference to the fact that Customs must check if the firm meets the conditions. Conversely, the safety and security of its transport operations continue to be inspected by the relevant authority. That authority will, however, take into account that as an AEO, the firm has to meet stricter requirements and that Customs has already looked into this. It is not possible to replace one certificate with another. In other words, having AEO status does not mean a company no longer needs other certificates, for instance ISPS or ISO. Safety certificates are always issued for a particular purpose, for example because a company complies with customs regulations or regulations concerning transport safety and security.

Case 2: Manufacturers as AEOs

The Fritz Company should definitely apply for an AEO certificate. On the basis of the information given it would do well to apply for the AEO Certificate - Customs Simplifications/security and safety. Currently negotiations are under way with non-EU customs administrations about the mutual recognition of AEO status. These negotiations and technical cooperation are already at a relatively advanced stage with the USA and Switzerland. Discussions are also being held with Canada and countries in Asia. Mutual recognition of customs inspections and AEO status are two points also called for by the World Customs Organisation in its Framework of Standards to Secure and Facilitate Global Trade. Given that the company already supplies goods to a C-TPAT certified American importer and as such complies with strict security regulations, it should not be a problem to meet the requirements for an AEO certificate - security and safety.

The Fritz Company imports goods from the US, Canada and EU Member States, manufactures vehicle parts and then exports them to the US and other countries. As in Example 2, Customs will check whether all conditions are met. What distinguishes a manufacturer from a haulier is that a manufacturer is also responsible for the safety and security of the manufacturing process. There will also be requirements as to the storage of goods. There will often be a combination of imports, exports and manufacture. Customs will check whether the conditions are met for all activities. At any rate the company will improve its chances on the international market, because AEO status is seen as a quality label.

Case 3: Carriers as AEOs, suspension of AEO status or revocation of AEO certificate

The CCIP provides for the possibility of suspending AEO status (Article 14r). The purpose of this is to enable the AEO to regularise the situation. However, if the infringements continue, the certificate will be revoked. An AEO can itself apply for suspension of its status. The advantage of this is that the company's AEO status will be reactivated immediately after the problem has been corrected. If it is Customs that discovers the problem and revokes the certificate, the company will be barred from AEO status for THREE years.

In this case the management may choose to report the problem to Customs and solve it. It can do so by dismissing the unreliable employee or, if the infractions are less serious than those described, by transferring him to a position where he no longer gets an opportunity to smuggle. The driver should also be dismissed or moved. Under Article 14r CCIP, the AEO must regularise the situation within 30 days (extendible by another 30 days).

If Customs finds out before the management that there has been more extensive smuggling and that it has been going on for an entire year, AEO status will be suspended and Customs will ask the company to explain. In the present example Customs will work together with the company to find a solution. The smuggler must be dismissed or at least transferred away from his current job. In addition the company will be advised to make it clear to new and, on a regular basis, to existing staff, that such behaviour will not be tolerated. If a joint solution is not found because the company is unreasonable and does not want to dismiss the culprit, the certificate is revoked. This, however, is likely to be exceptional, because the AEO certificate is issued only to reliable economic operators that will be keen to keep their good reputation and will not cover for smugglers or swindlers.