

The Impact of UCC for AEO

By: Y. S. Teong MSc
Post-Master EU Customs Law 2015-2016
European Fiscal Studies
Erasmus University Rotterdam

Abstract

This paper provides an analysis of the application of the UCC on AEO in the EU. The new customs legislation the UCC will become applicable in full on the 1st May 2016 and repeal the CCC. Under the UCC there will be two types of AEO where an economic operator can be authorised for: AEOC and AEOS. Under the new customs legislation the AEO criteria are also changing. Moreover, some customs simplifications are only reserved for the AEOC authorisations. Therefore this paper describes the changes for AEO under the UCC, which supports businesses to prepare for the new legislation. There will be a transition period until May 1st, 2019 for current AEOs, where the AEO authorisations will be reassessed, and by which time the AEO must have met all the new UCC requirements. Moreover, I discuss the application of the UCC to AEO in this paper: changes that affect the current holders of AEO and businesses who are considering applying for AEO.

Key words: Customs, European Union, Union Customs Code, Delegated Acts, Implementing Act, Authorised Economic Operator
Programme coordinator: K. H. Meenhorst

List of Abbreviations

AEO	Authorised Economic Operator
AEOC	Authorised Economic Operator for Customs Simplifications
AEOF	Authorised Economic Operator Full for Customs Simplifications and Security & Safety
AEOs	Authorised Economic Operator for Security & Safety
CCC	Community Customs Code; Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.
CCIP	Implementing Provisions of the Community Customs Code; Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.
C-TPAT	Customs-Trade Partnership Against Terrorism
DA	Delegated Act; Commission Implementing Regulation (EU) of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council with regard to detailed rules of specifying some of the provisions of the Union Customs Code
EEC	European Economic Community
EIDR	Entry in the Declarant's Records
EU	European Union
IA	Implementing Act; Commission Implementing Regulation (EU) of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code
LCPI	Local Clearance Procedures Imports
MCC	Modernised Customs Code; Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)
MCME	Measures on Classified Management of Enterprises Program
MRA	Mutual Recognition Agreement
PIP	Partnership in Peace
SAFE Framework	Framework of Standards to Secure and Facilitate Global Trade
SASP	Single Authorisation For Simplified Procedures
SES	Secure Exports Scheme
STP	Secure Trade Partnership
TFEU	The Treaty on the Functioning of the European Union
TTP	Trusted Trader Programme

UCC	Union Customs Code; Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code
VAT	Value Added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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1. Introduction

The customs law of the EU and its predecessors was for years regulated by the CCC¹ and the CCIP², which dates back to the 1992 and 1993, respectively. Today's heightened challenges to customs administrations are multi-faceted and stem from many sources. Among these are: fraud and the threat from terrorism through the international supply chain, the globalisation of trade, the increased volume of trade and just-in-time delivery, the sophisticated nature of products and transport services, as well as the growth of electronic commerce. Notwithstanding these multiple principles of taxation and the customs controls underpinning European customs law remain the same for years.

In 2012, the European Commission outlined a course of action for a more unified customs union by 2020 in its communication on the state of the customs union. The communication provided for a reform of its legal framework as well as a vast shift towards digitisation. The UCC was adopted on 9 October 2013, which enables customs to focus more on trade facilitation as well as on security and safety. It also improves cooperation between customs authorities and other services³.

The AEO status is being introduced around the world in order to combat terrorism by better security measures in world trade. The new customs legislation, the UCC, will change the requirements to become and remain AEO certified. For many authorisations and simplifications within the UCC, companies need to meet the customs simplifications AEO criteria. AEO holders do not need to reapply. However, the authorisation will need to be reassessed to take into account the new conditions under UCC. Businesses that do not fulfil the requirements may lose their AEO authorisation.

The full application of the UCC is due as from May 1st, 2016. Since the current literature on interaction of the impact of the new customs legislation the UCC on AEO is scarce and a comprehensive list of all customs simplifications and their link with the AEO status and/ or criteria are still not clear. Therefore, this paper contributes to the customs literature and helps businesses to prepare for the changes for the new legislation. My paper will describe the changes that the UCC brings for AEO in the EU. Consequently, this paper will give an answer to my research question: "What does the UCC mean for AEO the EU?". It is worth noting that the European Commission adopted the UCC's DA on 28 July 2015. On 24 November 2015, the UCC's IA were adopted by the European Commission after a vote in the Customs Code Committee. The UCC and AEO amendments that we will see coming from May 2016 are described in this paper. I organised this paper as follows. The next section, section 2, gives a background of the evolution of EU customs law and a slight background of the AEO. After that, I will bring forward the application of the UCC to AEO in section 3. Section 4 provides the cases AEO status is required for customs simplification. Finally, this paper ends in a discussion in section 5 and conclusion in section 6.

¹ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. OJ L 302, 19.10.1992

² Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. OJ L 253, 11.10.1993

³ European Commission, Commission modernises EU customs procedures, http://europa.eu/rapid/press-release_IP-15-5445_en.htm, 20.10.2015

2. Background

2.1 Evolution of the EU Customs Law

The European customs law was for years regulated by the CCC and the CCIP. These regulations were revised and modernisation. To this end, the EU adopted a new customs code: UCC. In this section I will outline the background of the UCC.

2.1.1 Modernised Customs Code (Recast) & Union Customs Code

Today's heightened challenges to customs administrations are multi-faceted and stem from many sources. Among these are: fraud and the threat from terrorism through the international supply chain, the globalisation of trade, the increased volume of trade and just-in-time delivery, the sophisticated nature of products and transport services, as well as the growth of electronic commerce. Notwithstanding these multiple principles of taxation and the customs controls underpinning European customs law remain the same for years. Customs must facilitate trade and protect the interests of the EU and its citizens. In order to achieve a proper balance between customs controls and facilitation of legitimate trade, customs procedures and customs control methods must be modernised. Moreover, mutual cooperation between Member States, customs authorities and economic operators are needed. For this reason, the MCC⁴ was adopted in April 2008.

The MCC saw itself as providing for the simplification and modernising of the customs law in line with twenty-first century developments and demands. Which aimed at the adaptation of customs legislation to fit, but also to govern, the electronic environment for customs and trade. By doing so, it took the opportunity to carry out a major overhaul of the customs rules in order to make them simpler and better structured. However, the MCC never became functioning due to the following technical and procedural considerations which was based on the three reasons⁵, which led to the proposal to amend the MCC.

First, it was appropriate to give customs authorities and economic operators sufficient time to undertake the necessary investments and ensure a phased but realistic implementation of electronic processes. The European Commission will continue to work with all stakeholders with a view to ensuring that the new electronic processing environment will be operational at the latest by 31 December 2020. An agreed work programme and the European Commission's proposal for the future FISCUS programme should provide the necessary support for this process. A single future FISCUS programme was proposed in order for safeguarding nevertheless the particularities of customs and taxation. This programme will contribute to the Europe 2020 Strategy for smart, sustainable and inclusive growth, by strengthening the functioning of the Union's Single Market and its Customs Union. By pushing technical progress and innovation in national tax administrations towards e-tax administrations, the new programme also contributes to the establishment of a digital Single Market.

⁴ Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code). OJ L 145/1, 4.6.2008.

⁵ Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and the Council laying down the Union Customs Code (Recast), COM(2012) 64 Final, 2012/00027(COD), 20.2.2012

Second, the commitment to align the MCC on the requirements of the Lisbon Treaty, as regards the use by the European Commission of either delegated or implementing powers to allow the MCC to be applied, in accordance with Articles 290 and 291 of the TFEU and the new 'Comitology' Regulation⁶.

Lastly, according to the European Commission, the requirement to adjust some provisions that have proved difficult to implement. The MCC needs to be revised, where appropriate, to the outcome of the work on implementing processes and provisions, where it reveals a lack of adequacy between certain provisions of the code and the actual functioning of customs procedures (e.g. temporary storage) or where it takes into account the evolution since 2008 of legislation in other policy fields (e.g. transport safety and security).

A major revision of the CCC was carried out in the MCC, which was subsequently recast and repealed by the UCC on 9th October 2013. The UCC has four main objectives⁷: facilitating legitimate trade, protecting society and the EU's financial interests, modernising customs working methods and developing new EU standards, and a paperless environment for customs and global trade.

The UCC has entered into force and in line with the requirements of the Lisbon Treaty, the UCC will be implemented through secondary legislation in the form of a DA (Article 290 TFEU)⁸ and IA (Article 291 TFEU)⁹ and the associated Annexes. The European Commission adopted the UCC's DA and its annex (Part 1, Part 2 and Part 3) on 28 July 2015. On 24 November 2015, the UCC's IA and its annex (Part 1 and Part 2) were adopted by the European Commission after a vote in the Customs Code Committee. The UCC will officially go into effect on 1 May 2016 with potential staggered changes that will be phased in over a four-year period. The application of the provisions of the UCC which depend on the use of electronic data processing techniques and electronic systems will be suspended for the periods pending the availability of such systems. The complete deployment of all of the electronic systems required by the UCC shall be carried out not beyond 31 December 2020.

2.2 Authorised Economic Operator

The development of global trade and increasing security threats have forced customs authorities to shift their attention more and more to securing the international trade flow and away from the traditional task of collecting customs duties. The AEO status has been introduced by the WCO and its SAFE Framework in order to combat terrorism in trade. Several standards are included that framework in order to assist customs authorisations in

⁶ Regulation (EU) No182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. L55/13, 28.2.2011

⁷ European Commission (2015), EU Customs strategy

http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_strategy/index_en.htm, 25.10.2015

⁸ This paper is based on the latest version of the DA of the European Commission, TAXUD/UCC-DA/2015-7 of July 28, 2015

⁹ This paper is based on the latest draft version of the IA of the European Commission, TAXUD/UCC-IA/2015-10 of November 24, 2015.

meeting today's customs challenges. The AEO programme is a core part of the SAFE Framework. In this section I will outline the background of the AEO.

2.2.1 SAFE Framework

After the attacks in the USA on 11 September 2001 governments worldwide realised that the international supply chain is vulnerable to terrorist exploitation, and other cross-border crimes such as drug trafficking, human trafficking and financial fraud. In an effort to reduce this vulnerability the WCO designed a new model to strengthen the security of the international supply chain¹⁰. Modern customs principles include risk management, use of technology and a partnership with the trade are well developed by the WCO and are incorporated in the Revised Kyoto Convention, adopted by the WCO Council in 1999¹¹. In 2005, the WCO adopted the SAFE Framework to secure and facilitate global trade. The SAFE Framework is based on the two pillars of Customs to Customs Network arrangements and Customs to Business partnerships and is aimed at improving customs operations. In June 2006, the SAFE framework was completed by a chapter on the AEO¹².

2.2.2 Basic Concept of AEO

The AEO concept is one of the main building blocks within the SAFE Framework and aims to secure and facilitate global trade. The essence of the AEO-concept can be found in the Customs to Business partnerships. Operators can be accredited by customs as AEOs when they ensure to have an administrative organisation and the internal control system that will prevent goods in international trade to be tampered with. The WCO defines an Authorised Economic Operator as follows:

AUTHORISED ECONOMIC OPERATOR (AEO) [Opérateur Economique Agréé – OEA]

“AEO is a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorised Economic Operators include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors”.

In accordance with the SAFE Framework, the basic aim underlying the AEO is to increase security in international trade and, at the same time, facilitate legitimate trade. In order to achieve this, the customs authorities are to carry out a detailed examination of economic operators on the basis of established criteria. Once the results are positive, grant the economic operator the status of AEO¹³. The AEO customs status has been introduced into

¹⁰ Walsh, T. (2015), European Union Customs Code, Alphen aan den Rijn; Kluwer Law International.

¹¹ Mikuriya K. (2007), Supply chain security: the Customs community's response. World Customs Journal 1(2): pp. 51–60.

¹² World Customs Organization (2015), WCO SAFE Framework of standards to secure and facilitate global trade, WCO, Brussels.

¹³ Wolfgang H. M., Natzel J. M. (2007), The Authorized Economic Operator in the European Union. Global Trade and Customs Journal, 2(11):pp. 377–384

the CCC as from 1 January 2008. The amendments introduced by this regulation have collectively become known as the safety and security amendments in the CCC¹⁴. I refer to section 3 for the legal foundations of the AEO under the new customs legislation; the UCC.

2.2.3 Mutual Recognition Agreements of AEO Programmes in the World

The voluntary AEO concept received worldwide adoption. By March 2015, 168 out of 180 WCO Members had signed letters of intent committing to implement the SAFE Framework and a total of 64 AEO programs were already operational or would soon be launched. Currently, there are 64 operational AEO programmes and 16 AEO programmes expected to be launched in the next few years¹⁵.

Today, AEO or AEO comparable programmes have been introduced. The United States had introduced its C-TPAT rather soon after 11 September 2001, in November 2001. Moreover, other programmes are in action, e.g.: in Canada the PIP, New Zealand the SES, Australia the TTP and Singapore the STP. For a detailed overview, see the WCO AEO Compendium 2015¹⁶. Although all these programmes are rooted in the SAFE framework of standards, the methods differ. E.g. the United States only allows importers to participate in C-TPAT whereas in the European AEO programme is open to all operators in the supply chain. Moreover, AEO differs from C-TPAT as AEO has a wider scope, as it encompasses customs simplified procedures next to security and with that relates to compliance with all customs legislation, including customs duties.

Under the WCO's SAFE Framework customs authorities are stimulated to develop partnerships with business and between each other to secure and facilitate trade. It encourages customs authorities to cooperate with each other in order to develop mechanisms for mutual recognition of AEO validations and authorisations, mutual recognition of customs security control standards and other mechanisms that may be needed to eliminate or reduce redundant or duplicated efforts. MRA is a broad concept embodied within the SAFE Framework whereby a decision taken or an authorisation that has been properly granted by one customs authority, is recognised and accepted by another customs authority. Table 1 lists the concluded MRA's between the EU and another customs authority.

¹⁴ Commission Regulation (EC). No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. L 117/13, 04.05.2005

¹⁵ World Customs Organization (2015), WCO SAFE Framework of standards to secure and facilitate global trade, WCO, Brussels.

¹⁶ World Customs Organization (2015), Compendium of Authorized Economic Operator Programmes 2015 edition.

TABLE 1: Concluded MRAs in the EU

Date	Country	Title	Type
July 2009	Norway**	AEO	Import & export
July 2009	Switzerland**	AEO	Import & export
June 2010	Japan	AEO	Import & export
January 2011	Andorra**	AEO	Import & export
May 2012	USA	C-TPAT	Import
May 2014	China	MCME	Import & export

**The agreements between the EU and Switzerland, EU and Norway, and EU and Andorra, are not traditional MRAs of AEO. The mutual recognition aspect of those agreements applies only to indirect export cases, as customs security measures in relation to the movement of goods do not exist between them.

The cooperation is not limited to those countries mentioned in table 1. In the near future, negotiations towards mutual recognition of AEO will start with Hong Kong (AEO). Moreover, negotiations with Canada (PIP) are completed and due to be implemented early 2016¹⁷.

¹⁷ HM Revenue & Customs (2015), Business tax – guidance - Authorised Economic Operator, <https://www.gov.uk/guidance/authorised-economic-operator-certification>, 30.11.2015

3. Application of UCC to AEO

The UCC will become applicable in full on May 1st, 2016 and repeal the CCC. However, what changes will the UCC bring for AEO? This section turns to an examination of how the UCC will apply to AEO from May 1st, 2016. There will be a transition period until May 1st, 2019 for current AEOs, AEO authorisations will be reassessed, and by which time the AEO must have met all the new UCC requirements¹⁸.

3.1 Legal Foundations

The European Parliament argued that the main conditions for AEO status are essential and therefore must be explicitly laid down in the basic act itself. Therefore, the basic rules relating to the conditions and procedure for granting the status of AEO are laid down in the Articles 38 and 39 of the UCC. While, pursuant to Article 40 UCC, the European Commission is merely authorised to specify the corresponding simplifications, facilitations and favourable treatments by way of DA.

3.1.1 Application and Authorisation

3.1.1.1 Types of Authorisations

Under the UCC, referred to in Article 38(2) UCC, there will be two types of AEO authorisations: AEOC and AEOS. The first option is the AEOC authorisation, which is designed for economic participants who wish to claim the benefits of customs simplifications. E.g. a faster application process for customs simplifications & authorisations and reductions or waivers of comprehensive guarantee.

The second is the AEOS authorisation. An AEOS must have appropriate security and safety standards in order to protect the international supply chain. These standards concern: logistical processes, physical integrity & access controls, and identification of personnel & business partners. Therefore, a holder of AEOS will benefit from: e.g. a lower risk score used to determine the frequency of customs physical and documentary checks, consignments being fast-tracked through customs control, and reduced requirements for the mandatory pre-arrival/pre-departure Entry Summary Declarations or Exit Summary Declarations.

However, the AEOF authorisation, which was available under the CCC¹⁹ will be repealed. Nevertheless, article 38(3) UCC specifically notes that both types of authorisations may be held at the same time. Which is intended for economic operators who wish to benefit from customs simplifications and facilitation relating to security and safety. Thus, this does not affect the current AEOF holders.

¹⁸ Article 250 and 252 UCC DA

¹⁹ Article 14a(c) CCIP

Article 38 UCC: Application and authorisation

(2) The status of authorised economic operator shall consist in the following types of authorisations:

(a) that of an authorised economic operator for customs simplifications, which shall enable the holder to benefit from certain simplifications in accordance with the customs legislation; or

(b) that of an authorised economic operator for security and safety that shall entitle the holder to facilitations relating to security and safety.

(3) Both types of authorisations referred to in paragraph 2 may be held at the same time

3.1.1.2 Recognition of AEO

Pursuant to Article 38(4) the AEO status granted by one member state is recognised by the customs authorities in all Member States. Noteworthy, an explicit reference is made in Article 38(7) UCC to mutual recognition of the AEO status in international agreements which on one hand should provide access to EU customs simplifications for companies outside the EU which are authorised in a comparable programme in their home country (e.g. C-TPAT of the USA). On the other hand because of reciprocity, which implies that AEO operators of the EU can enjoy customs simplification in countries outside the EU, when they are operating in third countries with a comparable programme.

3.1.2 Criteria for Granting the Status of AEO

The UCC contains specific criteria that must be met by the economic operator who is established in the customs territory of the Union in order to be granted for the AEO status. According to Article 39 UCC, the criteria for granting the status of AEO shall be the following:

Article 39 UCC: Granting of status

a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d) with regard to the authorisation referred to in point (a) of Article 38(2), practical standards of competence or professional qualifications directly related to the activity carried out; and

(e) with regard to the authorisation referred to in point (b) of Article 38(2), appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.

The criteria shall be deemed to be met to the extent that it is established to the type of authorisations. AEOC should fulfil the criteria (a), (b), (c) and (d) of Article 39 UCC. AEOS should fulfil the criteria (a), (b), (c) and (e) of Article 39 UCC.

Under the UCC additional requirements and a new criteria has been added which economic operators have to meet in order to be granted for the AEO status. These are the new requirements mentioned in Article 39(a) and (e) and a new criteria mentioned in Article 39(d) (see the underlined). Explanation to the new requirement and criteria will be given in following three subsections hereinafter (Section 3.1.2.1 to 3.1.2.3).

3.1.2.1 Compliance

For the application of the criterion in Article 39(a) UCC, I refer to article 24 of the IA of the UCC, over the last three years, there has been no breach of the requirements of Article 39(a) UCC by any of the following persons: the applicant, the person in charge of the applicant or exercising control over its management, and or the employee in charge of the applicant's customs matters.

Article 24 UCC IA: Compliance

(1) 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 employee 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 infringement or repeated 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 person in charge of the applicant or exercising control over its management;
- (c) the employee in charge of the applicant's customs matters.

This new requirement applies to all types of AEO authorisation, i.e. to the types of authorisation as laid down in Article 38(2) UCC; for (a) AEOC, and for (b) AEOS. Thus, the aforementioned persons have not committed a serious infringement or repeated infringements of customs legislation. Furthermore, under the UCC additional compliant requirements have been added, the applicant also needs to demonstrate that he or she is compliant to the taxation rules, and has not a record of serious criminal offences relating to their economic activity over the last three years. This criteria aims to make a prognosis of the economic operator's future customs compliance on the basis of its existing record of compliance. However, where the applicant has been established for less than three years, the customs authority competent to take the decision shall assess the fulfilment of the criterion referred to in Article 39(a) of the UCC on the basis of the records and information available.

3.1.2.2 Practical Standards of Competence or Professional Qualifications

The Article 39(d) UCC, introduces a new criterion of practical competence or a professional qualification directly related to the Customs activities. This new criterion only applies to AEO authorisation referred to in point (a) of Article 38(2) UCC; for AEOC. The criterion laid down in Article 39(d) UCC shall be considered to be fulfilled if any of the following conditions, as laid down in Article 27 UCC IA are met.

Article 27 UCC IA: Practical standards of competence or professional qualifications

(1) The criterion laid down in Article 39(d) of the Code shall be considered to be fulfilled if any of the following conditions are met:

(a) the applicant or the person in charge of the applicant's customs matters complies with one of the following practical standards of competence:

- (i) a proven practical experience of a minimum of three years in customs matters;
- (ii) a quality standard concerning customs matters adopted by a European Standardisation body.

(b) 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 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.

(2) Where the person in charge of the applicant's customs matters is a contracted person, the criterion laid down in Article 39(d) of the Code shall be considered to be fulfilled if the contracted person is an economic operator authorised for customs simplifications as referred to in Article 38(2)(a) of the Code (AEOC).

Therefore, the applicant or the person in charge of the applicant's customs matters shall fulfil any of the following conditions i.e.: (a) For the practical standards of competence a minimum of three years practical experience in customs matters or application of a quality standard adopted by a European Standardisation body as certified by an accredited certification body. (b) For professional qualifications, the contracted persons has undertaken training and passed an examination or can present a certificate of completion of a course covering customs legislation consistent with and relevant to the extent of his/her involvement in customs related activities, provided by a customs authority, or an educational establishment, professional or trade association recognised by the customs authorities. In case the applicant uses a contracted person, the criterion shall be deemed met if the contracted person is already an AEOC.

The European Commission has developed an EU Customs Competency Framework²⁰ which is now available for use by national customs services and businesses having to deal with customs in order to harmonise and raise customs performance standards throughout the EU. Businesses already authorised for AEOC will be assessed against these new criteria regarding the practical standards of competence or professional qualifications as part of the ongoing AEO monitoring programme.

3.1.2.3 Security and Safety Standards

For the application of the criterion in Article 39(e) UCC, I refer to article 28 of the IA of the UCC. In general the phrasing of the rules in the IA are tightened which are directed to the safety and security standards require: e.g. buildings to be protected, security measures should be in place for the handling of goods, and background checks on employees, active participation in security awareness programmes. However, additional requirements have been added under the UCC in Article 28 UCC IA. Article 28 UCC IA, the criterion laid down in Article 39(e) of the UCC shall be considered to be fulfilled if the following conditions are met.

Article 28 UCC IA: Security and safety standards

- (1) The criterion laid down in Article 39(e) of the Code shall be considered to be fulfilled if the following conditions are met:
- (a) buildings to be used in connection with the operations relating to the AEOC authorisation provide protection against unlawful intrusion and are constructed of materials which resist unlawful entry;
 - (b) appropriate measures are in place to prevent unauthorised access to offices, shipping areas, loading docks, cargo areas and other relevant places;
 - (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;
 - (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;
 - (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;
 - (f) the applicant has appropriate security procedures in place for any external service providers contracted;
 - (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;
 - (h) the applicant has appointed a contact person competent for safety and security related questions.

²⁰European Commission, EU Customs Competency Framework,
http://ec.europa.eu/taxation_customs/common/eu_training/competency/index_en.htm, 13.12.2015

Where point (a) – (e), the phrasing of the rules are tightened compared to the CCC. Moreover, points (f), (g) and (h) are the new requirements added to Article 28 of the IA of the UCC. The new requirements applies to the AEO authorisation. The conditions mentioned in article 28 (f) and (g) are rooted in the current AEO Guidelines which are now incorporated in the IA of the UCC and the applicant must appoint a contact person competent for safety and security related issues.

3.2 Conditions for the Acceptance of an Application for the Status

Concerning the procedure, the economic operator must submit an application for an AEO authorisation. The applicant shall supply all the information required by the competent customs authorities in order to enable them to take that decision (Article 22 UCC). The competent customs authority shall be that of the Member State where the applicant has a permanent business establishment and where the information about its general logistical management activities in the EU is kept or is accessible as indicated in the application (Article 27 UCC DA).

The European Commission developed a standard questionnaire (referred to as the 'self-assessment questionnaire') in 2010, which Member States may use for the AEO applications. The Netherlands had decided that the use of this questionnaire for AEO applications shall not be mandatory under the CCC. However, referred to Article 26(1) UCC DA, under the UCC the applicant of AEO should submit the self-assessment questionnaire which will be compulsory.

Article 26 UCC DA: Conditions for the acceptance of an application for the status of AEO

- (1) In addition to the conditions for the acceptance of an application provided for in the Article 11(1), in order to apply for the status of AEO the applicant shall submit a self-assessment questionnaire, which the customs authorities shall make available, together with the application.
- (2) An economic operator shall submit one single application for the status of AEO covering all its permanent business establishments in the customs territory of the Union.

Furthermore, as laid down in article 6 UCC, all communication shall be made using electronic data-processing techniques. The EU customs authorities will therefore not be able to accept paper applications from 1 May 2016.

Article 6 UCC: Means for the exchange and storage of information and common data requirements

- (1) All exchanges of information, such as declarations, applications or decisions, between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, shall be made using electronic data-processing techniques.

Once the application for the AEO authorisation has been submitted. The customs authorities shall determine whether the conditions for acceptance of an application for the status of AEO are met (Article 26 UCC DA). Moreover, customs authorities will examine the criteria of granting the AEO status laid down in Article 39(a) - (e) UCC. Generally, under the UCC, the competent customs authority shall take a decision at the latest within 120 days (Article 22(3)

UCC). The time-limit for taking the decision referred to in the first subparagraph of Article 22(3) UCC may be extended by a period of up to 60 days (Article 28(1) UCC DA. Which is currently under the CCC within 90 days and extendable with 30 days (Article 14o CCIP). According to Article 29 UCC DA, by way of derogation from Article 22(4) UCC, the authorisation granting the status of AEO shall take effect on the fifth day after the decision is taken, which is currently under the CCC the tenth day after the date of its issue. The status of AEO is Union-wide valid (Article 26 UCC) and its validity is unlimited (Article 22(5) UCC).

3.3 AEO Facilitations

The issue of AEO facilitations has been among the most discussed issues during the UCC adoption process and the discussions on the preliminary draft of the DA and IA of the UCC. The legal advantages depend on the type of AEO authorisation. These advantages can be classified in the following categories: customs simplifications, facilitations and more favourable treatments (Article 38(2) and 38(6) UCC). Table 2: Overview AEO Facilitations, includes the compilation of the AEO facilities. In general, AEO facilitations, i.e. the benefits, are an integral part of the overall package of provisions established in the UCC for governing the AEO status. Moreover, some customs simplifications are only reserved for the AEOC status. I will describe these cases in the next section.

UCC introduces a new article, where an AEO lodges a temporary storage declaration or a customs declaration prior to the presentation of the goods in accordance with Article 171 UCC. Hence, the competent customs office may, prior to the presentation of the goods, notify the AEO if the consignment has been selected for customs controls. The more favourable treatment as referred to in Article 38(6) UCC shall apply, unless the customs authorities decide otherwise in order to take into account a specific threat. Moreover, 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. In addition, on request from an AEO the controls may be carried out at a place other than the place where the goods have to be presented to customs (Article 24(4) UCC DA).

TABLE 2: Overview AEO Facilitations

AEO Facilitations	AEOC	AEOS	Reference
Exemption of Safety& Security data for customs declaration or a re-export declaration		x	Article 23 UCC DA
Lodging a customs declaration prior to the presentation of the goods in order to get a prior notification in case of selection for physical control	x	x	Article 38(6) UCC Article 171 UCC Article 24(2) UCC DA (for AEOS) Article 24(3) UCC DA (for AEOC)
Fewer physical and document-based controls & Priority treatment if selected for control	x	x	Article 38(6) UCC Article 24(1) UCC DA
On request controls may be carried out at a place other than the place where the goods have to be presented to customs	x	x	Article 38(6) UCC Article 24(4) UCC DA
Mutual recognition of AEO with third countries	x	x	Article 38(7) UCC

4. Cases where AEOC Status is Required for Simplification

The certificate AEOC grants benefit from the various simplifications specifically provided for under the customs legislation, which leads to the simplified grant of simplified procedures. The objective of the customs simplifications reserved for the AEOC status is to facilitate and speed up trade. This is essential for globally operating companies, which depend on a well-running supply chain. The cases where an AEOC is required to have access to simplification under the UCC are represented in the subsections hereinafter

4.1 Comprehensive Guarantee with Reduced Amount for Existing Customs Debts and Charges

Under the UCC guarantees are mandatory for most customs procedures. According to Article 211(3)(c) UCC, where a customs debt or other charges may be incurred for goods placed under a special procedure, they provide a guarantee in accordance with Article 89 UCC. The special procedures are laid down in Article 211 UCC, goods may be placed under any of the following categories of special procedures:

- (a) transit, which shall comprise external and internal transit;
- (b) storage, which shall comprise customs warehousing and free zones;
- (c) specific use, which shall comprise temporary admission and end-use;
- (d) processing, which shall comprise inward and outward processing.

All goods intended to be placed under a customs procedure, except for the free zone procedure, shall be covered by a customs declaration appropriate for the particular procedure and a guarantee to cover the amount of import or export duty (Article 158 and Article 245(1)(c) UCC). New under the UCC, a guarantee need to be provided for the authorisation for the operation of temporary storage facilities (Article 148(2)(c) UCC). Moreover new under the UCC, a comprehensive guarantee needs to be provided by holders of authorisations for self-assessment (Article 195(3) UCC). As laid down in Article 89(5) UCC, there is a possibility for the application of a comprehensive guarantee to cover the amount of import or export duty corresponding to the customs debt in respect of two or more operations, declarations or customs procedures.

There is a possibility to apply for a comprehensive guarantee to be reduced for charges which may be incurred (Article 95(2) UCC). An AEO authorisation is not necessary to benefit from a waiver or reduction in the level of the guarantee for potential debts²¹. Nevertheless certain AEO criteria will have to be met; high level of control of the operations and of the flow of goods and financial solvency (the criteria laid down in points (b) and (c) of Article 39). The benefits from reduced levels of guarantees or a waiver for potential debts dependent on criteria being met in Article 84 UCC DA and the level of the amount to be covered by the comprehensive guarantee are laid down in Article 158 UCC IA.

New under the UCC is the comprehensive guarantee with reduced amount for existing customs debts and charges. According to Article 95(3) UCC, only the holders of an AEOC authorisation are entitled to request comprehensive guarantee with a reduced amount in

²¹ A potential debt is one which is due or may become due at a later date.

order to cover the payment of actual debts²². There is no reduction available for the actual debts to businesses without an AEOC authorisation under the UCC.

Article 95 Comprehensive guarantee

(1) The authorisation referred to in Article 89(5) shall be granted only to persons who satisfy all of the following conditions:

- (a) they are established in the customs territory of the Union;
- (b) they fulfil the criteria laid down in point (a) of Article 39;
- (c) they are regular users of the customs procedures involved or operators of temporary storage facilities or they fulfil the criteria laid down in point (d) of Article 39.

(2) Where a comprehensive guarantee is to be provided for customs debts and other charges which may be incurred, an economic operator may be authorised to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver, provided that he or she fulfils the criteria laid down in points (b) and (c) of Article 39.

(3) Where a comprehensive guarantee is to be provided for customs debts and other charges which have been incurred, an authorised economic operator for customs simplification shall, upon application, be authorised to use a comprehensive guarantee with a reduced amount.

(4) The comprehensive guarantee with a reduced amount referred to in paragraph 3 shall be equivalent to the provision of a guarantee.

The holders of AEOC will eligible to benefit from a 0% guarantee (waiver) for potential debts (Article 158(1) UCC IA) and a reduction to 30% guarantee for the deferment account; i.e. the actual debt (Article 158(2) UCC IA). Thus, this is a single comprehensive guarantee covering charges which may be incurred (potential debt) and charges which have been (actual debt) incurred.

Article 158 UCC IA: Level of the comprehensive guarantee

(1) For the purposes of Article 95(2) of the Code, the amount of the comprehensive guarantee shall be reduced to:

- (a) 50% of the part of the reference amount determined in accordance with Article 155(4) of this Regulation where the conditions of Article 84(1) of [Delegated Regulation (EU) 2015/... supplementing Regulation (EU) No 952/2013] are fulfilled;
- (b) 30% of the part of the reference amount determined in accordance with Article 155(4) of this Regulation where the conditions of Article 84(2) of [Delegated Regulation (EU) 2015/... supplementing Regulation (EU) No 952/2013] are fulfilled; or
- (c) 0% of the part of the reference amount determined in accordance with Article 155(4) of this Regulation where the conditions of Article 84(3) of [Delegated Regulation (EU) 2015/... supplementing Regulation (EU) No 952/2013] are fulfilled.

(2) For the purposes of Article 95(3) of the Code, the amount of the comprehensive guarantee shall be reduced to 30% of the part of the reference amount determined in accordance with Article 155(3).

²² An actual debt is one which becomes due immediately on import.

4.2 Movement of Goods in Temporary Storage

An authorisation from the customs authorities shall be required for the operation of temporary storage facilities, which will be only granted to AEOC since the necessary assurance of the proper conduct of the operation need to be provided. Moreover, a guarantee need to be provided in accordance with Article 89 UCC.

Article 148(5) UCC will allow the ability of non-Union goods in temporary storage within the Union to be moved across Member States outside of the transit procedure under the condition that such movements would not increase the risk of fraud. Provided for this purpose without any customs duty or input turnover tax being collected. Such movement is covered by only one authorisation, issued to an AEOC (Article 148(5)(b) UCC).

Article 148 UCC: Authorisation for the operation of temporary storage facilities

(5) The customs authorities may authorise the holder of the authorisation to move goods in temporary storage between different temporary storage facilities under the condition that such movements would not increase the risk of fraud, as follows:

- (a) such movement takes place under the responsibility of one customs authority;
- (b) such movement is covered by only one authorisation, issued to an authorised economic operator for customs simplifications; or
- (c) in other cases of movement.

New under the UCC, the period of non-Union goods in temporary storage shall be placed under a customs procedure or re-exported has been extended to a maximum of 90 days (Article 149 UCC), contrary to a maximum of 45 or 20 storage days currently applicable in the case of goods carried by sea or goods carried otherwise than by sea, respectively.

4.3 Centralised Clearance

The SASP will be replaced by centralised clearance in the UCC with the aim of facilitating trade. Centralised clearance allows an AEOC operator to declare goods at the customs authority where the operator is established in order to perform the customs formalities, irrespective of the Member State in which the goods are entering into or leaving the EU. A transfer of the goods to the authorised location is possible, subsequently a periodic supplementary declaration must be lodged. This allows companies to conduct all of their EU business with one customs office. Centralised clearance will allow economic operators to centralise and integrate accounting, logistics and distribution functions with consequent savings in administrative and transaction costs, thus providing businesses a real simplification²³.

Centralised clearance can be authorised only for AEOC (Article 179(2) UCC) and if at least two Member States are involved (Article 232 UCC IA). The conditions covered are the same

²³European Commission, Single Authorisation for simplified procedures (SASP) / Centralised Clearance, http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/centralised_clearance/inde_i_en.htm, 15.01.2016

as the conditions for granting authorisations for EIDR (Article 149(2) UCC DA). According to Article 149 UCC DA, centralised clearance shall pertain to any of the following: (a) release for free circulation; (b) customs warehousing; (c) temporary admission; (d) end-use; (e) inward processing; (f) outward processing; (g) export; (h) re-export.

The customs office at which the customs declaration is lodged and the customs office at which the goods are presented shall exchange the information necessary for the verification of the customs declaration and for the release of the goods (Article 179(4) UCC). According to Article 231 UCC IA, the holder of the authorisation for centralised clearance shall have the goods presented at a competent customs office as set out in that authorisation by lodging at the supervising customs office any of the following: (a) standard customs declaration (Article 162 UCC); (b) simplified declaration (Article 166 UCC); (c) EIDR (Article 234(1)(a) UCC IA).

Article 179 UCC: Centralised clearance

(1) The customs authorities may, upon application, authorise a person to lodge at a customs office responsible for the place where such person is established, a customs declaration for goods which are presented to customs at another customs office.

The requirement for the authorisation referred to in the first subparagraph may be waived where the customs declaration is lodged and the goods presented to customs offices under the responsibility of one customs authority.

(2) The applicant for the authorisation referred to in paragraph 1 shall be an authorised economic operator for customs simplifications.

This concept is due to be introduced in 2020. Therefore, the SASP remains until the centralised clearance is implemented. Currently, centralised clearance is under heavy negotiation, which may be due to the fact that besides customs duties, national taxes, such as VAT and excises, also applies when declaring goods in the EU. Conversely, unlike customs, VAT and excise legislation is a national legislation. This leads to differentiation in treatment, depending on where the goods enter the EU. Moreover, the IT solution to facilitate the exchange of data between customs authorities and economic operators, which will be in place in 2020.

4.4 Entry into Declarant's Records with a Waiver of the Obligation for the Goods to be Presented

The LCPI will become EIDR under the UCC. The customs declaration is lodged directly in the declarant's records, including a simplified declaration, in the form of an EIDR. Which are at all times accessible electronically by the customs authorities. According to Article 182(3) UCC, the customs authorities may, upon application, waive the obligation for the goods to be presented. In that case, the goods shall be deemed to have been released at the moment of EIDR.

In order for an authorisation to lodge a customs declaration in the form of an EIDR to be granted in accordance with Article 182(1) UCC, the application shall pertain to any of the

following (Article 150 UCC DA): (a) release for free circulation; (b) customs warehousing; (c) temporary admission; (d) end-use; (e) inward processing; (f) outward processing; (g) export; (h) re-export.

Article 150(4)(b) UCC DA limits the uses of EIDR at export or re-export to cases where the office of export and the office of exit are the same unless specifically agreed between the offices of exit and export ensuring that the goods are subject to customs supervision on exit.

Only AEOC may be authorised not to present the goods, i.e. waive the obligation for the goods to be presented, only if the supervising customs office has access to all the necessary information it considers necessary to enable it to exercise its right to examine the goods should the need arise (Article 182(3) UCC). Referred to Article 234(1)(f) UCC IA, the holder of the authorisation for the operation of temporary storage facilities has the information necessary to prove the end of temporary storage.

Article 182 UCC: Entry in the declarant's records

(1) The customs authorities may, upon application, authorise a person to lodge a customs declaration, including a simplified declaration, in the form of an entry in the declarant's records, provided that the particulars of that declaration are at the disposal of the customs authorities in the declarant's electronic system at the time when the customs declaration in the form of an entry in the declarant's records is lodged.

(2) The customs declaration shall be deemed to have been accepted at the moment at which the goods are entered in the records.

(3) The customs authorities may, upon application, waive the obligation for the goods to be presented. In that case, the goods shall be deemed to have been released at the moment of entry in the declarant's records. That waiver may be granted where all of the following conditions are fulfilled:

(a) the declarant is an authorised economic operator for customs simplifications;

(b) the nature and flow of the goods concerned so warrant and are known by the customs authority;

(c) the supervising customs office has access to all the information it considers necessary to enable it to exercise its right to examine the goods should the need arise;

(d) at the time of the entry into the records, the goods are no longer subject to prohibitions or restrictions, except where otherwise provided in the authorisation.

However, the supervising customs office may, in specific situations, request that the goods be presented.

4.5 Self-Assessment

New under the UCC, Article 185, AEOC operators can be authorised to perform customs formalities which usually can only be carried out by the customs authorities. According to Article 152 UCC DA, AEOC with authorisations for self-assessment may be authorised to carry out controls, under customs supervision, of compliance with prohibitions and restrictions as specified in the authorisation.

Article 185 UCC: Self-assessment

(1) Customs authorities may, upon application, authorise an economic operator to carry out certain customs formalities which are to be carried out by the customs authorities, to determine the amount of import and export duty payable, and to perform certain controls under customs supervision.

(2) The applicant for the authorisation referred to in paragraph 1 shall be an authorised economic operator for customs simplifications.

The determination of the amount of import and export duty payable is laid down in Article 237 UCC IA. The holder of the self-assessment determines the amount of import and export duty payable in accordance with the rules laid down in the authorisation and submits a periodic declaration within ten days of the period following the period of the declaration. The amount shall be paid within ten days following notification (Article 108(1) UCC). Where a simplification as self-assessment is used, a comprehensive guarantee need to be provided (Article 195 UCC).

5. Discussion

The new customs code, the UCC, will become applicable in May 2016. In this section I will discuss the application of the UCC to AEO: changes that affect current holders of AEO and new requirements for businesses who are considering applying for AEO. There will be a transition period until May 1st, 2019 for current AEOs, AEO authorisations will be reassessed, and by which time the AEO must have met all the new UCC requirements (Article 250 UCC DA).

I convinced it is highly important for EU business to have the opportunity to benefit from the AEO customs simplifications, facilitations and more favourable treatments. Therefore future oriented solutions are necessary in order to ensure the competitiveness the EU market. To make it truly effective, the UCC DA and UCC IA should reflect the business needs. The European Commission adopted the UCC's DA and IA on 28 July 2015 and on November 2015, respectively. However, in my opinion there are large fields of uncertainty to be clarified and as the UCC is not self-executing, a number of rules which needs to be further specified. The DA and IA therefore need to be studied individually, in relation to the UCC itself and the decisions contained in body of case law to understand the breadth and depth of the changes introduced by the new EU Customs law.

The UCC aims to achieve greater legal certainty for businesses and increased clarity for customs authorities throughout the EU. It seeks to improve and simplify customs regulations and procedures, further harmonise decision-making procedures, and lead to more efficient customs transactions. The key amendment for granting the status of AEO is the new criterion of practical competence or a professional qualification and additional compliant requirements. Moreover, other key amendments for AEO that I have found includes changes to the field of centralised clearance, self-assessment and the introduction of mandatory guarantees for customs procedures. The introduction of mandatory guarantees for customs procedure is a fundamental change, which could increase operating costs for trading businesses and significantly affect the cash flows. Nevertheless, businesses with AEO status will be able to obtain guarantee waivers or guarantee reductions, which I believe is a valuable advantage.

However, some essential regulations needs more clarification in the DA and IA of the UCC; e.g. the self-assessment, centralised clearance, and new criterion of practical competence or a professional qualification. I would like to discuss four of my findings which in my opinion are the significant amendments on the application of the UCC to AEO: 1. Criteria for granting the status of AEO; 2. comprehensive guarantee; 3. centralised clearance; and 4. self-assessment.

Criteria for Granting the Status of AEO

Firstly, I believe that more clarification is needed on Article 27 UCC IA the criterion on the practical standards of competence or professional qualifications. Which has to be met for the application or re-assessment of AEO. In my opinion these criteria may be open to local

interpretation. The European Commission has developed an EU Customs Competency Framework²⁴, which includes the training curricula for customs.

Currently, none of the certificates in the customs field are recognised in the Netherlands. However, under the UCC the customs courses need to be accredited. It is not yet clear who will be responsible for the accreditation of the customs courses. Moreover, I am wondering whether and to what extent other Member States are able to provide those accredited training. Furthermore, how will this criteria be assessed by customs in different Member States. I suppose that more clarification is needed which clearly sets out the criteria to be met for practical standards of competence or professional qualifications in order to apply for AEOC or the re-assessment of the current holders of AEOC (transitional period until May 2019, by which time the AEO must have met all the new UCC requirements).

Furthermore, the UCC aims to promote further the harmonisation and uniform application of customs legislation, which ensures the compliance with the customs rules. However, the lawful imposition of sanctions, lies within Member States' national legislation. Consequently, customs legislation enforcement follows 28 different sets of legal rules. Member States can impose sanctions that seem appropriate to them as penalties for infringements of certain obligations stemming from the harmonised EU customs legislation. Such sanctions differ in nature and severity according to the Member State that is competent for it. Namely, they are of different types of: e.g. imprisonment, fines, temporal or permanent disqualification from the practice of industrial or commercial activities²⁵. These differences in infringements to the customs legislation and sanctions have implications for the economic operators. It has impact on the access to customs simplifications and facilitations or to the process of being granted the AEO status as the criterion referring to compliance with customs legislation and the absence of serious infringements as a condition for obtaining the AEO status, is interpreted in a different way by national legislations.

Comprehensive Guarantee

Secondly, the introduction of a comprehensive guarantee in the UCC enables operators to combine all of their current guarantees for different procedures and deferred payment into one guarantee. AEOC is not needed to benefit from a waiver or reduction for a guarantee for potential debts. Nevertheless, certain AEO criteria will have to be met; high level of control of the operations and of the flow of goods and financial solvency (the criteria laid down in points (b) and (c) of Article 39 UCC). However, AEOC authorisation is needed in order to reduce the guarantee to cover the payment of actual debts (e.g. reduce the amount of deferment guarantee). Thus, in my opinion the introduction of a comprehensive single guarantee for all special procedures are facilitating the trade.

However, I am a bit concerned about the fact that guarantee for temporary storage facilities becomes mandatory in comparison to current legislation where it is national discretion under the CCC. Nevertheless, if economic operators want to benefit at least from the use of a

²⁴European Commission, EU Customs Competency Framework, http://ec.europa.eu/taxation_customs/common/eu_training/competency/index_en.htm, 13.12.2015

²⁵ Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions. COM(2013) 884 final, 2013/0432 (COD), 13.12.2013

comprehensive guarantee (including reduced levels and waivers) in the future, they have to apply for the relevant authorisation before 1 May 2016. Unfortunately, because of the time constraints, economic operators cannot be sure that their application will be processed to ensure that they will receive their authorisations before the date when a guarantee will be required. I consider that the effect of the above-mentioned issue might be harmful for trade in the EU, since the new guidance and processes including application forms, are in development and will be available by spring 2016.

Centralised Clearance

Thirdly, the details of centralised clearance are still under discussion. However, the basic theory is that it allows economic operators to lodge import and export declarations at one place, where the operator is established. However, real simplifications for economic operators are not yet achievable. Three barriers have yet not been overcome: VAT and excise duties at import could be more harmonised, prohibition or restrictions at import, and export declarations²⁶. Unlike customs duties, VAT and excise legislation is governed by a Directive, leaving room for the Member States to make its own arrangements. This leads to differences in treatment, depending on where the goods enter the EU.

To make centralised customs clearance applicable, a solution needs to be found for the administrative requirements which are linked to customs clearance. The most important topics here are the import VAT and the statistic declarations. I support the idea of that an EU-wide electronic "import-VAT-portal" (i.e. FISCUS programme²⁷) should be implemented which will guarantee Member States customs duties and tax collection. The IT solution to facilitate the exchange of data between customs authorities and economic operators will be functioning in 2020. The solution for the three aforementioned barriers remains to be seen.

Self-Assessment

Lastly, AEO accredited businesses may apply for the authorisation for self-assessment. Which would enable the businesses to reduce their administration costs by taking the import function in-house. Being able to make periodical simplified customs declarations would generate significant time and cost savings. In the Netherlands the electronic periodic declaration for the stock movement of the customs warehouse are already available. Companies that hold authorisations for; a customs warehouse, and the local clearance procedure entry into free circulation, or the simplified declaration entry into free circulation according to the CCC, are obliged to submit monthly declaration within ten days of the month following the period of the declaration. However, I am wondering whether and to what extent other Member States are able to provide the facilitation for self-assessment. Furthermore, the scope is still under discussion. Customs activities to be covered by self-assessment have yet to be defined. It may be limited to declarations to free circulation or include all customs declarations.

²⁶ Bundesverband der Deutschen Industrie e.V. (2015), Discussion Paper: Centralised Clearance.

²⁷ Proposal for a Regulation of the European Parliament and of the Council establishing an action programme for customs and taxation in the European Union for the period 2014-2020 (FISCUS). COM(2011) 706 final, 2011/0341 (COD), 9.11.2011

6. Conclusion

The new customs code, the UCC, will become applicable in May 2016. There are a number of changes that the UCC brings for AEO and impact the way that business currently operates. This paper provides an analysis of the application of the UCC on AEO in the EU. A compilation of answers to question “What does the UCC mean for AEO?” will be given hereinafter.

Firstly, the status of AEO will comprise of two types; AEOC and AEOS. Nevertheless, article 38(3) UCC specifically notes that both types of authorisations may be held at the same time. Moreover, a reference is made in Article 38(7) UCC to mutual recognition of the AEO status which is based on the principle of reciprocity and shall be supported by international agreements.

Secondly, the criteria for granting the status of AEO are laid down in Article 39 UCC. Under the UCC additional requirements and a new criteria has been added which economic operators have to meet in order to become and remain AEO certified. These are the additional requirements mentioned in; Article 39(a) and (e) and a new criteria mentioned in Article 39(d). A new criterion has been introduced concerning practical standards of competence or professional qualifications for AEOC. In addition, the current test on compliance with customs rules has been expanded, the AEO needs to be compliant to the taxation rules, and have not a record of serious criminal offences. Moreover, an additional requirement for AEOS; which must appoint a contact person competent for safety and security related issues. There will be a transition period until the 1st of May 2019 for current AEO. The AEO authorisations will be reassessed and by which time the AEO must have met all the new UCC requirements

Lastly, for many authorisations and simplifications within the UCC, companies need to meet the customs simplifications AEO criteria. It is not mandatory to become an AEOC unless the company wishes to be authorised for one of the following customs simplifications:

- To obtain a comprehensive guarantee with reduced amount for existing customs debts and charges;
- To be authorised for movement of goods in temporary storage;
- To be authorised for centralised clearance;
- To be authorised for EIDR records with a waiver of the obligation for the goods to be presented;
- To be authorised for self-assessment.

Businesses holding AEO status will have advantages over businesses that do not have the AEO status. Moreover, holding an AEO will accelerate the authorisation process for additional customs simplification. Since only additional checks will be carried out concerning the expansion of authorisations of the business. Thus, in my opinion the UCC facilitates trade for AEO in the EU. This paper helps businesses to prepare for the changes for the new legislation. I am aware of some areas have been agreed only recently, and only high level principles are yet defined (e.g. centralised clearance, self-assessment, the criteria to be met for practical standards of competence or professional qualifications). It should be remembered the guidelines to assist the implementation are equally important for both customs authorities and holders of AEO, which will be available in spring 2016. Thus, the full impact of the changes in legislation, remains to be seen.

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