

Annex 1

Guidelines on eligibility conditions for an AEO and the procedure to be followed in case of multinational companies and large businesses

1. Legal notice

These guidelines explain the procedure for processing of AEO applications in case of multinational companies and large businesses. However, users are reminded that the Customs Code and the Customs Code Implementing Provisions are the only authentic legal basis and that the information in this document is not legally binding and should not be considered legal advice.

These Guidelines do not affect in any way the freedom of establishment of nationals of a MS in the territory of another MS, the establishment of foreign businesses in a particular MS or the different types of secondary establishment that a particular business has chosen to set up.

2. Abbreviations and Definitions

2.1. Abbreviations

AEO - Authorised Economic Operator

CC - Customs Code

CCIP - Customs Code Implementing Provisions

EU - European Union

EC - European Commission

DG TAXUD – Directorate General 'Taxation and Customs Union'

OJ - Official Journal of the European Union

PBE - Permanent Business Establishment

EORI – Economic Operators Registration and Identification

2.2. Definitions

According to the company law and as already used in the AEO Guidelines:

- subsidiary – an incorporated entity created in the host EU country, in accordance with one of the national business legal forms, whose capital is either fully owned by the parent company or controlled by a company in collaboration with minority local partners (a joint subsidiary);
- branch – it is not an individual legal entity; it is an office/premise/another location of the company itself and forms part of the company's total assets;

While offices, agencies and branches do not have a legal personality, subsidiaries are legally independent from their mother company.

- PBE – a fixed place of business through which the business of an enterprise is wholly or partly carried out¹.

3. Eligibility

3.1. Who can apply for an AEO status?

Article 5a(1) of the CC stipulates that the status of 'authorised economic operator' can be granted, subject to the criteria provided for in the legislation, to **any economic operator established in the customs territory of the Community**.

3.1.1 Economic operators established in the customs territory of the Community:

This main requirement implies fulfilment of two conditions: the applicant being an economic operator **and** being established in the customs territory of the Community.

Article 1(12) of the CCIP stipulates that “Economic operator means: a person who, in the course of his business, is involved in activities covered by customs legislation”.

3.1.1.1 “person” means (Article 4(1) of the CC):

- a natural person,
- a legal person,
- where the possibility is provided for under the rules in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person.

The national law of each Member State defines who is considered a natural person, a legal person or an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person.

3.1.1.2. 'person established in the Community' means (Article 4(2) of the CC):

- (a) in the case of a natural person, when he is normally resident there,
- (b) in the case of a legal person or an association of persons, when it has in the Community:
 - its registered office, or
 - central headquarters, or
 - a permanent business establishment.

3.1.2. Economic operators not established in the customs territory of the Community

The only exceptions from the requirement for being established in the customs territory of the Community are laid down in Article 14g of the CCIP. Nevertheless, a third country parent company may apply on behalf of its EU /branches if it is considered to be established in the EU by virtue of the presence of a PBE here.

¹ OECD model Treaty

3.2. Multinational or large businesses

Multinational or large businesses (regardless whether they are EU established or in a third country) usually consist of a parent company and subsidiary companies and/or PBE/branches which can be in one or several MS. Although being a PBE of the same parent company these separate entities can have different legal status in the different MS as the legal form under which they operate in each MS depends on how they have chosen to operate and mainly on the national legislation of the MS concerned. As a result a parent company may have some of its PBEs considered individual legal persons in some MS (i.e. an individual legal entity registered in the company register of that member state as established in that member state according to the MS's company law) and also some PBEs which are not considered to be an individual legal entity in other MS.

Therefore the following scenarios are possible for a multinational or large business who wants to apply for an AEO status:

- all subsidiaries, and if there are any, PBEs being separate legal entities (or fall under the definition described in the third indent of Article 4(1) of the CC) **shall** apply separately for an AEO status;
- all branches, and if there any, PBEs which are not individual legal entities (or do not fall under the definition described in the third indent of Article 4(1) of the CC) **cannot** apply separately for an AEO status and one single application covering **all** of them shall be submitted by the parent company considered as a person according to the EU legislation.

NB!

It is important that in one MS the same criteria are applied when establishing the legal status of a particular company as it is unacceptable that the company is treated in a different way depending on the authorisation/decision for which it applies.

In this context, without prejudice to any definitions and other provisions applicable, the most important is not relying on how a specific entity is called but try to establish whether it can be considered as a legal entity or not. An important fact to be taken into account is whether the company has already been assigned a separate EORI number.

4. AEO application from a multinational or large business in the cases referred to in point 3.2., second bullet

Prerequisites for a successful and efficient processing of these applications are the well developed procedure and the good cooperation between all parties involved in the process.

4.1. Preparatory work

The competent customs authority of a MS immediately inform DG TAXUD for each application received from a company/entity constituting a PBE/branch of a multinational or large business which is not considered as a separate legal entity. The MS concerned

provide all the information available related to the company including full name; organisational structure, information about the parent company etc. which can facilitate the coordination with the other MS.

DG TAXUD organizes the coordination with the other MS in order to identify all PBEs/branches of the company concerned in the EU and in particular those which are considered as not being separate legal entities.

This should result in a clear picture of the structure of the parent company and its subsidiary companies and/or PBE/branches. The objective is to ensure that all of the PBEs/branches, that are not legal entities, will be covered by the single AEO application. As it is not possible to discriminate between PBEs, failing to do this could result in a very unfortunate situation in which a PBE could benefit from an AEO certificate without having being audited.

The result is communicated to all MS concerned. The MS where the application has been submitted informs the company on the non-acceptance of the application due to non-compliance with the condition for being a person and provides information regarding the MS competent for submission of the single application by the parent company.

In order to speed up and facilitate the process in the future, MS are advised to send information also for any preliminary contacts from such a company/entity preparing for application.

The information exchanged between EC and MS is done via TAXUD AEO Helpdesk.

4.2. Competent Customs Authority for submission of the single application

The single application shall be submitted by the parent company to one of the customs authorities of the MS where it has PBEs/branches, based on the following criteria:

- applying the criteria under Article 14d of the CCIP; or
- if the company has a location which has the role of an European centre/headquarters, where the applicant's general logistical management activities are conducted in the MS where it is situated;

4.3. Filling in a single application form

Normally, the application shall be filled in the official language of the MS where it will be submitted. However, some of the annexes to it which relates to a separate branch in a particular MS can be submitted in any other language acceptable by the MS concerned.

Particularities to be filled in:

- Box 1 = name of the parent company (EU or third country) + all the EU PBEs names
- Box 4 = addresses of all EU PBEs
- Box 9 = the EORI number of the parent company² + all the registration numbers of all EU PBEs (VAT or TIN if VAT is not available)

² TAXUD/2008/1633 rev.1.9

- Box 12 = economic activity = codes instead of free text
- Box 16-18 = offices of all EU PBEs

One self-assessment questionnaire can be submitted with the single application however it shall contain the information for all the PBEs/branches included in the application.

5. Examination of the criteria

Regarding the consultation to be done the general rules should be the same used in the case where premises are located in other MS. The competent issuing customs authority has to start mandatory consultation at least with the MS where the other EU PBEs/branches where customs related activities are carried out are located. However the range of consultation might depend on the individual cases (e.g. common corporate standards applied by the company etc).

All the EU PBEs/branches where the customs related activities are carried out are to be checked by the individual MSs where the particular PBEs/branches are located.

The results of the individual checks should be sent to the issuing MS.

The time-limits under Articles 14m(1) and 14o applies *mutatis mutandis*. However, the consulted customs authority may ask for an extension of the period in order to make the necessary checks.

6. Management of the AEO certificate

6.1. Issuance of the certificate

As in all other cases the acceptance of an AEO application does not necessarily have the consequences of issuing an AEO certificate. In this particular case all PBEs/branches have to comply with the criteria so that the AEO certificate can be issued by the competent customs authority.

Only one AEO certificate is issued to the parent company and in case it is a third country company the certificate is with limitation only for his EU business, covering **all** the PBEs/branches in the EU without legal personality.

6.2. Monitoring and re-assessment

The audit plans for monitoring after the issuance of the certificates are elaborated and the relevant activities are carried out by the customs authorities of the MS where the separate PBEs/branches are situated. However it should be always done in close cooperation with the issuing customs authority in order to avoid any possible overlaps or duplication of activities.

Where it is necessary each of the MS where the separate PBEs/branches are situated can ask the issuing customs authority to start a reassessment of the conditions and the criteria.

In case the parent company establishes a new PBE/branch or it goes through a restructuring process which has an impact on PBE/branches, it shall inform the issuing customs authority which takes the necessary measures including a reassessment if started, if necessary.

6.3. Suspension and revocation

The issuing customs authority can take steps for suspension or revocation on its own initiative or on request by the customs authorities of any of the other MS, and in particular where the separate PBEs/branches are situated.

In these cases the suspension or revocation is of the entire AEO certificate regardless of the fact which of the PBEs/branches no longer complies with the relevant conditions or criteria.