

6 October 2005

UNICE preliminary comments on the draft implementing provisions of the Community Customs Code

Doc. TAXUD/1250/2005 of 4 July 2005

Summary

UNICE welcomes the European Commission's consultation on the implementing provisions of the Community Customs Code concerning the new security measures. European business supports efforts to increase security and shares the need to streamline customs procedures. However, security and trade facilitation must be mutually supportive to maintain a satisfactory balance between increased security controls and facilitation of legitimate trade.

UNICE fully endorses the objective of granting a special status to reliable companies (Authorised Economic Operator, AEO) with high accounting and security standards, insofar as this status genuinely results in reducing costs for business through facilitation and simplification.

To ensure the acceptance of the concept as a reliable partnership between traders and governments, it must be ensured that AEO companies will benefit from major simplifications and lower controls than those companies not having this status.

In the draft implementation regulation, however, the procedure for obtaining the AEO status is subject to complex and questionable conditions and provisions, whereas the actual benefits of the AEO status remain insufficient. UNICE strongly believes that AEOs must be granted clear benefits, including a complete waiver from the prior declaration.

UNICE seeks fundamental revision of the present draft and believes that more ambition is needed in the proposed reform, so as to seize the opportunity to genuinely simplify procedures and achieve true trade facilitation for the AEO.

UNICE looks forward pursuing the dialogue with the Commission and other interested partners on this important issue for European companies.

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of the Community Customs Code
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UNICE welcomes the European Commission's consultation on the implementing provisions of the Customs Code (CCIP) concerning the new security measures. It is an important opportunity to express its views on a key area for the future competitiveness of European companies in the trade field.

This proposal responds to a priority objective, that of ensuring security on Community territory. UNICE supports efforts to increase security and shares the need to streamline customs procedures in the EU and adapt rules to a modern IT-based and more secure environment. However, **security and trade facilitation must be mutually supportive** to maintain a satisfactory balance between the increase in controls created by the security measures and facilitation of legitimate trade. It is essential to avoid over-zealous security measures which ultimately raise new trade barriers.

UNICE fully endorses the objective of granting a special status to reliable companies with high accounting and security standards, insofar as this status genuinely results in reducing costs for business through facilitation and simplification. However, the future AEO status should by no means be less effective than the trade benefits that are currently granted in some EU Member States. The future significance of the Authorised Economic Operator (AEO) status therefore highly depends on the criteria to be fulfilled versus the expected benefits for the companies in question. To ensure the acceptance of the concept as a reliable partnership between traders and governments, it **must be ensured that AEO companies will benefit from major simplifications and lower controls** than those companies not having this status.

In the draft implementation regulation, however, it becomes clear that the **procedure for obtaining the AEO status is subject to complex and questionable conditions and provisions**, whereas the actual benefits of the AEO status remain insufficient, in particular compared to trading benefits currently granted. Indeed, an AEO would only be required to provide 31 data compared to the current 32. Questions might also be asked about the cost / benefit ratio.

UNICE believes that pre-arrival and pre-departure declarations will certainly require significant additional financial and organisational efforts and will probably lead to major delays in the movement of goods. New administrative and financial burden is particularly delicate for SMEs and for companies with a significant volume of external trade. If these companies cannot manage the additional requirements, this would cause serious damage to European competitiveness. The implementing provisions must be reconciled with the requirements of modern international trade and production, global sourcing and the international division of labour. This applies especially to simplified customs procedures. **Therefore, we strongly believe that AEOs must be granted clear benefits, including a**

complete waiver from the prior declaration. Further consultation with economic operators on this issue is necessary.

UNICE seeks **fundamental revision of the present draft and believes that more ambition is needed in the proposed reform**, so as to seize the opportunity to genuinely simplify procedures and achieve true trade facilitation for the AEO.

Efficient movement of goods will be guaranteed if the AEO status is granted to companies in **specific third countries** (e.g. enclaves within the EU or EFTA countries). Moreover, the EU should make strong efforts to secure high acceptance of AEOs on international level.

The new Customs Code must be implemented when the necessary new **IT systems are operating**. The Commission and the EU Member States cannot organise a uniform level of control within the Community and create harmonised risk analysis criteria without a computerised system in place.

Comments on specific articles

Art. 4d (2)

UNICE favours the establishment of EU-wide standards, more than agreements between different customs administrations. Work should be developed to ensure compatibility with international standards.

Art. 4g (5)

Guidelines can help to clarify standards and criteria for risk management, but they should be prepared in consultation with the main stakeholders and avoid transferring points from the implementing provisions to them.

Art. 14a

The status of AEO must be available to companies from all sectors, including logistic firms, exporting and forwarding companies.

Art. 14b

(2)

Access to company data should be restricted to the minimum, and implemented when an AEO has committed an infraction. Appropriate measures must be taken to prevent company data from being transferred to unauthorised persons outside customs administrations.

(3)

UNICE believes that the formulation of the requirements of additional information for AEO applicants should be reviewed to avoid customs authorities delay any application without repercussions on the time limits set in Article 14m, paragraph 2.

Art. 14c

The reference to access to the “main accounts” should be clarified, and accounts have to be related to the AEO status and not to the company in general. Applications should be made, if possible, in the country where the applicant’s main accounts are kept.

Art. 14d

The wording of the article is too general and needs further specification, as “penal proceedings” may relate to issues that have little or nothing to do with customs issues. The wording should mainly refer to AEO applicants which have been subject to criminal conviction.

Moreover, the penal proceedings mentioned in the last paragraph are not harmonised and may differ in EU Member States. Depending on where a company has its main account this may lead to a different outcome.

Art. 14f

Including the main shareholders of the applicant does not seem proportionate. Moreover, the wording “fiscal compliance” should be clarified.

Art. 14g

The necessary adjustments needed to comply with the proposed bureaucracy and information requirements for AEOs will cause costs and new burden to the companies, which will be particularly difficult for SMEs, the backbone of the EU economy.

(b)

This article seems to imply that all records should be accessible for custom authorities. The data to which access is provided should be clearly specified, in line with prior established criteria, and that access should be ex-post and not on line. UNICE believes that greater access to in-company data should be restricted to an absolute minimum, based on the principles of strict confidentiality or data protection. In any case, appropriate measures must be taken in order to prevent company data from being transferred to unauthorised persons.

(d)

The requirement to have a logistical system that guarantees to distinguish between Community and non-Community goods needs further consideration. For customs purposes it is not necessary to distinguish physically between Community and non-Community goods in case processing is done under the equivalence principle. It should be enough to document the incoming and outgoing goods to and from a facility in order to assure that a control under security aspects can be carried out for the respective supply chain.

(h)

The requirement of an “anti smuggling policy” does not fit into European legal traditions. The respect of existing rules and requirements is current practice in European companies and goes without saying. No specific “policy” is needed to reinforce this normal behaviour.

Art. 14h

Companies cannot provide evidence that they will be solvent in the near future. Regarding the reference to the “parent company” being taken into consideration, this proof should not be required considering that it is not asking for the AEO.

Art. 14i

UNICE considers that the requirements related to premises and people are very detailed and huge costs will be incurred if they need to be put in place, especially for SMEs. Furthermore, it is questionable if customs authorities will have the capacity to audit all the requirements.

The requirement for periodic background checks of staff does not fit into today’s current practices and treatment of staff in the EU.

Art. 14j

Guidelines can help to ensure uniform interpretation, but they must be prepared in a transparent consultation with the main stakeholders and avoid transferring points from the implementing provisions to them.

Art. 14m

The period to issue an AEO certificate seems rather long. If the AEO certification is not granted, the reasons for declining it should be indicated to help the concerned companies improve the situation or take legal action against the decision.

The period for a decision on the application should be reduced to one month. Within this timeframe, any request for additional information (Art. 14 b paragraph 3) must be raised and decided.

Art. 14o

The status of AEO must be recognised in all EU Member States in order to be in line with the single market objective and benefit from facilitation procedures irrespective of the state in which the customs office of entry or exit is situated. The AEO certificate shall take effect as soon as it is issued.

UNICE welcomes that the period of validity of the AEO certificate shall not be limited.

(6)

Companies cannot be punished in case authorities in the Member States do not conduct the re-assessment in time.

Art. 14p

When referring to suspension or withdrawal of the AEO, UNICE believes that appeal by economic operators or guarantees to protect them against discretionary decisions should be foreseen.

(1)

The term “irregularity” when referring to activities of an AEO is too broad and can be interpreted widely. An unintentional error should not be considered an irregular activity.

(2)

The possibility to suspend an AEO for a period of 30 days seems excessive as it could block the operations of an economic operator for a month. An authorised operator must have the possibility to correct the situation before an authorisation is suspended immediately where no illegal intention exists.

Art. 14q

When referring to suspension or withdrawal of the AEO, appeal by economic operators or guarantees to protect them against discretionary decisions should be foreseen. Moreover, a period of three years for withdrawal is too long and should be reconsidered.

Art. 14r

UNICE believes that the demand for an AEO to inform the customs authorities about “all events which could affect his status” is too extensive and would bring uncertainty and a huge burden for an operator. Companies are subject to a dynamic environment with organisations that need to be adapted and change quickly and cannot inform on all events.

Art. 14s

The economic operator must have access to the information which is related to it. There must be a possibility to correct or delete wrong information in the database.

Art. 183a

In UNICE’s opinion, the status of authorised economic operator must confer genuine advantages for operators of all sizes. In particular, AEOs must be eligible for all simplifications in customs procedures. Ideally, the AEO should be waived from the obligation to submit (summary) declarations upon arrival or departure of the goods. The simplifications of this article and article 791e do not offer explicit benefits for AEOs, apart of the reduction of the required data. The Commission should therefore take this opportunity to genuinely simplify procedures for the authorised economic operators.

Art. 183b

The pre-departure or pre-arrival declarations will have a considerable impact not only for the organisation of customs clearance but for the organisation of the entire logistic chain. As stated above, an AEO should be waived from the obligation to submit (summary) declarations upon entry or departure of the goods.

Efficient movement of goods will be guaranteed if the AEO status is granted to companies in specific third countries (e.g. enclaves within the EU or EFTA countries). It is only in this way that further delays at border crossings can be avoided.

The specific logistic needs for very short transport distances need to be taken into account when time limits for the lodging of the summary declaration are defined. The time limits proposed might not be feasible in all circumstances.

Art. 183c

(1)

The extension of the time limits to lodge the summary declaration would have an important impact in the companies' supply chain involving modifications which need time to be put in place. Therefore, AEOs should be notified in advance of changes in the time limits.

Art. 183d

(1)

The risk analysis carried out at another customs office "shall be taken into consideration". This provision needs to be more strongly worded to avoid duplications.

(3)

When referring to issue notifications within "reasonable" time, companies need predictability and to know a specific delay in advance. This mention opens the door for further delays and costs for companies.

(4)

The request for multiple summary declarations whenever a vessel or an aircraft calls more than one port/airport is overstated. One pre-arrival declaration at the first port of entry must be sufficient, considering that several summary declarations would lead to serious problems with the subsequent additional declaration.

Art. 187a

It is unclear who is the person referred to in this article.

Arts. 282, 285, 286, 288, 289

Annex 30A, which is referred to in these articles, does not bring substantive simplification for the exporter. Apart from the general concerns on Annex 30A (see below), a substantially reduced data set is absolutely vital for simplified procedures. AEOs must benefit from a complete waiver to any prior declaration. For them, the reference to their authorisation in the accompanying documents must be sufficient, because these companies are collected in the respective database.

The provisions undermine the existing national simplifications which are very important for European business in several countries. According to existing simplifications it is possible for exporting companies to "announce" their exports (goods and destination countries) in advance and then give a monthly declaration afterwards about the precise amount of products they have exported. This simplification is only granted upon previous authorisation from the customs administration and refers - of course - only to non-sensitive goods which are not subject to export controls. If the new implementing regulation does not foresee a complete waiver for AEOs, these simplifications will become worthless, because then the company would have to declare every single shipment. The possibility of a complete waiver is absolutely vital for any company which has a significant export volume.

Art. 791e

UNICE has the same remarks that for article 183a. Simplifications included in this article are extremely limited. Only one item is not to be supplied for the export declaration ("method of payment of transport charges"). Steps should be taken to exclude the AEO completely from summary declarations.

Art. 793

It would be necessary to conform the document's provisions with the timing foreseen by the e-customs system. Asking for documents in a paper format could be in contradiction with the requirements to use IT systems.

Annex 30A

In UNICE's opinion, the data elements proposed in this annex will give rise to practical problems as they differ from the elements contained in documents used today, mainly the TIR Carnet and the CMR consignment note. The demand for information about the goods transported by means of the HS code give rise to both practical and legal issues, recognised by the WCO. The Commission should accept the goods description as it exists in the TIR Carnet and in NCTS.

Moreover, the data set is too complicated as many data do not exist in the moment of a pre-arrival/pre-departure declaration, or they exist but at different places so it is too difficult to collect this information for a timely declaration.

The most problematic element is the demand for information about the freight cost. It is highly questionable if freight costs are a relevant information for security and if the information is available. It cannot be accepted that the transport operator should provide the customs authorities in a foreign country with commercial confidential information about the transport price agreed between our member and his client.

Regarding the commodity code and the simplified procedures at import, the 10-digit TARIC code would be more demanding than the normal procedures.

Conclusion

UNICE thanks the European Commission for the opportunity to submit its views, which it might further complement in the future. In order to reach the objectives of the Community Customs Code as well as to ensure trade facilitation for the business community, realistic solutions have to be evaluated in close cooperation between customs authorities and economic operators.

UNICE looks forward pursuing the dialogue with the Commission and other interested partners on this important issue for European companies.
