

AUTHORIZED ECONOMIC OPERATOR IN THE EURASIAN ECONOMIC UNION: PROSPECTS OF MUTUAL RECOGNITION

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The article is devoted to the modernized institution of Authorized Economic Operator (AEO) in the Eurasian Economic Union (EEU) and practical recommendations on Mutual Recognition of AEO of the Republic of Belarus with the People's Republic of China (PRC). The article provides a detailed analysis of the norms regulating the institution of AEO in the Republic of Belarus, including benefits and conditions for granting the status of AEO. Also there are some norms concerning the AEO institution in the PRC. Furthermore, practical guidelines for developing and signing a Mutual Recognition Agreement are proposed.

Key words: Authorized Economic Operator; Eurasian Economic Union; special benefits; conditions for granting the status; mutual recognition; People's Republic of China; recommendations.

The Customs Code of the Eurasian Economic Union entered into force on January 1th, 2018. That is why the modernized institution of the Authorized Economic Operator (AEO) in the Eurasian Economic Union (EEU) attracts our attention.

It should be noted that in the new version of the Code institution of AEO underwent significant changes, both in terms of benefits provided for AEO, and in terms of the conditions for issuing AEO certificates. In the new Code there are 3 types of certificates confirming the status of the AEO. Benefits depend on the type of certificate.

It is important to notice that the project of the Code was developed taking into account the interests of the business community with its direct participation. Its new provisions are progressive and in general correspond to advanced world practices.

The issue of Mutual Recognition (MR) of the AEO becomes relevant for our country. The new code identify, for the first time, MR of AEO: with all EEU member states; with countries that are not members of the EEU, in the framework of international agreements of the EEU with a third country; with countries that are not members of the EEU, in the framework of international agreements of a member state of the EEU with a third country [2].

At the same time, not all issues of customs regulation are finally regulated by the new Code. A wide competence for their improvement is given to the Eurasian Economic Commission and national legislations of the EEU member

states. One of such issues is the mechanism of MR of the AEO with other countries.

Thus, in this research, emphasis will be placed on a detailed study of the innovations of the AEO institution in the EEU and PRC and consideration of the prospects of MR of the AEO in EEU with the AEO in PRC.

As it was mentioned before, the institution of AEO in the new edition of the Code has undergone significant and progressive changes.

The new Code (art. 437) provides a wider range of *special benefits*. Based on the new Code, it can be concluded that the key benefits for AEO-1 are the performing of customs operations on a priority basis and not providing security for fulfillment of the obligation to pay customs duties.

Analysis of the benefits for AEO-2 allows us to conclude that these types of AEO are interested in placing and storing goods on their own premises.

The third type certificate shall give the AEO the right to benefit from the special simplified procedures referred to AEO-1 and AEO-2.

In addition, during the transition period, for AEO registered earlier and not having received a certain type of certificate, 5 definite benefits will be effective within 2 years from the entry into force of the new Code.

Thus, the new Code provides much wider range of benefits for AEO. In addition, each type of AEO has its own set of special benefits, which will allow them to choose the type that best suits activities of the AEO. For example, for AEO-1, there are benefits that affect the accelerated fulfillment of customs operations. AEO-2 is most attractive for owners of warehouse and logistics complexes. If the AEO is interested in the whole range of benefits, then AEO-3 is envisaged for this.

The *terms for inclusion* in the AEO Registry have changed with the entry into force of the new Code. The mechanism for the phased reduction of the security for fulfillment of obligations of the duty for AEO-1 is very progressive and should attract AEO, while allowing them to invest ever larger amounts in their direct activities every year rather than in security for fulfillment of obligations of the duties.

Among the submitted conditions for inclusion in the AEO Registry, the most advanced is determining the compliance of the financial sustainability of AEO. This condition can be considered as an alternative to security for fulfillment of obligations however, unlike security, the definition of financial stability allows AEO to save money for the production cycle.

The conditions for including a legal person in the Register of AEO by way of issuance of the third type certificate shall be as the conditions for AEO-2.

As we can see, a significant block of conditions for inclusion in the AEO register is assigned to security issues. All this shows that the new Code was developed taking into account the best world practice [2].

AEO in the People's Republic of China. The General Administration of China Customs (GACC) joined the WCO SAFE Framework in 2005, and the first AEO program was developed in 2008. China Customs changed its AEO classification system in 2014. In general, the revised regulations simplify processes and make it easier for new companies entering China to qualify for simplified customs procedures. The new rules also bring China's system into closer alignment with AEO legislations outlined in the WCO framework leading to greater MR in the future.

The GACC formulated Interim Measures for Enterprise Credit Management (decree № 225 of GACC, referred to as IMECM), which came into force on December 1st, 2014. In summary, the decree states that Customs will determine the status of an enterprise, based on those that act in good faith and in compliance with laws. Alternatively, Customs will take appropriate measures on those that lose credit and are non-compliant with the laws.

IMECM (decree) is a mechanism to determine the status of an enterprise from three broad categories:

1. Certified enterprise – A certified enterprise is an Authorized Economic Operator (AEO) recognized by Customs administrations of China. There are two levels of Certified Enterprises – Advanced Certified Enterprise (ACE) and General Certified Enterprise (GCE).

2. General-credit enterprise.

3. Discredited enterprise.

Classification is determined based on internal controls (including IT systems), financial conditions, compliance, trade security and “bonus criteria”. IMECM further strengthened the supervision of certified enterprises. It will conduct recertification every 3 years for ACE and conduct irregular recertification for GCE.

While, MR of China's enterprise credit system was limited, the new regulations bring it into alignment with WCO guidance. This supports China's initiatives and activities in actively working with the other AEO countries for MR and associated benefits.

As of November 31st, 2016, China registered 35,778 GCE and 3475 ACE. Only ACE have the right to participate in the MRA. To date, China has concluded MRA with the EU, Singapore and South Korea. Also, relevant MRA are being developed with Japan, the United States, Switzerland, Israel and New Zealand. China is at the stage of negotiations on the implementation of

such treaties with Turkey, India, Thailand, Australia, South Africa, Egypt, Brazil and other countries, including the Republic of Belarus.

In the light of the recent events, and also taking into account the intensive cooperation between the customs services of the PRC and the Republic of Belarus, the issues of developing and signing MRA of AEO of China and the Republic of Belarus is urgent.

For the development of the MRA of AEO between the Republic of Belarus and the PRC, taking into account the recommendations of WCO and the PRC experience, the *following steps are proposed* [1]:

1. It is important to fix an authority whose competence will include determining the possibility of the AEO's participation in the MRA. There are different types of AEO in the EEU and PRC, therefore mutual recognition of all AEOs is impossible. It is advisable to consider the comparison of AEO EEU of type 2 and type 3 with the ACE of the PRC, since this type of AEO of the PRC has the authority to participate in MRA.

2. To develop information systems in the countries-participants of the MRA, to provide data exchange on AEO.

3. Identify the conditions on the basis of which the participation of AEO in MRA will be approved.

4. Identify the benefits that will be used by AEO, visit each other and make on-site observation of the other's AEO validation process.

5. Develop lists of goods, the movement of which will use special benefits in the framework of MRA (exclude risks for national and economic security).

6. Prepare a draft of MRA.

7. Launch the pilot project, measure outcomes.

8. The entry of the MRA into force.

Practical implementation of these recommendations will show their strengths and weaknesses and will allow them to be adjusted, taking into account the interests of AEO and all states parties of this MRA.

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