

The Institution of an Authorised Economic Operator in Ukraine: Possibilities of Boosting the Competitiveness of Enterprises under the European Integration

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The introduction of the Institution of an Authorised Economic Operator (AEO) in Ukraine took place in 2020 in the context of the implementation of the obligations of the Association Agreement with the European Union (EU). In the EU, the AEO status greatly increases the competitiveness of enterprises in international markets by providing customs authorities with a number of benefits and simplifications in customs control and customs clearance of goods and strengthening the reputation of the company as a reliable partner. The key objective of the research is to study the trends in the development of the AEO Institution in Ukraine in the context of the European integration in order to identify key problems in this area and ways to solve them on the basis of European and international experience. This will intensify the authorisation of AEO Ukrainian enterprises and thereby increase their competitiveness in the EU and international markets.

Keywords: customs, customs authorities, customs control, customs clearance, simplification, benefit, Authorised Economic Operator, European integration, competitiveness

JEL Classification Codes: F13, F15, F53, K33

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Introduction

Today Ukraine is at the stage of the European integration which was formally launched in 2014 with the ratification of the Association Agreement between the European Union and its Member States and Ukraine. This document defines the basic obligations of Ukraine, the successful implementation of which should ensure the state's accession to the

European Union (EU). Section IV *Trade and trade-related issues* of the aforementioned Agreement provides for the gradual formation of a free trade zone between Ukraine and the EU states. The harmonisation of Ukraine's customs processes with EU standards and norms plays an important role in accomplishing this task. In particular, Article 76 and Article 80 of Chapter 5 of the EU-Ukraine Association Agreement provide for the introduction of

the Institution of an Authorised Economic Operators (AEO) by providing special customs simplifications and benefits for law-abiding businesses, as well as ensuring the conditions for mutual recognition of AEOs by Ukraine and the EU states.¹

The need for implementation and mutual recognition of an AEO is also dictated by the provisions of the Trade Facilitation Agreement of the World Trade Organization, of which Ukraine is a member. Article 7 of this Agreement states that a country must provide additional trade facilitation measures related to import, export or transit formalities and procedures to authorised operators who meet the established criteria. In addition, states should provide opportunities for mutual recognition of AEOs to enhance trade facilitation measures.²

Given all the above, the purpose of this article is to study the trends in the development of the AEO Institution in Ukraine in the context of the European integration to substantiate promising opportunities for boosting the competitiveness of Ukrainian AEO enterprises in the EU and international markets.

Literature review

The introduction of the AEO institution in the world was aimed at addressing the imbalance in ensuring an appropriate level of international security in the face of increasing global threats and maximising assistance to economic operators in international trade. In response to this situation, in 2005 the World Customs Organization issued the SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework). An important achievement in the process of im-

proving the WCO SAFE Framework was the introduction of the AEO programme in 2007. The WCO SAFE Framework states that an 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.³ The AEO concept is based on the idea that businesses that meet certain requirements and thereby boost international supply chain security receive a number of benefits and simplifications, primarily related to reduced time and money spent on customs clearance of goods.

At the beginning of the 21st century, due to the intensification of external threats in the EU, it also became necessary to develop an effective internal system of customs regulation which would take into account the interests of subjects of foreign economic activity to facilitate international trade and the interests of the Community to ensure an appropriate level of public and business security (Nestoryshyn, Turzhanskyi, 2017). One of the first documents that regulated the specifics of obtaining the AEO status in the EU was Regulation (EC) No 648/2005 of the European Parliament and of the Council. According to Article 5a of this Regulation, an AEO shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules. The criteria for granting the AEO status shall include: an appropriate record of compliance with customs requirements; a satisfactory system of managing commercial and transport records which allows appropriate customs controls; proven financial solvency; appropriate security and safety standards.⁴

¹ Association Agreement between the European Union and its Member States and Ukraine of 27 June 2014. Retrieved from: http://zakon2.rada.gov.ua/laws/show/984_011

² The Protocol amending the Marrakesh Agreement establishing the World Trade Organization: Decision of 27 November 2014. Retrieved from: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/940.pdf&Open=True>

³ World Customs Organization (2021). *WCO SAFE Framework of Standards*. Retrieved from: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe-framework-of-standards.pdf?la=en>

⁴ 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. Retrieved from: <https://eur-lex.europa.eu/eli/reg/2005/648/oj>

In the current version of the EU Customs Code, an economic operator who is established in the customs territory of the Union and who meets the certain criteria may apply for the status of an AEO. The status of an AEO shall consist in the two types of authorisations: an AEO for customs simplifications, which shall enable the holder to benefit from certain simplifications in accordance with the customs legislation; an AEO for security and safety that shall entitle the holder to facilitations relating to security and safety.⁵

At the present stage it is an indisputable fact that enterprises with the AEO status have the highest competitive advantage on the international and EU market. Such an advantage relates to simplification of customs control procedures and documentation of cargo crossing the border, as well as acceleration of customs clearance of goods and systematic sending by customs authorities of relevant information on changes in the customs area. In addition, the AEO status indicates a high level of confidence of customs authorities in the company, and in terms of recognition by other countries it significantly increases its reputation in the international arena (Gwardzińska, 2014).

Research methods

To achieve the defined goals, in the article there were used research methods based on a review and comparison of national and foreign scientific and expert papers, regulations, statistical information, data from specialised national and international studies.

Research results

In 2014 the Association Agreement between Ukraine and the EU was ratified, in 2015 there

⁵ Regulation (EU) No 952/2013 of The European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

was a temporary implementation of the Deep Free Trade Area between Ukraine and the EU, while on a permanent basis the Deep Free Trade Area between Ukraine and the EU began to operate only in 2017. The work on the implementation of the AEO institution in Ukraine at the legislative level began in 2015. Then only in October 2019, the Law of Ukraine on Amendments to the Customs Code of Ukraine on Certain Issues of Functioning of Authorised Economic Operators⁶ was adopted. The key purpose of this legislative act was the gradual harmonisation of the provisions of the Ukrainian customs legislation with the EU norms and the fulfillment of obligations under the Association Agreement between Ukraine and the EU, one of which is the authorisation of the AEO. In Ukraine, the AEO status is identified with a high degree of confidence of customs authorities in the business structure, which allows the company to use a wide range of simplifications when passing the customs clearance of goods crossing the state border. AEO authorisation provides reduction of financial costs and acceleration of customs clearance of goods, reduction of customs risks, simplification of declaration procedures, etc. In the future, the mutual recognition of the AEO by Ukraine and EU countries will boost the competitive position of Ukrainian business in the EU and international market and enhance its participation in the formation of safe international supply chains.

According to Article 4 of the Customs Code of Ukraine,⁷ an authorised economic operator is an entity to which the customs authorities have granted AEO authorisation in accordance with the applicable requirements of customs legislation. An AEO authorisation may be obtained by a resident business entity performing any role in the international supply chain of goods – a manufac-

⁶ On Amendments to the Customs Code of Ukraine on Certain Issues of Functioning of Authorised Economic Operators: Law of Ukraine No 141-IX of 2 October 2019. Retrieved from: <https://zakon.rada.gov.ua/laws/show/141-IX#Text>

⁷ Customs Code of Ukraine No 4495-VI of 13 March 2012, as amended. Retrieved from: <http://zakon4.rada.gov.ua/laws/show/4495-17>

turer, exporter, importer, customs representative, carrier, freight forwarder, warehouse keeper.

The Customs Code of Ukraine clearly outlines a list of criteria that are put forward for enterprises applying for the AEO status: compliance with the requirements of the customs and tax legislation of Ukraine as well as the absence of facts of criminal prosecution; an appropriate system of accounting, commercial, and transport documentation; a stable financial position; provision of practical standards of competence or professional qualification of the responsible company official; observance of safety and security standards.

Today in Ukraine as well as in the EU enterprises can obtain 2 types of AEO certificates: on granting the right to apply special simplifications (AEO-C); on confirmation of safety and security (AEO-S). To obtain an AEO-C certificate, a company must meet the first 4 criteria mentioned above, while obtaining an AEO-S certificate requires a company to meet 1-3 and 5 of the above-mentioned criteria. At that, according to the Ukrainian legislation, an enterprise may choose the type of certificate or apply for both types of AEO certificates at the same time. As for the recognition of AEO certificates of Ukrainian enterprises-residents by customs authorities of other countries, the Customs Code notes that such recognition will be carried out in accordance with the provisions of international treaties of Ukraine.

Article 13 of the Customs Code of Ukraine clearly distinguishes between special simplifications and the benefits that holders of AEO-C and AEO-S certificates can use. Thus, an enterprise that has obtained an AEO-C certificate can use such simplifications as: a general financial guarantee; self-application of special type fillings; the simplified declaration procedure; the procedure of release by location.

In turn, a business entity that has received AEO-C authorisation can use the following advantages: performance of customs formalities on goods, commercial vehicles as a matter of priority; reducing the level of risk by the automated customs clearance system to determine the list of customs formalities for the customs clearance of goods,

commercial vehicles; the use of a specially designated traffic lane at the state border crossing point for the movement of commercial motor vehicles; the use of the national logo of the AEO.

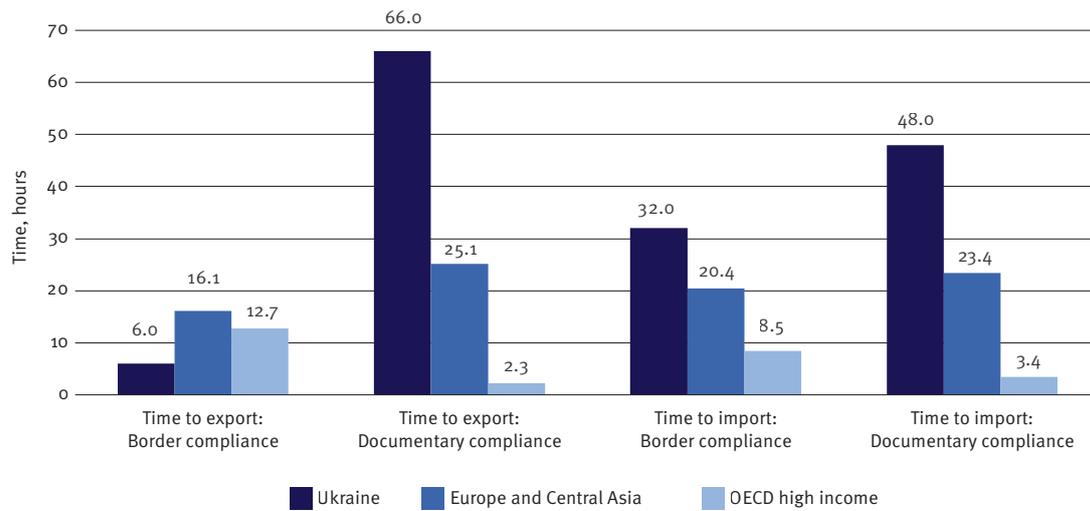
An AEO-S certified company can use the special facilitation called *self-application of fillings of a special type*. Such an enterprise is entitled to use the following benefits: receiving a notification from the customs authority that the relevant goods and commercial vehicles based on the results of risk analysis were selected for customs inspection at the checkpoint (control point) across the state border of Ukraine before moving them across the customs border of Ukraine; execution of customs formalities on goods, commercial vehicles in priority order; reducing the level of risk by the automated customs clearance system to determine the list of customs formalities for the customs clearance of goods, commercial vehicles; the use of a specially designated traffic lane at the state border crossing point for the movement of commercial motor vehicles; the use of the national logo of the AEO.

According to the provisions of the Ukrainian legislation, the customs authorities are required to maintain a unified state register of AEOs. According to the official website of the State Customs Service of Ukraine as of September 1, 2022, in Ukraine only one company has a AEO-C certificate – a manufacturer of tobacco products, JT International Company Ukraine CJSC, which received the appropriate authorisation on March 18, 2021. The first application for AEO authorisation was received by the customs authorities of Ukraine in 2020, when all the formal procedures for the implementation of the AEO Institution were completed. In total, employees of the State Customs Service of Ukraine reviewed 8 applications, 6 of which were denied a conformity assessment, and 1 application was rejected.⁸

According to the International Rating of Doing Business 2020, Ukraine ranks 74th place among

⁸ The State Customs Service of Ukraine. *The unified state register of Authorised Economic Operators*. Retrieved from: <https://customs.gov.ua/en/deiaki-pitannia-funktsionuvannia-avtorizovanikh-ekonomichnikh-operatoriv>

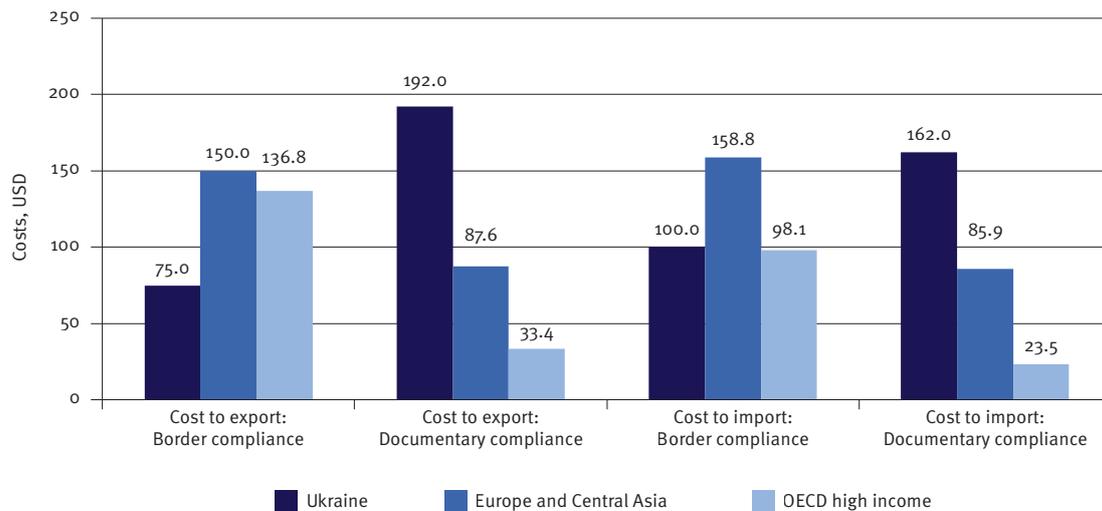
Figure 1. Comparison of time parameters of trading across borders in Ukraine, countries of Europe and Central Asia, and OECD countries with high income



Source: The World Bank (2020). Ease of Doing Business in Ukraine 2020.

Retrieved from: <https://www.doingbusiness.org/en/data/exploreeconomies/ukraine#>

Figure 2. Comparison of costs parameters of trading across borders in Ukraine, countries of Europe and Central Asia, and OECD countries with high income



Source: The World Bank (2020). Ease of Doing Business in Ukraine 2020.

Retrieved from: <https://www.doingbusiness.org/en/data/exploreeconomies/ukraine#>

190 countries in the trading across borders parameter with the score of 80.1 points. It should be noted that compared to 2019, the estimate of this parameter in Ukraine increased by 2.5 points. As experts state, one of the factors of such an improvement was the introduction of the AEO Institution in Ukraine (The World Bank, 2020).

In Figures 1 and 2 the comparison of time and costs indicators of trading across borders in Ukraine, countries of Europe and Central Asia, and OECD countries with high income is shown.

The trading across borders parameter is evaluated by such indicators as time to export and import operations for border and documentary com-

pliance, and costs to export and import operations for border and documentary compliance. Comparing Ukraine, the countries of Europe and Central Asia, and OECD countries with high income, the situation is unfavourable regarding the time to export for documentary compliance (66 hours versus 25.1 hours and 2.3 hours, respectively), the costs to export for documentary compliance (\$ 192 versus \$ 87.6 and \$ 33.4, respectively), as well as the time to import for border compliance (32 hours versus 20.4 hours and 8.5 hours, respectively), the time to import for documentary compliance (48 hours versus 23.4 hours and 3.4 hours, respectively), the costs to import for documentary compliance (\$ 162 versus \$ 85.9 and \$ 23.5, respectively) (Melnyk, Adamiv, Kots, 2019).

Figures 1 and 2 show that Ukrainian businesses spend quite a lot of time and money on border and documentary compliance for import and export operations. This points to the need to intensify AEO authorisation by Ukrainian enterprises in order to reduce time and costs for customs clearance. In the context of the European integration, the success of Ukrainian enterprises on the EU market depends largely on their competitiveness. As evidenced by international practice, at the present stage the AEO status is a significant competitive advantage, which greatly contributes to international trade and enhances the reputation of enterprises in foreign markets.

According to the calculations, AEO authorisation will allow a domestic enterprise to reduce the time and costs of customs clearance by about 30 per cent. Thus, according to the World Bank's International rating of Doing Business 2020, the time spent on customs clearance for exports for one Ukrainian business entity averaged 120 hours, of which 80 hours – at the terminal. Obtaining the AEO status will save a business 36 hours, including 24 hours at the terminal. In this case, customs clearance of exports for one domestic enterprise costs an average of \$1,500, while the AEO status will save \$450.⁹

⁹ The State Customs Service of Ukraine. *AEO in infographics*. Retrieved from: <https://customs.gov.ua/aeo-infographics>

As for imports, according to the World Bank's International Rating of Doing Business 2020, the time spent on customs clearance for one Ukrainian business entity averaged 2,272 hours, of which 568 hours were at the terminal. Obtaining the AEO status will save a business 682 hours, including 170 hours at the terminal. In this case, customs clearance of imports for one domestic enterprise costs an average of \$7,100, while the AEO authorisation can save \$2,130.9 It should be noted that the calculations did not take into account the time and cost of preparing supporting documentation for customs clearance for exports and imports.

The results of the Public Monitoring of Certain Aspects of the Customs in January-April 2021 showed that 64.7% of the respondents (customs experts, customs officials, customs brokers, foreign trade entities) are informed about the introduction of the AEO institution in Ukraine. 31.9% of the respondents indicated that they have studied the possibility of authorisation of the AEO, and 3.4% refused to give an answer. As for the enterprises' interest in receiving the AEO status, 43.2% of the respondents expressed such a desire. According to the respondents, the criteria for the AEO authorisation are quite complicated, and therefore, 13.5% of the respondents, despite their desire to obtain a certificate, indicated their inconsistency with this status. At the same time, 5.4% of the respondents are in the process of AEO authorisation (Butin, Fedets, 2021).

The Public Monitoring of Certain Aspects of the Customs gave an opportunity to reveal the shortcomings of the introduction and functioning of the AEO Institution in Ukraine, concerning mainly the complexity and slowness of obtaining the status, namely: more opportunities are for the state with such high requirements; dragging out the AEO authorisation procedure; limited access to the AEO status, a complicated questionnaire form; a limited number of places for enterprises to apply for the status (an enterprise must be a producer and an exporter at the same time). Some respondents also noted that the AEO status in Ukraine will not correspond to a similar status in EU countries and will not provide all the advantages used by enterprises in the EU market (Butin, Fedets, 2021).

It should be noted that in the first year (2020) of the functioning of the AEO Institution in Ukraine customs authorities could simultaneously consider not more than 10 applications, in the second year (2021) – not more than 20 applications, in the third year (2022) – not more than 30 applications.

At the present stage, in Ukraine the procedure of AEO authorisation is rather long-term. Thus, the preparatory stage includes test filling of the self-assessment questionnaire at the enterprise, analysis of internal processes and their adaptation to the AEO criteria, attraction of other specialised enterprises. This stage can last for several months depending on the role, size, specificity of activity, and the arrangement of internal processes of the enterprise. The next stage is the submission of documents to the State Customs Service of Ukraine, after which the AEO is authorised. Within 30 days, the customs authorities consider the application of the enterprise. After that, an assessment of the applicant's compliance with the AEO criteria takes place within 120 days, which allows for a decision on the issuance of the AEO certificate to the enterprise.¹⁰

According to experts, such an advantage as a special traffic lane at the border crossing point will not become available until 2023 at the earliest. In addition, at the present stage in practice what is not implemented is a procedure for advance notification that the cargo has been selected for customs inspection, which is an advantage of the AEO-S-type authorisation. At the same time, obtaining the AEO status, businesses face the risks of ensuring the confidentiality of their commercial information and increasing the number of inspections by supervisory authorities, given constant access to financial documentation (Interfax Ukraine, 2021).

Moreover, the results of the Public Monitoring of Certain Aspects of the Customs in Ukraine indicated that 45.7% of the respondents do not have sufficient information on the procedure for obtaining

the AEO status. In particular, the following data are insufficiently covered: the simplified declaration procedure; clarification of more specific criteria for customs brokers; coverage of this process for the regional customs authorities; peculiarities of the benefits of the AEO status for carriers; issues of determining the customs value for businesses that have been granted the AEO status; the size of the cash deposit and control of AEO activities (Butin, Fedets, 2021).

Thus, in general, the introduction of the AEO Institution in Ukraine is a progressive innovation, an important element of encouraging businesses to pay taxes voluntarily and in good faith. At the present stage, Ukrainian enterprises are aware of the significant advantages that the AEO status can provide, and at the same time the need to meet rather complicated criteria. However, the procedure for obtaining the AEO status is quite complicated and slow, and most enterprises require a more detailed explanation of the AEO authorisation operations. In addition, there is a subjective factor in the decision-making process by customs authorities on AEO authorisation (Butin, Fedets, 2021).

As practice shows, AEO authorisation is beneficial for large companies that are characterised by significant volumes of export-import operations, a continuous production cycle from raw materials supplied from abroad, and which actively cooperate with customs authorities. At the present stage, Ukrainian enterprises are not too active in their efforts to authorise the AEO status, which is a normal practice in many countries around the world with the introduction of the AEO Institution (Miroshnychenko, 2021). The key deterrent to obtaining AEO certificates is the possibility of obtaining EA-type declarations, which give Ukrainian businesses almost the same simplifications as the AEO status. However, in November 2022 the Ukrainian legislation provides for the abolition of EA-type declarations, and, accordingly, all simplifications for the supply of goods without their presentation to the customs authorities. This encourages business structures to look for other simplified mechanisms of customs clearance, namely AEO authorisation (Ukrinform, 2021)

¹⁰ The State Customs Service of Ukraine. *AEO in infographics*. Retrieved from: <https://customs.gov.ua/aeo-infographics>

Another obstacle to the AEO authorisation by Ukrainian enterprises is the non-compliance with the criterion of sustainable financial position. According to Article 14 of the Customs Code of Ukraine, an enterprise is considered financially stable if, according to financial statements, its net assets are positive and the calculated solvency and liquidity ratios meet the standard values. According to experts, such a formal approach to diagnosing the financial stability of enterprises applying for the AEO status is exclusively the Ukrainian practice, because in EU countries customs authorities only check two key indicators of financial statements: net current assets and net worth. In the current crisis conditions, a considerable part of even large Ukrainian companies have low values of solvency and liquidity indicators. In contrast to the European practice, in Ukraine the procedure of evaluation of the conformity of enterprises-applicants for the AEO status to the criterion of stable financial condition does not provide for the analysis of additional documents or factors that influence the calculation of indicators (Miroshnychenko, 2021).

Conclusion

The results of the research allow the author to assert that Ukraine is gradually implementing the obligations of the Agreement with the EU. One of the important achievements in the customs sphere is the introduction of the AEO institution in 2020. The AEO institution not only brings Ukraine closer to its integration with the EU, but also allows it to ensure the progressive development of the national economy on the basis of increasing the competitiveness of Ukrainian enterprises in the EU and international markets. It has been determined that the introduction of the AEO institution has improved Ukraine's position in the International Rating of Doing Business 2020 in the parameter "Trading across borders". The main competitive advantages of the AEO enter-

prise reflect the high level of confidence of customs authorities and special benefits and simplifications in customs control and customs clearance of products.

It has been established that today the AEO institution in Ukraine is at the stage of implementation, because only one enterprise has received the AEO-C certificate. However, taking into account the European experience of AEO functioning, it is possible to hope for a gradual increase in the number of AEO enterprises in Ukraine. At the present stage the AEO institution is not fully functioning in Ukraine, in particular, enterprises are not provided with the full range of simplifications and benefits. Besides, the procedure of AEO authorisation is rather complicated and lengthy, some of its operations do not comply with European and international practices. At the same time, in the current crisis conditions, a significant part of Ukrainian enterprises do not meet the AEO criteria defined in the national legislation. Thus, the further prospects of AEO institution development are to solve the existing problems in this area based on the establishment of effective cooperation between customs authorities and business structures in the direction of promoting the AEO institution and creating conditions for its recognition by other countries.

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The article is prepared in the framework of the J. Monnet Module *EU competitiveness boosting: circular economy* (610641-EPP-1-2019-1-UA-EPPJ-MO-MODULE), which is being realised by the Foreign Trade and Customs Department with the support of the Erasmus+ Programme of the European Union. The European Commission support for the production of this article does not constitute an endorsement of the content, which reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

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Received: 31 January 2022

Revised: 8 February 2022

Accepted: 4 March 2022

Published: 29 July 2022



Centre for Analyses and Studies of Taxation
Centrum Analiz i Studiów Podatkowych

· PUBLISHER ·

CENTRE FOR ANALYSES AND STUDIES OF TAXATION SGH · Al. Niepodległości 162 · Warsaw 02-554 · Poland
DOMINIK J. GAJEWSKI (General Editor) · GRZEGORZ GOŁĘBIEWSKI · ADAM OLCZYK (Managing Editor)

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