

# COMMISSION OF THE ~~EUROPEAN~~ COMMUNITIES

COM(80) 860 final

Brussels, 9 January 1981

Proposal for a

COUNCIL DIRECTIVE

on the harmonization of provisions laid down by law, regulation or administrative action concerning the exercise of the right of appeal in respect of customs matters

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(submitted to the Council by the Commission)

COM(80) 860 final

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## Begrundelse

### I. Nødvendigheden af en fællesskabsforanstaltning vedrørende klageadgang i toldspørgsmål

Fællesskabets toldforskrifter er af forskellig karakter, men bringes normalt i anvendelse over for de personer, de gælder for af de kompetente myndigheder, der i hver medlemsstat har fået til opgave at gennemføre disse forskrifter.

Disse kompetente myndigheders aktiviteter resulterer oftest i afgørelser af individuel karakter, der finder anvendelse på de pågældende fysiske eller juridiske personer.

Undertiden finder disse personer, at de således truffne afgørelser, som vedrører dem, ikke er i overensstemmelse med de gældende fællesskabsbestemmelser, hvis anvendelse vitterligt kan give anledning til fortolkningsproblemer især på grund af deres ofte indviklede karakter.

Det sker ligeledes, at den kompetente myndighed af grunde, som den ikke præciserer, undlader at træffe afgørelse om en anmodning fra en fysisk eller juridisk person, der ønsker at drage fordel af en fællesskabsbestemmelse. Denne person er da i samme situation, som hvis hans anmodning var blevet udtrykkeligt afvist.

I de tilfælde er det vigtigt, at de pågældende kan klage over den kompetente myndigheds afgørelse (eller manglende afgørelse). En sådan klageadgang udgør en væsentlig garanti mod en ukorrekt anvendelse af fællesskabsforskrifterne fra den nationale administrations side eller endog i givet fald mod den vilkårlighed, som denne i visse situationer kunne henfalde til.

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I øvrigt giver de gældende bestemmelser i alle medlemsstaterne adgang til at indgive klage i de pågældende tilfælde. Men betingelserne for denne klageadgang varierer betydeligt fra medlemsstat til medlemsstat. De mest bemærkelsesværdige forskelle vedrører

- fristerne for indgivelse af klage
- arten af de myndigheder, der er berettiget til at træffe afgørelse om klagen
- den kompetence, som er tillagt henholdsvis de administrative myndigheder og de retsinstanser, der har fået til opgave at træffe afgørelse om klagen
- de konsekvenser, som klageadgangen har for anvendelsen af den anfægtede afgørelse (klagens opsættende eller ikke-opsættende virkning).

På grund af disse forskelle behandles Fællesskabets erhvervsdrivende ikke ens, når de kræver en korrekt anvendelse af EF-toldforskrifterne. Specielt er der ikke de bedste betingelser for alle til, når der er indgivet klage til en administrativ myndighed, hos Domstolen at opnå en fortolkning i henhold til traktatens artikel 177. Nogle erhvervsdrivende har som følge af den klage, de har fremsat over den kompetente myndigheds afgørelse, mulighed for henstand, indtil klagen er færdigbehandlet, med betaling af de afgifter, som skal erlægges ifølge denne afgørelse, mens deres fagfæller i andre medlemsstater har pligt til at betale disse afgifter til trods for, at der er indgivet klage.

Tager man i betragtning, at de allerfleste klager over de kompetente toldmyndigheders afgørelser resulterer i afgørelser i myndighedernes favør, forstår man, i hvor høj grad visse erhvervsdrivende uberettiget kan drage fordel af klagens

opsættende virkning, og hvilken forskelsbehandling dette medfører. Man forstår ligeledes de konsekvenser, som denne opsættende virkning har for fastlæggelsen af Fællesskabets egne indtægter, såfremt det afgiftsbeløb, der bogføres, efter at klagen over en afgørelse truffet af den kompetente toldmyndighed er blevet afvist, ikke justeres, således at en eventuel forringelse af pengenes værdi opvejes.

Af alle disse grunde er det nødvendigt at foretage en harmonisering af betingelserne for klageadgang i toldspørgsmål.

## II. Begrænsning af fællesskabsforanstaltningen

For at sikre en så ensartet behandling som mulig af Fællesskabets forskellige erhvervsdrivende ville det absolut være ønskeligt, om der på fællesskabsplan på alle områder kunne fastsættes regler for klageadgang i forbindelse med afgørelser truffet af medlemsstaternes toldmyndigheder ved anvendelse af Fællesskabets toldforskrifter.

Der er imidlertid to væsentlige hindringer for dette mål:

- dels eksisterer der ingen EF-bestemmelser om bekæmpelse af overtrædelser af fællesskabsforskrifterne, og derfor kan kun de gældende nationale bestemmelser på området anvendes. Det er derfor på toldunionens nuværende stade umuligt at harmonisere de nationale bestemmelser vedrørende de klager, der kan tænkes indgivet af de overtrædende personer over den straf, der pålægges dem for overtrædelse af Fællesskabets toldforskrifter. Sådanne bestemmelser henhører under medlemsstaternes strafferet og omfattes ikke af dette forslag til direktiv;

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- dels bør de foranstaltninger, der træffes på fællesskabsplan vedrørende klageadgang, ikke medføre indgreb i retsvæsnets organisation og funktion i de enkelte medlemsstater. Det er således udelukket, at dette forslag til direktiv kan indeholde bestemmelser for klageadgangen til de retsinstanser, som eventuelt skal behandle klagen.

Derfor omhandler dette forslag til direktiv udelukkende retten til at klage over de afgørelser truffet af toldmyndighederne, som ikke er af strafferetlig karakter, og det fastlægger kun reglerne for denne klageadgang i den administrative fase, mens der blot træffes bestemmelse om, at medlemsstaterne har pligt til også at indføre en retslig fase, hvorved der i henhold til traktatens artikel 177 gives adgang til Domstolen.

### III. Indholdet af forslag til direktiv

Selv om de foreslåede harmoniseringsforanstaltninger har et begrænset anvendelsesområde, jf. pkt. II, er de af stor interesse, såfremt de i vidt omfang gør det muligt at afhjælpe de i pkt. I nævnte ulemper, som skyldes forskellene mellem de nuværende nationale ordninger.

Foranstaltningerne kan resumeres således:

#### a) Personer, der har klageadgang i toldspørgsmål

Forslaget opstiller det princip, at enhver, hvis rettigheder kan krænkes ved en afgørelse vedrørende anvendelse af toldforskrifterne, har adgang til at indgive klage for at få en sådan afgørelse ophævet eller ændret (artikel 2, stk. 1).

Ved "toldforskrifter" forstås samtlige toldbestemmelser (hidrørende enten fra gennemførelsen af selve toldunionen eller fra gennemførelsen af den fælles landbrugspolitik) af den fælles landbrugspolitik) som vedrører indførsel, udførsel, forsendelse og oplæggelse af varer i forbindelse med handel med disse mellem medlemsstaterne og tredjelande, hvad enten det drejer sig om fællesskabsbestemmelser eller om nationale bestemmelser vedtaget med henblik på gennemførelse af førstnævnte.

Ved "afgørelse" forstås enhver akt, ved hvilken en toldmyndighed udtaler sig i en bestemt sag, og som har retsvirkninger for en eller flere bestemte eller bestemmelige personer.

Endvidere er sådanne personer berettiget til at indgive klage, som har anmodet en toldmyndighed om at træffe en afgørelse, hvorved de drager fordel af en eller anden bestemmelse i toldforskrifterne, og som ikke har fået svar efter udløbet af en bestemt frist (artikel 2, stk. 2).

#### b) Klageadgang

Forslaget indeholder bestemmelser om, at klageadgangen kan omfatte to faser, idet klagen

- i første instans kan indgives til selve toldmyndigheden (administrativ fase)
- i anden instans kan indgives til en myndighed, der er uafhængig af toldmyndigheden, og som i henhold til traktatens artikel 177 kan indbringe sagen for De europaiske Fællesskabers Domstol (retslig fase).

Disse principper stemmer overens med dem, der følges i de fleste medlemsstater, og ligeledes med de bestemmelser, Told-samarbejdsrådet har uarbejdet, og som er indeholdt i bilag H.1 til konventionen om forenkling og harmonisering af regler om toldbehandling.

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Af de i pkt. II anførte grunde indeholder forslaget til direktiv kun bestemmelser om klageadgang i den administrative fase. Da denne fase er af relativ stor betydning (hovedparten af klagerne kommer ikke videre), opstilles der præcise regler med det formål at sikre de erhvervsdrivende den samme behandling, ligemeget i hvilken medlemsstat de udøver deres erhverv. Disse regler vedrører:

1. Den frist, inden for hvilken der kan indgives klage (artikel 5)

For at fremskynde en bilæggelse af tvisten er denne frist gjort så kort som mulig (to måneder). For dog at sikre de berørte personers rettigheder og lovlige interesser i videst muligt omfang, er der fastsat en længere frist (seks måneder) med henblik på de personer, der er blevet ufuldstændigt eller fejlagtigt informeret om muligheden for at indgive klage eller om, på hvilke betingelser dette skulle ske, samt på de personer, hvis anmodninger om afgørelse henvendt til toldmyndigheden ikke er blevet besvaret af denne.

2. De formaliteter, der skal overholdes ved klagens indgivelse

Indgivelse af en skriftlig klage, mulighed for at lade sig repræsentere (artikel 6, art. 4, stk 2).

3. De retlige konsekvenser af klagens indgivelse (artikel 7)

Klagen har ingen opsættende virkning på anvendelsen af den anfægtede afgørelse.

4. Den kompetente toldmyndigheds behandling af klagen (artikel 8)

Denne kan bl.a. indhente udtalelse fra uafhængige eksperter.



5. Omstændighederne i forbindelse med klagens behandling (artikel 10)

Den kompetente toldmyndighed træffer afgørelse skriftligt, en afgørelse, der begrundes og meddeles klageren. Hvis der er tale om en for klageren negativ afgørelse, bør den indeholde de oplysninger, der er nødvendige for klageadgang til en retslig instans.

6. Anvendelse af gratis-princippet ved klageadgang i første instans (artikel 11)

Af de allerede anførte grunde indeholder forslaget til direktiv ingen bestemmelser om klageadgang til en retslig instans. Det indskrænker sig til at opstille følgende princip: afvises en klage indgivet til toldmyndigheden helt eller delvis, kan klageren indgive en ny klage til en myndighed, der er uafhængig af toldmyndigheden, og som i henhold til traktatens artikel 177 kan indbringe sagen for De europæiske Fællesskabers Domstol (artikel 12).

c) Afsluttende bestemmelser

Formålet med de afsluttende bestemmelser er hovedsagelig en præcis afgrænsning af rækkevidden af den foreslåede harmonisering. Det præciseres bl.a.:

- at uanset bestemmelserne i direktivet kan enhver, som føler sig krænket af en afgørelse vedrørende toldforskrifternes anvendelse, gøre brug af den i medlemsstaternes lovgivning hjemlede ret til på et hvilket som helst tidspunkt at indbringe sagen for den retsinstans, der ifølge denne lovgivning er kompetent (artikel 13).

.../...

- at direktivet ikke anvendes i forbindelse med klager med henblik på ophævelse eller ændring af en afgørelse, som toldmyndighederne har truffet på grundlag af strafferetlige bestemmelser (artikel 16).

Det præciseres ligeledes, at direktivet ikke er bindende med hensyn til klager over de afgørelser truffet af toldmyndighederne, som hviler på en eksklusiv beføjelse tilkendt disse i medfør af Fællesskabets toldforskrifter til at bedømme de faktiske omstændigheder, hvorpå de baserer deres afgørelser. (jf. artikel 14), og at det ikke har nogen indvirkning på bestemmelserne i Rådets forordning (EØF) nr. 1430/79 af 2. juli 1979 om godtgørelse af eller fritagelse for import- eller eksportafgifter <sup>1)</sup>.

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Vedtagelsen af dette direktiv vil være et nyt skridt henimod en gennemførelse af toldunionen. Herigennem vil visse uligheder i behandlingen af Fællesskabets erhvervsdrivende kunne fjernes, og visse forskelle mellem de nationale bestemmelser, der anvendes som grundlag for fastlæggelsen af Fællesskabets egne indtægter, vil kunne udjævnes.

Til vedtagelsen af dette forslag til direktiv, som er baseret på artikel 100 i traktaten om oprettelse af Det europæiske økonomiske Fællesskab, kræves en udtalelse fra Europa-Parlamentet og fra Det økonomiske og sociale Udvalg.

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1) EFT nr. L 175 af 12. juli 1979, s. 1.

Proposal for a Council Directive  
on the harmonization of provisions laid down by  
law, regulation or administrative action concerning  
the exercise of the right of appeal in respect of  
customs matters

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas the Community is based upon a customs union ;

Whereas the establishment of that customs union is governed in the main  
by Title I, Chapter 1 of Part Two of the Treaty; whereas this Chapter con-  
tains a series of specific provisions dealing in particular with the elimi-  
nation of customs duties between Member States, the establishment and progres-  
sive introduction of the Common Customs Tariff and the autonomous alteration  
or suspension of that Tariff ;

Whereas, while Article 27 of the Treaty provides that Member States shall,  
before the end of the first stage in so far as may be necessary, take steps  
to approximate their provisions laid down by law, regulation or administra-  
tive action relating to customs matters, the said article does not however  
empower institutions of the Communities to lay down mandatory provisions  
in that field; whereas, however, a thorough examination undertaken jointly

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<sup>1</sup> OJ N° C

<sup>2</sup> OJ N° C

<sup>3</sup> OJ N° C

with Member States has shown the need to lay down in certain areas, by binding Community acts, the measures necessary to establish customs rules which would ensure uniform application of import duties or export duties imposed on goods being traded between the Community and non-member countries ;

Whereas Community law on customs matters covers more generally all of the provisions relating to importation, exportation, transit and storage of goods which are the subject of trade between the Member States as well as between the latter and third countries; whereas this provisions may arise either from the establishment of the customs union in the proper sense or from the establishment of the common agricultural policy ;

Whereas Community customs rules are normally applied by means of individual decisions taken by the competent authorities of the Member States ;

Whereas, in so far as those individual decisions may not comply with Community customs rules, they shall be of such a nature as to affect adversely the rights of the persons concerned; whereas there is therefore good reason for enabling those persons to exercise, in specific circumstances, the right to appeal against such decisions ;

Whereas the exercise of the right of appeal is important for the correct and uniform implementation of Community customs rules throughout the Community and for the elimination of differences in the treatment of traders who reside there ;

Whereas there are considerable discrepancies in the provisions in force in the Member States concerning the right of natural or legal persons to appeal against customs authorities' decisions which affect their rights; whereas this is particularly so with regard to the time-limits within which

.../...

which the right must be exercised, the kind of authorities empowered to decide on appeals, the respective jurisdiction of administrative authorities and judicial institutions called upon to decide on appeals and, above all, with regard to the consequences of the exercise of the right of appeal on the implementation of the disputed decision ; whereas it is necessary therefore, in order to ensure that those persons benefit as equally as possible from a correct application of Community customs rules, to lay down at Community level the conditions for exercising the right of appeal ;

Whereas, in accordance with the principles generally observed in most Member States and recommended by the Customs Co-operation Council, it seems appropriate to provide that an appeal be lodged initially with the customs authority itself and subsequently with an authority independent of the customs authority; whereas, in order to ensure uniform application throughout the Community of Community customs rules under the most favourable conditions, it is important that the independent authority be empowered to refer matters to the Court of Justice of the European Communities pursuant to Article 177 of the Treaty ;

Whereas, although precise provisions can be laid down with regard to the appeal procedure in its initial stage, as Community law stands at present, the organization of the appeal procedure in its second stage should be left to the discretion of the Member States;

Whereas this Directive does not prevent the parties concerned from taking any other action open to them under Community customs rules against certain decisions of Member States' competent authorities;

.../...

Whereas, in cases where the customs authority has the exclusive power of assessing the factual circumstances on which it founds its decision, it can be left to the Member States to choose between the procedure laid down in this Directive and a different appeal procedure ;

HAS ADOPTED THIS DIRECTIVE :

Article 1

1. This Directive sets out the rules which must be included in the provisions laid down by law, regulation or administrative action in the Member States concerning the right of persons affected by a decision applying law on customs matters as defined in paragraph 2(a), to enter an appeal for the annulment or amendment of that decision, and the appeal procedure to be followed.

2. For the purposes of this Directive :

(a) law on customs matters means all customs and agricultural provisions on the importation, exportation, transit and storage of goods forming the subject-matter of trade between the Member States and between the latter and non-member countries, including both Community provisions and national provisions adopted for the purpose of implementing them.

(b) decision means any act by which a customs authority gives a ruling in a particular case and which has direct effect on one or more known or ascertainable persons.

(c) customs authority means any authority competent to apply customs rules within the meaning of subparagraph (a), even where the authority is not part of the customs administration.

(d) person means a natural or a legal person.

(e) appellant means the person who lodges the appeal.

.../...

Article 2

1. Any person whose rights may be encroached upon by a decision regarding the application of law on customs matters is entitled to apply for the decision to be annulled or amended.
2. Any person who has requested a decision from the competent authority and has not obtained a ruling on that request is also entitled to apply for a decision regarding the application of law on customs matters.

This appeal may be lodged upon expiry of a time-limit laid down in each Member State, which may not be longer than three months, without prejudice to the right of the customs authority competent to take the requested decision to exceed this time-limit, where there is good reason for doing so, provided that it notifies the appellant of the extension in advance and states the grounds on which it is based, as well as the new time-limit which it needs to decide on the request.

3. The right of appeal referred to in paragraphs 1 and 2 may be exercised :
  - (i) initially, before the customs authority designated for this purpose ;
  - (ii) subsequently, before the authority referred to in Article 12(1).

TITLE I

Initial stage of the exercise of the right to  
appeal

Article 3

Articles 4 to 11 set out the rules to be followed for the exercise of the right of appeal in its initial stage.

.../...

Article 4

The person entitled to lodge an appeal shall retain this right even where he has previously accepted all or part of the decision of the customs authority.

That person may appoint another person to represent him in all matters relating to the lodging of the appeal and the implementation of the procedure relating thereto.

Article 5

1. An appeal shall be lodged within two months of notification of the decision of the customs authority.
2. The time limit laid down in paragraph 1 shall be extended to six months where the person entitled to lodge an appeal :
  - (a) is not the person to whom one decision was notified; in this case the time-limit runs from the date of notification of the Decision to the person for whom it is intended ;
  - (b) was not informed or was misinformed, as to his right to appeal, by the customs authority which took the decision.
3. In the cases referred to in Article 2(2) the appeal must be lodged within six months of the date of expiry of the period referred to in the second subparagraph of this paragraph.
4. The time limits specified in the preceding paragraphs may be extended only if the appellant shows that he has been prevented from lodging an appeal within the specified time-limits as a result of an unavoidable accident or force majeure.

.../...



Article 6

1. An appeal shall be lodged by means of a written request addressed to the customs authority which took the decision or which was requested to take the decision, or to any other customs authority designated by the Member State concerned.

As soon as the abovementioned authority receives the request, it shall forward it to the customs authority which is competent to give a ruling if it has not itself been designated as such.

2. The written request referred to in paragraph 1 must contain all points of fact or law adduced by the appellant in support of his appeal.

However, provided that he mentions it in its appeal, the appellant may supply further evidence within a time limit prescribed by the customs authority which is competent to give a ruling on the appeal. If further evidence is not submitted within this time limit, the said authority shall give a ruling on the basis of the evidence available to it.

Article 7

The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authority may, however, suspend enforcement of this decision in whole or in part if it has good reason to believe that the disputed decision is inconsistent with the customs rules. Suspension of enforcement may, where appropriate, be subject to the lodging of a security.

.../...

Article 8

The customs authority which is competent to give a ruling on the appeal shall conduct such investigations as may be necessary to enable it to give its decision and may, if it deems it appropriate, submit the case to experts who are independent of the customs authority with a view to obtaining their opinion.

The appellant shall be required to assist the said authority in its investigation of the facts and shall in particular supply, within the time limits specified by the authority, any information or documents at his disposal which the latter considers necessary to enable it to assess the situation correctly.

Article 9

The appellant may withdraw his appeal until such time as a decision has been taken on it. Notice of withdrawal must be given in writing.

Article 10

1. The customs authority competent to give a ruling on the appeal shall give its decision in writing.

The decision may impose greater constraints on the appellant than those contained in the decision which was the subject-matter of the appeal.

2. The appellant shall be notified of the decision and of the grounds on which it is based. Where the decision goes against the appellant, the authority referred to in paragraph 1 shall inform him of the opportunity available to him of initiating the second stage of his right of appeal.

.../...

Article 11

There shall be no charge for lodging an appeal. Whatever the result of the appeal, there shall be no reimbursement of any expenses incurred either by the appellant or by the customs authorities when an appeal is examined.

TITLE II

Second stage of the exercise of the right of appeal

Article 12

1. Where an appeal which has been lodged with a customs authority is rejected in whole or in part, the appellant must be able to introduce a fresh appeal before an authority which is independent of the customs authority and which is empowered by virtue of its structure to refer the matter to the Court of Justice of the European Communities pursuant to Article 177 of the Treaty.

The independent authority referred to in the preceding subparagraph may be a judicial authority or a specialized body, depending on the provisions in force in the Member States.

2. For the purposes of paragraph 1, an appeal lodged with the customs authority shall be deemed to have been rejected where no decision has been taken on it upon expiry of a time limit to be laid down in each Member States which shall not exceed six months, without prejudice to the right of that authority to exceed the time limit, where there is good reason for doing so, provided that it notifies the appellant beforehand and sets out the grounds on which the extension is based, as well as the new time-limit which it needs to to decide on his appeal.

.../...

TITLE III

Final provisions

Article 13

This Directive shall not prejudice :

- (i) the right conferred by the laws of the Member States on any person who considers himself adversely affected by a decision regarding the application of the customs rules to refer that decision at any time to the competent judicial authority, in accordance with the provisions of those laws ;
- (ii) the right of Member States, where the second stage of the right of appeal must be exercised before a specialized body, to provide that, in certain cases, an appeal must be lodged directly with the said authority ;
- (iii) the right conferred by Italian law on persons whose appeal has been rejected by the customs authority to refer the matter to the Head of State pursuant to that law.

Article 14

Where the law on customs matters grants to the customs authorities the exclusive power to assess the factual circumstances on which they found their decisions, the detailed rules for exercising the right of appeal against such decisions may be different from those laid down in this Directive.

.../...

Article 15

An application for repayment or remission of import or export duties submitted to a customs office pursuant to Council Regulation (EEC) No 1430/79 of 2 July 1979 (1) shall not constitute the lodging of an appeal for the purposes of this Directive.

Article 16

This Directive shall not apply to appeals lodged with a view to the annulment or revision of a decision taken by customs authorities on the basis of rules governing criminal matters.

Article 17

Member States shall bring into force the provisions necessary to comply with this Directive not later than 1 January 1983.

Article 18

Each Member State shall inform the Commission of the provisions it adopts for the implementation of this Directive.

The Commission shall forward this information to the other Member States.

Article 19

This Directive is addressed to the Member States.

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(1) OJ No L 175 of 12 July 1979, p. 1

