



## Reports of Cases

### Joined Cases C-29/13 and C-30/13

**Global Trans Lodzhistik OOD**  
v  
**Nachalnik na Mitnitsa Stolichna**

(Requests for a preliminary ruling from the Administrativen sad Sofia-grad)

(Reference for a preliminary ruling — Community Customs Code — Articles 243 and 245 — Regulation (EEC) No 2454/93 — Article 181a — Decision amenable to review — Admissibility of legal proceedings where a prior administrative complaint has not been made — Principle of respect for the rights of the defence)

Summary — Judgment of the Court (First Chamber), 13 March 2014

- Customs union — Application of customs legislation — Right of appeal — Appeal procedure against decisions of the customs authorities — Challengeable act — Decision rectifying the customs value of goods with the consequence that the declarant is served with a tax adjustment in respect of value added tax — Included — National legislation which makes provision for two separate appeal procedures for challenging decisions of the customs authorities — Lawfulness — Condition — Observance of the principles of equivalence and effectiveness*  
*(Council Regulation No 2913/92, Arts 30(2)(b), 243 and 245)*
- Customs union — Application of customs legislation — Right of appeal — Appeal procedure against decisions of the customs authorities — Whether an appeal to the judicial authorities must be preceded by an appeal to the customs authorities — Application of national law*  
*(Council Regulation No 2913/92, Art. 243; Commission Regulation No 2454/93, Art. 81a(2))*
- Customs union — Application of customs legislation — Right of appeal — Appeal procedure against decisions of the customs authorities — Decision adopted on the basis of Article 181a(2) of Regulation No 2454/93 — Decision having to be regarded as final*  
*(Commission Regulation No 2454/93, Art. 181a(2))*
- Customs union — Application of customs legislation — Right of appeal — Appeal procedure against decisions of the customs authorities — Decision adopted in breach of the principle of respect for the rights of the defence — Powers of the national court to hear the appeal against the decision or to refer the dispute back to the competent administrative authority*

*(Council Regulation No 2913/92, Art. 245; Commission Regulation No 2454/93, Art. 181a(2))*

1. First, a decision rectifying, on the basis of Article 30(2)(b) of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 82/97, the customs value of goods with the consequence that the declarant is served with a tax adjustment in respect of value added tax, constitutes a challengeable act for the purposes of Article 243 of the Customs Code. Secondly, having regard to the general principles of respect for the rights of the defence and *res judicata*, Article 245 of the Customs Code does not preclude national legislation which makes provision for two separate appeal procedures for challenging decisions of the customs authorities, where that legislation does not run counter to either the principle of equivalence or the principle of effectiveness.

In so far as concerns the issue whether a decision constitutes a challengeable act, it is clear from a reading of Article 243(1) in conjunction with Article 4(5) of the Customs Code that any person has the right to appeal against any decision taken by the customs authorities which relates to the application of customs legislation and concerns him directly and individually. Furthermore, it is apparent from Article 6(3) of the Customs Code that decisions relating to the application of customs legislation which are detrimental to the persons to whom they are addressed must refer to the right of appeal provided for in Article 243 of that code.

As regards national legislation which makes provision for two separate appeal procedures for challenging the decisions of the customs authorities, it must be noted that, under Article 245 of the Customs Code, the provisions for implementing the appeal procedure are to be determined by the Member States.

Furthermore, in the absence of EU rules in this area, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which litigants derive from EU law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness).

(see paras 27, 30, 32, 33, 40, operative part 1)

2. Article 243 of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 82/97, does not provide that the admissibility of judicial proceedings against decisions adopted on the basis of Article 181a(2) of Regulation No 2454/93 laying down provisions for the implementation of Council Regulation No 2913/92, as amended by Regulation No 3254/94, is subject to the condition that the administrative remedies available to challenge those decisions have been exhausted beforehand.

Under Article 243(2) of the Customs Code, the right of appeal may be exercised initially before the customs authority, and subsequently before an independent body which may be a judicial authority. There is nothing in the wording of that provision to indicate that the appeal before the customs authority is a mandatory stage prior to lodging an appeal before the independent body. Article 243 of the Customs Code is to be interpreted as meaning that it is for national law to determine whether an operator must initially bring an appeal before the customs authority or whether he may appeal directly to the judicial authority.

(see paras 42-45, operative part 2)

3. Article 181a(2) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92, as amended by Regulation No 3254/94, must be interpreted as meaning that a decision adopted under that article must be regarded as final and capable of being challenged by way of a direct action before an independent judicial authority, even where it was adopted in breach of the right of the person concerned to be heard and to raise objections.

Article 181a(2) provides that, if the doubts of the customs authorities regarding the determination of the customs value of the goods continue, the customs authorities must, before reaching a final decision, notify the person concerned of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor must be communicated in writing to the person concerned. Although that article requires the customs authorities, before reaching a final decision, to notify the person concerned of the grounds for those doubts and to provide him with a reasonable opportunity to make his views known, an infringement of that obligation by the customs authorities cannot however affect the definitive nature of that decision or the classification of the act adopted under Article 181a(2) as a decision.

In any event, the act adopted by the customs authorities produces legal effects with regard to its addressee, in that it leads to the determination of a new customs value for the goods, and thus constitutes a decision for the purposes of Article 4(5) of Regulation No 3254/94. On the other hand, an infringement of the right of the person concerned to be heard renders that decision unlawful so that it may be challenged by way of a direct action before an independent judicial authority.

(see paras 47-50, operative part 3)

4. In the event of a breach of the right of the person concerned to be heard and to raise objections under Article 181a(2) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92, as amended by Regulation No 3254/94, it is for the national court to determine, having regard to the particular circumstances of the case before it and in the light of the principles of equivalence and effectiveness, whether, where the decision which was adopted in breach of the principle of respect for the rights of the defence must be annulled on that ground, it must give a ruling in the action brought against that decision or whether it can consider referring the matter back to the competent administrative authority.

Observance of the rights of the defence is a general principle of EU law which applies where the authorities are minded to adopt a measure which will adversely affect an individual. In accordance with that principle, expressly set out in Article 181a(2) of Regulation No 2454/93, the addressees of decisions which significantly affect their interests must therefore be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision.

(see paras 57, 61, operative part 4)