# Right to Be Heard

## Stakeholders involved in the process

* Trader;
* Decision-taking customs authority.

## Business

The Right to be heard process is initiated by cases where there is an intention to take a decision which would adversely affect the trader, allowing the trader to express his point of view/lodge an appeal as a result thereof.

From our high-level view of the Customs Decisions process, the Right to be heard process is inscribed throughout the Grant Authorisation and Manage Authorisation parts of the process, as depicted in Figure 1.



Figure 1 Right to be Heard process, as part of the Customs Decisions process

Figure 2 presents the situations where the Right to be Heard process can take place.



Figure 2 Occurrences of Right to be Heard process

The process will be initiated whenever the trader has a right to be heard. This can occur in the Take Decision & Notify process, Amend decision process, Annul decision process, Revoke decision process, and Suspend decision process. Table 1 lists the situations, where the right to be heard applies.

| Situations where the RTBH applies |
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| **Take Decision process** |
| When the customs officer has checked all conditions and criteria, he intends to take an unfavourable decision. |
| **Suspend Decision process** |
| When the CO has sufficient grounds to believe that the decision should be annulled, revoked or amend, the suspend decision process is started; |
| When the CO realises that fulfilment of conditions for decision or compliance with obligations may be ensured by holder taking measures, the suspend decision process is started; |
| As outcome of re-assessment process; the suspend decision process is started. |
| **Amend Decision process** |
| When the CO realises that one or more conditions were not or are no longer fulfilled, the amend decision process is started; |
| When the CO realises that the decision does not conform with the legislation in force according to Art. 23(3) UCC, the amend decision process is started; |
| As outcome of re-assessment process; the amend decision process is started; |
| As outcome of a suspension process; the amend decision process is started; |
| As outcome of non-ended annulment process; the amend decision process is started. |
| **Annul Decision process** |
| When the customs officer realises that the decision does not conform with the customs legislation, the annul decision process is started; |
| When the decision has been based on incorrect/incomplete information and the applicant knew or ought reasonably to have known that the information was incorrect/incomplete and that the decision would have been different if the information was correct/complete, the annul decision process is started; |
| As outcome of re-assessment process; the annul decision process is started; |
| As outcome of a suspension process; the annul decision process is started; |
| **Revoke Decision process** |
| When the holder is no longer registered in accordance with UCC art. 9(1) and the EORI number is invalid, the revoke decision process is started. |
| When the holder has failed to take the necessary measures within the prescribed period of time to fulfil the conditions and criteria or to comply with the obligations imposed under that decision, the revoke decision process is started; |
| When the customs officer realises that the decision does not conform with the legislation in force, the revoke decision process is started; |
| When the CO establishes that one or more conditions were or are no longer fulfilled, other than those requiring an annulment, the revoke decision process is started; |
| When the CO establishes that authorised consignor has no longer valid authorisation to use comprehensive guarantee or guarantee waiver, the revoke decision process is started;[[1]](#footnote-1) |
| As outcome of re-assessment process; the revoke decision process is started; |
| As outcome of suspension process; the revoke decision process is started; |
| As outcome of non-ended annulment process; the revoke decision process is started. |

Table 1 Situations where the RTBH applies

The customs officer first communicates the grounds of intended decision to the trader (intended authorisation / reason for suspension / amendment / annulment / revocation). A time period of 30 days is allocated to the trader to reply to the grounds of intended decision. The trader is expected to provide his point of view within this time period.

If the Right to be Heard process occurs in the context of an application for a decision, the time limit to take decision is extended by 30 days.

When the trader provides the customs officer with his point of view, he can indicate that he will further express his point of view in a second message. However, this has no impact on the above-mentioned time limit. The further expression of the point of view has to be provided within the same time limit.

Once the customs officer receives the point of view from the trader, this will be used in the context of the process, which initiated the Right to be Heard process.

1. Only applicable for authorisation for the status of Authorised Consignor [↑](#footnote-ref-1)