Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

11 May 2022 *

(Own resources of the European Union – Financial liability of a Member State – Import duties – Payment to the Commission of amounts corresponding to non-recovered own resources – Action based on unjust enrichment of the European Union – Obligations of a Member State with regard to own resources – Obligation to lodge a security – Exemption from making available amounts corresponding to established entitlements declared irrecoverable)

In Case T-151/20,

Czech Republic, represented by M. Smolek, J. Vláčil and O. Serdula, acting as Agents,

applicant,

supported by

Kingdom of Belgium, represented by S. Baeyens and J.-C. Halleux, acting as Agents,

and by

Republic of Poland, represented by B. Majczyna, acting as Agent,

interveners,

v

European Commission, represented by T. Materne and P. Němečková, acting as Agents,

defendant,

APPLICATION based on Article 268 TFEU and seeking repayment of the sum of 40 482 255 Czech koruny (CZK) paid in respect of the European Union's own resources,

THE GENERAL COURT (Sixth Chamber),

composed of A. Marcoulli, President, J. Schwarcz and R. Norkus (Rapporteur), Judges,

Registrar: R. Ūkelytė, Administrator,

* Language of the case: Czech.

having regard to the written part of the procedure and further to the hearing on 12 November 2021,

gives the following

Judgment

Background to the dispute

Summary of the main facts

1 Between 2 and 26 November 2007, the European Anti-Fraud Office (OLAF) carried out a Community administrative and investigative cooperation mission in Laos, in which a representative of the Czech customs authorities participated ('the inspection mission'). The investigation concerned checks on the importation from Laos into various EU countries of non-refillable, gas, flint pocket lighters ('the pocket lighters') in the period between 2004 and 2007. A document entitled 'Agreed Joint Minutes' was drawn up on 15 November 2007 and was signed by all the members of the mission and the competent Laotian authorities ('the Minutes of 15 November 2007').

2 On 30 May 2008, following the inspection mission, OLAF adopted a post-mission report ('the OLAF report'). It was sent to the Czech Republic, in English, French and German, on 9 July 2008.

3 The final investigation report was adopted by OLAF on 10 December 2008.

4 It is apparent from the conclusions of the OLAF report that, during the period covered by that report, Baide lighter Industry (LAO) Co., Ltd. ('BAIDE') imported pocket lighters originating in China but presented at customs as originating in Laos, thereby avoiding the anti-dumping duty applicable to pocket lighters of Chinese origin.

5 The OLAF report indicated in that regard that 'the evidence of Chinese origin established in the course of the [inspection] mission [was] sufficient for Member States to take administrative duty recovery proceedings'. According to that report, it was necessary that 'Member States institute[d] follow up audits and investigations[,] if appropriate[,] of the importers concerned and initiate[d] recovery proceedings as a matter of urgency if this ha[d] not already been done'.

6 The conclusions of the OLAF report covered, inter alia, 28 cases in which pocket lighters were imported by BAIDE into the Czech Republic and released for free circulation, between 26 September 2005 and 1 March 2007 ('the imports at issue').

7 The competent Czech customs offices took measures to adjust and recover the tax in those cases.

8 Nonetheless, in all those cases, it was not possible to adjust and recover all the established entitlements.

9 Between 22 September 2008 and 18 February 2009, sums corresponding to the entitlements established but not yet recovered in respect of the imports at issue were shown in the account designed for that purpose, referred to as the B account, in accordance with Article 6(3)(b) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1).

10 Then, between November 2013 and November 2014, the Czech Republic, in accordance with the applicable legislation, added to the WOMIS information system (Write-Off Management and Information System) the cases in which recovery of the European Union's own resources was impossible.

11 By letter of 20 January 2015, the European Commission informed the Czech Republic, in response to the latter's request to be released from the obligation to make available the own resources of the European Union mentioned in paragraph 10 above, that the conditions laid down in Article 17(2) of Regulation No 1150/2000 were not satisfied in any of the cases in question. The Commission asked the Czech authorities to adopt the measures necessary for its account to be credited with the amount of CZK 53 976 340 at the latest on the first working day which followed the nineteenth day of the second month following the month during which that letter was sent. The Commission added that any delay would give rise to the payment of interest pursuant to Article 11 of Regulation No 1150/2000.

12 On 17 March 2015, the Czech Republic paid 75% of the amount referred to in paragraph 11 into the Commission's account designed for that purpose, after deducting collection costs of 25% of that amount, that is a sum of CZK 40 482 255 ('the sum at issue').

13 By letter of 27 February 2015, the Czech Republic expressed reservations, indicating to the Commission that it was a conditional payment, subject to the validity of the Commission's claims, in order to avoid being required to pay the interest provided for by Article 11 of Regulation No 1150/2000.

14 The Commission responded to the letter of 27 February 2015 by letters of 4 and 21 May 2015.

15 The payment referred to in paragraph 12 above was supplemented by a second, dated 22 December 2016, of 5% of the amount in question, namely the sum of CZK 2 698 817, representing the difference in the amount intended to cover the collection costs, linked to the reduction of the rate of 25% to 20% following a retroactive amendment of the applicable legislation.

Earlier court proceedings

16 By application lodged at the Registry of the General Court on 30 March 2015, the Czech Republic brought an action seeking the annulment of the Commission's letter of 20 January 2015.

17 By order of 28 June 2018, *Czech Republic* v *Commission* (T-147/15, not published, EU:T:2018:395), the action was dismissed as inadmissible, inasmuch as it was directed against an act which could not be the subject of an action for annulment.

18 The appeal brought against the order of 28 June 2018, *Czech Republic* v *Commission* (T-147/15, not published, EU:T:2018:395), was dismissed by the Court of Justice in the judgment of 9 July 2020, *Czech Republic* v *Commission* (C-575/18 P, EU:C:2020:530).

19 The Court of Justice specified the following in paragraph 81 of that judgment:

'… when a Member State has made available to the Commission an amount of the [European] Union's own resources while expressing reservations as to the validity of the Commission's arguments, and the dialogue [which it is for the Commission to engage in with that State, in accordance with the principle of sincere cooperation, in order to clarify their respective positions and to determine the obligations of that Member State] has not brought the dispute between [the latter] and that institution to an end, it is open to that Member State to seek damages on account of the [European] Union's unjust enrichment and, if necessary, to bring an action before the General Court to that end.'

Procedure and forms of order sought

20 By application lodged at the Registry of the General Court on 16 March 2020, the Czech Republic brought the present action.

21 On 7 September 2020, the Commission lodged the defence.

22 By documents lodged at the Registry of the General Court on 8 and 16 July 2020 respectively, the Republic of Poland and the Kingdom of Belgium sought leave to intervene in the present proceedings in support of the form of order sought by the Czech Republic.

23 By decisions of 16 September 2020, the President of the Sixth Chamber of the General Court granted them leave to intervene.

24 The Republic of Poland and the Kingdom of Belgium each lodged a statement in intervention on 30 November 2020.

25 The parties lodged observations on the Kingdom of Belgium's statement in intervention in the periods of time allowed. The Commission also lodged observations on the Republic of Poland's statement in intervention.

26 The Czech Republic lodged the reply on 27 November 2020 and the Commission lodged the rejoinder on 18 January 2021.

27 By letter of 15 March 2021, the applicant made a request for a hearing, under Article 106(2) of the Rules of Procedure of the General Court.

28 By a measure of organisation of procedure of 7 September 2021, the General Court asked the Commission to produce OLAF's final investigation report adopted on 10 December 2008 and put written questions to the main parties. The Czech Republic and the Commission responded to that request in the periods prescribed.

29 The Czech Republic indicated, in response to one of the questions put to it, that it was withdrawing its claim for repayment of the sum of CZK 2 698 817 referred to in paragraph 15 above.

30 By letter of 1 October 2021, the Kingdom of Belgium declined to participate in the hearing.

31 By letter of 13 October 2021, the Republic of Poland declined to participate in the hearing.

32 The main parties presented oral argument and answered the oral questions asked by the General Court at the hearing on 12 November 2021.

33 Following the partial withdrawal referred to in paragraph 29 above, the Czech Republic claims that the General Court should:

– order the Commission to reimburse to it the sum at issue on account of the unjust enrichment of the European Union;

– order the Commission to pay the costs.

34 The Commission contends that the General Court should:

– dismiss the action;

– order the Czech Republic to pay the costs.

35 The Kingdom of Belgium and the Republic of Poland contend that the General Court should uphold the action.

Law

Subject matter of the action and the conditions of an action based on unjust enrichment

36 The Czech Republic seeks repayment of the sum at issue, which it believes it overpaid in respect of the European Union's own resources. It seeks, in support of its claim, to establish the non-contractual liability of the European Union on the basis of unjust enrichment.

37 In that regard, the Commission argues, in essence, that the Czech Republic limits its arguments to the refutation of the content of the letter of 20 January 2015. However, an action based on unjust enrichment cannot take the place of an action for annulment of that letter. The subject matter of the dispute thus cannot be the content of the letter of 20 January 2015 but lies in the question of whether '[the sum at issue] fall[s] to the European Union as own resources or not'.

38 The Czech Republic argues in the reply that the letter of 20 January 2015 constitutes the framework for the dispute, which the Commission cannot change by submitting, in order to challenge its claims, new arguments which were not made against it in that letter. It takes the view that that letter produces legal effects and that 'the examination of the action for recovery of overpayments and of the condition that there be no valid legal basis for the enrichment in question must also stem from the Commission's view expressed in [the letter] of 20 January 2015'.

39 Questioned on that point at the hearing, the Czech Republic confirmed the position argued in its written pleadings.

40 Having set out the principal arguments of the main parties concerning the subject matter of the dispute, it should be emphasised that actions for unjust enrichment do not fall under the rules governing non-contractual liability in the strict sense, which, to be invoked, require a number of

conditions to be satisfied, relating to the unlawfulness of the conduct imputed to the European Union, the fact of the damage alleged and the existence of a causal link between that conduct and the damage complained of. They differ from actions brought under those rules in that they do not require proof of unlawful conduct – indeed, of any form of conduct at all – on the part of the defendant, but merely proof of enrichment on the part of the defendant for which there is no valid legal basis and of impoverishment on the part of the applicant which is linked to that enrichment (judgment of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraph 49).

41 In that regard, it must be stated that, according to the principles common to the laws of the Member States, a person who has suffered a loss which increases the wealth of another person without there being any legal basis for that enrichment has the right, as a general rule, to restitution from the person enriched, up to the amount of the loss. Whilst the FEU Treaty does not make express provision for a means of pursuing that type of action, if Article 268 TFEU and the second paragraph of Article 340 TFEU were to be construed as excluding that possibility, the result would be contrary to the principle of effective judicial protection. Actions for unjustified enrichment of the European Union, brought under those articles, require proof of enrichment on the part of the defendant for which there is no valid legal basis and of impoverishment on the part of the applicant which is linked to that enrichment (see, to that effect, judgment of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraphs 44 and 46 to 50).

42 When examining such an action, the General Court has to assess, in particular, whether the impoverishment of the applicant Member State, corresponding to the amount of the European Union's own resources which have been made available to the Commission and which that Member State has disputed, and the corresponding enrichment of the Commission, are justified by the Member State's obligations under EU law governing the European Union's own resources or, on the contrary, whether no such justification exists (judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 83).

43 In those circumstances, the Czech Republic cannot establish that its claims are well founded, in an action based on the Commission's unjust enrichment, by merely refuting the arguments contained in the letter of 20 January 2015, but must demonstrate, first, that the Commission's enrichment subsequent to the sum at issue being made available is not justified by the Czech Republic's obligations under EU law governing own resources and, second, that its impoverishment is linked to that enrichment.

44 In that connection, the Czech Republic's obligations with regard to own resources do not stem from 'the Commission's view expressed in [the letter] of 20 January 2015', but are imposed directly under the legislation applicable in that field, and no decision-making power has been conferred on the Commission enabling it to require the Member States to establish and to make available to it amounts that represent the European Union's own resources (see, to that effect, judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 62).

45 First, it follows that the Czech Republic's arguments consisting of challenging both the grounds of the letter of 20 January 2015 and the conduct of the Commission in the course of the dialogue with the Czech Republic are ineffective in the present dispute, inasmuch as they do not potentially relate to what the Czech Republic must demonstrate (see paragraph 43 above).

46 Second, contrary to what the Czech Republic maintains, neither can the letter of 20 January 2015 constitute the framework for the dispute inasmuch as it would limit the Commission's arguments seeking to challenge the existence of unjust enrichment to those contained in that letter.

47 In particular, the information contained in the letter of 20 January 2015 cannot constitute precise, unconditional and consistent information which is such as to provide the Czech Republic with assurances as to the delimitation of the dispute which may arise between it and the Commission in an action based on the unjust enrichment of that institution.

48 It follows that the Commission could adduce any matters, in these proceedings, to dispute the existence of unjust enrichment, including matters not appearing in the letter of 20 January 2015, without undermining the principle of the protection of legitimate expectations or the right to good administration, as defined in Article 41 of the Charter of Fundamental Rights of the European Union.

49 In the light of all of the foregoing, it is now necessary to examine, in the context defined in paragraph 42 above, the merits of the present action, taking into account the evidence produced by the Czech Republic and the arguments exchanged by the parties.

Merits of the action and existence of unjust enrichment of the European Union

50 The Czech Republic maintains, in essence, that it is not liable for the sum at issue, because it was able to take the measures necessary to recover it only following the communication of the OLAF report.

51 According to the Czech Republic, the conditions for establishing the customs duties corresponding to the sum at issue were able to be fulfilled only after the delivery of the OLAF report, as its content alone in fact allowed the Czech Republic to determine with certainty the amount of the duties to be recovered and the debtor of those duties.

52 However, BAIDE ceased all activities in the territory of the Czech Republic as of May 2008, that is before the communication of the OLAF report, so that, when that report was adopted, there were no seizable assets in the Czech Republic other than those ultimately seized by the national customs authorities.

53 The alleged delay on the part of the customs authorities following receipt of that report therefore could not, in any event, have been a cause of their inability to recover the customs debt.

54 The Czech Republic adds that, in any event, no delay can be attributed to it in establishing and recovering the sum at issue after the delivery of the OLAF report. It explains that the customs authorities adopted the measures necessary to avoid the time-barring of the possibility of tax adjustment in all 28 cases of imports concerned.

55 In those circumstances, the reasons for the sum at issue not being recovered cannot be attributed to the Czech Republic and it is entitled to be released from the obligation to make available own resources, as provided for in Article 17(2) of Regulation No 1150/2000.

56 Consequently, the enrichment of the Commission, as a result of the impoverishment of the Czech Republic arising from the making available of the sum at issue, has no valid legal basis.

57 The Commission contends that all of the Czech Republic's arguments should be dismissed and argues that it has failed to prove unjust enrichment.

58 The Commission argues, principally, that the provisions of Article 17(2) of Regulation No 1150/2000 are not applicable to the Czech Republic, because it failed to show the own resources which had not been recovered in the separate account designed for that purpose, the B account, within the periods prescribed in Article 6(3) of that regulation.

59 It is clear from the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414, paragraph 65), that it is not sufficient, in order for a Member State to be exempted from its obligation to make available to the Commission the amounts corresponding to established entitlements, that the conditions laid down in Article 17(2) of Regulation No 1150/2000 be met; the condition that those entitlements were properly entered in the B account must also have been satisfied.

60 According to the Commission, the Czech Republic failed to comply with the prescribed time limits and therefore failed to properly show the entitlements to be recovered in the B account, because it was late in acting when it failed to establish the anti-dumping duties due by BAIDE on the imports at issue immediately on the return of the inspection mission, which ended on 26 November 2007.

61 Even supposing that the amounts corresponding to the established entitlements were properly shown in the B account, the Commission argues that the Czech Republic should have lodged a security for the recovery of the sum at issue before releasing the imports at issue for free circulation, so that BAIDE's cessation of activity, occurring subsequently, could not legally have obstructed the recovery of that sum.

62 The Republic of Poland emphasises that the outcome reached in the judgment of 9 July 2020, *Czech Republic* v *Commission* (C-575/18 P, EU:C:2020:530), is of considerable importance for Member States wishing to make use of the possibility of being heard in disputes between them and the Commission, relating to obligations to make available own resources.

63 The Republic of Poland maintains that the Czech Republic was unable to recover the sums at issue for a reason which could not be attributed to it, since the debtor had ceased its activities prior to the date on which the OLAF report was adopted.

64 The Kingdom of Belgium takes the view that a Member State is entitled to be released from the obligation to make available own resources, as provided for in Article 17(2) of Regulation No 1150/2000, even in the scenario where own resources are shown in the B account belatedly, if such resources fulfil the substantive conditions for being shown in that account and that Member State demonstrates that the fact that certain own resources have not been recovered is the result of circumstances which cannot be attributed to it.

65 In the present case, the Czech Republic was not late in undertaking the recovery of the sums at issue inasmuch as, in essence, it was for OLAF, if it took the view that it was necessary, to communicate officially and immediately on the return of the inspection mission the information required for the recovery of the customs debt and not to rely 'passively' on the representative of the Czech administration who was present during the mission to do so.

66 The General Court takes the view that the arguments exchanged by the parties, as just described, require it to examine the following four points, in the following order: the conditions of application to the Czech Republic of the possibility of being released from its obligation to make available the sum at issue; the date by which the anti-dumping duties due by BAIDE, corresponding to the sum at issue, were required to be established; the effect of that company's cessation of activity on the obligation to make available the sum at issue; and the obligation for the Czech Republic to lodge a security for the recovery of the sum at issue.

Conditions of application to the Czech Republic of the possibility of being released from its obligation to make available the sum at issue

67 As noted in paragraph 58 above, the Commission argues that the Czech Republic was not entitled to rely on the provisions of Article 17(2) of Regulation No 1150/2000, because it failed to establish that it showed the entitlements which had not been recovered in the B account within the periods laid down in Article 6(3)(b) of that regulation.

– *Applicable provisions*

68 With regard to the period concerned by the facts giving rise to the dispute, two decisions on the system of the European Union's own resources applied successively, namely Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42), then, as of 1 January 2007, Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17).

69 Under Article 2(1)(b) of Decision 2000/597, the content of which was repeated, in essence, in Article 2(1)(a) of Decision 2007/436, revenue from, inter alia, 'Common Customs Tariff duties and other duties established or to be established by the institutions of the [European Union] in respect of trade with non-member countries' is to constitute own resources entered in the general budget of the European Union.

70 Article 8(1) of Decisions 2000/597 and 2007/436 provides, in the first and third subparagraphs thereof, notably, first, that those own resources of the European Union are to be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which are, where appropriate, to be adapted to meet the requirements of EU rules and, second, that Member States are to make those resources available to the Commission.

71 Regulation No 1150/2000 as it applies to the present dispute is the result of two changes introduced, in the course of the period concerned by the facts giving rise to the dispute, with effect from 28 November 2004, by Council Regulation (EC, Euratom) 2028/2004 of 16 November 2004 (OJ 2004 L 352, p. 1) and, with effect from 1 January 2007, by Council Regulation (EC, Euratom) No 105/2009 of 26 January 2009 (OJ 2009 L 36, p. 1).

72 Under Article 2(1) of Regulation No 1150/2000, the European Union's entitlement to own resources is to be established as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the

debtor. The date of the establishment referred to in Article 2(1) is to be the date of entry in the accounting ledgers provided for by the customs regulations, in accordance with the first subparagraph of Article 2(2) of that regulation.

73 Article 6(1) and (3)(a) and (b) of that regulation provides:

‘1. Accounts for own resources shall be kept by the Treasury of each Member State or by the body appointed by each Member State and broken down by type of resources.

…

3.

(a) Entitlements established in accordance with Article 2 shall, subject to point (b) of this paragraph, be entered in the accounts [commonly referred to as “A accounts”] at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established.

(b) Established entitlements not entered in the accounts referred to in point (a), because they have not yet been recovered and no security has been provided shall be shown in separate accounts [commonly referred to as “B accounts”] within the period laid down in point (a). Member States may adopt this procedure where established entitlements for which security has been provided have been challenged and might, upon settlement of the disputes which have arisen, be subject to change.’

74 The first subparagraph of Article 9(1) of that regulation provides:

‘In accordance with the procedure laid down in Article 10, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.’

75 In accordance with Article 10(1) of that regulation:

‘After deduction of collection costs in accordance with Article 2(3) and Article 10(3) of Decision [2007/436,] entry of the own resources referred to in Article 2(1)(a) of that Decision shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

However, for entitlements shown in separate accounts under Article 6(3)(b) of this Regulation, the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.’

76 Under Article 11(1) of Regulation No 1150/2000, any delay in making the entry in the account referred to in Article 9(1) of that regulation, is to give rise to the payment of interest by the Member State concerned.

77 Finally, Article 17(1) to (4) of that regulation states:

‘1. Member States shall take all requisite measures to ensure that the amount[s] corresponding to the entitlements established under Article 2 are made available to the Commission as specified in this Regulation.

2. Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable either:

(a) for reasons of *force majeure*; or

(b) for other reasons which cannot be attributed to them.

Amounts of established entitlements shall be declared irrecoverable by a decision of the competent administrative authority finding that they cannot be recovered.

Amounts of established entitlements shall be deemed irrecoverable, at the latest, after a period of five years from the date on which the amount has been established in accordance with Article 2 or, in the event of an administrative or judicial appeal, the final decision has been given, notified or published.

…

Amounts declared or deemed irrecoverable shall be definitively removed from the separate account referred to in Article 6(3)(b). They shall be shown in an annex to the quarterly statement referred to in Article 6(4)(b) and[,] where applicable, in the quarterly statement referred to in Article 6(5).

3. Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limits referred to in that paragraph, Member States shall provide the Commission with information on those cases where paragraph 2 has been applied provided the established entitlements involved exceed EUR 50 000.

…

This report, which shall be made on a form to be produced by the Commission after consulting the committee referred to in Article 20, shall include all the facts necessary for a full examination of the reasons referred to in paragraph 2(a) and (b), which prevented the Member State concerned from making available the amounts in question, and the recovery measures the Member State took in the case or cases in question.

4. The Commission has six months from the receipt of the report provided for in paragraph 3 to forward its comments to the Member State concerned.

…’

– *The Court of Justice’s interpretation*

78 It is apparent from Article 8(1) of Decisions 2000/597 and 2007/436 that the European Union’s own resources referred to in Article 2(1)(a) and (b) of Decision 2000/597 and in Article 2(1)(a) of Decision 2007/436 are collected by the Member States, who are obliged to make them available to the Commission (see, to that effect, judgment of 8 July 2010, *Commission* v *Italy*, C-334/08, EU:C:2010:414, paragraph 34).

79 To that end, the Member States are required, under Article 2(1) of Regulation No 1150/2000, to establish the European Union's entitlement to own resources as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor. The Member States are accordingly required to enter the entitlements established in accordance with Article 2 of that regulation in the accounts for the own resources of the European Union on the conditions laid down in Article 6 of that regulation (see, to that effect, judgment of 1 July 2010, *Commission* v *Germany*, C-442/08, EU:C:2010:390, paragraph 76 and the case-law cited).

80 It must be made clear in that regard that, under Article 6(3)(b) of that regulation, an established entitlement which has not yet been recovered and in respect of which no security has been provided is to be shown in separate accounts, namely B accounts (see, to that effect, judgment of 11 July 2019, *Commission* v *Italy* (*Own resources – Recovery of a customs debt)*, C-304/18, not published, EU:C:2019:601, paragraph 52).

81 The Member States must then make the European Union's own resources available to the Commission on the conditions laid down in Articles 9 to 11 of Regulation No 1150/2000, by crediting those resources, within the prescribed period, to the account opened in the name of that institution. In accordance with Article 11(1) of that regulation, any delay in making the entry in that account is to give rise to the payment of interest by the Member State concerned (judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 58).

82 In addition, under Article 17(1) and (2) of Regulation No 1150/2000, Member States are to take all requisite measures to ensure that the amounts corresponding to the entitlements established under Article 2 of that regulation are made available to the Commission. Member States are to be released from that obligation only if the amounts cannot be recovered for reasons of force majeure or if recovery proves definitively to be impossible for reasons which cannot be attributed to them. Amounts declared or deemed irrecoverable are to be definitively removed from the separate account referred to in Article 6(3)(b) of that regulation (judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 60).

83 Entry of own resources in the B account thus reflects an exceptional situation characterised by the decision to allow the Member States either not to place those entitlements at the disposal of the Commission from the time of their establishment, because they have not yet been recovered, under Article 6(3)(b) of Regulation No 1150/2000, or to be released from doing so because those entitlements prove irrecoverable for reasons of force majeure or other reasons which cannot be attributed to them, on the basis of Article 17(2) of that regulation (judgment of 8 July 2010, *Commission* v *Italy*, C-334/08, EU:C:2010:414, paragraph 68).

84 However, it is not sufficient, in order for a Member State to be exempted from its obligation to make available to the Commission the amounts corresponding to the established entitlements, that the conditions laid down in Article 17(2) of Regulation No 1150/2000 be met; the condition that those entitlements were properly entered in the B account must also have been satisfied (judgment of 8 July 2010, *Commission* v *Italy*, C-334/08, EU:C:2010:414, paragraph 65).

– *Application to the present case*

85 The Commission relies, as specified in paragraph 59 above, on the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414, paragraph 65), as recalled in paragraph 84 above.

86 As a preliminary point, it must be observed that the argument advanced by the Commission, regardless of its merits, is irrelevant in the context of the present action, based on the unjust enrichment of the European Union.

87 In that context, as set out in paragraph 42 above, it is necessary to determine whether the applicant has proved enrichment on the part of the Commission, for which there is no valid legal basis, and impoverishment on its part, linked to that enrichment, or whether, in the absence of that proof, it must be concluded that that enrichment was justified by the obligations imposed by the legislation on own resources. However, in any event, the making available of own resources is not justified by the obligation to comply with the time limits laid down in Article 6 of Regulation No 1150/2000, breach of which does not result in any payments, even of interest, payment of which is dependent on delayed entry in the account opened in the name of the Commission for that purpose, in accordance with Article 11 of amended Regulation No 1150/2000.

88 The Czech Republic cannot, therefore, be required, in its action based on unjust enrichment, to establish, as the Commission, in essence, argues, that 'the entire process during the customs proceedings, the recovery of the claim and the transactions relating to own resources was carried out in accordance with all the rules, correctly, in good time and whilst respecting the protection of the financial interests of the European Union', but only to establish, in addition to its impoverishment and the corresponding enrichment, that there was no justification for such enrichment.

89 In any event, it is apparent from the case file that the entitlements in question were shown in the B account within the periods laid down in Article 6(3) of Regulation No 1150/2000.

90 Entry in the B account is a purely accounting step, so that the periods laid down for doing that must, contrary to the Commission's submissions, be calculated not from the date on which the entitlements in question should have been established, in accordance with Article 2 of Regulation No 1150/2000, but from the date on which those entitlements were in fact established.

91 It is common ground between the parties, as they confirmed in their responses to the written questions, that the anti-dumping duties due by BAIDE on the imports at issue were established and shown in the B account on the same day, between 22 September 2008 and 18 February 2009. Moreover, the Commission acknowledged, in the context of the measure of organisation of procedure referred to in paragraph 28, that 'entry in the B account immediately after entry in the accounts as provided for by customs legislation [was] acceptable'.

92 In those circumstances, it must be concluded that, in accordance with the provisions of Article 6(3)(b) of Regulation No 1150/2000, the duties due by BAIDE which had yet to be recovered and when no security had been provided, were shown in the B account, in any event, at the latest on the first working day after the 19th day of the second month following the month during which those entitlements were established.

93 Therefore, it is necessary to ascertain whether the sum at issue was irrecoverable for reasons not attributable to the Czech Republic, allowing it to show it in a separate account.

Date by which the anti-dumping duties due by BAIDE, corresponding to the sum at issue, were required to be established

94 The Czech Republic maintains, as noted in paragraph 51 above, that it was in a position to establish the anti-dumping duties due by BAIDE on the imports at issue only following the communication of the OLAF report, whilst the Commission claims that it should have done so immediately on the return of the inspection mission, as is apparent from paragraph 60 above.

95 According to the Commission, the Czech Republic was aware of the Minutes of 15 November 2007 and the evidence of the Chinese origin of the goods in question obtained during the mission and annexed to that document, since those minutes had been signed by the representative of the Czech customs administration who was present throughout the mission and attended all the meetings and participated in the inspection of the production facilities. In those circumstances, the Czech Republic had sufficient information at its disposal to establish the customs debt as soon as its representative returned from the mission.

96 Based on the applicable legislation, set out in paragraphs 68 to 77 above, as interpreted by the Court of Justice, the Member States must establish the European Union's entitlement to own resources as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor.

97 In that regard, Article 217(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, 'the Customs Code'), in the version applicable to the dispute, provides that 'each and every amount of import duty or export duty resulting from a customs debt … shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts)'.

98 Those conditions are met if the customs authorities have the necessary particulars and are therefore in a position to calculate the amount of duties and determine the debtor (see, to that effect, judgment of 15 November 2005, *Commission* v *Denmark*, C-392/02, EU:C:2005:683, paragraphs 57 to 59).

99 In the present case, it is common ground that a representative of the Czech customs administration participated in the inspection mission and signed the Minutes of 15 November 2007.

100 The Czech Republic asserts that the representative of its customs administration did not receive a copy of the documents annexed to those minutes at the end of the inspection mission, so that it did not, at that time, have the evidence necessary to recover the sum at issue.

101 At the hearing, the Commission confirmed that it was not alleging that the representative of the Czech customs administration present during the inspection mission had physically received the documents annexed to the minutes, but that she was necessarily aware of the evidence gathered during that mission because she had been able to consult that evidence.

102 However, it is not possible to agree with the Commission's assertion that it was sufficient that the representative of the Czech customs administration 'saw with her own eyes what happened' in order for the Czech Republic, solely on the basis of the evidence of its representative, to be in a position to establish the duties due by BAIDE on the return of the inspection mission.

103 To rely on evidence in administrative proceedings, it cannot be sufficient to be aware of the existence of that evidence. In order to enable them to enter the duties due in the accounts and inform the debtor of them, the Czech authorities would have had to be in a position to authenticate the evidence gathered during the inspection mission, then to use it against the taxpayer. However, as has just been observed, it is not disputed that such evidence was not sent to the Czech Republic at the end of the inspection mission.

104 The Commission nonetheless argues that, inasmuch as the Czech Republic, through the Minutes of 15 November 2007, had been informed of the list of evidence collected, it fell to it to obtain copies of that evidence by requesting it from OLAF if it considered that necessary.

105 In that regard, it must be observed that the Czech Republic asserts that there was no legal basis allowing the representative of its customs administration to send directly to the competent national authorities evidence collected as part of a mission conducted under the responsibility of OLAF, which is confidential and can serve as evidence in administrative or legal proceedings only after having been communicated by the Commission and verified by OLAF, the only recipients of the documents and information gathered as part of an EU mission in a third country.

106 According to Article 1 thereof, Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ 1997 L 82, p. 1), 'lays down the ways in which the administrative authorities responsible for implementation of the legislation on customs and agricultural matters in the Member States shall cooperate with each other and with the Commission in order to ensure compliance with that legislation within the framework of a Community system'.

107 Article 12 of Regulation No 515/97, in the version applicable to the dispute, provides that 'findings, certificates, information, documents, certified true copies and any intelligence obtained by the staff of the requested authority[, namely the competent authority of a Member State to which a request for assistance is made,] and communicated to the applicant authority[, namely the competent authority of a Member State which makes a request for assistance,] in the course of the assistance provided for in Articles 4 to 11 [on the rules of implementation of assistance on request] may be invoked as evidence by the competent bodies of the Member Stat[e] of the applicant authority'.

108 Article 20 of Regulation No 515/97 provides as follows:

'1. In pursuit of the objectives of this Regulation, the Commission may, under the conditions laid down in Article 19, conduct Community administrative and investigative cooperation missions in third countries in coordination and close cooperation with the competent authorities of the Member States.

2. The Community missions to third countries referred to in paragraph 1 shall be governed by the following conditions:

(a) they may be undertaken at the Commission's initiative, where appropriate on the basis of information supplied by the European Parliament, or at the request of one or more Member States;

(b) they shall be carried out by Commission officials appointed for that purpose and by officials appointed for that purpose by the Member State(s) concerned;

(c) they may also, by agreement with the Commission and the Member States concerned, be carried out on behalf of the Community by officials of a Member State, in particular under a bilateral assistance agreement with a third country; in that event the Commission shall be informed of the results of the mission;

…'

109 Article 21, which is part of Title IV, 'Relations with third countries', of Regulation No 515/97, in the version applicable to the dispute, specifies:

'1. The findings and information obtained in the course of the Community missions referred to in Article 20 of this Regulation, and in particular documents passed on by the competent authorities of the third countries concerned, shall be handled in accordance with Article 45 of this Regulation.

2. Article 12 shall apply *mutatis mutandis* to the findings and information referred to in paragraph 1.

3. For the purposes of their use pursuant to Article 12, original documents obtained or certified true copies thereof shall be forwarded by the Commission to the competent authorities of the Member States if they so request.'

110 Article 45 of Regulation No 515/97, in the version applicable to the dispute, states:

'1. Regardless of the form, any information transmitted pursuant to this Regulation shall be of a confidential nature, including the data stored in the [Customs Information System]. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to like information under both the national law of the Member States receiving it and the corresponding provisions applicable to Community authorities.

In particular, the information referred to in the first subparagraph may not be sent to persons other than those in the Member States or within the Community institutions whose functions require them to know or use it. Nor may it be used for purposes other than those provided for in this Regulation, unless the Member State, or the Commission, which supplied it or entered it in the [Customs Information System] has expressly agreed, subject to the conditions laid down by that Member State or by the Commission and in so far as such communication or use is not prohibited by the provisions in force in the Member State in which the recipient authority is based.

2. Without prejudic[e] to the provisions in Title V on the [Customs Information System], information concerning natural and legal persons shall be transmitted under this Regulation only where strictly necessary to prevent, investigate or take proceedings in respect of operations in breach of customs or agricultural legislation.

3. Paragraphs 1 and 2 shall not preclude the use of information obtained under this Regulation in any legal action or proceedings subsequently initiated in respect of failure to comply with customs or agricultural legislation.

…’

111 Article 9, headed ‘Investigation report and action taken following investigations’, of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1), reads as follows:

‘1. On completion of an investigation carried out by the Office, the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of the Office on the action that should be taken.

2. In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.

3. Reports drawn up following an external investigation [, by which, in accordance with Article 3 of the regulation, the Office is to carry out the inspections and checks provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that regulation in the Member States and, in accordance with the cooperation agreements in force, in third countries,] and any useful related documents shall be sent to the competent authorities of the Member States in question in accordance with the rules relating to external investigations.

…’

112 Article 17, headed ‘Investigative missions in third countries’, of OLAF’s internal guidelines on investigation procedures (‘the Internal Guidelines’) states, in paragraph 5, that ‘members of the investigation unit [to which the case has been assigned by the Director-General of OLAF, in accordance with Article 6.1 of the Internal Guidelines,] who are engaged in carrying out the investigative mission shall draw up a report of the activities undertaken during the mission, a copy of which shall be provided to the participants[, namely, in accordance with paragraph 7, with regard to investigative missions concerning customs or own resources, to the officials of the Member States concerned participating in the investigative mission]’.

113 Having set out the provisions applicable to the present dispute and invoked by the parties, it must be observed that it follows from the regulatory framework thus defined that the Member States’ cooperation with the Commission is an essential requirement of the implementation of customs legislation in the European Union.

114 To that end, Community administrative and investigative cooperation missions are carried out in third countries by officials appointed, for that purpose, by the Member States, in accordance with Article 20(2) of Regulation No 515/97.

115 Whilst the findings and information obtained in the course of Community missions are of a confidential nature, the obligation of professional secrecy by which they are covered, in accordance with Article 45(1) of Regulation No 515/97, cannot obstruct their communication to

the representatives appointed by the Member States involved in such missions, without thereby rendering ineffective the objective of that regulation, as defined in paragraph 113 above, in accordance with Article 1 of that regulation.

116 In those circumstances, those representatives must be regarded, within the meaning of the second subparagraph of Article 45(1) of Regulation No 515/97, as persons, in the Member States, whose functions require them to know or use them.

117 Consequently, the findings and information gathered in the course of a Community mission carried out in a third country may be used by the officials appointed by the Member States to participate in that mission for the purposes of the application of Regulation No 515/97.

118 Under Article 45(2) and (3) of that regulation, the information obtained in the course of Community missions may be used to take proceedings in respect of operations which are in breach of customs legislation and in any legal action or proceedings subsequently initiated. Such information may, in particular, be invoked as evidence by the competent authorities of the Member States, in accordance with Article 21(2) of Regulation No 515/97.

119 In those circumstances, contrary to the Czech Republic's submissions, the representative of its customs administration involved in the inspection mission was fully entitled to request and receive from OLAF, as the Commission argues, the evidence annexed to the Minutes of 15 November 2007 and the obligation of confidentiality laid down in Article 45 of Regulation No 515/97 did not present an obstacle to that. It was also entitled to communicate that evidence to the competent authorities of the Czech Republic so that those authorities could use it as evidence against BAIDE in the proceedings for recovery of the customs debt due by that company.

120 In that regard, the Czech Republic nonetheless argues, as specified in paragraph 105 above, that OLAF was required to evaluate the findings made during the inspection mission before communicating them in its investigation report, in accordance with Article 17.5 of the Internal Guidelines and Article 9 of Regulation No 1073/1999.

121 Whilst the fact that OLAF verifies the evidence before communicating it in its report may, in some circumstances, have delayed the communication of such evidence, it nonetheless did not present an obstacle, in itself, to the Czech Republic, as the Commission maintains, requesting it from the Commission as soon as its representative returned from the mission.

122 Nevertheless, it is not disputed that OLAF had agreed to communicate the evidence collected during the inspection mission to the Czech Republic at the beginning of 2008. However, it is common ground, as the Commission, furthermore, acknowledged at the hearing, that OLAF was delayed in communicating its report, to which such evidence was attached.

123 In those circumstances, the Czech Republic cannot be criticised for having waited for the communication of the OLAF report and for not having asked for the evidence to be produced immediately on the return of the inspection mission.

124 Moreover, the Czech Republic could, in the present case, take the view that it was necessary to wait for such evidence to be analysed and verified by OLAF before using it in tax adjustment proceedings. OLAF was best placed to carry out that verification since the evidence had been collected under a cooperation agreement between the Commission and Laos and in the absence of a bilateral assistance agreement between that country and the Czech Republic.

125 In those circumstances, the Czech Republic has established that it was not possible for it to be in possession of the evidence necessary to establish the anti-dumping duties due by BAIDE on the 28 cases of imports at issue immediately on the return of the inspection mission.

126 Consequently, contrary to the Commission's arguments, by failing, in the circumstances of the present case, to establish the entitlements in question in the days following the return of the inspection mission, the Czech Republic did not breach its obligations under the provisions set out in paragraphs 68 to 77 above.

Effect of BAIDE's cessation of activity on the obligation to make available the sum at issue and the recovery thereof

127 The Czech Republic maintains, as noted in paragraph 52 above, that it was unable to recover the sum at issue, since BAIDE had ceased all activities in its national territory as of May 2008, so that the majority of that company's assets could no longer be seized when the OLAF report was delivered to it.

128 It is common ground that the OLAF report did in fact make it possible to establish the customs duties due by BAIDE. Such report specifies that the evidence of the Chinese origin of the goods was sufficient to initiate duty recovery proceedings and mentions the 28 cases of imports at issue concerning BAIDE in the Czech Republic.

129 Neither is it disputed that BAIDE had ceased its activities in the territory of the Czech Republic from May 2008, which the Commission acknowledged at the hearing.

130 Moreover, the inquiries conducted, in particular the investigation carried out by the Czech customs authorities through banks and the municipal services of the City of Prague (Czech Republic), as well as the extract from the commercial register, the tax authorities' response to the Czech customs authorities' request for transfer of a tax overpayment established in BAIDE's name, the response to a request for tax information and the insolvency application of BAIDE's liquidator, attached to the application as Annexes A.8, A.19, A.20 and A.21 respectively, show that BAIDE no longer possessed any seizable assets in the territory of the Czech Republic, with the exception of the sums deposited in three accounts opened with the Československá obchodní banka, and a tax overpayment, in the amounts of CZK 16 047.67, 14.56 United States dollars (USD), EUR 51.60 and CZK 82 300 respectively, which sums were ultimately recovered by the customs authorities.

131 The Commission does not dispute the result of the investigation conducted by the Czech customs authorities into BAIDE's assets, or the conclusions and financial data contained in the documents referred to in paragraph 130 above. Neither does it dispute the fact that there is a direct link between the finding of a cessation of activity on the part of BAIDE and the fact that, since then, other than the abovementioned amounts, that company had had no seizable assets in the Czech Republic.

132 Finally, the Commission does not allege that the Czech Republic could have seized greater assets than it ultimately seized after the delivery of the OLAF report.

133 Whilst the Commission claims that the Czech Republic failed to act with all due diligence at the end of the inspection mission, it confirmed at the hearing that it did not intend to allege that the Czech Republic, regardless of the measures implemented after the delivery of the OLAF report, should have recovered a greater amount than that ultimately recovered following the delivery of that report.

134 In that regard, the Commission argued at the hearing, in response to a question put to it on that point, that 'the Czech Republic was obliged to establish the customs duties at a time when [BAIDE] still had a presence in Czech territory, therefore at a time between the end of November 2007 … and the end of February 2008', and that it 'could [thus] have recovered more money if it had established the customs debt earlier'.

135 However, in the particular circumstances of the present case, as found in paragraphs 123 and 124 above, the Czech Republic could reasonably wait for the communication of the OLAF report, expected to take place at the beginning of 2008, without asking, prior to that, for the evidence collected during the inspection mission. In that context, and given the time that it would have taken to obtain those documents, for the Czech authorities to analyse them and for tax adjustment proceedings to be carried out, the Commission is not justified in maintaining that the Czech Republic could have recovered a higher amount of entitlements to own resources if it had established them earlier.

136 In those circumstances, it follows from the inquiries conducted, taking account of the materials in the case file and the arguments exchanged by the parties, that BAIDE's cessation of activity is capable of having constituted a reason not attributable to the Czech Republic which could legally release that Member State from the obligation to place the sum at issue at the disposal of the European Union, on the basis of Article 17(2)(b) of Regulation No 1150/2000, set out in paragraph 77 above.

137 Also, given that BAIDE's cessation of activity occurred prior to the delivery of the OLAF report, the circumstance, even supposing it well founded, that the Czech Republic was late in acting after the delivery of that report has, in any event, no bearing on the assessment of the obligation for the Czech Republic to make available the sum at issue.

Obligation to lodge a security for the recovery of the sum at issue

138 The Commission argues, however, that the Czech Republic was aware of the risk of fraud on the part of BAIDE at the time of the checks which preceded the release of the goods in question. It should therefore have lodged, prior to the release of those goods for circulation, as specified in paragraph 61 above, a security sufficient to cover the difference which could exist between the amount of the duties declared by that company and the amounts which may ultimately be payable on such goods, in the light of the serious doubts which existed as to their origin.

139 The Commission relies, on that point, on Article 248 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1, 'the Regulation implementing the Customs Code').

140 The Czech Republic disputes the Commission's position and maintains that the customs authorities could not require any security as part of the checks which preceded the release of the goods in question when, in the light of the information available, there was no evidence of a customs debt which had been or may be incurred.

141 In support of its argument, the Czech Republic invokes Article 190(1) of the Customs Code, which provides that 'where customs legislation provides that the provision of security is optional, such security shall be required at the discretion of the customs authorities in so far as they consider that a customs debt which has been or may be incurred is not certain to be paid within the prescribed period'.

142 Asked to clarify its argument as part of the measure of organisation of procedure referred to in paragraph 28 above, the Czech Republic indicated that 'none of the provisions of the customs legislation in force at the relevant time specified that security could be required under [Article 190 of the Customs Code] as a result of additional checks or newly acquired information after the goods were released for free circulation'. It concluded on that basis that it was thus 'inconceivable for the Czech customs authorities to have required security under that provision'.

143 However, it must be observed that the Commission, as it confirmed at the hearing, is not criticising the Czech Republic, for the purposes of contesting its action in the present dispute, for failing to provide a security after the release of the pocket lighters for free circulation, but only for failing to do so at the time of the granting of their release.

144 Thus, regardless of its merits, the Czech Republic's argument concerning the conditions for the application, in the present case, of the optional security provided for by Article 190 of the Customs Code is of no relevance to the examination, in the present dispute, of the obligation to provide a security, invoked by the Commission, for recovery of the sum at issue.

145 In that regard, the Czech Republic does not dispute that the examination of the goods in question falls within the scope of Article 248 of the Regulation implementing the Customs Code, which provides for the lodging, when the release of goods is granted, of a security to permit their release for free circulation in cases where the checks carried out may enable an amount of import duties higher than that resulting from the particulars in the customs declaration to be assessed. It disputes, on the other hand, that the conditions for the application of that article are met in the present case.

146 Having clarified that, it may be recalled that, as EU law currently stands, the management of the system of the European Union's own resources is entrusted to the Member States and is their responsibility alone (judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 62). In that context, the Member States are to take all requisite measures to ensure that the amounts corresponding to the entitlements established, as noted in paragraph 77 above, are made available to the Commission, in accordance with Article 17(1) of Regulation No 1150/2000.

147 Therefore, it falls to the Member States, in accordance with Article 18(1) of that regulation, to conduct the checks and enquiries concerning the establishment and the making available of own resources from, as in the present case, Common Customs Tariff duties and other duties established by the institutions in respect of trade with countries not members of the European Union, as those duties were defined in paragraph 69 above.

148 Entitlements are to be established according to customs regulations concerning the entry of the entitlement in the accounts and the notification of the debtor, in accordance with Article 2 of that regulation.

149 The first sentence of Article 74(1) of the Customs Code states that 'where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured'.

150 Article 248, which appears in Title VIII, 'Examination of the goods, findings of the customs office and other measures taken by the customs office', of the Regulation implementing the Customs Code reads as follows:

'1. The granting of release shall give rise to the entry in the accounts of the import duties determined according to the particulars in the declaration. Where the customs authorities consider that the checks which they have undertaken may enable an amount of import duties higher than that resulting from the particulars … in the declaration to be assessed, they shall further require the lodging of a security sufficient to cover the difference between the amount according to the particulars in the declaration and the amount which may finally be payable on the goods. However, the declarant may request the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable instead of lodging this security.

…'

151 It follows from those provisions that, when a customs declaration is lodged, the applicable duties must either be paid or covered by a security, prior to the release of the goods. Thus, if the customs authorities consider that verification of the customs declaration may lead to a higher amount of import duties being payable than that resulting from the particulars in the customs declaration, the release of those goods will be authorised after a security sufficient to cover the difference in those amounts has been lodged.

152 In that regard, whilst Article 248(1) of the Regulation implementing the Customs Code allows, on account of the use of the verb 'consider', the customs authorities of the Member States a certain degree of discretion when deciding on the need to require the lodging of securities, that discretion is limited by the principle of effectiveness, set down in Article 325(1) TFEU, under which the financial interests of the European Union must be effectively protected against any fraud or other illegal activities liable to adversely affect those interests.

153 The scope of the principle of effectiveness, inasmuch as it applies to the specific obligation of the Member States under Article 325(1) TFEU to guarantee the effective and comprehensive collection of the European Union's own resources constituted by customs duties, cannot be determined in an abstract and fixed manner, since it depends on the characteristics of the fraud or other illegal activity concerned, which may furthermore change over time.

154 In the present case, to assert that the Czech Republic was aware of the risk of fraud at the time of the release of the goods in question, the Commission maintains, in essence, that the applicant Member State had been informed that the five-digit serial number '44001', written on the base of the pocket lighters, gave grounds to assume that they were of Chinese origin.

155 In that regard, firstly, the Commission argues that that information appeared in documentation drawn up by OLAF and distributed at a seminar held on 31 May and 1 June 2005 ('the 2005 OLAF documentation'). The Commission acknowledges that the Czech Republic did not attend that seminar but maintains that it was a recipient of that documentation.

156 The Czech Republic disputes that it received the 2005 OLAF documentation.

157 At the hearing, the Commission indicated that it did not 'know exactly' the date on which the 2005 OLAF documentation was allegedly received by the Czech Republic. It explained that it had not found 'concrete proof' that that documentation was sent to the Czech Republic. Neither is it apparent from the case file that such documentation, contrary to what the Commission asserted at the hearing, was sent to the Czech Republic between 'June and the end of the year [2005]'.

158 Moreover, contrary to the Commission's submissions in the rejoinder, nor is it apparent from Communication WOMIS/CZ/2014/5, attached as Annex D.3 and dated 3 October 2016, that, 'on the basis of [the 2005 OLAF documentation], the Czech authorities established a risk profile on 22 March 2006'.

159 Finally, whilst the Czech Republic acknowledged at the hearing that, as is furthermore expressly mentioned therein, the risk profile which it established on 22 March 2006 was in fact based on information provided by OLAF, it indicated that such information was passed to it at a meeting held between 20 and 22 March 2006 with OLAF's representatives, and the Commission did not comment on that assertion.

160 In those circumstances, it has not been established that the Czech Republic received the 2005 OLAF documentation between June and the end of 2005.

161 Therefore, the Commission cannot maintain that the Czech Republic breached its obligations with regard to own resources by failing to lodge in 2005, on the basis of 'sufficiently precise information on the risks' of fraud contained in that documentation, a security in respect of the anti-dumping duties which may be due by BAIDE, prior to the release of the pocket lighters for free circulation.

162 Secondly, the Commission argues that the information concerning the serial number '44001', which indicates that the pocket lighters are of Chinese origin, also appeared in the risk profile which the Czech Republic established on 22 March 2006 and updated in November of that year ('the risk profile').

163 It is apparent from the case file that the risk profile, as the Czech Republic expressly alleges, was adopted to 'dr[a]w the attention of the various customs offices to the risks identified and … oblig[e] them to carry out thorough checks of the goods in the light of those risks'. The risk profile emphasises, as the Commission argues, that 'the five-digit numerical code on the bottom of the lighters indicates that they may be lighters which originated in China'.

164 First, the Czech Republic maintains that the checks carried out on the basis of the risk profile nonetheless did not make it possible to demonstrate that the pocket lighters had a different origin from that declared by BAIDE.

165 In that regard, the Czech Republic refers, in paragraphs 43 and 44 of the reply, to Annexes C.1a to C.1f, C.1h to C.1l and C.2a to C.2n. It identifies, more specifically, as is apparent from paragraph 22 of its responses to the written questions asked as part of the measure of organisation of procedure referred to in paragraph 28 above, Annexes C.1h and C.2a to C.2n, in particular the official records which they contain, as relating to the imports made after the adoption of the risk profile.

166 However, the Czech Republic fails to identify, among those annexes which present a selection of 'documents relating to customs checks', as they are identified in the summary attached to the reply, concerning 24 of the 28 imports in question, composed mainly of the official records of the checks made, the invoices issued by BAIDE and a number of photographs of the cargoes and goods concerned, the evidence on which it relies to assert that 'none of those checks found evidence suggesting that the real origin of the goods was different from the origin declared'.

167 Even if such evidence had been identified in a sufficiently precise manner to allow the General Court to assess its merits, the fragmented and incomplete nature of such documentation, clearly presented in a selective manner, cannot, in any event, lead to the conclusion that there was no evidence which could suggest that the goods in question were of Chinese origin. Moreover, as the Commission observed in paragraph 66 of the rejoinder, no photos of the pocket lighters were attached to the documents selected as Annexes C.1b, C.1f, C.1h to C.1l, C.2a to C.2n.

168 Questioned on that point in the context of the measure of organisation referred to in paragraph 28 above, the Czech Republic merely relied on two additional photographs to assert that the Czech customs authorities had not found the serial number '44001', indicated by OLAF, written on the bottom of the pocket lighters, but a different code, consisting of three letters and two digits, or even no code at all.

169 The production of just two photographs, in support of such an argument, cannot, however, suffice to demonstrate, as the Czech Republic maintains, that 'the photographs taken during the customs checks' allow the conclusion that the serial number '44001' did not appear on the imports at issue. What is more, whilst the photographs attached as Annex F.3 do in fact show, on the bottom of two lighters, a different code from that indicated by OLAF, there is nothing in those photographs which allows the importer of those goods to be identified.

170 Since the imports at issue concern several million lighters, the absence, supposing it has been established, of the serial number identified by OLAF from the bottom of 10 or so lighters imported by BAIDE, as they appear in the photographs attached in the annexes cited in paragraph 165 above, cannot therefore suffice to establish that the Czech Republic could not have suspected that the pocket lighters were of Chinese origin.

171 Moreover, the Czech Republic cannot sucessfully rely, to establish that the measures taken failed to 'reveal anything which demonstrated that the goods had a different origin from that declared', on the official records attached as C Annexes, since those documents simply attest to the results of the checks as they in fact took place, on the basis of the evidence taken into account alone.

172 It must also be pointed out, in that regard, that point 6.1 of Commission Communication AM 2007/019 of 30 April 2007, sent to the Member States in the context of mutual cooperation, specifies the following:

'…

In the period between [the] end [of] 2004 and July 2006, the quantity of lighters imported into the Community from Laos reached more than 80 million pieces.

…

During the course of checks, two Member States (Czech and Belgian Customs) detected[,] on the bottom of the lighter tank bodies declared as originating in Laos[,] the so[-]called 5 digit code, which is a code attributed by Chinese authorities to Chinese lighte[r] producers. In that case, it was the code 44001, which is the code given by the Chinese authorities to the Chinese producer mentioned under point 7.1.2[, namely BAIDE].'

173 In addition, point 12 of that communication reads as follows:

'It has been established that the Chinese company mentioned under 7.1.2 has placed [its] European distribution centre in Prague in the Czech Republic. Czech Customs monitored the importing situation of the related importer mentioned under 7.2.

The related importer mentioned under 7.2 immediately started to change the place of customs clearance from one Customs house to the next in order to avoid complete checks of the lighter consignments declared as originating in Laos.

Subsequently[,] the goods were cleared for free circulation in the Slovak Republic. Slovak Customs was informed about the transport of lighters by Czech Customs in July 2006 and[,] with further support by OLAF[,] the imports of two consignments were stopped in August 2006. When Slovak Customs asked for guarantees covering the anti-dumping duties on the lighters[,] the consignments were sent back to a customs warehouse in Prague.

…'

174 Expressly asked, in the context of the measure of organisation of procedure referred to in paragraph 28 above, to submit observations regarding the information contained in points 6.1 and 12 of the communication referred to in paragraphs 172 and 173 above, the Czech Republic argued that 'the information on the significance of the five-digit code appearing in [that] communication [was] very patchy and vague'. It nonetheless did not call into question the fact, mentioned in point 6.1 of that communication, that Czech customs had detected, regardless of its exact significance, such a serial number on the bottom of the lighters imported by BAIDE.

175 Although the Czech Republic also maintained that such communication was not relevant in the present dispute, inasmuch as it was prepared after the release of the imports at issue for free circulation, neither can that circumstance, in itself, invalidate the information contained in that communication, according to which Czech customs had detected the serial number '44001' on the bottom of the lighters.

176 What is more, since that communication, as the Czech Republic emphasises, was not sent out until after the goods were released for free circulation, the fact that OLAF did not recommend that a security be put in place in the communication in question cannot validly be taken into account in assessing the obligation for the Czech Republic to put in place such a security at the time of the release of those goods.

177 Asked again, at the hearing, to submit observations on the information contained in points 6.1 and 12 of Communication AM/2007/019, the Czech Republic however failed to produce any concrete evidence capable of invalidating that information. It furthermore did not dispute that it had alerted Slovak customs to the existence of fraudulent imports, as is apparent from point 12 of Communication AM/2007/019.

178 It must thus be held that the Czech Republic, though asked in writing to clarify the information contained in points 6.1 and 12 of Communication AM/2007/019, was not in a position to submit sufficiently precise and relevant evidence capable of refuting that information. It thus cannot maintain that it did not detect the series number indicated by OLAF, when it informed the Slovak authorities of the existence of fraudulent imports, declared as originating in Laos and previously brought into its territory by BAIDE.

179 Whilst the Czech Republic attempts to challenge the relevance of the information communicated by OLAF in order to determine the origin of the goods in question, arguing, as indicated in paragraph 174 above, that its incomplete nature meant, in essence, that it could not be certain of the significance of that information, it is common ground, as the Czech Republic confirmed at the hearing, that it did not question OLAF on the accuracy of the information thus communicated, even though it included that information, unamended, in the risk profile.

180 Moreover, it must be recalled that it is for the customs authorities of the Member States to ensure that EU customs law is applied and, in particular, to carry out appropriate customs checks in order to effectively protect the financial interests of the European Union. The performance of such a task requires those authorities to work continuously, consistently and systematically. Whilst customs inspection activities undertaken at EU level are intended to support the Member States, they cannot thereby, in any event, replace the act of monitoring and effectively protecting the financial interests of the European Union which is the responsibility of the Member States.

181 Finally, contrary to the Czech Republic's assertions, for a security to be lodged for the recovery of the sum at issue, it was not necessary, at the time of the release of the goods in question, for it to be certain that their origin was different from that declared, but only for there to be indications which may enable, when those goods were checked, a higher amount of import duties than that resulting from the particulars in the customs declaration to be assessed.

182 In that regard, the Czech Republic cannot now maintain that it could have only vague suspicions as to the fraudulent nature of the imports at issue, when it acknowledged itself in the risk profile that there '[was] a reasonable suspicion of circumvention of customs legislation', specified that the aim of the internal monitoring was 'to take all possible measures to prevent avoidance of the anti-dumping duties by means of a different tariff classification or declaration of origin of the goods' and indicated that it was recommended, where appropriate, 'that the amount of the anti-dumping duty be seized'.

183 Furthermore, as stated in paragraph 178 above, the Czech Republic alerted Slovak customs to the existence of fraudulent imports. It also put in place a number of measures following the adoption of the risk profile, which show, at the least, that it was aware of the risk of fraud from the time when that profile was put in place. The Czech Republic does not dispute that, as the Commission pointed out in paragraph 15 of the defence, on 13 April 2006, it sent a letter to OLAF regarding suspicions of fraud on the part of BAIDE and, on 28 August 2006, it opened an investigation concerning that company. Neither does it dispute that it sent OLAF, prior to its inspection mission, a list of the imports at issue, the origin of which it was necessary to verify.

184 Nevertheless, second, the Czech Republic submits that, even if it were obliged, in the light of OLAF's information, to lodge a security for the recovery of the sum at issue, it would have had to release that security as soon as the Laotian authorities had confirmed the authenticity of the certificates of origin of the goods in question and there was 'no evidence to the contrary'.

185 Nonetheless, regardless of the legal effect which may be accorded to declarations of the Laotian authorities in the context of the dispute, the mere fact that those authorities confirmed the authenticity of the certificates of origin attached by BAIDE in 2 of the 28 cases of imports at issue could not, in any event, suffice to dispel the doubts which the Czech Republic had itself had, on the basis of the information communicated by OLAF, with regard to all BAIDE's imports from Laos.

186 At the most, the certificates produced by BAIDE could have been used as evidence of the Laotian origin of the pocket lighters solely to the extent that such origin was corroborated, and not, as in the present case, invalidated, by the other evidence in the Czech Republic's possession at the time of the release of the goods in question.

187 In the light of all of the foregoing, the Czech Republic was required, on the basis of Article 248(1) of the Regulation implementing the Customs Code, to lodge a security, for the recovery of the anti-dumping duties which may be due by BAIDE, as of the adoption of the risk profile, that is from 22 March 2006.

General conclusion on the existence of unjust enrichment of the European Union

188 As follows from paragraphs 123 and 124 above, the Czech Republic was in a position to establish the customs duties due by BAIDE on the imports at issue as of the delivery of the OLAF report.

189 As observed in paragraph 129 above, the OLAF report was nonetheless delivered after BAIDE's cessation of activity.

190 In accordance with the conclusion in paragraph 136, BAIDE's cessation of activity, prior to the delivery of the OLAF report, constituted a reason not attributable to the Czech Republic, within the meaning of Article 17(2)(b) of Regulation No 1150/2000, which could legally release it from the obligation to place the sum at issue at the disposal of the European Union, since it was then no longer possible for any assets to be seized in the territory of the Czech Republic.

191 It was nonetheless concluded, in paragraph 187 above, that the Czech Republic was required, on the basis of Article 248(1) of the Regulation implementing the Customs Code, to lodge a security in respect of the sums to be recovered by way of the anti-dumping duties due by BAIDE, as of 22 March 2006.

192 It is common ground between the parties that the imports at issue, as they confirmed at the hearing, were made between 26 September 2005 and 1 March 2007. Moreover, the Commission confirmed at the hearing that it argues that the obligation to lodge a security was required to cover all the imports at issue.

193 It is clear from the document in Annex F.1 and the table in Annex B.7, that, as from 22 March 2006, 16 imports were made, the first on 11 April 2006, the last on 1 March 2007.

194 In the light of the foregoing, it must be concluded that there has been unjustified enrichment of the European Union to the extent of the amount of the sum at issue, which corresponds to the anti-dumping duties due by BAIDE on the first 12 imports of pocket lighters, made between 26 September 2005, in the case of the first, and 20 February 2006, in the case of the last, that is on 26 September, and 7, 15, 27, 29 and 30 November 2005, and 3, 10, 16, 17 and 27 January and 20 February 2006.

195 Therefore, it is necessary to uphold the action in so far as it concerns the reimbursement to the Czech Republic of the sum referred to in paragraph 194 above, namely, in the light of the financial data produced in Annex F.1 and not disputed by the Commission, the sum of CZK 17 828 399.66 paid in respect of the European Union's own resources into the Commission's account designed for that purpose.

196 The action must be dismissed as to the remainder.

Costs

197 Under Article 134(3) of the Rules of Procedure, the parties are to bear their own costs where each party succeeds on some and fails on other heads.

198 In the present case, since the Czech Republic and the Commission have each been unsuccessful in part, the parties must be ordered to bear their own costs.

199 The Kingdom of Belgium and the Republic of Poland are to bear their own costs, pursuant to Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Upholds the Czech Republic's action in so far as it concerns the repayment by the European Commission of the sum of 17 828 399.66 Czech koruny (CZK) paid in respect of the European Union's own resources;**

2. **Dismisses the action as to the remainder;**

3. **Orders the parties to bear their own costs.**

Marcoulli Schwarcz Norkus

Delivered in open court in Luxembourg on 11 May 2022.

[Signatures]