Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 September 2024*

(Appeal – Own resources of the European Union – Financial liability of a Member State – Payment to the European Commission of amounts corresponding to a loss of own resources – Action based on unjust enrichment of the European Union – Obligations of the Member States with regard to own resources – Establishment of the amounts of own resources – Entry of amounts not recovered in the B account – Time limits – Exemption from making available amounts corresponding to established entitlements declared irrecoverable – Conditions)

In Case C-494/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 22 July 2022,

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

appellant,

the other parties to the proceedings being:

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

applicant at first instance,

supported by:

Kingdom of the Netherlands, represented by M.K. Bulterman, A. Hanje and J. Langer, acting as Agents,

intervener in the appeal,

Kingdom of Belgium, represented initially by S. Baeyens and J.-C. Halleux and subsequently by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

Republic of Poland, represented by B. Majczyna, A. Kramarczyk-Szaładzińska and R. Stańczyk, acting as Agents,

interveners at first instance,

* Language of the case: Czech.

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra, N. Jääskinen and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 10 January 2024,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2024,

gives the following

Judgment

1 By its appeal, the European Commission seeks to have set aside in part the judgment of the General Court of the European Union of 11 May 2022, *Czech Republic* v *Commission* (T-151/20, 'the judgment under appeal', EU:T:2022:281), by which the General Court upheld in part the action of the Czech Republic based on Article 268 TFEU and seeking the repayment of the sum of 40 482 255 Czech koruny (CZK) (approximately EUR 1.6 million) paid in respect of own resources of the European Union.

Legal context

The Customs Code

2 The first subparagraph of 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'), applicable at the time of the facts giving rise to the dispute, provided:

'Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", 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).'

3 Article 218 of the Customs Code provided:

'1. Where a customs debt is incurred as a result of the acceptance of the declaration of goods for a customs procedure other than temporary importation with partial relief from import duties or any other act having the same legal effect as such acceptance the amount corresponding to such customs debt shall be entered in the accounts as soon as it has been calculated and, at the latest, on the second day following that on which the goods were released.

…

3. Where a customs debt is incurred under conditions other than those referred to in paragraph 1, the relevant amount of duty shall be entered in the accounts within two days of the date on which the customs authorities are in a position to:

(a) calculate the amount of duty in question, and

(b) determine the debtor.'

Regulation (EC) No 515/97

4 Article 17(2) of 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) provides:

'The Commission shall communicate to the competent authorities in each Member State, as soon as it becomes available, any information that would help them to enforce customs or agricultural legislation.'

5 Article 20 of that regulation provides:

'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;

…

3. The Commission shall inform the Member States and the European Parliament of the results of missions carried out pursuant to this Article.'

6 The first subparagraph of Article 45(1) of that regulation states:

'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.'

Regulation (EC) No 1073/1999

7 Under recitals 1, 3 and 16 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), applicable at the time of the facts giving rise to the dispute:

'(1) Whereas the institutions and the Member States attach great importance to the protection of the Communities' financial interests and to the fight against fraud and any other illegal activities detrimental to the Communities' financial interests; …

…

(3) Whereas all available means must be deployed fully to attain this objective, notably in the context of investigative duties devolving upon the Community, while the current distribution and balance of responsibilities as between the national and Community levels should be maintained;

…

(16) Whereas, to ensure that the findings of investigations conducted by the [European Anti-Fraud] Office's [(OLAF)] employees are taken into account and that the requisite follow-up action is taken, the reports should have the status of admissible evidence in administrative and judicial proceedings; whereas, to that end, they should be drawn up in a manner compatible with the rules governing administrative reports in the Member States'.

8 Article 1(1) and (2) of that regulation provided:

'1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, [OLAF] shall exercise the powers of investigation conferred on the Commission by the Community rules and Regulations and agreements in force in those areas.

2. [OLAF] shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting the European Community's financial interests against fraud. [OLAF] shall contribute to the design and development of methods of fighting fraud and any other illegal activity affecting the financial interests of the European Community.'

9 Article 9 of that regulation, entitled 'Investigation report and action taken following investigations', provided, in paragraphs 1 to 3:

'1. On completion of an investigation carried out by [OLAF], 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 [OLAF] 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 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.'

10 Article 10 of that regulation, relating to the forwarding of information by OLAF, stated, in paragraph 1:

'Without prejudice to Articles 8, 9 and 11 of this Regulation and to the provisions of [Council] Regulation (Euratom, EC) No 2185/96 [of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2)], [OLAF] may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations.'

Decisions 2000/597/EC, Euratom and 2007/436/EC, Euratom

11 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).

12 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 EU general budget.

13 The first and third subparagraphs of Article 8(1) of Decision 2000/597 and the first and third subparagraphs of Article 8(1) of Decision 2007/436 provide 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 that the Member States are to make those resources available to the Commission.

Regulation No 1150/2000

14 Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436 (OJ 2000 L 130, p. 1) is the product of two amendments introduced, in the period to which the facts giving rise to the dispute relate, respectively, with effect from 28 November 2004, by Council Regulation (EC, Euratom) No 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) ('Regulation No 1150/2000').

15 Article 2(1) of Regulation No 1150/2000 provided that the European Union's entitlement to own resources 'shall 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 first subparagraph of Article 2(2) of that regulation stated that 'the date of the establishment referred to in paragraph 1 shall be the date of entry in the accounting ledgers provided for by the customs regulations'. Lastly, the first subparagraph of Article 2(3) stated that, 'in disputed cases, the competent administrative authorities shall be deemed, for the purposes of the establishment referred to in paragraph 1, to be in a position to calculate the amount of the entitlement not later than when the first administrative decision is taken notifying the debtor of the debt or when judicial proceedings are brought if this occurs first'.

16 Article 6(1) and (3) of that regulation provided:

'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 the "A account"] 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 the "B account"] 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.

…'

17 The first subparagraph of Article 9(1) of that regulation provided:

'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.'

18 The first subparagraph of Article 10(1) of Regulation No 1150/2000, inter alia, established the time limit for crediting own resources to the account referred to in Article 9 thereof, while Article 11 of that regulation provided that any delay in making that entry was to give rise to the payment of default interest by the Member State concerned.

19 Article 17(1) and (2) of that regulation provided:

'1. Member States shall take all requisite measures to ensure that the amount 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.

If part payment or payments have been received, the period of five years at maximum shall start from the date of the last payment made, where this does not clear the debt.

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).'

Background to the dispute

20 The background to the dispute is set out in paragraphs 1 to 15 of the judgment under appeal and, to the extent relevant to this appeal, may be summarised as follows.

21 Between 2 and 26 November 2007 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 Member States, 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').

22 On 30 May 2008, following the inspection mission, OLAF adopted a post-mission report ('the OLAF report'). That report was sent to the Czech Republic, in German, English and French, on 9 July 2008. The final investigation report was adopted by OLAF on 10 December 2008.

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

24 The OLAF report stated in that regard that 'the evidence of Chinese origin established in the course of the mission is sufficient for Member States to take administrative duty recovery proceedings'. According to the report, it was important 'that Member States institute follow up audits and investigations if appropriate of the importers concerned and initiate recovery proceedings as a matter of urgency if this has not already been done'.

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

26 The competent Czech customs offices took measures to adjust and recover the tax in those cases. Nonetheless, it was not possible to adjust and recover all the established entitlements in all of those cases.

27 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 B account.

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

29 The Czech Republic also asked the Commission to be released from the obligation to make available to the latter the own resources of the European Union referred to in the preceding paragraph.

30 By letter of 20 January 2015, the Commission informed the Czech Republic, in response to that request, that the conditions laid down in Article 17(2) of Regulation No 1150/2000 were not satisfied in any of the cases in question. Consequently, 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 (approximately EUR 2.1 million) at the latest on the first working day following the nineteenth day of the second month following the month during which that letter had been sent.

31 On 17 March 2015, the Czech Republic paid 75% of that sum into the Commission's account designed for that purpose, after deducting collection costs of 25% of that amount, namely a sum of CZK 40 482 255 (approximately EUR 1.6 million). Previously, by letter of 27 February 2015, the Czech Republic had expressed reservations, informing the Commission that that payment was conditional, subject to the validity of the Commission's claims, which was made in order to avoid being required to pay the interest provided for in Article 11 of Regulation No 1150/2000.

The action before the General Court and the judgment under appeal

32 By application lodged at the Registry of the General Court on 16 March 2020, the Czech Republic brought an action under Article 268 TFEU seeking repayment of the sum of CZK 40 482 255 (approximately EUR 1.6 million) on account of the unjust enrichment of the European Union.

33 By decisions of 16 September 2020, the President of the Sixth Chamber of the General Court granted the Kingdom of Belgium and the Republic of Poland leave to intervene in support of the form of order sought by the Czech Republic.

34 By the judgment under appeal, the General Court upheld in part the Czech Republic's claims. It upheld the action in so far as it concerns the repayment by the Commission of the sum of CZK 17 828 399.66 (approximately EUR 700 000) paid in respect of the European Union's own resources (point 1 of the operative part) and dismissed it as to the remainder (point 2 of the operative part).

Procedure before the Court of Justice and forms of order sought

35 By its appeal, the Commission claims that the Court of Justice should:

– set aside point 1 of the operative part of the judgment under appeal;

– dismiss the action brought by the Czech Republic in Case T-151/20 or, in the alternative, refer the case back to the General Court in order to have it rule on the parts of the pleas in law which have not yet been examined; and

– in the event that the Court of Justice gives final judgment in the case, order the Czech Republic to pay the costs incurred by the Commission at first instance and on appeal or, in the event that the case is referred back to the General Court, reserve the decision as to costs.

36 The Czech Republic contends that the Court of Justice should:

– dismiss the appeal as inadmissible or, in the alternative, as unfounded; and

– order the Commission to pay the costs.

37 The Kingdom of Belgium and the Republic of Poland contend that the Court of Justice should dismiss the appeal and order the Commission to pay the costs.

38 By document lodged at the Registry of the Court of Justice on 11 January 2023, the Kingdom of the Netherlands sought leave to intervene in the present appeal in support of the form of order sought by the Czech Republic. By decision of 13 February 2023, the President of the Court granted that application. The Kingdom of the Netherlands has not submitted a statement in intervention.

The application to reopen the oral part of the procedure

39 By document lodged at the Court Registry on 22 March 2024, the Czech Republic requested that an order be made for the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

40 In support of that request, the Czech Republic submits that the Opinion of the Advocate General concerning the assessment of the second ground of appeal is based on a factual misunderstanding. Indeed, she considered, in point 133 of that Opinion, that the Member State in question had neither taken a proactive stance nor requested the necessary information from OLAF and, in points 138 and 143 thereof, that it had merely waited passively for OLAF to provide it with

information. The Czech Republic argues that those assertions are not supported by the facts as found by the General Court, in particular in paragraphs 99 to 103, 122 and 124 of the judgment under appeal. It is therefore necessary to clarify those various aspects.

41 In that regard, in accordance with Article 83 of its Rules of Procedure, the Court of Justice may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties.

42 On the other hand, it should be borne in mind that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the parties to submit observations in response to the Advocate General's Opinion. Under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which require the Advocate General's involvement. The Court is not bound either by the Advocate General's conclusion or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Advocate General's Opinion, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (see, to that effect, judgments of 13 July 2023, *Grupa Azoty and Others* v *Commission*, C-73/22 P and C-77/22 P, EU:C:2023:570, paragraph 25 and the case-law cited, and of 8 February 2024, *Pilatus Bank* v *ECB*, C-256/22 P, EU:C:2024:125, paragraphs 29 and 30 and the case-law cited).

43 It is apparent from the reasons advanced in support of its request for the oral part of the procedure to be reopened that the Czech Republic intends solely to respond to certain factual assessments made by the Advocate General in her Opinion, which does not constitute a ground for reopening the oral part of the procedure.

44 In those circumstances, the Court considers, after hearing the Advocate General, that it is not necessary to order the reopening of the oral part of the procedure.

The appeal

45 The Commission raises two grounds in support of its appeal.

46 As a preliminary issue the Czech Republic disputes the admissibility of each of those grounds of appeal and, therefore, of the appeal as a whole.

47 In that regard, it is appropriate to assess the challenge to admissibility in the examination of each of those grounds of appeal.

The first ground of appeal

Arguments of the parties

48 By the first ground raised in support of its appeal, the Commission submits that the General Court erred in law in paragraphs 85 to 93 of the judgment under appeal in its interpretation of Article 6(3) and Article 17(2) of Regulation No 1150/2000. This ground of appeal is divided into two parts.

49 By the first part thereof, the Commission claims that the General Court, in paragraphs 88, 90 and 93 of the judgment under appeal, erred in law in its interpretation of Article 6(3) of Regulation No 1150/2000.

50 In that regard, it states that, as regards customs duties, each Member State responsible for managing the system of own resources is required, on its own initiative and within the time limits laid down by EU law, to carry out three operations in succession, namely the establishment of entitlements, their entry in the A or B account and making them available, as provided for respectively in Articles 2, 6 and 10 of Regulation No 1150/2000. Those operations are so closely connected that failure to comply with the rules or time limits applicable to one of them inevitably has an impact on the following steps.

51 Article 17(2) of that regulation provides for an exemption from the obligation to make entitlements available. As the General Court correctly found in paragraph 84 of the judgment under appeal, such an exemption presupposes, apart from meeting the conditions laid down in that latter provision, that the entitlements have been properly entered in the B account.

52 However, the General Court failed to take account of the fact that, according to paragraph 69 of the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414), proper entry also implies that it must be made ‘in compliance with European Union law’. That requirement covers not only compliance with the time limits for entering entitlements in the A or B account, but also the establishment of entitlements as soon as the conditions provided for by the customs regulations have been met.

53 Consequently, contrary to what the General Court held in paragraph 90 of the judgment under appeal, the entry of the entitlements at issue in the B account cannot be made in proper fashion when that takes place in a time period calculated from the belated date on which those entitlements were in fact established. In that regard, it is irrelevant that, according to the General Court, entry in the B account is a ‘purely accounting step’.

54 By the second part of the first ground of appeal, the Commission complains that the General Court erred in law in paragraphs 85 to 88 and 93 of the judgment under appeal in its interpretation of Article 17(2) of Regulation No 1150/2000.

55 First, the Commission states that that provision is not applicable where entry in the B account has not been carried out properly. An entry has not been carried out properly where, as in the present case, the entitlements have been established belatedly under Article 2 of that regulation.

56 Second, the Commission asserts that if Article 17(2) of Regulation No 1150/2000 is inapplicable then the Member State must make the amount corresponding to the belatedly established entitlements available to the European Union. The impoverishment of that Member State and the corresponding enrichment of the European Union is therefore indeed justified by the obligation to make entitlements available.

57 Accordingly, the General Court erred in law, in paragraphs 85 to 88 of the judgment under appeal, by rejecting the argument raised by the Commission as ineffective and by limiting its analysis, in paragraph 87 of that judgment, solely to compliance with the time limits laid down in Article 6 of Regulation No 1150/2000. It also follows, contrary to what the General Court held in paragraph 88 of that judgment, that it is for the Member State to establish that all the operations relating to own resources have been carried out in accordance with the relevant rules, time limits and the protection of the financial interests of the European Union.

58 Lastly, the Commission submits that the interpretation of the General Court is liable to have harmful consequences for the financial interests of the European Union.

59 The Czech Republic contends that the first ground of appeal is inadmissible on the ground that it does not comply with the requirements of Article 169(2) of the Rules of Procedure. The structure and content of the arguments raised in support of that ground of appeal do not correspond to the way in which it was delimited by the Commission.

60 More specifically, the Commission has made arguments that have no connection with its challenge to the description of the entry of the entitlements at issue in the B account as a 'purely accounting step' and has contradicted itself as to the relevance of that description. It has failed to put forward specific arguments in support of that challenge and of the claim that the Czech Republic should have demonstrated the perfect nature of the entire process of the establishment, the recovery and the making-available of entitlements to own resources. The headings of the two parts of the present ground of appeal do not accord with their substance. The only substantive arguments put forward do not concern compliance with the time limit for entering entitlements in the B account but their establishment in good time and the consequences of belated establishment, which is not covered by paragraphs 85 to 93 of the judgment under appeal and is in fact the subject of the second ground of appeal. Furthermore, it is not clear from the first ground of appeal whether the Commission is referring to belated entry of entitlements in the B account or whether it considers that those entitlements cannot be entered in that account at all in the event of an irregularity.

61 In any event, the first ground of appeal is also unfounded.

62 In that regard, the Czech Republic submits, in the first place, that Article 6(3) of Regulation No 1150/2000 lays down expressly that the time limit for entering entitlements in the B account is to be calculated from the time when 'the entitlement was established' and, therefore, from the time of the actual establishment of that entitlement. Neither the wording nor the purpose of Article 17(2) of that regulation precludes that provision being applied in the event of those entitlements being entered belatedly in the B account. The interpretation suggested by the Commission runs counter to the purpose of that provision since it is liable to prevent a Member State from being released from the obligation to make own resources available even though it is unable to recover the entitlements for reasons of *force majeure* or for reasons that cannot be attributed to it. Entry in the B account is indeed a purely accounting step.

63 In the second place, the Czech Republic submits that the Court, in the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414), ruled on the substantive conditions of Article 17(2) of Regulation No 1150/2000 in a particular context that was characterised by fraudulent acts attributable to the Member State concerned. Given that context, the Commission cannot infer from the latter judgment that the entry of the entitlements at issue in the B account, in good time and within a period calculated from the date on which those entitlements should have been established, is a precondition for the application of that provision. The Court neither examined the calculation of the time limit for entering entitlements in the B account nor addressed the consequences of belated entry.

64 In the third place, the Czech Republic submits that the judgment under appeal does not produce harmful consequences for the EU budget.

65 In the fourth place, the Czech Republic submits that the Commission's argument that a Member State must demonstrate, in the context of an action for recovery of undue payments, that the entire customs procedure has been carried out in accordance with the rules, correctly, in good time and while ensuring the protection of the financial interests of the European Union, bears no relation to the substance of the first ground of appeal.

66 The Kingdom of Belgium and the Republic of Poland also contend that the first ground of appeal should be rejected as unfounded.

67 The Kingdom of Belgium observes that the period for entering a debt in the B account runs, in accordance with Article 6(3)(b) of Regulation No 1150/2000, from the date on which that debt is established. There can only be a belated entry in the B account if the debt in question is established belatedly. In the present case, it is apparent from paragraph 92 of the judgment under appeal that the entitlements at issue were not established belatedly.

68 Moreover, a belated entry does not automatically exclude the possibility of relying on Article 17(2) of Regulation No 1150/2000. Paragraph 69 of the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414), should be read in the context of the case which gave rise to that judgment, to the effect that it refers solely to a situation in which an established debt has been entered in the B account even though it does not satisfy the substantive conditions for doing so.

69 The Republic of Poland also puts forward, in essence, the latter argument relating to the scope of paragraph 69 of the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414).

70 It adds that the time limit for establishing customs duties is not based on an objective and precise criterion, given the vague and subjective wording, 'to be in a position to calculate', in Article 2(3) of Regulation No 1150/2000. In practice, the Commission arbitrarily determines when the national customs authorities are to be deemed to be in a position to calculate and thus establish customs duties. In order to avoid arbitrariness, the time limit laid down in Article 6(3) of that regulation should be calculated from the date on which the customs duties are actually established.

71 Lastly, the Commission's argument based on the protection of the financial interests of the European Union is irrelevant, since disputes relating to traditional own resources account for only a small proportion of all the cases concerning Member States' contributions in respect of those resources and they cannot therefore undermine the system of EU financing. That is all the

more so since, if resources are in any way made available belatedly, that means that the Member State is faced with the obligation to pay default interest, in accordance with Article 11 of Regulation No 1150/2000.

Findings of the Court

– *Admissibility*

72 Under Article 169(2) of the Rules of Procedure, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested. Consequently, according to settled case-law, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the relevant ground of appeal will be declared inadmissible (judgments of 20 September 2018, *Agria Polska and Others* v *Commission*, C-373/17 P, EU:C:2018:756, paragraph 33 and the case-law cited, and of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU:C:2022:323, paragraph 186).

73 In that regard, a ground of appeal supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which that ground of appeal is based are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy the requirements referred to in the preceding paragraph above and must be dismissed as inadmissible (see, to that effect, judgments of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 30 and the case-law cited, and of 28 April 2022, *Changmao Biochemical Engineering* v *Commission*, C-666/19 P, EU:C:2022:323, paragraph 187).

74 In the present case, the Commission, in its appeal, precisely and unequivocally identifies the paragraphs of the judgment under appeal which it challenges by the first ground of appeal and it sets out the reasons why it considers that the assessments made in those paragraphs are vitiated by errors of law, which it also sets out clearly.

75 Moreover, it is apparent from the written pleadings of the Czech Republic that it has been able to understand the scope of the first ground of appeal and put forward its arguments in defence.

76 The first ground of appeal is therefore admissible.

– *Substance*

77 By the two parts of the first ground raised in support of its appeal, which are closely linked and must therefore be examined together, the Commission challenges paragraphs 85 to 93 of the judgment under appeal.

78 In those paragraphs the General Court rejected the Commission's line of argument that, in essence, the Czech Republic was not entitled to benefit in the case at hand from the exemption, provided for by Article 17(2) of Regulation No 1150/2000, from the obligation to make own

resources available on the ground that, because the entitlements at issue were established belatedly under Article 2 of that regulation, those entitlements had not been entered in proper fashion in the B account under Article 6(3) of that regulation.

79 In that regard, the reasoning of the General Court is based on two grounds whose validity the Commission disputes in the present plea.

80 First, the General Court held, in paragraphs 86 to 88 of the judgment under appeal, that the line of argument put forward by the Commission was irrelevant. In that respect, it found that, in an action based on unjust enrichment of the European Union, 'the Czech Republic cannot … be required … to establish … 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"'. In fact, according to the General Court, 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.

81 Second, the General Court held, in paragraphs 89 to 92 of that judgment, that, in any event, in accordance with Article 6(3)(b) of Regulation No 1150/2000, the periods for entering the entitlements in the B account must 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. That condition was said to be satisfied in the present case.

82 In order to assess the merits of those grounds in the light of the arguments made by the parties, it is appropriate to recall, in the first place, the evidentiary rules applicable to an action based on unjust enrichment of the European Union.

83 According to the case-law of the Court of Justice, such an action, brought under Article 268 TFEU and the second paragraph of Article 340 TFEU, requires proof of enrichment on the part of the defendant for which there is no valid legal basis and proof of impoverishment on the part of the applicant which is linked to that enrichment (see, to that effect, judgments of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraph 49, and of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 82).

84 When examining an action of that kind, brought by a Member State which has made an amount of the Union's own resources available to the Commission, while expressing reservations as to the merits of that institution's position, it is for the General Court to assess, in particular, whether the impoverishment of the applicant Member State, corresponding to that amount being made available to the Commission, and the corresponding enrichment of the Commission, are justified by the Member State's obligations under EU law governing the Union's own resources or, on the contrary, whether no such justification exists (see, to that effect, judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 83).

85 In that context, it is therefore for the applicant Member State to demonstrate that it is not required, under the EU rules governing the system of own resources, to make available to the Commission the amount of own resources which are the subject of the dispute and that it has complied with its obligations in that respect.

86 Contrary to what the Czech Republic has suggested by criticising the Commission for having changed its position on several occasions between the pre-litigation and litigation stages of the present case, it also follows from the foregoing that the subject matter of an action based on unjust enrichment of the European Union brought in the circumstances referred to in paragraph 84 above cannot be limited solely to rebutting the position taken by the Commission prior to the action being brought. That institution may, in its capacity as a defendant, put forward new arguments to challenge the position of the applicant Member State.

87 In the second place, it is important to recall the characteristics of the system of own resources of the European Union, as summarised by the Court of Justice in its case-law.

88 In that regard, as EU law currently stands, the management of that system is entrusted to the Member States and is their responsibility alone (judgments of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 62, and of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 345).

89 Accordingly, it is apparent from Article 8(1) of Decisions 2000/597 and 2007/436 that the European Union's own resources referred to, respectively, in Article 2(1)(a) and (b) of Decision 2000/597 and Article 2(1)(a) of Decision 2007/436 are collected by the Member States, which are obliged to make them available to the Commission (see, to that effect, judgments of 8 July 2010, *Commission* v *Italy*, C-334/08, EU:C:2010:414, paragraph 34, and of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 340 and the case-law cited).

90 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 European Union's own resources on the conditions laid down in Article 6 of that regulation. It must be stated 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, known as the 'B account' (see, to that effect, judgments of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 57 and the case-law cited, and of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 341).

91 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 (judgments of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 58, and of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 342).

92 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 (see, to that effect, judgment of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 60).

93 It is in the light of those considerations that the merits of the present ground of appeal must be assessed.

94 To that end, it is necessary, in the first place, to determine when the period for entering entitlements in the B account begins to run under Article 6(3) of Regulation No 1150/2000.

95 That provision states that 'entitlements established in accordance with Article 2' of that regulation are to be entered in the accounts for own resources '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', with that deadline applying for entering entitlements in both the A account and the B account.

96 On a prima facie basis, as claimed in particular by the Czech Republic, the use of the past tense could indeed be understood as meaning that the period referred to in Article 6(3) of Regulation No 1150/2000 is to run from the date on which the entitlements have actually been established, including in the case of belated establishment, irrespective of the date on which those entitlements should have been established.

97 However, in providing that 'entitlements established in accordance with Article 2 [of Regulation No 1150/2000]' are to be entered in the accounts for own resources, the wording of Article 6(3) of that regulation establishes an inseparable link between entry in those accounts and the prior establishment of entitlements, a link which has, moreover, been recognised in the case-law of the Court of Justice (see, to that effect, judgments of 20 March 1986, *Commission* v *Germany*, 303/84, EU:C:1986:140, paragraph 11, and of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 59).

98 The time limit for the entry of established entitlements in the accounts for own resources must therefore be assessed by reference to the obligation to establish the entitlements as laid down in Article 2 of Regulation No 1150/2000. The entry of entitlements in the accounts is therefore based on the premiss that they have been established in accordance with that Article 2, which must occur in good time (see, by analogy, judgment of 5 October 2006, *Commission* v *Netherlands*, C-312/04, EU:C:2006:643, paragraphs 58 to 62), namely where 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.

99 Since that latter provision thus sets out, in an abstract and objective manner, the conditions in which the obligation to establish an entitlement of the European Union to own resources arises, it cannot be claimed, as the Republic of Poland does, that the time at which entitlements must be established is determined arbitrarily by the Commission.

100 Consequently, contrary to what the General Court found in paragraph 90 of the judgment under appeal, compliance with the time limit within which entitlements must be entered in the accounts for own resources under Article 6(3) of Regulation No 1150/2000 is to be assessed from the date on which the entitlements must or should have been established under Article 2 of that regulation.

101 That finding is supported by the responsibility falling to the Member States for managing the system of own resources, which makes it necessary, as the Advocate General stated, in essence, in point 94 of her Opinion, to interpret strictly the obligations of those Member States relating to the establishment of entitlements, their entry in the accounts of own resources and their being made available.

102 It is dictated all the more by the fact that an opposite interpretation of Article 6(3) of Regulation No 1150/2000 would allow Member States to delay unduly the establishment of entitlements and, subsequently, their entry in the accounts of own resources and their being made available, thus raising the risk that circumstances will arise that make their recovery impossible.

103 In the second place, the Court has already held that, in order for a Member State to be exempted, in accordance with Article 17(2) of Regulation No 1150/2000, from its obligation to make available to the Commission the amounts corresponding to the established entitlements, it is not sufficient that the conditions laid down in that provision be met; the condition that those entitlements were properly entered in the B account must also have been satisfied, in other words, the entry must have been carried out in compliance with EU law (see, to that effect, judgment of 8 July 2010, *Commission* v *Italy*, C-334/08, EU:C:2010:414, paragraphs 65 and 69).

104 While it is true, as all the Member States which have participated in the present proceedings have argued, that the case which gave rise to the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414), concerned a factual context that differs from that of the present case, it nevertheless remains the case that there is nothing in that judgment to suggest that the Court intended to limit the scope of the requirement of proper entry in the B account solely to the factual context brought before it.

105 Consequently, in accordance with the case-law cited in paragraph 103 above and also taking into account the grounds set out in paragraphs 101 and 102 above, it must be considered, as the Commission does, that a Member State cannot be released from the obligation to make available to the Commission the amounts corresponding to entitlements which have not been entered properly in the B account, in compliance with the time limit laid down in Article 6(3)(b) of Regulation No 1150/2000, read in conjunction with Article 2 thereof, owing to those entitlements having been established belatedly.

106 As a consequence, where a Member State, in an action for unjust enrichment under the conditions set out in paragraphs 83 to 85 above, relies on the exemption from being obliged to make own resources available to the Commission provided for in Article 17(2) of Regulation No 1150/2000, that Member State must demonstrate that the process of establishing the entitlements at issue and the entry of those entitlements in the B account, including compliance with the relevant time limits, has been carried out in proper manner. In the absence of such proof, that Member State may not benefit from that exemption and must, therefore, proceed to make the own resources available. That making available, therefore, cannot constitute enrichment of the European Union for which there is no valid legal basis.

107 It follows that the General Court was wrong to hold, in paragraphs 87 and 88 of the judgment under appeal, that the Czech Republic was not required to establish that the operations relating to own resources had been carried out properly.

108 In the light of the foregoing reasons, both parts of the first ground of appeal must be upheld.

The second ground of appeal

Arguments of the parties

109 By the second ground raised in support of its appeal, the Commission submits that the General Court erred in law in paragraphs 94 to 126 of the judgment under appeal in its interpretation of Article 2(1) and Article 17(1) of Regulation No 1150/2000, read in conjunction with Article 217(1) of the Customs Code and Article 325 TFEU. The General Court was wrong to hold that the Czech Republic was entitled to await OLAF's official communication of the evidence collected during the inspection mission, even though the representative of the Czech customs administration had the right to request and receive from OLAF the evidence collected upon her return from the mission. According to the Commission, the Czech Republic was required, on the contrary, to request the evidence collected during that mission from OLAF as soon as the representative returned, which would have enabled it to establish the entitlement of the European Union to own resources in the days following that person's return.

110 In the first place, the Commission bases its argument on Article 2(1), read in conjunction with Article 17(1), of Regulation No 1150/2000 and on Article 217(1) of the Customs Code.

111 It claims that it is for the Member States to take all the measures necessary, as soon as possible, to ensure the effective and comprehensive collection of customs duties. The entitlement to own resources should be established, under Article 2(1) of Regulation No 1150/2000, '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'. In the light of Article 217(1) of the Customs Code, the customs authorities should therefore establish the duties resulting from a customs debt as soon as they have the necessary particulars for that purpose and are in a position to calculate the amount of those duties and to determine the debtor. With the Member States being responsible for determining the customs debt and establishing the entitlements to own resources, they are required to take all requisite measures, in accordance with Article 17(1) of Regulation No 1150/2000, to ensure that the amounts corresponding to the entitlements established under Article 2 thereof are made available to the Commission as specified in that regulation.

112 The Commission acknowledges that a Member State may cooperate with OLAF in order to establish customs debts, but it states that, as is apparent from recital 3 of Regulation No 1073/1999, the creation and powers of investigation of OLAF may not affect the current distribution and balance of responsibilities as between the national and EU levels. Accordingly, Article 1(2) of that regulation shows that OLAF has only a supporting role and can issue only non-binding recommendations to the EU or national authorities.

113 In those circumstances, the Commission argues that the carrying out of an OLAF investigation cannot relieve the Member States of the obligation to take the necessary measures imposed by EU law and that OLAF's assistance cannot release them from their duty of diligence in the collection of customs duties. In the present case, the Czech Republic was therefore required, in parallel with and independently of the inspection mission, to take the necessary measures to establish the customs debt. As the General Court stated in paragraph 119 of the judgment under appeal, the representative of the Czech customs administration could have requested and received from OLAF the evidence annexed to the minutes of 15 November 2007 as soon as she returned

from that mission and communicated it to the competent Czech authorities, it being understood that that evidence was sufficient to establish BAIDE's customs debt. Furthermore, the Czech Republic had sufficient information even before the return of the inspection mission.

114 Such a conclusion is all the more compelling in view of the responsibility borne by the Member States in respect of own resources. By contrast, the approach adopted by the General Court would allow a Member State to act in a passive and negligent manner on the sole ground that OLAF has agreed to communicate to it the evidence collected during an inspection mission.

115 The requirement of the prompt establishment of customs debts also finds support in Article 45(1) of Regulation No 515/97. That requirement ensures the effectiveness of Article 20(2)(b) of that regulation and, more specifically, of the participation of experts sent by Member States on investigation missions to third countries led by OLAF.

116 In the second place, the Commission submits that the General Court also infringed Article 325 TFEU. That provision imposes an unconditional obligation on Member States as regards the result to be achieved so as to take the measures necessary to ensure the effective and comprehensive collection of customs duties, leaving them free only to choose the measures to be taken, in compliance with the principles of proportionality, equivalence and effectiveness. Accordingly, the Czech Republic, under that provision, was required to establish the customs debt, at the latest, in the days following the return of the inspection mission.

117 The Commission concludes by stating that the customs debt was established belatedly, such that the amounts corresponding to that debt were not entered in the proper manner in the B account. By establishing the customs debt belatedly, the Czech Republic itself caused the emergence of the conditions for the application of Article 6(3)(b) of Regulation No 1150/2000, such that the General Court could not, without falling into error, hold that Article 17(2) of that regulation was applicable.

118 The Czech Republic contends that the second ground of appeal is inadmissible. First, the argument put forward in footnote 55 to the appeal, that that Member State had sufficient information to establish the anti-dumping duties owed by BAIDE before taking part in the inspection mission, bears no relation to the subject matter of that ground. It is also a new argument inasmuch as the Commission made no claim before the General Court that the Czech Republic had sufficient information to make such a finding before the end of the inspection mission. Second, the argument relating to an alleged infringement of Article 325 TFEU has been raised for the first time at the appeal stage. Third, although formally directed against paragraphs 94 to 126 of the judgment under appeal, the second ground of appeal actually concerns only paragraphs 122 to 125 thereof.

119 In any event, the Czech Republic contends that the second ground of appeal is also unfounded since it was legitimately entitled to wait for OLAF to communicate its report.

120 First, neither the lack of decision-making powers on the part of the Commission as regards own resources nor the non-binding nature of OLAF's recommendations is such as to change the fact that the effective cooperation of Member States with the Commission and OLAF is, in certain cases, essential for enabling Member States to establish entitlements to own resources and to recover them.

121 Second, it is apparent from the findings of fact made by the General Court that it was possible to establish the entitlements relating to the imports at issue only on the basis of the evidence obtained during the inspection mission. OLAF, which had agreed to communicate that evidence to the Czech Republic, sent it belatedly, namely on 9 July 2008, in breach of its undertaking. The Czech Republic submits that it could legitimately expect OLAF to respect its undertaking, in accordance with the principle of sincere cooperation laid down in Article 4(3) TEU.

122 Third, the Commission is attempting to shift responsibility onto the Czech Republic for its own delay linked with the late communication of the evidence by OLAF.

123 The General Court therefore did not err in law when it held, in paragraphs 123 and 126 of the judgment under appeal, that, in the circumstances of the present case, that Member State could not be criticised for not having asked OLAF to produce the evidence immediately on the return of the inspection mission.

124 In any event, in so far as the Commission disputes the fact that the Czech Republic could take the view that it was necessary, as the General Court held in paragraph 124 of the judgment under appeal, to wait for the evidence to be analysed and verified by OLAF, that Member State observes that the applicable legislation specifically provides that evidence gathered in the context of an investigation conducted by OLAF is to be analysed, assessed and then communicated to the Member States in the form of mission reports and investigation reports. Moreover, it follows from Article 9(2) of Regulation No 1073/1999, read in conjunction with recital 16 thereof, that OLAF's mission reports are of critical probative value. As the General Court observed in paragraph 124 of the judgment under appeal, OLAF is best placed to analyse and assess evidence, especially when that evidence is obtained during an inspection mission to a third country and is capable of having an impact on a large number of Member States.

125 The Czech Republic adds that OLAF, in accordance with Article 10 of Regulation No 1073/1999, read in conjunction with Article 17(2) of Regulation No 515/97, has the possibility to communicate relevant evidence to Member States before the adoption of the mission report. OLAF, which knew that the Czech Republic needed the evidence that had been gathered, could have made use of that possibility, given the long delay in the mission report.

126 The Kingdom of Belgium and the Republic of Poland essentially agree with the position taken by the Czech Republic.

127 The Kingdom of Belgium adds that the Commission's argument, based on the responsibility falling to the Member States, amounts to the Czech Republic having to bear by itself the negative financial consequences of a delay attributable to OLAF. In addition, the Commission's argument relating to the effectiveness of Article 20(1) and (2) of Regulation No 515/97 cannot succeed. Lastly, Article 325 TFEU cannot be interpreted as imposing obligations on Member States that are additional to those laid down by Regulation No 1150/2000 in the circumstances of the present case.

128 The Republic of Poland states that the Czech Republic cannot be considered to have infringed Article 325 TFEU since it made a sufficient effort to establish the customs debt at issue.

Findings of the Court

– *Admissibility*

129 According to settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the Court's jurisdiction is thus limited to a review of the findings of law on the pleas argued at first instance (judgments of 1 June 1994, *Commission* v *Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 59, and of 26 February 2020, *EEAS* v *Alba Aguilera and Others*, C-427/18 P, EU:C:2020:109, paragraph 45).

130 The Court of Justice has, however, repeatedly held that an appellant may rely, in support of its appeal brought before it, on grounds which arise from the judgment under appeal itself and seek to criticise, in law, its correctness (see, to that effect, judgments of 29 November 2007, *Stadtwerke Schwäbisch Hall and Others* v *Commission*, C-176/06 P, EU:C:2007:730, paragraph 17, and of 26 February 2020, *EEAS* v *Alba Aguilera and Others*, C-427/18 P, EU:C:2020:109, paragraph 54).

131 In the present case, first, even if footnote 55 to the appeal were to be understood, as the Czech Republic does, as a claim that that Member State had sufficient information, even before the return of the inspection mission, to establish the entitlements at issue, such a claim is not included in the body of the second ground of appeal. The presence of that footnote is not therefore such as to affect the admissibility of that ground of appeal.

132 Second, while it is true that the Commission did not rely on Article 325 TFEU before the General Court, the fact remains that the argument based on that provision is intended to show that the General Court erred in law. Consequently, that argument is admissible.

133 Third, ambiguity in identifying the paragraphs contested by the second ground of appeal, even if established, has not in any way prevented the Czech Republic from understanding the substance of that ground of appeal, which is clear from the Commission's written pleadings, and from presenting its arguments in defence.

134 The second ground of appeal is therefore admissible.

– *Substance*

135 By the second ground of appeal, the Commission disputes, in essence, the merits of the General Court's findings, in paragraphs 94 to 126 of the judgment under appeal, relating to the date on which the anti-dumping duties owed by BAIDE in connection with the imports at issue should have been established by the Czech Republic.

136 In those paragraphs, the General Court held in essence that the Czech Republic was not required to establish those entitlements in the days immediately following the return of the inspection mission and that it could legitimately await the communication of OLAF's report, to which the evidence gathered during that mission was annexed.

137 More specifically, the General Court held, in paragraphs 119 and 121 of the judgment under appeal, that the representative of the Czech customs administration who participated in the inspection mission was entitled to request and receive from OLAF the evidence annexed to the minutes of 15 November 2007 and to communicate that evidence to the competent Czech authorities so that they could use it as evidence against BAIDE, even if OLAF had to verify that evidence before communicating it. However, it found in paragraphs 122 to 124 of that judgment that OLAF had agreed to communicate that evidence to the Czech Republic at the beginning of 2008 but was delayed in communicating its report, to which the evidence was attached. In those circumstances, according to the General Court, the Czech Republic could not 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. In the light of those factors, the General Court concluded, in paragraph 125 of that judgment, that the Czech Republic had 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 imports at issue immediately on the return of the inspection mission.

138 In that regard, it should be recalled that, as is apparent from the case-law cited in paragraph 88 above, as EU law currently stands, the management of the system of own resources of the European Union is entrusted to the Member States and is their responsibility alone.

139 Moreover, in so far as there is a direct link between the collection of revenue deriving from customs duties and the availability to the Commission of the corresponding resources, it is for the Member States, in accordance with the obligations imposed on them under Article 325(1) TFEU to protect the financial interests of the European Union against fraud or any other illegal activities affecting those interests, to adopt the measures necessary to guarantee the effective and comprehensive collection of those duties and, therefore, of those resources (judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 346 and the case-law cited).

140 In exercising that duty, it is for the Member States, in accordance with 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' obligation to establish the European Union's entitlement to own resources therefore arises as soon as those conditions have been met, while it is not necessary that the entry in the accounts has actually been made. As evidenced by Articles 217 and 218 of the Customs Code, those conditions are met when the customs authorities have the necessary particulars and, therefore, are 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).

141 In the present case, it is apparent from the facts established by the General Court in paragraphs 1, 99, 178 and 183 of the judgment under appeal, which have not been challenged before the Court of Justice and which it is not for the latter to review in the absence of any claim of distortion, that (i) the Czech Republic was aware, well before the inspection mission, of fraudulent imports declared as originating in Laos and brought into its territory by BAIDE; (ii) that Member State sent to OLAF, before that mission, the list of the imports at issue whose origin was to be checked; and (iii) a representative of the Czech customs administration took part in that mission and signed the minutes of 15 November 2007 at the end thereof.

142 It is also apparent from the findings of fact made by the General Court in paragraphs 2, 122 and 124 of the judgment under appeal that, on the return of the inspection mission, OLAF agreed to transmit to the Czech Republic at the beginning of 2008 the evidence gathered during that mission but that OLAF did not communicate its report, to which that evidence was annexed, until 9 July 2008, while the Czech Republic considered that it was necessary to wait for that information to be analysed and verified by OLAF before using it in a tax adjustment procedure.

143 In the light of those factors, the General Court was not entitled to hold, without erring in law, in paragraphs 124 to 126 of the judgment under appeal, that the Czech Republic could wait for the communication of the OLAF report, including the evidence, without requesting the communication of that evidence, if necessary, before that report was finalised, and that that Member State did not breach its obligations in the management of the system of own resources of the European Union by failing to establish the entitlements at issue in the days following the return of the inspection mission.

144 In view of the responsibility falling upon it in the management of the system of own resources and in the protection of the financial interests of the European Union, a Member State cannot, even though it is aware of a serious risk of fraud concerning specified imports and although that risk has been verified and confirmed during an external investigation led by OLAF in a third country, including the presence of a representative of that Member State, limit itself to waiting for several months for the communication of OLAF's final report along with the evidence without ever requesting the prior communication of that evidence. On the contrary, in view of that responsibility, that Member State must take all the effective measures to enable it to gather the information needed to establish the rights at issue.

145 None of the arguments put forward in the defence is capable of invalidating that finding.

146 First, as regards the argument that OLAF delayed the communication of its report and the evidence, it should be observed that the carrying out of an external investigation by OLAF in a third country is not such as to relieve the Member States of the responsibility they bear, as EU law currently stands, for the management of the system of own resources of the European Union.

147 Accordingly, on the one hand, in the light of recital 3 of Regulation No 1073/1999, the carrying out of an investigation cannot alter the distribution and balance of responsibilities as between the national and EU levels. As is apparent from Article 1(2) of that regulation, OLAF plays a role of supporting and coordinating action to protect the European Union's financial interests against fraud. The reports adopted by OLAF on completion of an investigation it has carried out are to specify, in accordance with Article 9(1) of that regulation, 'the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of [OLAF] on the action that should be taken'. It thus falls to the Member States to decide on the action that should be taken in respect of such a report, in the exercise of the responsibilities they bear under EU law.

148 On the other hand, in accordance with Article 10(1) of Regulation No 1073/1999, OLAF 'may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations'. Given the use of the verb 'may', which shows that OLAF enjoys some discretion in that regard, it cannot be inferred from that provision that failure by OLAF to forward evidence before finalising its report relieves the Member State concerned of its responsibility in the management of the system of own resources.

149 Second, OLAF's duty of sincere cooperation may likewise not have the effect of altering the division of tasks and responsibilities as prescribed for the implementation of Regulation No 1073/1999 (see, by analogy, order of the President of the Court of 19 April 2005, *Tillack* v *Commission*, C-521/04 P(R), EU:C:2005:240, paragraph 33) or of relieving the Member States of the responsibility they bear in the management of the system of own resources of the European Union.

150 Moreover, in accordance with the principle of sincere cooperation, laid down in the second subparagraph of Article 4(3) TEU, the Member States, which are themselves subject to that principle, are obliged to take all the measures necessary to guarantee the application and effectiveness of EU law (see, to the effect, judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 584 and the case-law cited).

151 In the light of the foregoing reasons, the second ground of appeal must be upheld.

152 The judgment under appeal must therefore be set aside, inasmuch as it upheld, in point 1 of its operative part, the action of the Czech Republic in so far as it concerns the repayment by the Commission of the sum of CZK 17 828 399.66 (approximately EUR 700 000) paid in respect of the European Union's own resources.

The action before the General Court

153 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

154 In the present case, the action brought by the Czech Republic before the General Court is based on arguments that have been the subject of exchanges between the parties before the latter and whose examination does not require any further measure of organisation of procedure or inquiry to be taken (see, by analogy, judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 130). In those circumstances, since the state of the proceedings so permits, it is appropriate to give final judgment.

155 In that regard, it is apparent from paragraph 152 above that the judgment under appeal is set aside only inasmuch as it upheld, in point 1 of its operative part, the action of the Czech Republic in so far as that action concerns the repayment by the Commission of the sum of CZK 17 828 399.66 (approximately EUR 700 000; 'the amount at issue').

156 By contrast, point 2 of the operative part of the judgment under appeal, by which the General Court dismissed the Czech Republic's action as to the remainder, has not been the object of an appeal, such that it has the force of *res judicata* despite the fact that that judgment has been set aside in part (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraphs 109 to 111).

157 The action in Case T-151/20 therefore subsists only in so far as it seeks repayment of the amount at issue.

158 In support of its action, the Czech Republic maintains, in essence, that it is not liable for that sum because it was not able to take the measures necessary to recover it until after communication of the OLAF report. It argues that it should be released from the obligation to make own resources available, under Article 17(2) of Regulation No 1150/2000, because it was impossible to recover the customs debt after BAIDE ceased activities in the Czech Republic from May 2008.

159 However, as observed in paragraphs 100, 103 and 105 above, a Member State may not be exempted from the obligation to place at the disposal of the Commission the amounts corresponding to entitlements which have not been properly entered in the B account, in compliance with the time limit laid down in Article 6(3)(b) of Regulation No 1150/2000, read in conjunction with Article 2 thereof, where those entitlements have been established belatedly. It is apparent from paragraphs 141 to 144 above that, by failing, in the specific circumstances of the present case, to take the necessary measures to ensure that the entitlements were established as soon as possible, the Czech Republic has not demonstrated that it had established the entitlements at issue in good time or, therefore, that it had entered them in the B account in the proper manner, in compliance with the time limit laid down in Article 6(3)(b) of that regulation.

160 Consequently, the Czech Republic may not rely on Article 17(2) of Regulation No 1150/2000 in order to be released from its obligation to make the amount at issue available to the Commission. That Member State has therefore failed to demonstrate that its refusal to make the amount at issue available to the European Union complies with all its obligations and, therefore, to establish enrichment of the European Union without a valid legal basis, for the purposes of the case-law cited in paragraph 83 above.

161 In the light of all those grounds, the action brought by the Czech Republic in Case T-151/20 must be dismissed in so far as it seeks the repayment of the amount at issue.

Costs

162 Under Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the latter is to make a decision as to the costs. Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

163 In the present case, the Czech Republic has been unsuccessful both in Case C-494/22 P and in the part of Case T-151/20 which has been disposed of by the Court of Justice. In addition, the Czech Republic was unsuccessful before the General Court as to the remainder in Case T-151/20. Accordingly, the action of the Czech Republic, as a result of the judgment under appeal and of the present judgment, has been dismissed in its entirety. In those circumstances, and in accordance with the form of order sought by the Commission, the Czech Republic must be ordered to bear its own costs and to pay those incurred by the Commission in relation to both the proceedings at first instance and the appeal proceedings.

164 In accordance with Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Kingdom of Belgium, the Kingdom of the Netherlands and the Republic of Poland, which have intervened in the proceedings, are to bear their own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 11 May 2022, *Czech Republic* v *Commission* (T-151/20, EU:T:2022:281), inasmuch as it upheld, in point 1 of the operative part of that judgment, the action of the Czech Republic in so far as it concerns the repayment by the European Commission of the sum of 17 828 399.66 Czech koruny (CZK) (approximately EUR 700 000) paid in respect of the European Union's own resources;**

2. **Dismisses the action in Case T-151/20 inasmuch as it concerns the repayment by the Commission of the sum of CZK 17 828 399.66 (approximately EUR 700 000) paid in respect of the European Union's own resources;**

3. **Orders the Czech Republic to bear its own costs and to pay those incurred by the Commission in relation to both the proceedings at first instance and the appeal proceedings;**

4. **Orders the Kingdom of Belgium, the Kingdom of the Netherlands and the Republic of Poland to bear their own costs.**

[Signatures]