Reports of Cases

OPINION OF ADVOCATE GENERAL
NORKUS
delivered on 6 March 2025 [1]

Case C-206/24

YX,
Logística i Gestió Caves Andorranes i Vidal SA
v
Ministre de l'Économie, des Finances et de la Relance,
Directeur général des douanes et droits indirects

(Request for a preliminary ruling from the Cour de cassation (Court of Cassation, France))

(Reference for a preliminary ruling – Customs union – Repayment or remission of import or export duties – Regulation (EEC) No 1430/79 – Union Customs Code – Regulation (EU) No 952/2013 – Conditions for repayment on own initiative – Time limit of three years from the date of notification of the customs debt – Knowledge by the customs authorities of the identity of the operators concerned and the amount to be repaid to each of them, without it being necessary to carry out extensive research – Right to good administration)

I. Introduction

1. This present request for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France) concerns the interpretation of Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, [2] as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 [3] ('Regulation No 1430/79'), and the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [4] ('the Community Customs Code').

2. The present request has been made in the context of a dispute between YX and Logística i Gestió Caves Andorranes i Vidal SA, formerly Caves Andorranes SA ('Caves Andorranes'), a company incorporated under Andorran law, and the ministre de l'Économie, des Finances et de la Relance (Minister for Economic Affairs, Finance and Recovery, France) and the directeur général des douanes et droits indirects (Director-General of Customs and Indirect Taxes, France) concerning the repayment by the authorities on their own initiative of customs duties wrongly collected. The customs duties at issue were levied as a result of an incorrect application of customs

1 Original language: French.
2 OJ 1979 L 175, p. 1.
3 OJ 1986 L 286, p. 1.
4 OJ 1992 L 302, p. 1.

rules, which was not discovered and corrected until years later. In that regard, the French authorities argue, in essence, that they were not themselves able to identify the undertakings concerned by that administrative practice or to determine the amounts to be repaid. In addition, they submit that the right to demand repayment is subject to time limits laid down by the customs legislation. By its action against the refusal to grant repayment of the customs duties at issue, Caves Andorranes disputes that argument.

3. The parties to the dispute have accordingly expressed divergent positions as regards both the scope of the customs authorities' investigative obligations and the three-year limitation period laid down by EU law for the administrative repayment procedure. The present case provides the Court with an opportunity to rule on the need to restore a situation which complies with EU law, for the benefit of the undertaking which has suffered damage, even if a considerable period of time has elapsed since the administrative infringement occurred. In its judgment, the Court will have to explain how that objective can be reconciled with the interests of legal certainty and the proper functioning of the customs administration.

II. Legal framework

A. Regulation No 1430/79

4. The ninth recital in the preamble to Regulation No 1430/79 was worded as follows:

'Whereas the other substantive and formal conditions upon the observance of which the grant of repayment or remission of import or export duties is conditional must be specified; whereas it is advisable in particular to lay down the time within which the person concerned may lodge an application with the competent authorities for this purpose'.

5. Article 1 of the regulation provided:

'1. This Regulation lays down the conditions under which the competent authorities shall repay or remit import and export duties.

2. For the purposes of this Regulation:

…

(e) "entry in the accounts" means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined;

…'

6. Article 2 of the regulation provided:

'1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts:

– relates to goods in respect of which a customs debt has either not arisen or has been settled other than by payment or prescription,

– exceeds for any reason the amount lawfully payable.

2. Import duties shall be repaid or remitted for one of the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts by the authority responsible for their collection.

This period may not be extended unless the person concerned can prove that he was prevented by unforeseeable circumstances or *force majeure* from submitting his application within the prescribed period.

Where the competent authorities themselves discover within this period that one or other of the situations described in paragraph 1 obtains, they shall repay or remit on their own initiative.'

7. The first paragraph of Article 15 of the regulation stated:

'Import or export duties shall be repaid or remitted only to the person who paid or is liable to pay those duties, or to the persons who have succeeded him in his rights and obligations.'

8. The second paragraph of Article 16 of Regulation No 1430/79 provided:

'Applications must be accompanied by all the evidence in the applicant's possession, so that the competent authorities may decide on the application taking due account of the reasons put forward by him. Where they consider it necessary, the competent authorities may lay down a time limit for the production by the applicant of additional evidence.'

9. That regulation was repealed by Article 251 of the Community Customs Code.

B. The Community Customs Code

10. Article 236 of the Community Customs Code provided:

'1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.'

11. In accordance with the second paragraph of Article 253 thereof, that code was to apply from 1 January 1994.

12. The Code was repealed by Article 186 of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1), which was itself repealed by Article 286 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2016 L 267, p. 2) ('the Union Customs Code').

C. The Union Customs Code

13. Article 116 of the Union Customs Code provides:

'1. Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:

(a) overcharged amounts of import or export duty;

…

4. Subject to the rules of competence for a decision, where the customs authorities themselves discover within the periods referred to in Article 121(1) that an amount of import or export duty is repayable or remissible pursuant to Articles 117, 119 or 120 they shall repay or remit on their own initiative.

…'

14. Article 117(1) of the Code states:

An amount of import or export duty shall be repaid or remitted in so far as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified to the debtor contrary to point (c) or (d) of the second subparagraph of Article 102(1).'

15. Article 121 of the Code, entitled 'Procedure for repayment and remission', provides, in paragraph 1 thereof:

'Applications for repayment or remission in accordance with Article 116 shall be submitted to the customs authorities within the following periods:

(a) in the case of overcharged amounts of import or export duty, … within three years of the date of notification of the customs debt;

…

The period specified in points (a) and (b) of the first subparagraph shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within the prescribed period as a result of unforeseeable circumstances or *force majeure*.'

16. In accordance with Article 288(2) thereof, the provisions of the Union Customs Code referred to in the three preceding paragraphs of the present Opinion apply from 1 May 2016.

III. Facts of the dispute, the procedure in the main proceedings and the questions referred for a preliminary ruling

17. Between 1988 and 1991, Andorran importers imported into Andorra, through the company Ysal, a customs agent established in France, goods originating, in particular, from third countries. Those imports resulted in the payment of customs duties in France. At that time, the French customs authorities required goods originating from third countries and destined for Andorra to be released for free circulation when they crossed French territory.

18. On 23 January 1991, the European Commission published reasoned opinion COM(90) 2042 final, in which, first, it found that the French Republic, by imposing such a requirement that goods be released for free circulation,[5] had failed to fulfil its obligations under certain provisions of (then) Community law and, second, it called upon that Member State to comply with its reasoned opinion within 30 days.

19. It is apparent from the documents before the Court that, on 6 June 1991, the ministère de l'Économie, des Finances et du Budget (Ministry of the Economy, Finance and the Budget, France) published in the *Journal officiel de la République française* (Official Journal of the French Republic) a notice to exporters abolishing that requirement of release for free circulation.

20. On 20 May 2008, Ysal brought proceedings against the French customs authorities before a court of first instance seeking repayment of the customs duties alleged to have been wrongly collected on account of import declarations to Andorra made between 1988 and 1991.

[5] The concept of 'release for free circulation' is defined in Article 201(2) of the Union Customs Code. It entails the collection of any import duty due; the collection, as appropriate, of other charges, as provided for under relevant provisions in force relating to the collection of those charges; the application of commercial policy measures and prohibitions and restrictions in so far as they do not have to be applied at an earlier stage; and completion of the other formalities laid down in respect of the import of the goods. Pursuant to Article 201(3) of the Code, release for free circulation confers on non-Union goods the customs status of Union goods.

21. By a judgment of 15 June 2010, that court dismissed the action brought by Ysal as inadmissible on the ground that it lacked standing and interest to bring proceedings. That judgment was confirmed by a judgment of a court of appeal of 13 December 2011. By a judgment of 21 January 2014, the Cour de cassation (Court of Cassation) dismissed the appeal brought by Ysal.

22. On an unspecified date, those Andorran importers, the legal predecessors of Caves Andorranes and YX, repaid Ysal the customs duties which the latter had settled on their behalf.

23. On 16 July 2015, Caves Andorranes and YX brought proceedings against the French customs authorities before the tribunal de grande instance de Toulouse (Regional Court, Toulouse, France) seeking the payment of a sum corresponding to the customs duties wrongly collected by those authorities. By a judgment of 4 July 2017, that court rejected the actions brought by Caves Andorranes and YX.

24. By a judgment of 10 February 2020, the cour d'appel de Toulouse (Court of Appeal, Toulouse, France) upheld the judgment of 4 July 2017. In that regard, that court held that in order to repay on their own initiative, as provided for in Article 2(2) of Regulation No 1430/79 and in the third subparagraph of Article 236(2) of the Community Customs Code, the customs authorities had to have the information necessary to determine both the amount of duties to be repaid and the identity of every person liable for payment, without having to carry out disproportionate research.

25. Caves Andorranes and YX brought an appeal against that judgment before the Cour de cassation (Court of Cassation), which is the referring court, in support of which they put forward, in essence, that by its judgment of 10 February 2020, the cour d'appel de Toulouse (Court of Appeal, Toulouse) infringed Article 2(2) of Regulation No 1430/79. They submit that the obligation to make a repayment on the authorities' own initiative provided for in that provision is subject only to compliance with a time limit of three years from the date on which the customs duties were notified to the debtor. However, that provision does not provide that the customs authorities must have the information relating to the amount of those duties and the identity of every person liable for payment. They argue that the cour d'appel de Toulouse (Court of Appeal, Toulouse) thus added a condition to Article 2(2) that it did not contain.

26. The referring court points out that the French customs authorities submit that they can repay import and export duties of their own motion only if they have all the information necessary to establish that such duties have been wrongly collected and must be repaid. The customs authorities cannot be required to carry out extensive research to determine the amounts of duties to be repaid to each of the operators concerned.

27. The Cour de cassation (Court of Cassation) thus asks whether Article 2(2) of Regulation No 1430/79 and Article 236(2) of the Community Customs Code must be interpreted as meaning that the competent authorities are required to repay duties not legally owed of their own motion only if they have all the information necessary in order to do so and that, if not, they are not required to carry out disproportionate research.

28. According to the referring court, the preliminary question also arises as to whether the repayment by a customs authority on its own initiative may take place after a period of three years from the date on which the duties were notified to the debtor. Having regard to the judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraph 21), in which the Court held that the first subparagraph of Article 236(2) of the Community Customs Code imposes a three-year time limit on the repayment of customs duties not legally owed, the referring court

asks whether Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the competent authorities can no longer, beyond that period, make a repayment of their own motion, even if it were established during that period that the duties were not legally owed.

29. In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 2(2) of [Regulation No 1430/79], which is incorporated into the third subparagraph of Article 236(2) of [the Community Customs Code], be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is limited to a period of three years from the date on which those duties were entered in the accounts by the authorities responsible for their collection or [as meaning] that the customs authorities must establish, during the three years following the chargeable event, that the duties were not legally owed?

(2) Must Article 2(2) of [Regulation No 1430/79], which is incorporated into the third subparagraph of Article 236(2) of [the Community Customs Code], be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is subject to the latter knowing the identity of the operators concerned and the amounts to be repaid to each of them without it being necessary to carry out extensive or disproportionate research?'

IV. Procedure before the Court

30. The order for reference dated 13 March 2024 was received at the Court Registry on 17 March 2024.

31. The French Government and the Commission submitted written observations within the period prescribed by Article 23 of the Statute of the Court of Justice of the European Union.

32. At the general meeting of 5 November 2024, the Court decided not to hold a hearing.

V. Legal analysis

A. Preliminary remarks

33. In addition to the introduction of a Common Customs Tariff, the creation of a customs union under Article 28 TFEU also requires the standardisation of general customs rules and corresponding customs procedures for the collection, suspension or exemption from import duties. Otherwise, differences between national customs provisions could hinder the movement of goods within the single market. The initial aim was therefore to harmonise the customs legislation of the Member States. However, the harmonisation of customs law through numerous individual regulations on a variety of subjects has led to legal fragmentation.[6] It was not until 1 January 1994 that a uniform customs procedural law became applicable at supranational level

[6] Lux, H., *Handbuch des EU-Wirtschaftsrechts* Dauses/Ludwigs, Munich, 2024, C.C. II., point 29, provides a brief overview of the history of the creation of the Union Customs Code.

with the Community Customs Code. The Union Customs Code, in force since 9 October 2013, has been applicable since 1 May 2016.[7] National legislation for its part governs the organisation of customs authorities, which are responsible for the administrative application of EU customs law.

34. It must be borne in mind that, in accordance with Article 3(1)(a) TFEU, the European Union has exclusive competence as regards the customs union and that, in accordance with Article 1(1) of the Union Customs Code, the latter must be applied uniformly throughout the customs territory of the Union. Thus, the levying of customs duties by the Member States on behalf of the European Union on goods imported into the customs territory of the European Union is subject to European legislation only, by virtue of the principle of primacy of EU law,[8] which means that, in the present case, the Member State concerned, namely France, is to apply the relevant provisions of EU law, and specifically those relating to transit and the repayment of customs duties wrongly collected, in place of any provisions of its national legislation which may derogate from the Union Customs Code.

35. It should be noted that the facts giving rise to the dispute in the main proceedings occurred just over 30 years ago and that several cases have been brought before the French courts. It is for that reason that the national court refers in its questions both to Article 2(2) of Regulation No 1430/79 and to the third subparagraph of Article 236(2) of the Community Customs Code. Those provisions, which have now been taken over by Article 116(4), read in conjunction with Article 121(1) of the Union Customs Code, were applicable *ratione temporis* at the times considered relevant by the referring court. In that regard, I would point out that the provisions referred to differ only in their drafting, while *their normative content has remained unchanged*. For that reason, in order to facilitate the reading of the present Opinion, I shall refer instead to the *common elements of the rules relating to the repayment procedure*. Such an approach seems to me to be all the more appropriate since the interpretation which I advocate is also intended to apply to similar cases to which the provisions of the Union Customs Code currently in force apply.[9]

36. For the sake of completeness, I should point out that, according to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force.[10] For the purposes of the present analysis, the provision laying down *the conditions governing the basis and the origin of the right to repayment* should be regarded as a substantive rule, whereas the procedural rules include *the provisions governing the conditions for the exercise of that right*, and in particular the time limit for submitting an application for repayment or for the authorities to establish the existence of one or other of the circumstances justifying repayment.

37. The present case raises a number of legal issues which are intrinsically linked. They can be broadly grouped into three distinct subject areas: (i) the scope of the customs authority's obligation to repay on its own initiative customs duties not owed; (ii) the procedure to be followed where the obligation to repay arises from the finding that there is no legal basis for

7 See points 11, 12 and 16 of the present Opinion.

8 See judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraphs 58 and 61).

9 The Court often indicates in its judgments whether the normative content of a given provision has been taken over by a provision which follows it, so that the same interpretation is intended to apply to the latter provision (see judgment of 13 December 2007, *Bayerischer Rundfunk and Others*, C-337/06, EU:C:2007:786, paragraph 30).

10 See judgment of 23 February 2006, *Molenbergnatie* (C-201/04, EU:C:2006:136, paragraph 31 and the case-law cited).

claiming payment of the customs duties not owed; (iii) the legislative purpose of the three-year time limit laid down in the customs legislation. In the interests of clarity and rationality, I propose to deal with the questions referred by the referring court together. I shall address them in the context of my presentation of those subject areas.

B. Admissibility

38. Before examining the substantive issues, I consider it necessary briefly to address the question of the admissibility of the request for a preliminary ruling. Even if none of the interested parties raises the plea of inadmissibility, the question arises whether an answer to the questions referred by the national court is necessary in order to resolve the dispute in the main proceedings. Since the customs legislation provides for a three-year time limit for making claims for repayment of customs duties wrongly collected, and the events giving rise to the present dispute occurred more than 30 years ago, those questions appear, at first sight, to be irrelevant.

39. In accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court declines to rule on a reference for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or to its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [11]

40. I do not regard the questions referred by the national court as hypothetical since, in my view, an interpretation of the provisions relating to the obligations of the customs authorities in the context of the repayment procedure may also prove useful in clarifying whether Caves Andorranes is *entitled to compensation for breach of EU law* in accordance with the principles established in the case-law of the Court. There are indications that Caves Andorranes might pursue that objective, at least in the alternative. [12] Consequently, the points of interpretation on *any question relating to the repayment by the authorities on their own initiative of wrongly collected customs duties* arising from the future judgment of the Court could be of assistance in resolving the dispute in the event that the applicant in the main proceedings were to call into question *the liability of the French customs administration for a possible breach of EU law*. [13]

41. For the reasons set out in the preceding points of the present Opinion, it must be assumed that the present request for a preliminary ruling is admissible.

[11] See judgment of 16 December 2008, *Cartesio* (C-210/06, EU:C:2008:723, paragraph 67).

[12] The First Advocate General of the Economic, Financial and Commercial Chamber of the Cour de cassation (Court of Cassation) mentions that possibility in his opinion in the national file.

[13] See judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Liability of the State for air pollution)* (C-61/21, EU:C:2022:1015, paragraph 34 et seq.).

C. Substance

1. Obligation of the customs authority to repay on its own initiative customs duties not owed

42. EU customs legislation provides for two different procedures for repayment of import duties not owed. The first procedure requires a prior request to that effect to the customs office concerned before the expiry of a period of three years from the date on which the customs duties not owed were entered in the accounts, whereas the second is the result of spontaneous action by the customs authority, which must repay on its own initiative when it discovers, within that same period, one or other of the situations providing grounds for repayment.

43. The present case concerns the *second procedure*. In that regard, it should be noted at the outset that the customs legislation provides for *a general obligation to repay* where certain conditions, which I shall address below, are met. More specifically, it is apparent from both Article 2(1) of Regulation No 1430/79 and Article 236(1) of the Community Customs Code that import duties 'shall be repaid', and Article 116(1) of the Union Customs Code also provides that the amount of import duty 'shall be repaid' on any of the grounds specified in the legislation.

44. Among the conditions which give rise to a right to repayment and which, subject to the assessment to be made by the referring court, may be applicable in the present case is the fact that 'a customs debt has … not arisen', as referred to in Article 2(1) of Regulation No 1430/79, or that 'when they were paid the amount of such duties was not legally owed', in accordance with Article 236(1) of the Community Customs Code. Article 116(1)(a) of the Union Customs Code in turn provides for repayment for 'overcharged amounts of import … duty'. Despite the somewhat divergent wording of those provisions, what they have in common is that they essentially refer to a situation in which *a customs duty has been levied by the authorities without legal justification*. In so far as those provisions lay down the conditions governing the basis and origin of the right to repayment, they constitute *substantive rules*.

45. Those substantive rules must be distinguished from *procedural rules*, which play a decisive role in the present case. As I have already pointed out, such provisions, referred to in point 35 of the present Opinion, have not changed in terms of their normative content: they provide, in essence, that 'where the customs authorities themselves discover within this period [that the conditions for such an initiative have been met] they shall repay … on their own initiative'. That legislation calls for a number of observations on my part for the purposes of its interpretation. In so doing, I shall use the methods of interpretation recognised in the case-law of the Court. In that regard, it should be recalled that, according to settled case-law, the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of the context in which it occurs, as well as the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation. [14]

46. On the basis of those considerations, it seems to me that the very wording of those provisions ('on their own initiative') confirms, first, that it is for the customs authorities to act on their own initiative and, second, that *the event which brought to their attention the fact that customs duties*

[14] See judgment of 29 July 2024, *Asociația Crescătorilor de Vaci 'Bălțată Românească' Tip Simmental* (C-286/23, EU:C:2024:655, paragraph 38).

have been wrongly collected must have occurred within the three-year period ('within this period'). In my view, it is clear that the legislation is not to be understood as meaning that the repayment itself must take place within this period.

47. From a contextual point of view, that interpretation, relating to repayment on the customs authority's own initiative, seems to me to be supported by a reading of the provisions relating to the first procedure for repayment of import duties not owed, namely the procedure on application. Under that legislation, import duties 'shall be repaid … upon submission of an application to the appropriate customs office *within a period of three years*' [15] from a date which, depending on the version used, is the date 'on which those duties were entered in the accounts by the authority responsible for their recovery', the date 'on which the amount of those duties was communicated to the debtor' or the date of 'notification of the customs debt'. By way of exception, that period is extended where the applicant provides evidence that he or she was prevented from submitting an application within the prescribed period as a result of unforeseeable circumstances or *force majeure*.

48. Leaving aside the differences in the wording of the provisions in question, it is clear that the EU legislature also intended, in regulating the repayment procedure under discussion, to lay down a period of three years within which the authorities were to establish that customs duties had been wrongly collected. In other words, under the procedure in question, the application submitted by the debtor is *the means by which the authorities become aware* of the circumstances giving rise to a right to repayment and which oblige them to act. On the other hand, a reading of the provisions shows that the procedure in question does not provide for any specific time limit for making the repayment. The rationale underlying the provisions of the two procedures set out in the preceding points of the present Opinion is therefore very similar.

49. Consequently, if such an application were submitted just *before* the expiry of the three-year period, the administration could perfectly well proceed to repayment at a later date, that is to say, after the expiry of that period, without breaching EU customs legislation. The case-law of the Court supports that interpretation, since the Court held in the judgment in *C & J Clark International* that it follows from Article 236 of the Community Customs Code that 'as a general rule and except as a result of unforeseeable circumstances or *force majeure*, the repayment of duties that were not legally owed at the time when they were paid can occur, after the expiry of a period of 3 years from the communication of the amount of those duties to the debtor, *only if the debtor has validly submitted, within that period, an application* to that effect to the national customs authorities'. [16]

50. In addition, the Court held in the earlier judgment in *CIVAD*, which concerned a situation in which the application for repayment had been lodged *after* the expiry of that time limit, or, in other words, late, that 'an economic operator *is no longer able, in principle, to claim repayment of* anti-dumping *duties* which it has paid … and for which the three-year time limit laid down by Article 236(2) of the [Community] Customs Code has expired'. [17] In the light of those explanations, it appears that the legislation at issue presupposes that the authorities must have acknowledged, within that period, the absence of a legal basis for the levying of import duties, a precondition that applies both to repayment on their own initiative and to repayment on

[15] Emphasis added.

[16] Judgment of 19 June 2019, *C & J Clark International* (C-612/16, EU:C:2019:508, paragraph 50). Emphasis added.

[17] Judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraph 21). Emphasis added.

application. To hold otherwise, namely that the repayment itself is limited to the three-year period, would result in the extinction of the right to repayment on the basis of the speed at which the administrative authorities act, which would be contrary to legal certainty.

51. In the present case, it is common ground that no claim for repayment was made within the three-year period. That raises the question of what legal requirements must be met in order for the customs authorities to intervene. In particular, it is necessary to clarify what degree of certainty the authorities must have as regards the citizen's right to repayment of wrongly collected customs duties. I shall address that question in more detail after briefly explaining the function of the three-year period provided for in the legislation at issue.

2. Function of the three-year limitation period

52. As the Court indicated in the judgment in *CIVAD*, the three-year period referred to above is a time limit, that is to say, a legally prescribed period during which the creditor may assert his or her right to repayment. The expiry of that period entails, in principle, the loss of that right. According to the Court, such a three-year time limit is reasonable, since it is not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law. [18]

53. The Court has held that such a time limit is in the interests of legal certainty, which protects both the taxpayer and the administration concerned, and does not preclude the individual from exercising rights conferred by EU law. Lastly, the Court has pointed out that, although the customs rules provide for certain exceptions to the three-year period, for example in cases of *force majeure*, the repayment of import or export duties is made only under certain conditions and in cases specifically provided for. Consequently, in so far as such a repayment is an exception to the normal import and export procedure, the provisions which provide for it are to be interpreted strictly. [19]

54. The case-law cited in the preceding points of the present Opinion concerns the provisions governing the repayment of customs duties on application by an economic operator. However, the same reasoning based on legal certainty seems to me to be applicable to the three-year time limit for the repayment procedure on the authority's own initiative, which by extension renders applicable all the principles of interpretation deriving from the case-law referred to above.

3. The degree of certainty which the customs authorities must have and the procedure to be followed for repayment purposes

55. The legislation cited in point 35 of the present Opinion governing the procedural aspects of the repayment of wrongly collected customs duties states that '*where the customs authorities themselves discover* … that one or other of the situations [giving rise to such a right] exists, they shall repay … on their own initiative', [20] which raises the question of what exactly such a 'discovery' refers to and what degree of certainty is required as to the existence of a right to repayment.

[18] Judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraphs 21 and 22).

[19] Judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraphs 23 and 24).

[20] Emphasis added.

56. In my view, the wording of the relevant substantive provisions, quoted in point 44 of the present Opinion, leaves no doubt that the knowledge of the customs authorities must extend to the circumstances giving rise to the right to repayment. In practice, that implies *knowledge of the essential elements*, namely the customs transactions carried out, the identity of the undertakings involved in those transactions, the amounts paid and, of course, the absence of a customs debt. [21]

57. When those elements are present, the customs authorities are obliged to make repayment and *have no margin of discretion*. In that regard, and contrary to what the Commission suggests, it is not possible to draw a clear distinction between the actual discovery of the conditions for repayment and an obligation to recognise, without rendering the concept of 'repayment on their own initiative' meaningless. Where the customs authorities are aware of the elements referred to in the preceding point, it must be concluded that they are under an obligation to recognise and to make repayment on their own initiative. The condition of *discovery* in the strict sense coincides, in my view, with an *obligation to recognise* under certain conditions. An interpretation to the contrary, namely one based on the absence of any obligation on the part of a customs authority to recognise on its own initiative that an amount may be repaid, would lead to the exclusion of any judicial review and, consequently, of any conviction for breach of that obligation, because a breach of a non-existent obligation is by definition impossible. Such a result would be contrary to the objective of repayment on the authority's own initiative based on the general obligation to repay taxes levied in breach of the rules of EU law.

58. However, a key question is how the customs authorities are to obtain the information necessary for that purpose, in particular whether it is sufficient for the information to be communicated to them, for example, by the undertakings concerned, or whether they must rather be proactive and carry out research in order to obtain greater clarity. It is clear that the recognition by the customs authorities on their own initiative that the conditions for repayment are met is certainly not a matter of chance and always requires some active behaviour on their part. The way in which the customs authorities act and the extent to which they must be proactive will be analysed below. What can be said with certainty for the moment is that the burden of ensuring that the customs authority becomes aware that there is no customs debt should not be borne solely by the undertaking concerned, otherwise it would be tantamount to requiring it to submit an application for repayment in all cases. In other words, there is de facto only one procedure for the repayment of wrongly collected customs duties, whereas the customs legislation clearly provides for *two separate procedures*.

59. Therefore, in order not to render the rules on repayment on the customs authorities' own initiative devoid of substance, it seems reasonable to me to require the customs authorities themselves to carry out research to establish the abovementioned essential elements in order to make repayment possible. That interpretation is also based on an analysis of the various language versions of the expression 'the customs authorities *themselves discover*' (in the French-language version, 'les autorités douanières *constatent d'elles-mêmes*') [22] used by the legislation in question, which suggests an initiative on the part of the administration, that is to say, *an investigative measure designed to obtain information*. The Spanish- and English-language versions even expressly include the verb 'to discover'.

[21] The 'Guidance on Repayment and Remission' (page 30) developed by the Commission's Directorate-General Taxation and Customs Union states only that the customs authorities '[must] have *all the required data* allowing them to proceed with the repayment', without being more specific. Emphasis added.

[22] See the versions in Spanish ('cuando las propias autoridades aduaneras descubran'), Danish ('toldmyndighederne … når de selv … konstaterer'), German ('stellen die Zollbehörden selbst … fest'), English ('where the customs authorities themselves discover'), Italian ('se le autorità doganali constatano'), Lithuanian ('Jeigu muitinė per šį laikotarpį pati nustato'), Dutch ('de douaneautoriteiten … tot de vaststelling komen') and Portuguese ('as próprias autoridades aduaneiras verifiquem').

60. The national authorities have the power to carry out customs controls pursuant to the customs legislation.[23] That said, it must be made clear that the obligation to establish the facts and act accordingly should *depend on the situation at issue*. I agree with the French Government and the Commission that, in principle, customs authorities should not be obliged to take *disproportionate measures* to determine the identity of economic operators and the sums to be repaid. I would point out, however, that my position differs as regards the conclusions to be drawn from that finding. The requirement of proportionality relates to the existence of a reasonable ratio between, on the one hand, the objective of repaying wrongly collected customs duties and, on the other hand, the effort which the customs authorities must expend to achieve that objective. The proportionality of the actions of a customs authority must be assessed not in the abstract but by taking into account the specific situation in which the repayment on its own initiative takes place. Thus, a more serious situation involving more economic operators could require more in-depth measures by a customs authority, without those measures necessarily appearing to be disproportionate.

61. In an ordinary situation involving a single importer, verification of the importer's identity and of the amount to be repaid in order to make a repayment on the authority's own initiative appears to be a reasonable and proportionate measure. Why should that not be the case in a particular situation involving several economic operators affected by an incorrect application of customs legislation by an administration? In the latter case, the fact that a determination that the conditions for repayment are met requires additional effort and resources on the part of the customs administration is a natural consequence of the *seriousness of the situation* which that administration should remedy, and that fact should not, for that reason alone, be regarded as a disproportionate measure.

62. The reasons that led to the overcharging could also be one of *the factors to be taken into account when assessing the proportionality of further research* to be carried out by a customs administration. Thus, the fact that an administration has contributed to the overpayment by misapplying the customs legislation tends to require the administration to take a more proactive approach to returning the overpayment to the economic operator rather than adopting a wait-and-see approach, where the excessive amount is recovered only if the operator takes the initiative. Furthermore, I would like to point out that, contrary to what the French Government suggests, the failure by an authority to repay on its own initiative cannot always be offset by the possibility for an economic operator to assert its right to repayment. That operator is not necessarily aware of the circumstances giving rise to the repayment and will not always be in a position to submit a request to that effect.

63. Taking all those factors into account, and while ordinary diligence is appropriate in day-to-day administrative operations, so that the administration cannot be accused of having failed in its duty of diligence if errors in the application of customs law are discovered only in the course of regular checks,[24] I consider that *more serious infringements require additional measures* on the part of the administration to determine the exact extent of the repayment obligation. In other words, the measures to be taken by the customs administration must be proportionate to the seriousness of the situation.

[23] Albert, J.-L., *Le droit douanier de l'Union européenne*, Section 4 ('La gestion du risque et des fraudes'), Bruylant, 2019, p. 542 et seq., explains that customs control has always been considered one of the prerogatives of the customs administration.

[24] Witte, P., *Zollkodex der Union (UZK)*, Munich, 2022, Article 116, paragraphs 46 to 48; Niestedt, M., *EU-Außenwirtschafts- und Zollrecht*, Munich, 2024, Article 116, paragraph 13, explain that the customs authorities are not obliged to examine each individual case in order to determine whether a repayment is possible. Such a general inspection obligation would overburden the authorities in view of the large number of customs transactions. On the other hand, the customs authorities are required to repay if they discover facts providing a basis for such repayment during a *customs check, an external audit*, and so forth.

64. Although the assessment of the proportionality of the measures taken *in concreto* is a matter for the referring court, the fact remains that the Court may provide it with guidance to enable it to carry out that task. As regards the present case, I consider, contrary to the view taken by the interested parties, that the French authorities have not done everything necessary to apply properly the customs legislation. In my opinion, the fact that the latter has been incorrectly applied *for several consecutive years*, [25] which had *financial consequences for a significant number of undertakings*, is a circumstance which should have required the French authorities to take additional measures in order to repay on their own initiative customs wrongly collected customs duties. I shall set out my point of view in more detail below.

65. At the outset, it should be noted that on 23 January 1991, the Commission published reasoned opinion COM(90) 2042 final, in which, first, it found that the French Republic, by imposing a requirement that goods be released for free circulation on goods coming from third countries and destined for Andorra when they crossed French territory, had failed to fulfil its obligations under certain provisions of Community law and, second, invited the French authorities to comply with that reasoned opinion within 30 days. Furthermore, it is apparent from the documents before the Court that, on 6 June 1991, the ministère de l'Économie, des Finances et du Budget (Ministry of the Economy, Finance and the Budget,) published in the Official Journal of the French Republic, a notice to importers and exporters abolishing that requirement of release for free circulation. In my view, that reaction on the part of the French authorities must be understood as an effective admission of an infringement of customs legislation and of an intention to comply with the requirements of Community law.

66. The Commission's reasoned opinion leaves no room for doubt. The duties levied under the free circulation system were contrary to the applicable legislation and were therefore not legally owed. It can therefore be established that the customs authorities were generally informed of that fact, or at least were aware of it. Similarly, it may be assumed that the customs authorities considered the question of the possible repayment, on their own initiative or on application, of wrongly collected customs duties, especially as the customs legislation provided for a *general obligation to repay* when the conditions were met, as I have already indicated in the present Opinion. [26]

67. It is clear from the official communication from the French authorities concerning the change in their administrative practice that they were aware of the need to protect the interests of the economic operators concerned by expressly informing them. In that context, it is important to note that the customs authorities are subject to an obligation of communication, since, under Article 14(2) of the Union Customs Code, they are to '*maintain a regular dialogue with economic operators* and other authorities involved in international trade in goods'. That provision also states that the customs authorities '*shall promote transparency by making* the customs legislation, *general administrative rulings and application forms freely available*, [27] wherever practical without charge, and through the Internet'. That provision reflects the *requirements of transparency and disclosure* in order to ensure good administration. It should be noted that those provisions were already in force in international economic law at the time of the facts in the main

[25] Although the present case concerns only imports made between 1988 and 1991, the practice of the French customs authorities at issue appears to have started much earlier. In any event, that is what the Commission's reasoned opinion appears to suggest, since it states that that practice is based on a 'notice to exporters of goods destined for the Andorra valleys' published in 1950, which was amended in 1974, 1978 and 1983. According to that opinion, the transit to Andorra of goods which were not in free circulation in the Community was subject to the production of a special authorisation issued by the prefecture of Pyrénées-Orientales.

[26] See point 43 of the present Opinion.

[27] Emphasis added.

proceedings.[28] It can therefore be stated that, by means of that official communication, the customs authorities fulfilled their *minimum* obligation to provide information on the applicable legislation.

68. However, such an approach was certainly not sufficient to remedy the unlawfulness of the situation which had persisted for several years, that is to say, to ensure that the undertakings affected by the infringement of EU law attributable to the French authorities could obtain repayment. It should be noted that the notice published by the French authorities merely announces the abolition of the requirement of release for free circulation *in the future*, but says nothing about the handling of any complaints from undertakings which have suffered financial loss *in the past*.[29] The notice is also silent as to whether it is possible for those undertakings to request information directly from the customs authorities concerning the scope of the infringement committed by those authorities, as to the possibility of contributing to the clarification of the facts relating to the customs transactions concerning them or of submitting, where appropriate, an application for repayment.

69. The official notice does not state that the change in the administrative practice of the customs authorities is in fact due to the intervention of the Commission, which had alerted them to the existence of a breach of Community law. Economic operators who were not informed of those events were therefore unable to identify the cause of that change in administrative practice. Such information was, however, essential to enable the undertakings concerned to assert their rights effectively. In the absence of additional measures, there was a risk that some undertakings would be unaware of the opportunities available to them.

4. Requirements arising from the general principle of good administration

70. Such an approach seems to me to be incompatible with the requirements arising from the general principle of good administration that customs authorities must observe when they implement EU law.[30] In particular, in my view, the French authorities have failed to comply with two essential obligations, compliance with which is characteristic of good administration, namely, first, the obligation to *justify administrative decisions* and, second, the obligation to *treat the person concerned fairly*.[31]

71. As the Court has stated in its case-law, the obligation to state reasons for decisions adopted by the national authorities is particularly important, since it *puts their addressee in a position to defend its rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against those decisions*. It is also

[28] The provision implements the requirements of international law, namely the agreements concluded within the framework of the World Trade Organization (WTO), more specifically Article X, paragraph 1, of the General Agreement on Tariffs and Trade (GATT) and the Trade Facilitation Agreement (TFA) (Witte, P., *Zollkodex der Union*, Munich, 2022, Article 14, paragraphs 33 to 35).

[29] Moreover, it is clear from the case file that the Commission had initiated infringement proceedings against the French Republic, which had led to a change in the administrative practice of the customs authorities, following a complaint lodged by a trader of products originating in Poland and intended for Andorra.

[30] See judgment of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839, paragraph 39).

[31] The principle of sound administration is not an individual principle of administrative law, but a combination of several principles, or a kind of collective term for some or all the principles of administrative law. Sometimes it is used as a synonym for those principles which make up administrative procedure based on the rule of law. The principle of good administration requires that the authorities repair faults or omissions, that proceedings are conducted impartially and objectively and that a decision is taken within a reasonable period. Furthermore, the principle implies a comprehensive duty of care and regard for welfare on the part of the authorities, and the right to a fair hearing, that is the obligation on officials, before taking a decision, to place those affected in a position in which they may make known their views, and the obligation to state reasons for the decision (see Opinion of Advocate General Trstenjak in *Gorostiaga Atxalandabaso* v *Parliament*, C-308/07 P, EU:C:2008:498, point 89).

necessary in order to enable the courts to review the legality of those decisions.[32] In my view, the obligation to state reasons also comes into play in a case such as the present, where the administration's decision to change its administrative practice, by which it implicitly admits an infringement of EU law, *paves the way for applications for repayment of wrongly collected customs duties*. Compliance with that requirement to state reasons is all the more important given that the customs authorities are obliged to make such repayments and that a time limit of three years applies.[33]

72. It seems to me that if a sufficiently precise and detailed statement of reasons is not provided by the administration itself, which is aware of all the factual and legal aspects relating to the infringement, it will be difficult, if not impossible, for the person concerned to exercise some of the rights conferred by EU law, such as the right to repayment. Moreover, it should be noted in that connection that, in accordance with settled case-law, when EU law confers rights on individuals, *it must be ensured that the persons concerned are put in a position to ascertain the full extent of their rights and*, where appropriate, *to rely on them* before the national courts.[34] That requirement is particularly relevant in *the relationship between the citizen and the administration* which is at issue in the present case.[35] The attainment of that objective would be seriously compromised if the administration were to omit essential information, such as the occurrence of an event giving rise to a right to repayment.

73. Furthermore, it should be borne in mind that the principle of good administration also implies an obligation to act fairly. The principle of fairness is indispensable in creating a climate of confidence and predictability in relations between individuals and the administration.[36] That implies, in particular, trust in the legality of the acts of the administration.[37] The principle is seen as a very broad concept, forming the basis of other principles of EU administrative law, such as the principles of impartiality, legality, legitimate expectations, non-discrimination and equal treatment, as well as the principle of proportionality.[38]

74. As far as the present case is concerned, it is clear that, because the administration omitted important information on the possibility of making an application for repayment, the undertakings which were wrongly obliged to pay customs duties before the change in the customs administration's practice were placed at a disadvantage compared with other undertakings. On the other hand, if the French authorities had set out publicly the reasons why such a change in administrative practice was necessary, all undertakings would have been treated equally. For that reason, I consider that the principle of fairness has not been observed in the present case.

75. With that in mind, it seems to me that it was not disproportionate to require the customs authorities to provide additional information and to put in place adequate procedures for the repayment of wrongly collected customs duties. Such an approach seems necessary in view of the

[32] See judgment of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839, paragraph 40).

[33] See point 50 of the present Opinion.

[34] See judgments of 15 May 2014, *Almos Agrárkülkereskedelmi* (C-337/13, EU:C:2014:328, paragraph 21), and of 9 March 2023, *État belge and Promo 54* (C-239/22, EU:C:2023:181, paragraph 28).

[35] See judgments of 8 May 2019, *PI* (C-230/18, EU:C:2019:383, paragraph 57), and of 7 September 2021, *Klaipėdos regiono atliekų tvarkymo centras* (C-927/19, EU:C:2021:700, paragraph 122).

[36] Lenaerts, K., '"In the Union We Trust": Trust-enhancing Principles of Community Law', *Common Market Law Review*, Vol. 41, Issue 2, 2004, p. 337 et seq.

[37] See, in that regard, European Parliament, *Law of Administrative Procedure of the European Union – European Added Value Assessment*, October 2012, pp. 1 to 12.

[38] Wakefield, J., *The Right to Good Administration*, Alphen aan den Rijn, 2007, p. 71.

seriousness of the breach of customs legislation, in terms of both issues of duration and scale. The case file shows that the breach lasted for several years and that all trade between Andorra and third countries appears to have been affected.

5. Status of the right to repayment in the EU legal order

76. Such a requirement is all the more imperative if account is taken of the status of the right to repayment in the EU legal order. In that regard, it should be recalled that the customs provisions on the repayment of wrongly collected customs duties are *the expression of a principle inherent in EU law*, namely the general principle of recovery of sums paid but not due.[39] According to well-established case-law, 'the right to a refund of charges levied in a Member State in breach of the rules of [EU] law is the consequence and complement of the rights conferred on individuals by [EU] provisions as interpreted by the Court. The Member State is therefore required, in principle, to repay charges levied in breach of [EU] law'.[40]

77. Furthermore, in accordance with settled case-law of the Court, 'any person on whom a national authority has imposed the payment of a tax, duty, charge or other levy in breach of EU law has the right, under EU law, to obtain the repayment from the Member State concerned of the corresponding sum of money'. According to the Court, 'such a person has the right, also under EU law, to obtain from that Member State not only the repayment of the sum of money levied though not due, but also the payment of interest intended to compensate for the unavailability of that sum'. The Court also notes that 'such a breach may concern any rule of EU law, whether it be a provision of primary or secondary law, or a general principle of EU law'. Lastly, the Court held that the rights to repayment and to the payment of interest may be relied on where the payment has been imposed in circumstances where a national authority '*has misapplied … an EU act*'.[41]

78. That case-law is not called into question by another judgment of the Court stating that the provisions which provide for repayment are to be interpreted strictly in so far as such a repayment is an exception to the normal import and export procedure.[42] Apart from the fact that that case-law must be understood in its true sense, namely as a reminder of the principle of legality, under which the administration is authorised to act only in cases specifically defined by EU law, in particular where the application of certain customs rules would result in losses of own resources to the detriment of the EU budget,[43] the following arguments militate against an interpretation of that case-law to the effect that it excludes a right to repayment.

[39] See judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others* (C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraph 62).

[40] See judgment of 28 January 2010, *Direct Parcel Distribution Belgium* (C-264/08, EU:C:2010:43, paragraph 45). Waelbroeck, M., 'La nature juridique du droit au remboursement des montants payés contrairement au droit communautaire', *Droit international, intégration européenne et libres marchés*, 2011, p. 161 et seq., explains the origins of that case-law.

[41] See judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others* (C-415/20, C-419/20 and C-427/20, EU:C:2022:306, paragraphs 51, 52, 61, 63 and 64). Emphasis added.

[42] See judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraph 24).

[43] Revenue from Common Customs Tariff duties constitutes own resources of the European Union, which are collected by the Member States and made available to the Commission. The Court, for its part, has held that the Member States are obliged to adopt the measures necessary to guarantee the effective and comprehensive collection of customs duties (see judgment of 11 July 2019, *Commission* v *Italy (Own resources – Recovery of a customs debt)*, C-304/18, EU:C:2019:601, paragraphs 49 and 50).

79. First, it is important to clarify that the interpretation put forward in the present Opinion is not intended to create an additional ground for repayment applicable in all cases. Rather, it is necessary to determine *the scope of the customs authorities' obligations under the second procedure* provided for in the customs regulations, namely when they make repayment on their own initiative after having recognised for themselves that no customs debt had arisen.

80. Second, as has already been pointed out in the present Opinion, there is an obligation in principle for the administration to repay wrongly collected customs duties. A strict interpretation of the rules on the repayment of wrongly collected customs duties cannot therefore serve as an argument for refusing such repayment in cases where the legal conditions are met. The specific provisions of customs law must rather be interpreted in a manner consistent with the general principle of recovery of sums paid but not due, referred to above.

6. Interim conclusions

81. In the present Opinion, I have examined several legal aspects relating to the right to repayment under customs law, taking into account the specific circumstances of the case. On the basis of that analysis, it is appropriate to draw some interim conclusions with a view to replying to the referring court.

82. First, it has been established that the repayment of wrongly collected customs duties requires: (i) that an application be submitted within the three-year period laid down by the customs legislation or (ii) that the authorities themselves recognise within that period that those duties were not legally owed. However, it is not necessary for the repayment to be made within that period. If any of the above conditions is met in due time, the repayment may be made after the expiry of the period referred to. [44]

83. Second, it has been established that, in order for the customs authorities to be able to make repayments, it is necessary for them to establish, inter alia, the identity of the undertakings concerned and the amounts to be repaid. However, the customs authorities must not remain passive, but must themselves take the initiative in the event of serious breaches of the customs legislation or irregularities. Consequently, the customs authorities should be required to take all measures appropriate to the situation, including investigations, and to cooperate in good faith with the undertakings concerned to safeguard the exercise of their rights. [45]

84. Third, if, according to the findings of the referring court, repayment of the wrongly collected customs duties is no longer possible, for example, due to the expiry of the three-year period laid down by the customs legislation, that court could examine, at the request of the applicant in the main proceedings, whether the conditions for compensation for breach of EU law are satisfied in the present case.

[44] See points 42 to 54 of the present Opinion.

[45] See points 55 to 75 of the present Opinion.

VI. Conclusion

85. In the light of the above considerations, I propose that the Court reply as follows to the questions referred for a preliminary ruling by the Cour de cassation (Court of Cassation, France):

Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, reproduced in the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code

must be interpreted as meaning that in order for the customs authorities to be able to repay on their own initiative wrongly collected customs duties, they must have recognised, within a period of three years from the date on which those duties were entered in the accounts, that those duties were not legally owed. In order for repayment to be made, the finding must include the identity of the operators concerned and the amounts to be repaid to each of them. Research for those purposes must be proportionate to the seriousness of the situation which the competent authority must remedy.