JUDGMENT OF THE COURT
22 February 1989 *

In Case 54/87

Commission of the European Communities, represented by John Forman, Legal Adviser, and Eugenio de March, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaïde,

defendant,

APPLICATION for a declaration that,

(i) by refusing to pay interest pursuant to Article 11 of Council Regulation No 2891/77 of 19 December 1977 implementing the decision of 21 April 1980 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal L 336, p. 1) following a misclassification of a number of customs duties in the first three months of 1980,

(ii) by failing to transmit to the Commission the information necessary to calculate default interest following the same misclassification during the months of May and June 1980, and

* Language of the case: Italian

(iii) by failing to notify the Commission whether and, if so, when similar misclassifications occurred and were rectified, if at all, in respect of the period prior to 1 January 1980,

the Italian Republic has failed to fulfil its obligations under the Treaty.

THE COURT

composed of: O. Due, President, T. F. O'Higgins and F. Grévisse (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, J. C. Moitinho de Almeida, M. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 17 November 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 13 December 1988,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 February 1987 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty in which it seeks, after withdrawing two other claims, solely a declaration that by refusing to pay default interest pursuant to Article 11 of Regulation No 2891/77 implementing the decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources following a misclassification of a number of customs duties in January, February and March 1980, the Italian Republic has failed to fulfil its obligations under the Treaty.

2 It is apparent from the documents before the Court that during the first three months of 1980 the Ravenna Customs Office by mistake classified certain EEC customs duties, which in view of the decision of 21 April 1970, implemented by the

aforementioned regulation, constitute the Communities' own resources, as ECSC customs duties, that is to say national resources. The mistake was corrected in the accounts of the customs office in July 1980 on the occasion of an inspection carried out by the Italian authorities with which the Commission was associated and the corresponding amounts of customs duties were made available to the Commission on 20 September 1980 by crediting them to the Commission's 'own resources' account with the Italian Treasury.

3 The Commission requested the Italian authorities to pay it, pursuant to Article 11 of the aforementioned regulation, default interest on the sums resulting from the rectification for the period from the date when they ought to have been credited to the Commission's account to the date on which they were in fact so credited.

4 Article 11 provides that any delay in making the entry in the Commission's 'own resources' account is to give rise to the payment of interest by the Member State concerned at the rate provided for therein.

5 The Italian authorities refused to comply with the request since they thought it was unfounded in law.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 It is appropriate to begin by recalling the principles of the arrangements given effect by the regulation at issue, which aims, according to the penultimate recital in the preamble thereto, at enabling the Communities to dispose of their own resources under the best possible conditions.

8 The entitlements which, by virtue of Decision 70/243 of the Council of 21 April 1970 (Official Journal, English Special Edition 1970 (I), p. 224) constitute the Communities' own resources, and in particular Common Customs Tariff duties,

are, according to Article 1 of the aforesaid Regulation No 2891/77, to be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action and made available to the Commission as specified in the regulation.

9 The first paragraph of Article 2 of the same regulation provides that 'an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State'.

10 In accordance with Article 7 (2) of the regulation, the established entitlements are to be entered in the 'own resources' accounts kept by each Member State at the latest on the 20th day of the second month following the month during which the entitlements were established. Pursuant to Articles 9 (1) and 10 (1) the amount of own resources established must within that same period be credited by each Member State to the account opened for that purpose in the name of the Commission with the Treasury of the Member State or with the body it has appointed.

11 It follows from the aforementioned provisions that the Member States must make available to the Commission the amount of any entitlement representing own resources no later that the 20th day of the second month following the month during which the entitlement was established by the appropriate department or agency of the Member State.

12 It must also be borne in mind that, as the Court has consistently held (see in particular the judgment of 20 March 1986 in Case 303/84 *Commission* v *Federal Republic of Germany* [1986] ECR 1171), that the default interest provided for by Article 11 of the regulation is payable in respect of 'any delay', regardless of the reason for the delay in making the entry in the Commission's account.

13 The Government of the Italian Republic contends however that in the present case there was no delay in crediting the Commission's account. According to the Italian legislation, applicable pursuant to Article 1 of the regulation, establishment of an entitlement entails not only the technical and legal establishment of the tax in question but also its calculation and entry in the accounts. It follows that the

accounting error made by the Ravenna Customs Office relates to the establishment of the entitlement within the meaning of the first paragraph of Article 2 of the regulation.

14 The Italian Government considers that such an error may be rectified in accordance with the second paragraph of Article 2 which provides: 'where it becomes necessary to rectify an establishment recorded in accordance with the first paragraph, the competent department or agency of the Member State shall make a new establishment'. The rectification in the customs office's accounts which was made in July 1980 thus constitutes a new establishment which, in accordance with Article 8, has to be entered in the 'own resources' account only for the month during which it was made.

15 That argument cannot be accepted. Although it is true that Article 1 provides that the Communities' own resources are to be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action, the first paragraph of Article 2 defines when the establishment takes place. According to the latter provision an entitlement is deemed to be established as soon as the corresponding claim has been duly determined.

16 In the present case it is not in dispute that the claims were properly determined and calculated and the parties agree that the error committed by the customs office does not concern the classification of the goods but solely the entry of the entitlements in the accounts as national resources and not as Communities' own resources. The rectification of such an accounting error which is purely internal to the competent department or agency in no way affects the determination of the claim and cannot therefore constitute 'a new establishment' within the meaning of the second paragraph of Article 2 of the regulation entailing the postponement of the period laid down for making the amount of the entitlement established available to the Commission.

17 The amounts corresponding to the contested entitlements established in January, February and March 1980 by the Ravenna Customs Office were thus belatedly entered in the Commission's 'own resources' account and the Italian Republic must therefore pay to the Commission the interest on those amounts, as laid down in Article 11 of Regulation No 2891/77.

18 It must therefore be held that, by refusing to pay, pursuant to Article 11 of Regulation No 2891/77, default interest due as a result of an accounting error in respect of a number of customs duties in January, February and March 1980, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

19 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

20 With regard to the two claims which the Commission withdrew during the proceedings it must be borne in mind that under the first subparagraph of Article 69 (4) of the Rules of Procedure the party who discontinues or withdraws from proceedings is to be ordered to pay the costs, unless the discontinuance or withdrawal is justified by the conduct of the opposite party. In the present case the two claims concern the defendant's failure to communicate certain information to the Commission. Since that information was communicated only after the action was brought, it follows that the corresponding claims in the action and the subsequent withdrawal were the result of the defendant's attitude and therefore the defendant must be ordered to pay the costs also in respect of that part of the action.

On those grounds,

THE COURT

hereby:

(1) Declares that by refusing to pay, pursuant to Article 11 of Council Regulation No 2891/77 of 19 December 1977 implementing the decision of 21 April 1970 on the replacement of financial contributions from Member States by the

Communities' own resources, default interest due as a result of an accounting error in respect of a number of customs duties in January, February and March 1980, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Due O'Higgins Grévisse Mancini

Kakouris Schockweiler Moitinho de Almeida Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 22 February 1989.

J.-G. Giraud
Registrar

O. Due
President