

ECJ Clarifies Member States' Obligation to Establish EU's Own Resource Entitlements

News

Thomas Wahl

On 5 September 2024, the Court of Justice of the European Union (ECJ) delivered an **important judgment** on the obligations of EU Member States to pay own resources to the European Union (*Case C-494/22 P, European Commission v Czech Republic*).

Background of the case

The case refers back to an OLAF investigation into the circumvention of anti-dumping duties against China by a Laotian company importing pocket lighters into the EU. The investigation included an external mission in Laos and Thailand by OLAF, with customs officers from the Czech Republic, the United Kingdom, and Germany (the three EU Member States mainly concerned by the illicit traffic). The Czech Republic claimed before the European courts that it was exempt from paying certain amounts of own resources to the Commission's account. The Czech Republic argued that it had proven impossible to recover the customs duties from the Laotian company (because the OLAF report including recommendations for recovery and follow-up measures came too late), and the Laotian company had ceased its activity in the Czech Republic in the meantime.

While the General Court upheld, in part, the Czech Republic's action against the Commission for unjust enrichment (*Case T-151/20*, judgment of 11 May 2022), the ECJ dismissed the action upon appeal by the Commission. The Commission put forward two grounds of appeal:

Obligation to establish the Union's entitlements (time limits and exemptions)

The ECJ first interpreted the EU law on own resources, in particular Arts. 2, 6(3)(b) and 17(2) of Council Regulation 1150/2000 (valid at the time of the events). It stressed that, as EU law currently stands, the management of the system of own resources of the EU is entrusted to the EU Member States and is their responsibility alone. Hence, Member States are, in principle, obliged to make own resources available to the Commission.

The time limit for the entry of established entitlements in the accounts for own resources is to be assessed from the date on which the entitlements must or should have been established, under Art. 2 of Regulation 1150/2000, and not (as the General Court found) from the date on which the entitlements have actually been established.

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The conditions under which a Member State shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements that prove irrecoverable (Art. 17(2) of Regulation 1150/2000) must be interpreted narrowly. In the present case, the Czech Republic did not demonstrate that its late entry of the entitlements in the accounts was in line with the Regulation, and therefore the country must pay the own resources due by the Laotian company to the Commission.

Obligation to request evidence soon

Second, the ECJ dealt with the Czech Republic's argument that it was late in establishing and entering the EU entitlements, in the particular circumstances of this case, because it waited for OLAF's mission report.

The ECJ found that a Member State, which is aware of a serious risk of fraud concerning specific imports, cannot limit itself to waiting for several months for the release of OLAF's final report. In particular, the Czech representative of the EU mission to Laos was obliged to request the prior communication of gathered evidence during the mission, because OLAF is obliged to respond to such requests under the OLAF Regulation. In sum, it is up to the Member State to take all effective measures to enable it to gather the information needed to fulfil the Union's rights at issue.

As a consequence, the General Court's judgment under appeal must be set aside. The Czech Republic owes the Commission the (non-recovered) own resources of the customs duties.

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