



Reports of Cases

Case C-575/18 P

Czech Republic

v

European Commission

Judgment of the Court (Grand Chamber), 9 July 2020

(Appeal — Own resources of the European Union — Financial liability of the Member States — Request to be released from the obligation to make own resources available — Action for annulment — Admissibility — Letter from the European Commission — Concept of ‘actionable measure’ — Article 47 of the Charter of Fundamental Rights of the European Union — Effective judicial protection — Action alleging unjust enrichment on the part of the European Union)

1. *Action for annulment — Actionable measures — Concept — Measures producing binding legal effects — Commission letter informally calling on a Member State to place traditional own resources at the disposal of the EU budget — Not included*
(Art. 263 TFEU; Council Regulation No 1150/2000; Council Decision 2007/436)

(see paragraphs 46-48)

2. *Action for annulment — Actionable measures — Concept — Measures producing binding legal effects — Whether that condition can be set aside by invoking the right to effective judicial protection — Not possible*
(Art. 263, fourth para., TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraphs 52, 53)

3. *Action for annulment — Actionable measures — Measures producing binding legal effects — Commission letter informally calling on a Member State to place traditional own resources at the disposal of the EU budget — Letter fixing a time limit within which the Union’s own resources are to be made available, failing which interest is payable — Production of legal effects — None*
(Art. 263 TFEU; Council Regulation No 1150/2000, Art. 9(1) and (11))

(see paragraph 54)

4. *Action for annulment — Action brought against a Commission letter informally calling on a Member State to place traditional own resources at the disposal of the EU budget — Review of*

the validity of that State's obligation to make those resources available — Disregarding the system of the Union's own resources — Not permissible
(Art. 263 TFEU; Council Regulation No 1150/2000; Council Decisions 2000/597 and 2007/436)

(see paragraphs 55-64)

5. *Own resources of the European Union — Establishment and making available by the Member States — Making own resources available subject to reservations — Principle of sincere cooperation — Obligation of the Commission to engage in constructive dialogue with the Member State concerned — Obligation of that institution to initiate infringement proceedings — None*
(Art. 4(3) TEU; Art. 258 TFEU; Council Regulation No 1150/2000)

(see paragraphs 68, 73-75, 77-80)

6. *Own resources of the European Union — Establishment and making available by the Member States — Making own resources available subject to reservations — Action alleging unjust enrichment on the part of the Union — Observance of the right to effective judicial protection*
(Arts 268 and 340 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraphs 81-83)

Résumé

On 30 May 2008, the European Anti-Fraud Office (OLAF) adopted a report on an investigation to check imports of pocket flint lighters from Laos. According to that report, which concerned, in particular, 28 cases of imported goods in the Czech Republic, the Member States were required to institute audits of the importers concerned and to take administrative duty recovery proceedings. The Czech authorities took steps to carry out tax adjustments and recovery but stated that, in some of those cases, it had not been possible to recover the amount representing the Union's own resources. By letter of 20 January 2015, the European Commission informed those authorities that the Czech Republic could not be released from its obligation to make the Union's own resources available, in accordance with Regulation No 1150/2000,¹ and requested them to pay the amount at issue, advising that any delay would give rise to the payment of interest.

The Czech Republic took issue with the position expressed by the Commission in that letter and brought an action before the General Court for annulment of the Commission's decision allegedly contained in the letter. By an order,² the General Court upheld the plea of inadmissibility put forward by the Commission and consequently dismissed the action. It ruled that the action was directed against a measure which could not be the subject of an action for annulment in so far as it did not produce binding legal effects. The Czech Republic brought an appeal before the Court of

¹ Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1), as amended by Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 (OJ 2004 L 352, p. 1) and by Council Regulation (EC, Euratom) No 105/2009 of 26 January 2009 (OJ 2009 L 36, p. 1). See, in particular, Article 17(2) of that regulation.

² Order of the General Court of 28 June 2018, *Czech Republic v Commission* (T-147/15, not published, EU:T:2018:395).

Justice, claiming, in essence, that the inadmissibility of its action for annulment had deprived it of judicial protection since it did not have a legal remedy that would enable it to obtain an effective judicial review of the Commission's position.

In its Grand Chamber judgment of 9 July 2020, the Court of Justice ruled on the conditions of the Member States' access to effective judicial protection in the event of a dispute over the extent of their financial liability having regard to EU law governing the Union's own resources.

First of all, the Court held that, as EU law currently stands, the obligations to collect, establish and place on account the Union's own resources are imposed directly on the Member States. Thus, the Commission does not have any decision-making power enabling it to require the Member States to establish and to make available to it amounts representing those resources. The Court concluded from this that making available an action for annulment against a letter, such as the letter at issue, for the purpose of reviewing the validity of the obligation of a Member State to make such amounts available to the Commission would be effectively to disregard the system of the Union's own resources, as laid down by EU law. It is not for the Court to change the choice made in that respect by the EU legislature.

Next, the Court ruled that, as EU law currently stands, the Commission's ability to submit to review by the Court, in infringement proceedings, a dispute between the Commission and a Member State regarding the latter's obligation to make available to the Commission a certain amount of the Union's own resources is inherent in the system of those resources. The Court added that, where a Member State makes an amount of those resources available subject to reservations as to the Member State's obligation to do so, it is for the Commission, in accordance with the principle of sincere cooperation, to engage in constructive dialogue with the Member State. Should that dialogue fail, the Commission has the possibility of initiating infringement proceedings against that Member State. The making available of the Union's own resources subject to reservations would justify a finding of a failure to fulfil obligations if the Member State concerned is indeed required to make those resources available.

However, in view of the Commission's discretion as to whether to initiate infringement proceedings, the Court concluded that the remedy of such proceedings does not offer the Member State concerned any guarantee of having its dispute with that institution concerning the making available of the Union's own resources resolved by the Court. The Court nevertheless added that when a Member State has made available to the Commission an amount of the Union's own resources while expressing reservations as to the validity of the Commission's arguments, and dialogue has not brought the dispute between that institution and the Member State to an end, the Member State can seek damages on account of the Union's unjust enrichment and, if necessary, bring an action before the General Court to that end.

In that regard, the Court recalled that actions for unjust enrichment of the European Union brought under Article 268 TFEU and the second paragraph of Article 340 TFEU require 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. Thus, when examining such an action, the General Court would have to assess, in particular, whether the impoverishment of the applicant Member State, corresponding to the amount of the Union's own resources which have been made available to the Commission and which that Member State has disputed, and the corresponding enrichment of the Commission, are justified by the Member State's obligations under EU law governing the Union's own resources or, on the contrary, whether no such justification exists. Accordingly, having found that a Member State is not

deprived of any effective judicial protection in the event of disagreement with the Commission as to the Member State's obligations in relation to the Union's own resources, the Court dismissed the appeal in its entirety.