



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

17 July 2014\*

(Failure of a Member State to fulfil obligations — Own resources — Post-clearance recovery of import duties — Financial liability of the Member States — Surplus stocks of non-exported sugar)

In Case C-335/12,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 13 July 2012,

**European Commission**, represented by A. Caeiros, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Portuguese Republic**, represented by L. Inez Fernandes, J. Gomes and P. Rocha, and by A. Cunha, acting as Agents,

defendant,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász (Rapporteur), A. Rosas, D. Šváby and C. Vajda, Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 December 2013,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2014

gives the following

### Judgment

- 1 By its application, the European Commission seeks a declaration from the Court that, by refusing to make available an amount of EUR 785 078.50 corresponding to levies on surplus stocks of non-exported sugar following the accession of Portugal to the European Community, the Portuguese Republic has failed to fulfil its obligations under Article 10 EC, Article 254 of the Act concerning the

\* Language of the case: Portuguese.

conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23) ('the Act of Accession'), Article 7 of Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources (OJ 1985 L 128, p. 15), Articles 4, 7 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 (OJ 1986 L 57, p. 21), as amended by Commission Regulation (EEC) No 3332/86 of 31 October 1986 (OJ 1986 L 306, p. 37) ('Regulation No 579/86'), Article 2 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), and Articles 2, 11 and 17 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1).

### Legal context

- 2 Article 254 of the Act of Accession provides:

'Any stock of products in free circulation in Portuguese territory on 1 March 1986 which in quantity exceeds what may be considered representative of a normal carry-over stock must be eliminated by and at the expense of the Portuguese Republic under Community procedures to be specified, and within the time-limits to be determined, under the conditions provided for in Article 258. The concept of a normal carry-over stock shall be defined for each product in the light of the criteria and objectives specific to each market organisation.'

- 3 Under Article 371 of the Act of Accession:

'1. The Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ... shall be applied in accordance with Articles 372 to 375.

2. Any reference to the Decision of 21 April 1970 made in the Articles of this Chapter shall be understood as referring to the Council Decision of 7 May 1985 on the Communities' system of own resources, as from the entry into force of that Decision.'

- 4 The first paragraph of Article 372 of the Act of Accession provides:

'The revenue designated as "agricultural levies" referred to in the first paragraph of Article 2(a) of the Decision of 21 April 1970 shall also include the revenue from any amount recorded on import in trade between Portugal and the other Member States and between Portugal and third countries under Articles 233 to 345, 210(3) and 213.'

- 5 Article 2 of Decision No 85/257 provides:

'Revenue from:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries,

shall constitute own resources entered in the budget of the Communities.

...'

6 Article 7(1) of that decision is worded as follows:

'The Community resources referred to in Articles 2 and 3 shall be collected by the Member States in accordance with national provisions imposed by law, regulation or administrative action, which shall, where necessary, be amended for that purpose. Member States shall make these resources available to the Commission.'

7 Article 2(1) of Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources (OJ 1988 L 185, p. 24) provides:

'Revenue from the following shall constitute own resources entered in the budget of the Communities:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community;

...'

8 Article 8(1) of that decision provides:

'The Community own resources referred to in Article 2(1)(a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules. ... Member States shall make the resources under Article 2(1)(a) to (d) available to the Commission.'

9 Article 1 of Regulation No 1697/79 provides:

'1. This Regulation shall determine the conditions under which the competent authorities shall undertake post-clearance recovery of import duties or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which, for whatever reason, payment has not been required of the person liable for payment.

2. For the purposes of this Regulation:

- (a) "import duties" means customs duties and charges having equivalent effect as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

...

- (c) "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;

(d) “customs debt” means the obligation on a natural or legal person to pay the amount of the import duties or export duties which apply under the provisions in force to goods liable to such duties.’

10 Article 2 of Regulation No 1697/79 provides:

‘1. Where the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they shall take action to recover the duties not collected.

However, such action may not be taken after the expiry of a period of three years from the date of entry in the accounts of the amount originally required of the person liable for payment or, where there is no entry in the accounts, from the date on which the customs debt relating to the said goods was incurred.

2. Within the meaning of paragraph 1 action for recovery shall be taken by notifying the person concerned of the amount of import duties or export duties for which he is liable.’

11 Article 1 of Council Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21) states:

‘This Regulation shall lay down the general rules for the application of Article 254 of the Act of Accession.’

12 Article 8 of Regulation No 3771/85 provides:

‘1. Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [OJ 1966, 172, p. 3025] or, as the case may be, in corresponding Articles in other regulations on the common organisation of the agricultural markets.

2. The detailed rules referred to in paragraph 1 shall relate in particular to:

(a) the determination of stocks as referred to in Article 254 of the Act of Accession in the case of products the quantities of which exceed normal carry-over stocks;

...

(d) the procedures for disposing of surplus products.

3. The detailed rules referred to in paragraph 1 may make provision for:

...

(c) the collection of a charge in cases where a party concerned does not comply with the procedures for disposing of surplus products.’

13 Recital 2 in the preamble to Regulation No 579/86 reads:

‘... [I]n view of the likelihood of speculation in the new Member States in respect of sugar and isoglucose, which may be stored and for which export refunds are fixed, arrangements, should be made concerning stocks in ... Portugal on 1 March 1986’.

14 The sixth recital in the preamble to Regulation No 259/2008 reads as follows:

‘... [Q]uantities in excess of the carry-over stock ... which have not been exported before the date laid down and therefore have not been eliminated from the market must be considered as being disposed of on the Community internal market and being imported from third countries; ... under these conditions, provision should rightly be made for levying an amount equal to the import levy for the product in question in force on the final day of the time limit laid down for export; ... the agricultural rate applicable on the date should be used to convert that amount into national currency’.

15 Article 3 of that regulation provides:

‘1. The new Member States shall ... undertake a survey of sugar and isoglucose stocks in free circulation in their respective territories at 00.00 hours on 1 March 1986.

2. For the application of paragraph 1, any person holding ... a quantity of sugar or isoglucose of at least 3 000 kilograms ... in free circulation at 00.00 hours on 1 March 1986 must declare it to the competent authorities before 13 March 1986.

...’

16 The relevant parts of Article 4 of Regulation No 579/86 read as follows:

‘1. Where the quantity of the sugar or isoglucose stocks recorded by the survey provided for in Article 3 exceeds, for a new Member State, the quantity laid down for the latter in Article 2(1), that Member State shall ensure that a quantity equal to the difference between the quantity recorded and the quantity laid down is exported from the Community ... before 1 July 1987 in the case of Portugal ...

...

2. In respect of the quantities to be exported pursuant to paragraph 1:

...

(c) the product in question must be exported ... before 1 July 1987 in the case of Portugal, from the territory of the new Member State in question where stocks have been recorded as provided for in paragraph 1 and the product must have left the geographical territory of the Community before the relevant date.’

17 Article 5 of Regulation No 579/86 provides as follows:

‘1. The evidence of export as referred to in Article 4(1) must be provided, except in cases of *force majeure*, ... before 1 September 1987 in the case of exports from Portugal by the presentation of:

(a) export licences and certificates issued in accordance with Article 6 by the competent body in the new Member State concerned;

(b) the relevant documents laid down in Articles 30 and 31 of [Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1980 L 338, p. 1)] for the release of the security.

2. If the evidence referred to in paragraph 1 is not provided before the date laid down, the quantity in question shall be considered as being disposed of on the Community internal market.

...'

18 Article 7(1) of Regulation No 579/86 provides:

'For the quantities which are considered as being disposed of on the internal market in accordance with Article 5(2), an amount shall be levied which is equal to:

- (a) in the case of sugar, per 100 kilograms, to the import levy for white sugar, in force on ... 30 June 1987 in the case of Portugal, increased or reduced as the case may be by the accession compensatory amount in force on that date for white sugar for the new Member State in question;

...'

19 Article 8(1) of that regulation provides:

'The new Member States shall take all measures necessary for the application of this Regulation and shall lay down, in particular, all the verification procedures which prove necessary to conduct the survey provided for in Article 3 and to accomplish the export obligation referred to in Article 4(1).'

20 Article 2(1) of Regulation No 1552/89 provides as follows:

'For the purpose of applying this Regulation, the Community's entitlement to the own resources referred to in Article 2(1)(a) and (b) of Decision [88/376] shall be established as soon as the amount due has been notified by the competent department of the Member State to the debtor. Notification shall be given as soon as the debtor is known and the amount of entitlement can be calculated by the competent administrative authorities, in compliance with all the relevant Community provisions.'

21 Article 11 of Regulation No 1552/89 provides:

'Any delay in making the entry in the account referred to in Article 9(1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by two percentage points. This rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.'

22 Article 17 of that regulation provides:

'1. Member States shall take all requisite measures to ensure that the amount[s] corresponding to the entitlements established under Article 2 are made available to the Commission as specified in this Regulation.

2. Member States shall be free from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure*, these amounts have not been collected. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is impossible in the long term for reasons which cannot be attributed to them. These cases must be mentioned in the report provided for in paragraph 3 if the amounts exceed [EUR] 10 000, converted into national currency at the rate applying on the first working day of October of the previous calendar year; this report must contain an indication of the reasons why the Member State was unable to make available the amounts in question. The Commission has six months in which to forward, if appropriate, its comments to the Member State concerned.

...'

### Pre-litigation procedure

- 23 On 26 June 2003, the Portuguese Republic applied to the Commission, pursuant to Article 17(2) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) for authorisation to be released from the obligation to place at the disposal of the Commission the amount of EUR 785 078.50 relating to traditional resources.
- 24 In the Portuguese Republic's submission, those levies had become irrecoverable following a judgment of the Supremo Tribunal Administrativo (Supreme Administrative Court) of 8 May 2002, which set aside an order for clearance of entitlements of which the relevant debtor had initially been notified on 25 October 1990. The clearance concerned own resources relating to surplus stocks of sugar for which no evidence of export had been provided by 1 September 1987, which was the time-limit laid down in Regulation No 579/86.
- 25 The Commission replied by letters of 17 December 2003 and 20 February 2004, in which it asked the Portuguese authorities for additional information about, inter alia, the reasons why the person liable for payment had received notice of the relevant customs debt more than three years after it arose and why the Supremo Tribunal Administrativo '[had] annulled the entry of [that] debt'.
- 26 By letter of 22 March 2004, the Portuguese authorities supplied the information requested as well as a copy of the judgment of the Supremo Tribunal Administrativo of 8 May 2002 and of the Tribunal Tributário de Segunda Instância (Tax Court of Second Instance) of 26 March 1996. That information indicates that the undertaking in question had not provided proof of export of the surplus stocks of sugar in its possession and that, in accordance with a notice from the tax office in Funchal (Portugal) of 16 October 1987, on 30 October 1987 it had paid an amount of EUR 522 511.20. After further investigation, the Portuguese authorities informed that undertaking that it owed an additional amount of EUR 785 078.50. That undertaking brought an action against the decision charging it that amount. The matter was referred to the Supremo Tribunal Administrativo which, before ruling on the case, referred a number of questions to the Court which, on 11 October 2001, delivered the order in *William Hinton & Sons*, C-30/00, EU:C:2001:536. Subsequently, on 8 May 2002, the Supremo Tribunal Administrativo definitively annulled the Portuguese customs authorities' claim on the ground that the notification of the additional amount in question had been made out of time.
- 27 By letter of 19 July 2004, the Commission informed the Portuguese authorities that their request of 26 June 2003 to be released from the obligation to place the own resources in question at the disposal of the Commission had been refused. The Commission also informed them that it considered that the Portuguese Republic had not established that the reasons for failure to recover the own resources in question were not attributable to it. It accordingly required the Portuguese authorities to make available to it the total sum of EUR 785 078.50 by 20 September 2004.
- 28 By letter of 29 November 2004, the Portuguese authorities asked the Commission to reconsider its position.
- 29 By letter of 28 July 2006, the Commission refused the Portuguese Republic's request. It again requested the Portuguese authorities to make the amount in question available immediately. In that letter, the Commission formulated its request on the categorisation of the amount in question as 'revenue from ... levies and other charges connected with the common organisation of the sugar market'. A further request to make the amount owing available was made by letter of 31 January 2007 but did not give rise to a positive response on the part of the Portuguese authorities.

- 30 On 23 October 2007, the Commission sent the Portuguese Republic a letter of formal notice in which it set out the reasons why it disagreed with the Portuguese Republic's expressed position, to the effect that 'it refuse[d] to recognise that the charges at issue constitute[d] Communities' own resources' and listed the reasons why those charges '[were] indeed Communities' own resources'.
- 31 In that letter of formal notice, the Commission stated that it was 'indisputable that the definitive ruling by the Supremo Tribunal Administrativo could not be disregarded by either the Portuguese authorities or the Commission' whilst pointing out that that decision 'concern[ed] directly the relationship between the trader and the national authorities ..., and [did] not affect the Member State's obligations in respect of Communities' own resources'.
- 32 In that same letter of formal notice, the Commission pointed out that 'Article 254 of the Act of Accession required [the Portuguese Republic] to eliminate, at its own expense, surplus stocks of sugar', adding that 'the Portuguese authorities ought to have ensured export of the surplus stocks (in accordance with Article 4 of Regulation No 579/86)'. The Commission added that 'as regards the quantities to be exported, they ought to have collected the established entitlements in accordance with Article 8(3)(c) of Regulation No 3771/85 ... and Article 7(1)(a) of Regulation No 579/86 and ought to have taken all necessary measures for the application of that legislation (in accordance with Article 8 of that regulation)'.
- 33 The Commission also called on the Portuguese Republic to make available to the Commission as soon as possible the amount of EUR 785 078.50 in order to avoid further accrual of overdue interest, in accordance with Article 11 of Regulation No 1150/2000, and also called on the Portuguese Republic, pursuant to Article 226 EC, to submit its observations on the matter within two months of receipt of the abovementioned letter of formal notice.
- 34 By letter of 8 February 2008, the Portuguese authorities replied to that letter of formal notice, stating that, on 26 June 2003, when they had 'requested the Commission to release them from their obligation to make available the own resources ..., they [had] referred to the amount in question as a "levy"' and that, following the 'judgment of the (then) Court of First Instance [of the European Communities] of 7 December 2004 in *Koninklijke Coöperatie Cosun v Commission* [T-240/02, EU:T:2004:354], the categorisation adopted by the Portuguese authorities [had] been called into question ... [and that] the interpretation contained in that judgment [had] subsequently been upheld by the Court of Justice on 26 October 2006 in *Koninklijke Coöperatie Cosun v Commission* [C-68/05 P, EU:C:2006:674]'. The Portuguese authorities observed that 'it [was] apparent from those two judgments (although they concern the amount charged for non-exported sugar) that the amount owing under Article 7(1)(a) of Regulation No 579/86 could not be categorised as a "levy" because it pursue[d] different objectives from those associated with the implementation of import levies [and used] the levy only as a basis of calculation'.
- 35 In the same letter the Portuguese authorities went on to state that 'it [was] only in its letter of 28 July 2006 that the Commission [had], for the first time, [categorised] the amount in question as "other duties provided for within the framework of the common organisation of the markets in sugar" within the meaning of Article 2 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42)...', a categorisation with which the Portuguese authorities disagreed, giving reasons in support of their position.
- 36 On 2 February 2009, the Commission sent the Portuguese Republic a reasoned opinion in which it dismissed the arguments put forward by the Portuguese authorities.
- 37 Therein the Commission observed, first of all, that the nature of the amounts in question as Communities' own resources was the result of Community legislation and was not determined by the Member States, which meant that the Member States' categorisation of those amounts was entirely



irrelevant. Secondly, it reiterated its position that ‘the amount in question [had] to be categorised as “other duties provided for within the framework of the common organisation of the markets in sugar” within the meaning of Article 2(a) of Decision [85/257]’.

38 The Commission also called on the Portuguese Government to adopt the measures necessary to comply with the reasoned opinion within two months from its notification.

39 On 28 October 2011, the Commission sent the Portuguese Republic a supplementary reasoned opinion, in which it reiterated the position set out in the reasoned opinion sent on 2 February 2009 to that Member State, and informed the Portuguese authorities that ‘two obvious material errors [had] been detected in the reasoned opinion ... and that it [was] necessary, for reasons of clarity and legal certainty, to rectify them through the present supplementary reasoned opinion’.

40 The Commission rectified those material errors in paragraphs 11 and 12 of that supplementary reasoned opinion, in the following terms: ‘... by the Portuguese authorities’ refusing to make available an amount of EUR 785 078.50 of own resources corresponding to levies on surplus stocks of non-exported sugar following the accession of [the Portuguese Republic] to the [Community], the Portuguese Republic has failed to fulfil its obligations under Article 10 EC, Article 254 of the Act of Accession, Article 7 of Decision 85/257, Articles 4, 7 and 8 of Regulation No 579/86, Article 2 of Regulation No 1697/79 and Articles 2, 11 and 17 of Regulation No 1552/89’.

41 In that supplementary reasoned opinion, the Commission again requested the Portuguese Republic to comply with its obligations within two months from its notification.

42 On 6 February 2012, the Portuguese authorities replied to that supplementary reasoned opinion. They maintained the position expressed in their arguments and stated that they ‘disagree[d] with the arguments which form[ed] the basis of the reasoned opinion which the Commission maintain[ed] in the supplementary reasoned opinion’.

43 Not being satisfied with the Portuguese Republic’s response, the Commission decided to bring the present action pursuant to Article 258 TFEU.

### **The application to reopen the oral procedure**

44 By letter of 18 March 2014, the Portuguese Republic applied to have the oral procedure reopened, arguing in essence that the Advocate General: (i) failed to consider all of its arguments concerning the categorisation of the amount in question as the European Union’s own resources, and (ii) in regard to the assessment of the Portuguese authorities’ diligence, based himself on facts on which the Portuguese Republic was not questioned by the Court.

45 On this point, it must be recalled that the Statute of the Court of Justice and its Rules of Procedure make no provision for the parties to submit observations in response to the Advocate General’s Opinion (see *Stichting Natuur en Milieu and Others*, C-266/09, EU:C:2010:779, paragraph 28).

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

47 The Court considers, having heard the Advocate General, that it has all the material necessary for it to decide the dispute before it and that the case does not have to be examined in the light of an argument that has not been the subject of discussion before it.

48 The application for the oral procedure to be reopened must therefore be dismissed.

### **The action**

49 It is common ground that, on the date fixed in the reasoned opinion, namely 2 April 2009, the amount of EUR 785 078.50 had not been made available to the Commission.

50 It is not disputed that that amount was calculated on the basis of Articles 4, 7 and 8 of Regulation No 579/86.

51 The Commission and the Portuguese Republic disagree on the categorisation of the charge provided for in Article 8(3)(c) of Regulation No 3771/85, which is levied in the event of non-compliance with the procedures for disposing of surplus products. Article 7(1) of Regulation No 579/86 refers to that charge simply as an 'amount'. Such a term in itself provides no indication as to whether or not that charge constitutes Communities' own resources.

52 The Commission submits that that charge constitutes another duty provided for within the framework of the common organisation of the markets in sugar within the meaning of Article 2(a) of Decision 85/257 and Article 2(1)(a) of Decision 88/376 and thus Communities' own resources.

53 In order to arrive at that categorisation, the Commission drew inferences from the judgments of the General Court in *Koninklijke Coöperatie Cosun v Commission* (EU:T:2004:354) and the Court of Justice in *Koninklijke Coöperatie Cosun v Commission* (EU:C:2006:674), in which those courts rejected the idea of categorising that charge as an import levy.

54 The Commission's categorisation of own resource is the correct one.

55 Article 1 of Regulation No 3771/85 states that that regulation lays down the general rules for the application of Article 254 of the Act of Accession. The latter provision provides not only that any stock of products in free circulation in Portuguese territory on 1 March 1986 which in quantity exceeds what may be considered representative of a normal carry-over stock must be eliminated by and at the expense of the Portuguese Republic, but also that the concept of a normal carry-over stock is to be defined for each product in the light of the criteria and objectives specific to each market organisation.

56 As the Court held in paragraph 54 of the order in *William Hinton & Sons* (EU:C:2001:536), the purpose of Article 254 of the Act of Accession is to ensure the transition, so far as concerns the Portuguese Republic, from the pre-existing system to the common agricultural policy. To that end, it determines the limits within which the sale of certain products in free circulation in Portuguese territory on 1 March 1986 may not be the subject of financial support from the Community at that date.

57 The general rules for the application of that article include Article 8(3)(c) of Regulation No 3771/85, which provides that the detailed rules therein, to be fixed in accordance with the procedures provided for by the regulations on the common organisation of the agricultural markets, include the collection of a charge in cases where a party concerned does not comply with the procedures for disposing of surplus products. Thus, in order to eliminate surplus stocks of sugar found to exist in Portugal, Regulation No 579/86 provides, principally, for the exportation of such stocks within a certain

time-limit and, failing exportation within that period, for payment of a levy in an amount equal to the import levy for sugar in force on 30 June 1987, pursuant to Article 7(1) thereof (see, to that effect, order in *William Hinton & Sons* (EU:C:2001:536), paragraph 56).

- 58 Moreover, and irrespective of the legislative context, it is recognised that the disposal of surplus stocks of certain agricultural products from the market or the maintenance of normal levels of stocks of those products are typically the objective of the common agricultural policy and that the measures aimed at achieving that objective are part of that policy. Thus, unless otherwise provided for under Union law, those measures — including the charge provided for in Article 8(3)(c) of Regulation No 3771/85 — are to be regarded as forming part of the common organisation of the market in question, in this case the market in sugar.
- 59 Moreover, Regulation No 579/86, which lays down the detailed rules for stocks of products in the sugar sector on 1 March 1986 in Spain and Portugal, has as its legal basis not only the Act of Accession and Regulation No 3771/85, but also Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4).
- 60 The Portuguese Republic disputes that categorisation, but the arguments it puts forward on this point cannot be upheld.
- 61 First of all, the Portuguese Republic contends that the revenue to be categorised as ‘own resources’ is defined in the Act of Accession and that the charge in question is not included in that definition. It refers in that connection specifically to Articles 371 and 372 thereof.
- 62 It should be observed that the Portuguese Republic’s reference to those provisions is irrelevant. Article 371 of the Act of Accession provides that Decision 85/257 is to be applied in accordance with Articles 372 to 375 thereof. The first paragraph of Article 372 of the Act of Accession states that the revenue designated as ‘agricultural levies’ referred to in Decision 85/257 ‘is also to include the revenue from any amount recorded on import in trade’ between the Portuguese Republic and the other Member States or third countries, without restricting the Communities’ own revenue to ‘agricultural levies’. In the light of that wording of the first paragraph of Article 372 of the Act of Accession, it does not exclude the collection of own revenue other than ‘agricultural levies’.
- 63 The Portuguese Republic takes the view that the charge provided for in Article 7(1) of Regulation No 579/86 was introduced solely pursuant to Article 254 of the Act of Accession and Regulation No 3771/85, and that the reference to Regulation No 1785/81 in Regulation No 579/86 covers only certain provisions of the latter, such as Article 2(2) and Article 4(2)(b) thereof. The Portuguese Republic refers to paragraph 54 of the order in *William Hinton & Sons* (EU:C:2001:536) as support for the proposition that it is an implementation of the Act of Accession.
- 64 In response to that argument, it should be observed that the Portuguese Republic does not give any reasons why, in its view, the influence of the legal basis of Regulation No 1785/81 is limited to certain provisions of Regulation No 579/86. It refers, moreover, to the provisions referred to in the preceding paragraph herein as an example. Paragraph 54 of the order in *William Hinton & Sons* (EU:C:2001:536), also referred to by the Portuguese Government, rather supports the Commission’s argument. The Treaty of Accession and the Act of Accession serve not only to bring to fruition the legal and political measure by which a candidate country becomes a member of the Union, but also to lay down the conditions under which that new Member State will function during the transition period. The transition to the common agricultural policy may entail provision for the new Member State to be obliged to apply immediately or within a specified time the relevant Union rules or certain elements thereof.

- 65 The Portuguese Republic relies on the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1), which provides that no revenue may be collected unless credited to an article in the budget and states that, for the financial years 1987, 1988, 1989 and subsequent budgets, the charge in question was not credited to any article in those budgets.
- 66 It must be borne in mind that the subject-matter of the application is the refusal by the Portuguese Republic to make available to the Commission an amount considered to form part of the own resources. In that regard it is important to distinguish Decision 85/257 as a budgetary law measure whose purpose is to define own resources allocated to the Union budget and taxes or duties established by the Community legislature in the exercise of powers based on the provisions of the EC Treaty on the common agricultural policy (see, to that effect, *Amylum v Council*, 108/81, EU:C:1982:322, paragraph 32; *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraph 40; and the order in *Isera & Scaldis Sugar and Others*, C-154/12, EU:C:2013:101, paragraph 31). Thus, as observed by the Advocate General in point 79 of his Opinion, the collection of the amount owing under Article 8(3)(c) of Regulation No 3771/85 and Article 7(2) of Regulation No 579/86 cannot be dependent on whether it is credited to an article in the Community budget.
- 67 Lastly, the Portuguese Republic contends that, under Article 6(3) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8), and Article 12(3) of Commission Regulation (EC) No 1832/2006 of 13 December 2006 laying down transitional measures in the sugar sector by reason of the accession of Bulgaria and Romania (OJ 2006 L 354, p. 8), the amounts which are of the same nature as those at issue are credited to the national budget of those Member States and, as a result, are not considered to be own resources.
- 68 As observed by the Commission, as a matter of temporal application, those regulations cannot be taken into consideration. They were adopted subsequently to the date of the facts which form the basis of the Commission's application and in circumstances which are not identical to the present case. The Commission is correct in pointing out that the Union legislature is free to determine and categorise the measures it adopts.
- 69 In the light of the foregoing considerations, the charge provided for in Article 8(3)(c) of Regulation No 3771/85 and Article 7(1) of Regulation No 579/86 constitutes another duty provided for within the framework of the common organisation of the markets in sugar within the meaning of Article 2(a) of Decision 85/257 and Article 2(a) of Decision 88/376. It follows that the Portuguese Republic was required to make that amount available to the Commission.
- 70 In its application, the Commission also asks the Court to declare that the Portuguese Republic has failed to fulfil its obligations under Article 2 of Regulation No 1697/79.
- 71 In that regard it should be observed that Article 1 states that that regulation determines the conditions under which the competent authorities are to undertake post-clearance recovery of import duties or export duties. The first subparagraph of Article 2(1) of that regulation provides that where the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they are to take action to recover the duties not collected.
- 72 It is clear from the wording of those provisions that the application of that regulation presupposes, inter alia, that the amount to be recovered constitutes an import or export duty.

- 73 The amount at issue here is not an import or export duty, however. Under Article 7(1)(a) of Regulation No 579/86, it does not constitute an import or export levy but only an amount equal to an import levy for sugar. It is also clear from that provision, read in conjunction with Article 5(2) of that regulation, that the chargeable event for the amount is not the import or export, but the absence of proof of export of the surplus quantities on 1 September 1987.
- 74 It should be borne in mind that, in the cases which gave rise to the judgments in *Koninklijke Coöperatie Cosun v Commission* (EU:T:2004:354, paragraph 38) and *Koninklijke Coöperatie Cosun v Commission* (EU:C:2006:674, paragraphs 38 to 43), the Union courts found that the amount owing due to the non-export of C sugar within the meaning of Regulation No 1785/81 and Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14) does not constitute a customs duty on imports or exports or a charge having equivalent effect or an agricultural charge on imports or exports, namely a levy.
- 75 The Commission, moreover, acknowledges in its application that the chargeable event is essentially identical to the chargeable event for the collection of the amount provided for in Article 7(1)(a) of Regulation No 579/86.
- 76 It is, furthermore, for that reason that the Commission maintains that the charge in question, which, in the light of the case-law referred to in paragraph 74 of this judgment, cannot be categorised as an import or export duty, constitutes another duty provided for within the framework of the common organisation of the markets in sugar.
- 77 In those circumstances, Regulation No 1697/79 is not applicable to the present case and nor does the three-year limitation period for recovery actions, provided for in the second subparagraph of Article 2(1) of the regulation, apply.
- 78 The Portuguese Republic's argument put forward in its defence is based essentially on the argument that the recovery of the amount in question was not possible due to the debtor company's debt being time-barred and that the Portuguese Republic was not at fault in exceeding the three-year time-limit.
- 79 It should be observed in that regard that, under Article 17(2) of Regulation No 1552/89, referred to by the Commission, Member States are to be free of the obligation to take all requisite measures to make the amounts corresponding to established entitlements available to the Commission solely if, for reasons of *force majeure*, those amounts could not be collected or if it appears that recovery is impossible in the long term for reasons which cannot be attributed to them (see, to that effect, *Commission v Denmark*, C-392/02, EU:C:2005:683, paragraph 66).
- 80 It is common ground that, on 25 October 1990, the competent Portuguese authorities sent a letter to the debtor company, ordering it to pay the amount owing. Without even having to consider the issue whether the Portuguese Republic acted until that date with all the necessary diligence to establish and recover the debt in question, it appears that, subsequently and until the expiry of the time-limit laid down in the supplementary reasoned opinion, apart from legal arguments which have turned out to be unfounded, the Portuguese Republic has not provided proof of *force majeure* or anything which has made it impossible for it to make the amount in question available to the Commission. The Portuguese Republic has not even attempted to recover the amount in question on the legal basis that its claim was not yet time-barred.
- 81 Consequently, the Court finds that, apart from the portion of its application which alleges failure by the Portuguese Republic to fulfil its obligations under Article 2 of Regulation No 1697/79, the Commission's action is well founded.

82 In the light of all the foregoing considerations, the Court:

- declares that, by refusing to make available to the Commission an amount of EUR 785 078.50, corresponding to levies on surplus stocks of non-exported sugar following the accession of Portugal to the European Community, the Portuguese Republic has failed to fulfil its obligations under Article 10 EC, Article 254 of the Act of Accession, Article 7 of Decision 85/257, Articles 4, 7 and 8 of Regulation No 579/86, and Articles 2, 11 and 17 of Regulation No 1552/89, and
- dismisses the application as to the remainder.

### Costs

83 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the Portuguese Republic and the latter has, in essence, been unsuccessful, the Portuguese Republic must be ordered to pay the costs.

On those grounds, the Court (Fifth Chamber) hereby rules and declares:

1. **By failing to make available to the European Commission an amount of EUR 785 078.50 corresponding to levies on surplus stocks of non-exported sugar following the accession of Portugal to the European Community, the Portuguese Republic has failed to fulfil its obligations under Article 10 EC, Article 254 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, Article 7 of Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources, Articles 4, 7 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986, as amended by Commission Regulation (EEC) No 3332/86 of 31 October 1986, and Articles 2, 11 and 17 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources.**
2. **The action is dismissed as to the remainder.**
3. **The Portuguese Republic shall pay the costs.**

[Signatures]