JUDGMENT OF THE COURT

12 September 2000 *

In Case C-276/97,

Commission of the European Communities, represented by H. Michard and E. Traversa, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of that service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and G. Mignot, Secretary for Foreign Affairs in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

* Language of the case: French.

APPLICATION for a declaration that,

— by failing to charge value added tax on motorway tolls as consideration for the service supplied to users, contrary to Articles 2 and 4 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), and

— by failing to make the corresponding sums, with interest for late payment, available to the Commission as own resources,

the French Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida (Rapporteur), L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, P. Jann, H. Ragnemalm, V. Skouris and F. Macken, Judges,

Advocate General: S. Alber,

Registrar: D. Louterman-Hubeau and H.A. Rühl, Principal Administrators,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 November 1999, at which the Commission was represented by H. Michard, and the French Republic was represented by K. Rispal-Bellanger and S. Seam, Secretary for Foreign Affairs in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 July 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that

— by failing to charge value added tax (hereinafter 'VAT') on motorway tolls as consideration for the service supplied to users, contrary to Articles 2 and 4 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, hereinafter 'the Sixth Directive'), and

— by failing to make the corresponding sums, with interest for late payment, available to the Commission as own resources

the French Republic had failed to fulfil its obligations under the EC Treaty.

Legal background

2 Article 2 of the Sixth Directive provides as follows:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

3 According to Article 4(1), (2) and (5) of the Sixth Directive:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph (2), whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph (1) shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

...

5. States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where

treatment as non-taxable persons would lead to significant distortions of competition.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Articles 13 or 28 as activities which they engage in as public authorities.'

4 It is common ground that providing access to roads and related infrastructures (hereinafter 'roads') on payment of a toll is not one of the activities listed in Annex D to the Sixth Directive.

5 Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ 1989 L 155, p. 9), which replaced with effect from 1 January 1989 Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (OJ 1977 L 336, p. 8), last amended by Council Regulation (ECSC, EEC, Euratom) No 3735/85 of 20 December 1985 (OJ 1985 L 356, p. 1), provides in Article 1:

'VAT resources shall be calculated by applying the uniform rate, set in accordance with Decision 88/376/EEC, Euratom, to the base determined in accordance with this regulation.'

6 Under Article 2(1) of Regulation No 1553/89:

'The VAT resources base shall be determined from the taxable transactions referred to in Article 2 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment as last amended by [Directive] 84/386/EEC, with the exception of transactions exempted under Articles 13 to 16 of that directive.'

7 Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Community's own resources (OJ 1989 L 155, p. 1), applicable from 1 January 1989, which repealed Council Regulation (EEC, Euratom, ECSC) 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 (OJ 1977 L 336, p. 1), last amended by Council Regulation (ECSC, EEC, Euratom) No 1990/88 of 30 June 1988 (OJ 1988 L 176, p. 1), provides in Article 9(1):

'In accordance with the procedure laid down in Article 10, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.'

8 Under Article 11 of Regulation No 1552/89:

'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 2 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.'

Pre-litigation procedure

Procedure relating to the Sixth Directive

9 By letter of 26 April 1984, the Commission asked the French authorities to submit their observations on the VAT rules applicable to French motorway concessionaires.

10 In their reply of 5 July 1984, the French authorities argued that the concessionaires were tax collectors inasmuch as they provided a service consisting in the collection of taxes, namely road tolls, from users on behalf of the State, and were subject to tax, as taxable persons, only on the income which constituted the consideration received in return for the service provided to the State.

11 By letter of 12 March 1986 the Commission gave the French Government formal notice, pursuant to Article 169 of the Treaty, to submit its observations within two months on that institution's argument that the activities of motorway concessionaires constituted a supply of services to users rather than to the State and that failure to levy VAT on those activities distorted the VAT system.

12 By letter of 22 May 1986, the French authorities informed the Commission that they maintained their position. They pointed out, *inter alia*, that the level of toll did not depend on the services provided to the user, with the result that it did not constitute a fee.

13 On 28 April 1988, the Commission sent the French Republic a further letter of formal notice setting out its arguments in the light of the information supplied by that Member State. The Commission argued that the fact that concessionaires were liable to VAT as collectors of taxes was not sufficient: VAT had to be levied on the full amount of the tolls.

14 In their reply of 17 February 1989, the French authorities reiterated their argument that tolls constituted a fiscal levy and VAT had to be charged only on the income which represented the consideration for the service provided to the State by concessionaires.

15 The Commission considered that the explanations given by the French authorities were not convincing, and therefore sent a reasoned opinion to the French Government on 28 August 1989, primarily to the effect that the French Republic was not fulfilling its obligations under the Sixth Directive. Accordingly, it called on that Member State to take the measures necessary to fulfil its obligations within two months.

Procedure relating to the own resources system

16 By letter of 20 December 1985, the Commission drew the attention of the French Government to the fact that the infringement of the Sixth Directive resulting from

the failure to levy VAT on the full amount of motorway tolls entailed an unwarranted reduction in the Community's own resources. It asked the French Government to calculate the amounts which had not been paid for the financial years 1981 to 1984 and to pay those amounts into the Community budget with interest for late payment as from 31 March 1986.

17 Since the French authorities informed the Commission on 27 February 1986 that they would not do so, the Commission gave the French Government formal notice by letter of 28 January 1988, under the procedure provided for by Article 169 of the Treaty, to submit its observations within two months on the alleged failure to fulfil its obligations.

18 By letter of 19 September 1988 the French Government replied that levying VAT on the full amount of the tolls would have an adverse effect on the Community's own resources as a result of the deductions which would then be made by the concessionaires themselves and users of the motorways who are liable to VAT.

19 By letter of 17 January 1989, the Commission extended its demand for payment to the financial years 1985 to 1987 with interest for late payment as from 1 May 1989 and to subsequent years until the infringement ended.

20 In the reasoned opinion of 28 August 1989 mentioned in paragraph 15 of this judgment, which related to both the infringement of provisions of the Sixth Directive and the repercussions of that infringement on the payment of the

Community's own resources, the Commission found that the French Republic was also not fulfilling its obligations under Regulations Nos 2892/77 and 2891/77, as amended. Accordingly, it called on that Member State to take the measures necessary to fulfil its obligations within two months.

21 By letter of 29 November 1989 replying to the reasoned opinion the French Republic again denied that it had infringed the Sixth Directive and sent the Commission data, together with explanations, showing the amount of VAT paid by motorway concessionaires under the present scheme and the amount which would be yielded by the system advocated by the Commission.

22 As that reply was considered inadequate as regards both the alleged infringement of the Sixth Directive and the repercussions of that infringement on the payment of the Community's own resources, the Commission brought the present action.

Substance

23 By its application the Commission claims that the French Republic, first, did not comply with the provisions of the Sixth Directive by failing to charge VAT on tolls collected as consideration for the use of motorways and, second, breached the rules relating to the system of the Communities' own resources by not paying in

to the Community budget the own resources accruing from VAT (hereinafter 'VAT own resources') relating to the sums which should have been collected by way of VAT on those tolls.

The first claim

24 The Commission submits that providing access to roads on payment of a toll by the user is an economic activity within the meaning of Articles 2 and 4 of the Sixth Directive. That activity must be considered to be a supply of services carried out by a taxable person in the course of the exploitation of property for the purpose of obtaining income therefrom on a continuing basis, within the meaning of Article 4(1) and (2) of the Sixth Directive.

25 The fact that this activity is carried out, as it is in France, under a special system of concessions granted by the State to public, quasi-public or private bodies cannot, in its view, remove the transactions in question from the scope of the Sixth Directive.

26 In that regard the Commission points out that under the first paragraph of Article 4(5) of the Sixth Directive it is only in respect of activities or transactions in which they engage as public authorities that bodies governed by public law are not considered to be taxable persons. The activity at issue does not come into that category, as it does not fall within the core responsibilities of public authority which can never be delegated to private bodies, bearing in mind that the rule that bodies governed by public law are not taxable persons must be interpreted strictly.

27 Moreover, the exemption referred to in the preceding paragraph can in any event only be relied on if the activity at issue is carried out by a body governed by public law.

28 Finally, the Commission submits that even if the conditions for the application of the first paragraph of Article 4(5) of the Sixth Directive are met, the second paragraph of that article none the less requires Member States to treat bodies governed by public law as taxable persons where failure to do so would lead to significant distortions of competition. That is the case here.

29 The Court notes, first, that by including amongst the taxable transactions defined in Article 2 not only the importation of goods but also the supply of goods or services effected for consideration within the territory of a country and by defining 'taxable person' in Article 4(1) as any person who independently carries out an economic activity, whatever the purpose or results of that activity, the Sixth Directive attributes to VAT a very wide scope (Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 6).

30 'Economic activities' are defined in Article 4(2) as comprising all activities of producers, traders and persons supplying services. In particular, the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis is also to be considered an economic activity.

31 An analysis of those definitions shows that the scope of the term 'economic activities' is very wide, and that the term is objective in character, in the sense that

the activity is considered *per se* and without regard to its purpose or results (*Commission* v *Netherlands*, cited above, paragraph 8).

32 In view of the scope of the term 'economic activities' it must be held that, in providing access to roads in return for payment, motorway concessionaires in France are carrying out an economic activity within the meaning of the Sixth Directive.

33 In view of the objective character of the term 'economic activities', the fact that the activity in question consists in the performance of duties which are conferred and regulated by law in the public interest is irrelevant. Indeed, Article 6 of the Sixth Directive expressly provides that certain activities carried on in pursuance of the law are to be subject to the system of VAT (*Commission* v *Netherlands*, cited above, paragraph 10).

34 It must also be remembered that according to the case-law of the Court (in particular Case 102/86 *Apple and Pear Development Council* v *Commissioners of Customs and Excise* [1988] ECR 1443, paragraph 12, and Case C-258/95 *Fillibeck* v *Finanzamt Neustadt* [1997] ECR I-5577, paragraph 12), the concept of the supply of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive requires the existence of a direct link between the service provided and the consideration received.

35 As the Commission rightly submitted, providing access to roads on payment of a toll fits that definition. Use of the road depends on payment of a toll, the amount of which varies *inter alia* according to the category of vehicle used and the distance covered. There is, therefore, a direct and necessary link between the service provided and the financial consideration received.

36 Accordingly, providing access to roads on payment of a toll constitutes a supply of services for consideration within the meaning of Article 2(1) of the Sixth Directive.

37 It must therefore be ascertained whether, as the French Government contends, the operators in question are entitled to the exemption provided for by Article 4(5) of the Sixth Directive in respect of the activity of providing access to roads on payment of a toll.

38 The first paragraph of that article provides that bodies governed by public law are not considered to be taxable persons in respect of activities or transactions in which they engage as public authorities.

39 As the Court has held on numerous occasions, it is clear from that provision, when examined in the light of the aims of the directive, that two conditions must be fulfilled in order for the exemption to apply: the activities must be carried out by a body governed by public law and they must be carried out by that body acting as a public authority (see, in particular, Case C-202/90 *Ayuntamiento de Sevilla* v *Recaudadores de Tributos de las Zonas primera y segunda* [1991] ECR I-4247, paragraph 18).

40 As regards the latter condition, it is clear from the settled case-law of the Court of Justice (Joined Cases 231/87 and 129/88 *Ufficio Distrettuale delle Imposte Dirette di Fiorenzuola and Others* v *Comune di Carpaneto Piacentino and Others* [1989] ECR 3233, paragraph 16; Case C-4/89 *Comune di Carpaneto Piacentino and Others* v *Ufficio Provinciale Imposta sul valore aggiunto di*

Piacenza [1990] ECR I-1869, paragraph 8, and Case C-247/95 *Finanzamt Augsburg-Stadt* v *Marktgemeinde Welden* [1997] ECR I-779, paragraph 17) that activities pursued as public authorities within the meaning of the first paragraph of Article 4(5) of the Sixth Directive are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders.

41 In the light of that case-law, the Commission's argument (see paragraph 26 of this judgment) that a body acts 'as a public authority' only in respect of activities falling within the definition of public authority in the strict sense of that term, which do not include providing access to roads on payment of a toll, must be rejected.

42 The Commission, whose legal argument has thus not been upheld by the Court, has not established, or even sought to establish, that in the present case the traders in question are operating under the same conditions as a private trader within the meaning of the case-law of the Court of Justice. In contrast, the French Republic took pains to demonstrate that the activity in question was carried out by those traders under a special legal regime applicable to them within the meaning of the same case-law.

43 Accordingly, it must be held that the Commission has failed to put before the Court the evidence required to substantiate the alleged failure to fulfil obligations as regards the condition relating to pursuance of an activity as a public authority.

44 However, as also noted in paragraph 39 of this judgment, the non-taxable status provided for in Article 4(5) of the Sixth Directive requires that the activities be carried out not only as a public authority but also by a body governed by public law.

45 In that regard the Court has held that an activity carried on by a private individual is not excluded from the scope of VAT merely because it consists in the performance of acts falling within the prerogatives of the public authority (*Commission* v *Netherlands*, cited above, paragraph 21, and *Ayuntamiento de Sevilla*, cited above, paragraph 19). The Court held, in paragraph 20 of the latter judgment, that it follows that if a commune entrusts the activity of collecting taxes to an independent third party the exclusion from VAT provided for by Article 4(5) of the Sixth Directive is not applicable. Similarly, the Court held in paragraph 22 of the judgment in *Commission* v *Netherlands*, cited above, that even assuming that in performing their official services notaries and bailiffs in the Netherlands exercise the powers of a public authority by virtue of their appointment to public office, they cannot enjoy the exemption provided for in Article 4(5) of the Sixth Directive because they pursue those activities, not in the form of a body governed by public law, since they are not part of the public administration, but in the form of an independent economic activity carried out in the exercise of a liberal profession.

46 In the present case it is common ground that, in France, the activity of providing access to roads on payment of a toll is, at least in certain cases, carried out not by a body governed by public law but by traders governed by private law. In such cases the exemption provided for by Article 4(5) of the Sixth Directive is not applicable.

47 The Commission submitted that even if the requirements for the application of the first paragraph of Article 4(5) of the Sixth Directive were met in the present case, failure to levy VAT on the activity in question would lead to significant distortions of competition within the meaning of the second paragraph of that provision. No such claim was made against the French Republic at any stage during the pre-litigation procedure, however, and it is therefore inadmissible.

48 Accordingly, the Commission's first claim must be dismissed in so far as it concerns the case where the activity of providing access to roads is carried out in France by a body governed by public law.

49 In the circumstances it must be held that by failing to charge VAT on motorway tolls collected as consideration for the service supplied to users, where that service is not provided by a body governed by public law within the meaning of Article 4(5) of the Sixth Directive, the French Republic has failed to fulfil its obligations under Articles 2 and 4 of that directive.

The second claim

50 The Commission observes that the Community rules on the collection of VAT own resources are contained in Regulation No 1553/89, which replaced with effect from 1 January 1989 Regulation No 2892/77, as amended.

51 Where a taxable person carries out a transaction falling within Articles 2 and 4 of the Sixth Directive, the ultimate consumer of that supply of goods or services is liable to VAT, and the provisions relating to the payment of VAT own resources are correspondingly applicable to the Member State in which the VAT was collected.

52 The Commission submits that where the Sixth Directive has been breached and the basis of assessment of VAT own resources thereby reduced it must be credited

with the amount of own resources attributable to the tax which should have been collected, or suffer financial disadvantage which must be made good out of the gross domestic product. Such breaches therefore cause financial damage to the other Member States and consequently subvert the principle of equality.

53 As regards interest for late payment the Commission notes that the Court has held that the default interest provided for by Article 11 of Regulation No 1552/89 is payable in respect of 'any delay', regardless of the reason for the delay in making the entry in the Commission's account (see, for example, Case 54/87 *Commission* v *Italy* [1989] ECR 385, paragraph 12).

54 The Commission considers that it gave the French Government sufficient time to remedy the infringement and drew its attention to the fact that, from 31 March 1986, interest for late payment was due for the amounts of VAT own resources which had not been paid by the French Republic as a result of its failure to levy VAT on motorway tolls.

55 It must be observed that under Article 1 of Regulation No 1553/89 VAT own resources are calculated by applying the uniform rate to the base determined in accordance with that regulation and that under Article 2(1) of the regulation that base is determined from the taxable transactions referred to in Article 2 of the Sixth Directive.

56 Since VAT was not levied on the tolls collected as consideration for the use of certain roads in France, the corresponding amounts were not taken into account in determining the VAT own resources base, with the result that the French Republic has thereby also breached the rules relating to the system of the Community's own resources.

57 Moreover, the interest for late payment claimed by the Commission has its basis in Article 11 of Regulation No 1552/89. As the Commission rightly pointed out, the default interest is payable regardless of the reason for the delay in making the entry in the Commission's account (see, in particular, *Commission* v *Italy*, cited above, paragraph 12).

58 The French Government objects, however, that Article 9 of Regulation No 1553/89 and Article 11 of Regulation No 1552/89 entitle the Commission to require additional payments and interest for late payment only in the case of an infringement of Community legislation which entails a reduction in the basis of assessment of VAT own resources. That is not the case here.

59 The French Government explains that under the current regime, VAT relating to the income of motorway companies is net VAT for the Exchequer because the State is not considered to be a taxable person in respect of that activity. Similarly, the VAT invoiced for highway construction work is not deductible, whereas it would be under the regime proposed by the Commission. Finally, the VAT levied on tolls would only constitute definitive receipts for the State in respect of the tolls paid by users not liable to VAT.

60 Accordingly, the French Government contends, the argument put forward by the Commission would in practice bring about a reduction in the VAT own resources base, so that the second claim must be rejected.

61 In that regard, it is sufficient to note that whilst, as the Commission conceded at the hearing, the financial consequences of the correct application of the Sixth Directive must be assessed when this judgment is enforced, those consequences cannot, in any event, affect the finding made in paragraph 56 of this judgment

that the French Republic did not comply with the rules relating to the system of the Communities' own resources in connection with the tolls collected as consideration for providing access to certain roads.

62 However, it is necessary to consider whether the extent of the French Republic's obligation to make retrospective payments where appropriate under the rules relating to the Communities' own resources is affected by the fact that over seven years elapsed between the notification of the reasoned opinion and the bringing of this action.

63 Despite the absence of a limitation period for the recovery of VAT in either the Sixth Directive (Case C-85/97 *SFI* v *Belgian State* [1998] ECR I-7447, paragraph 25) or in the legislation relating to the Communities' own resources, the fundamental requirement of legal certainty may have the effect of preventing the Commission from indefinitely delaying, in the course of a procedure for failure to fulfil obligations seeking the retrospective payment of own resources, the decision to bring proceedings (see, *mutatis mutandis*, Case 57/69 *ACNA* v *Commission* [1972] ECR 933, paragraph 32).

64 In that regard, it should be borne in mind that, under Article 7(1) of Regulation No 1553/89, the Member States must send the Commission a statement of the total amount of the VAT own resources base for the previous calendar year, to which the uniform rate referred to in Article 1 is to be applied in order for VAT own resources to be determined.

65 Under Article 9(1) of Regulation No 1553/89, any corrections, for whatever reason, to the statements referred to in Article 7(1) for previous financial years

are to be made in agreement between the Commission and the Member State concerned. If the Member State does not give its agreement, the Commission, after re-examining the matter, is to take whatever measures it considers necessary for correct application of that regulation.

66 Article 9(2) of that regulation provides:

'No further corrections may be made to the annual statement referred to in Article 7(1) after 31 July of the fourth year following the financial year concerned, unless they concern points previously notified either by the Commission or by the Member State concerned.'

67 That provision does not refer to the situation in which the procedure for failure to fulfil obligations under Article 169 of the Treaty has been initiated, but demonstrates none the less the requirements pertaining to legal certainty in budgetary matters by ruling out any correction after four budgetary years have elapsed.

68 It is clear that the same considerations of legal certainty justify the application by analogy of the rule laid down by that provision, where the Commission decides to initiate the procedure for failure to fulfil obligations in order to seek retrospective payment of VAT own resources.

69 Accordingly the Commission, which did not bring this action until 30 July 1997, can seek retrospective payment of VAT own resources with interest for late payment only as from the 1993 budgetary year.

70 Having regard to all the foregoing considerations, it must be held that by failing to make available to the Commission as VAT own resources the amounts corresponding to the VAT which should have been levied on motorway tolls, together with interest for late payment, the French Republic has failed to fulfil its obligations under Regulations Nos 1553/89 and 1552/89.

Costs

71 Under Article 69(2) 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. As the Commission has applied for an order for costs against the French Republic and the latter has been unsuccessful in the main, the French Republic must be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to charge value added tax on motorway tolls collected as consideration for the service supplied to users, where that service is not provided by a body governed by public law within the meaning of**

Article 4(5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and by failing to make available to the Commission of the European Communities as own resources accruing from value added tax the amounts corresponding to the value added tax which should have been levied on those tolls together with interest for late payment, the French Republic has failed to fulfil its obligations under Articles 2 and 4 of that directive and under Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax and 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. Orders the French Republic to bear the costs.

Rodríguez Iglesias	Moitinho de Almeida		Sevón
Schintgen	Kapteyn	Gulmann	Puissochet
Jann	Ragnemalm	Skouris	Macken

Delivered in open court in Luxembourg on 12 September 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President