OPINION OF ADVOCATE GENERAL LÉGER

delivered on 14 January 2003 [1]

I — Introduction

1. The Bundesgerichtshof (Federal Court of Justice, Germany) has referred to the Court for a preliminary ruling several questions on the interpretation of Articles 454 and 455 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. [2]

2. Those questions were raised in proceedings between the Hauptzollamt (Principal Customs Office) Friedrichshafen (hereinafter 'the HZA'), and an association established under German law approved as a guaranteeing association, the Bundesverband Güterkraftverkehr und Logistik eV (BGL) (hereinafter 'BGL'). The dispute relates to the recovery of import customs duties and taxes on goods placed under the external transit regime and conveyed under cover of an international road transport carnet (hereinafter the 'TIR carnet'), in accordance with the system established by the Customs Convention on the international transport of goods under cover of TIR carnets (hereinafter the 'TIR Convention'), the substance of which is incorporated in Regulation No 2454/93.

II — Legal background

A — *The TIR Convention*

3. The TIR Convention, which was drawn up under the auspices of the United Nations Economic Commission for Europe, was signed in Geneva on 14 November 1975 and came into force in 1978. It has been amended several times. [3] It is currently binding on around 60 parties, including the European Community. [4]

4. The TIR Convention aims to facilitate the international carriage of goods by road

1 — Original language: French.

2 — OJ 1993 L 253, p. 1. Regulation No 2913/92 of 12 October 1992 was published in OJ 1992 L 302, p. 1.

3 — The latest version came into effect on 17 February 1999, in other words after the facts in the case in the main proceedings.

4 — The TIR Convention was concluded by the Council on behalf of the Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1).

vehicle by simplifying and harmonising the administrative customs formalities to be fulfilled at frontiers. Accordingly, it provides that consignments of goods being transported are subject to a single inspection by the customs office of departure, to the exclusion of any other examination by the customs offices *en route* or of destination, unless the latter suspect an irregularity (Article 5). Furthermore, it provides that such goods are not subject to the payment or deposit of import or export duties and taxes [5] (Article 4).

5. On the other hand, the TIR Convention imposes three requirements. First, the goods must be carried in vehicles or containers providing certain security guarantees to prevent their removal or substitution during transit (Articles 12 to 14). Secondly, the goods must be accompanied throughout their journey by a uniform despatch document, the TIR carnet, issued by the customs office of departure and which will serve as a reference instrument for checking the regularity of the operation (Article 3). [6] Finally, the payment of duties and taxes liable to be levied on a transporter by customs services must be guaranteed in part by a national association approved for this purpose by the authorities of the contracting parties (Article 3). This guarantee is itself covered by the International Road Transport Union (IRU) and by a group of insurance companies established in Switzerland.

6. Having thus sketched the broad outlines of the TIR system, I shall now describe how it is applied in practice.

7. The TIR carnets are printed by the IRU and distributed by the guaranteeing associations to the transporters, which use them to record a series of information, primarily on the goods carried. Each TIR carnet consists of a set of sheets in duplicate (copies Nos 1 and 2). At the start of the transport operation, the customs office of departure checks the load, verifying in particular that it corresponds to the goods declared in the TIR carnet, and seals it. It then completes the first sheet of the TIR carnet presented by the user, removes copy No 1, signs the corresponding counterfoil and returns the carnet to the user. At the point where the consignment leaves the territory it has crossed, the customs office *en route* checks the state of the seals, removes copy No 2, signs the corresponding counterfoil and returns the TIR carnet to the user. It then sends copy No 2 to the customs office of departure, which checks that it corresponds to copy No 1. If copy No 2 contains no reservation as to the regularity of the TIR operation, the latter is regularly discharged on the territory crossed. On the other hand, if copy No 2

5 — Article 1(b) of the TIR Convention states that this term means 'customs duties and all other duties, taxes, fees and other charges which are collected on, or in connection with, the import or export of goods, but not including fees and charges limited in amount to the approximate cost of services rendered'.

6 — The number of TIR carnets issued each year is steadily increasing, especially since 1989, in view of the expansion in trade between Eastern and Western Europe. At present the number is close to 3 million.

bears reservations or is not received by the customs office of departure, the TIR operation is considered to be irregular on the territory in question. As a consequence, the customs authorities of that territory are entitled to demand payment of the duties and taxes which thus become payable.

8. This process is repeated in each country crossed, except between the Member States of the Community because they constitute a single customs territory. In this case, the TIR operation is regularly discharged if the goods in question are presented again to the customs office of destination, that is to say the office at the point at which they leave the Community's customs territory, and if the latter unconditionally notifies the customs office of departure, in other words the office at the point of entry to the Community's customs territory.

9. The guaranteeing associations may be called upon to guarantee payment of part of the import or export duties and taxies falling due as a consequence of the irregularity of the TIR operation. [7] This amount may be increased to include default interest. The guaranteeing association is liable, jointly and severally with the persons directly chargeable, for payment of the sums in question. However, the competent customs authorities must so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association (Article 8(1), (3) and (7) of the TIR Convention).

10. Claims against the guarantee of the guaranteeing association may be made only by the customs authorities by which it has been approved. However, this rule does not apply in relations between the Member States of the Community. In this case the guaranteeing association that issued the TIR carnet at the start of the operation is solely liable. Its liability may be invoked by the Member State of departure by which it has been approved or by another Member State if the irregularity proves to have been committed on the territory of the latter. [8]

11. The procedural framework for invoking the liability of a guaranteeing association is defined in Articles 10(2) and 11 of the TIR Convention. It consists of the following three elements.

12. First, the customs authorities may not claim against a guaranteeing association if they have unconditionally discharged a TIR

7 — Guarantee limits are set by the contracting parties to the TIR Convention. The explanatory notes to the Convention, which were adopted on the basis of Article 43, contain recommendations in this regard. The limits proposed vary according to the type and quantity of goods covered. The highest relate to alcohol and tobacco, primarily because of the high duties and taxies on such products.

8 — See Article 457(2) of Regulation No 2454/93.

carnet unless the certificate of discharge was obtained in an improper or fraudulent manner (Article 10(2) of the TIR Convention).

13. Secondly, if there are grounds for claiming against a guaranteeing association, the customs authorities must abide by certain formalities and time limits. Article 11(1) and (2) of the TIR Convention provides as follows:

'1. Where a TIR Carnet has not been discharged or has been discharged conditionally, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8... from the guaranteeing association unless, within a period of one year from the date of acceptance of the TIR Carnet by those authorities, they have notified the association in writing of the non-discharge or conditional discharge. The same provision shall apply where the certificate of discharge was obtained in an improper or fraudulent manner, save that the period shall be two years.

2. The claim for payment of the sums referred to... shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the Carnet had not been discharged or had been discharged conditionally or that the certificate of discharge had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the abovementioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.'

14. Thirdly, certain time-limits also apply to the consequences of the procedure I have just described for the guaranteeing association concerned. Article 11(3) of the TIR Convention lays down that 'the guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed. The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.'

B — *Regulation No 2454/93*

15. In accordance with Article 48 of the TIR Convention, special provisions have been adopted within the Community for transport operations on the Community's customs territory. These provisions are contained in Regulation No 2454/93.

16. Articles 454, 455 and 457 of Regulation No 2454/93 define the procedure for the recovery of duties and taxes that become due.[9] They broadly mirror the procedural framework laid down by the TIR Convention. These provisions relate particularly to the determination of the national authorities competent to effect recovery of the amounts corresponding to the duties and taxes that have become payable.

17. Article 454 of Regulation No 2454/93 is worded as follows:

'1. This Article shall apply without prejudice to the specific provisions of the TIR... Convention concerning the liability of the guaranteeing associations when a TIR... carnet is being used.

2. Where it is found that, in the course of or in connection with a transport operation carried out under cover of a TIR carnet..., an offence or irregularity has been committed in a particular Member State, the recovery of duties and other charges which may be payable shall be effected by that Member State in accordance with Community or national provisions, without prejudice to the institution of criminal proceedings.

3. Where it is not possible to determine in which territory the offence or irregularity was committed, such offence or irregularity shall be deemed to have been committed in the Member State where it was detected unless, within the period laid down in Article 455(1), proof of the regularity of the operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the customs authorities.

Where no such proof is furnished and the said offence or irregularity is thus deemed to have been committed in the Member State in which it was detected, the duties and other charges relating to the goods concerned shall be levied by that Member State in accordance with Community or national provisions.

If the Member State where the said offence or irregularity was actually committed is subsequently determined, the duties and other charges (apart from those levied, pursuant to the second subparagraph, as own resources of the Community) to which the goods are liable in that Member State shall be returned to it by the Member State which had originally recovered them. In that case, any overpayment shall be repaid to the person who had originally paid the charges.

9 — The sum recovered corresponds to the amount of customs duties, excise duties and value added tax. Of the customs duties, 90% accrues to the Community budget and the remaining 10% covers the recovery expenses incurred by the customs authorities of the Member States. The entire amount of the excise duties accrues to the Member State that undertook recovery. The value added tax accrues mainly to that Member State, with a small portion going to the Community.

Where the amount of the duties and other charges originally levied and returned by the Member State which had recovered them is smaller than that of the duties and other charges due in the Member State where the offence or irregularity was actually committed, that Member State shall levy the difference in accordance with Community or national provisions.

The customs administrations of the Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.'

18. Article 455(1) and (2) of Regulation No 2454/93 provides that:

'1. Where an offence or irregularity is found to have been committed in the course of or in connection with a transport operation carried out under cover of a TIR carnet..., the customs authorities shall notify the holder of the TIR carnet... and the guaranteeing association within the period prescribed in Article 11(1) of the TIR Convention...

2. Proof of the regularity of the operation carried out under cover of a TIR carnet... within the meaning of the first subparagraph of Article 454(3) shall be furnished within the period prescribed in Article 11(2) of the TIR Convention...'

19. Articles 454 and 455 of Regulation No 2454/93 were amended by Regulation (EC) No 2787/2000, [10] in so far as 'certain corrections should be made to the content with regard to references to the TIR Convention'. [11] The amendments in question are applicable as from 1 July 2001, in other words after the events in the present case.

III — Facts and procedure in the main proceedings

20. On 23 March 1994 the transport undertaking Freight Forwarding Services placed under the Community external transit regime at the HZA, the customs office of entry to Community territory, a consignment of 12.5 million cigarettes coming from Switzerland for transport to Morocco via the customs office of Algeciras (Spain), the office of departure from Community territory.

21. The last date laid down for presenting the goods at the Spanish customs office was

10 — Commission Regulation of 15 December 2000 (OJ 2000 L 330, p. 1).

11 — See the 12th recital of Regulation No 2787/2000.

28 March 1994, five days after the starting date of the transport operation. As the HZA received no confirmation of discharge of the TIR operation from the Spanish customs office, it asked the latter for information in this regard. On 13 July 1994 the Spanish office indicated to the HZA that the goods had not been presented to it. The original TIR carnet was finally discovered after 28 March 1994. It was found to bear a forged stamp of the Algeciras office dated 28 March 1994, the final date for presentation of the goods.

22. On 16 August 1994 the HZA sent the transporter a tax notice for DEM 3 197 500 for duties and taxes payable on the goods in question. The transporter did not respond to this payment demand.

23. On the same date the HZA informed BGL that the TIR carnet had not been discharged. BGL had stood surety for the holder of the TIR carnet up to a maximum of ECU 175 000 (DEM 334 132.75). It was allegedly an unreserved guarantee under German law, with the result that the surety could not maintain that the customs authorities first had to seek payment from the holder of the TIR carnet before claiming from the surety. For its part, BGL concluded a guarantee contract with the IRU, which in turn is bound by an insurance contract with a group of insurance companies including Préservatrice Foncière Tiard SA (hereinafter 'PFA'), intervener in the main proceedings.

24. In February 1996 the HZA brought an action against BGL before the Landgericht (Regional Court) in Frankfurt am Main (Germany) to claim the sum of DEM 334 132.75 (the maximum amount of the guarantee) plus interest. In its defence document deposited on 8 May 1996, BGL claimed that the cigarettes at issue had been unloaded in Spain and that consequently only the Spanish State, and not the German State, was entitled to pursue it for payment. BGL proposed to produce witnesses to prove this allegation concerning the place where the irregularity in question was committed. This proposal was not entertained. Indeed, both the Landgericht Frankfurt am Main and, on appeal, the Oberlandesgericht (Higher Regional Court, Germany) allowed the disputed claim for payment. BGL then lodged an appeal with the Bundesgerichtshof.

25. In its order for reference the Bundesgerichtshof wonders about the admissibility of the evidence put forward by BGL as to the place where the irregularity in question was committed, given the time-limits for proof laid down in Regulation No 2454/93 and in the TIR Convention. It states in this regard that this evidence was not put forward until 8 May 1996, in other words almost two years after notification of the non-discharge of the TIR carnet to the

guaranteeing association, which occurred on 16 August 1994. Furthermore, the court of reference finds that the presence of a forged stamp on the TIR carnet does not mean that this is a situation in which the certificate of discharge was obtained in an improper or fraudulent manner, in other words a situation in which the time-limit for furnishing proof is two years pursuant to the second sentence of Article 11(1) of the TIR Convention, to which Article 455(1) of Regulation No 2454/93 refers. Having made these observations, the Bundesgerichtshof wonders whether it is necessary to apply to a guaranteeing association the time-limit for the provision of proof of one year that applies to the holder of a TIR carnet, in accordance with the judgment in *Met-Trans and Sagpol*. [12] In addition, the court of reference wonders about the respective roles of the guaranteeing associations and the customs authorities in investigating where the irregularity was committed.

IV — The questions referred for a preliminary ruling

26. As a result, the Bundesgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. (a) Does the time-limit laid down in the first subparagraph of Article 454(3) of... Regulation... No 2454/93... for furnishing proof of the actual place of an offence or irregularity apply also where a Member State, pursuant to Article 454(2) and the first and second subparagraphs of Article 454(3) of Regulation No 2454/93, brings proceedings against the guaranteeing association for the payment of customs duties, and the association wishes to prove in those proceedings that the place where the offence or irregularity was actually committed is situated in another Member State?

(b) If the answer to Question 1(a) is in the affirmative:

(i) In such a case does the one-year time-limit in the first subparagraph of Article 454(3) and Article 455(1) of Regulation No 2454/93 in conjunction with the first sentence of Article 11(1) of the TIR Convention or the two-year time-limit in Article 455(2) of that regulation in conjunction with the first sentence of Article 11(2) of the TIR Convention apply?

(ii) Does the time-limit for furnishing proof in the case set

12 — Joined Cases C-310/98 and C-406/98 [2000] ECR I-1797.

out in Question 1(a) apply in such a way that the guaranteeing association must submit its allegation under tender of evidence that the offence or irregularity was actually committed in another Member State within the time-limit and, if that is not done, is precluded from offering that proof?

(b) If the Court's answer to Question 2(a) is in the affirmative:

(i) If such an investigative obligation is infringed, is the offence or irregularity not deemed under the first subparagraph of Article 454(3) of Regulation No 2454/93 to have been committed in the Member State in which it was detected?

2. (a) Under Articles 454 and 455 of Regulation No 2454/93, is the Member State which finds that an offence or irregularity has been committed in connection with a transport operation under cover of a TIR carnet obliged as against the guaranteeing association, in addition to the notifications under Article 455(1) of that regulation and an enquiry to the customs office of destination, to investigate where the offence or irregularity was actually committed and who is the customs debtor within the meaning of Article 203(3) of Regulation No 2913/92, by requesting another Member State to lend administrative assistance in ascertaining the facts (see Council Regulation No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters)?

(ii) Must the Member State which has detected the offence or irregularity, when claiming against the guaranteeing association, demonstrate and prove that such an investigative obligation has been complied with?'

V — Examination of the questions referred for a preliminary ruling

27. The national court raises two series of questions, which deal first with the time-limit for furnishing proof of the place where the irregularity was committed and secondly with the obligation, if any, for the Member State which detected the irregularity to investigate where it was committed.

A — *The time-limit for furnishing proof of the place where the irregularity was committed*

1. Arguments of the parties

28. Both BGL and PFA maintain that a guaranteeing association is entitled to bring proof of the place where the irregularity was committed.

29. According to BGL, the guaranteeing association is subject to no time-limit for furnishing proof. However, in the alternative, it maintains that the only time-limit admissible is that of two years from the date of the request for payment. It therefore excludes the application of the one-year time-limit laid down in the first sentence of Article 11(1) of the TIR Convention referred to in the version of Regulation No 2454/93 in force at the time of the facts. After drawing attention to the inconsistencies in the regulation in question, it asserts that the time-limit of two years from the date of the request for payment was finally introduced by the amending Regulation No 2787/2000 in order to correct the error committed in this respect by the Community legislature.

30. Like BGL, PFA maintains that the only time-limit for proof applicable to the guaranteeing association is that of two years from the date of the request for payment or, at the very least, from the date on which the irregularity was notified to the association. PFA relies in this regard on the retroactive application of Regulation No 2787/2000. Nevertheless, it considers in substance that the bringing of legal proceedings bars the issue of a payment demand, which has the effect of postponing, for the entire duration of the proceedings, the date from which the time-limit is measured. Finally, both BGL and PFA maintain that the applicable time-limit for furnishing proof is indicative, not prescriptive.

31. In contrast to BGL and PFA, the HZA and the German Government consider that the guaranteeing association is not entitled to submit proof of the place where the irregularity in question was actually committed. In their view, no provision granting this right is to be found in Regulation No 2454/93 or in the TIR Convention. Furthermore, according to the German Government, if it were acknowledged that the guaranteeing association had such a right, it would create the danger of conflicts within the German legal system between decisions in this regard, given the duality of the jurisdictions that would become competent (the financial courts to assess proof submitted by the principal debtor and the civil courts with regard to that submitted by the surety).

32. In the alternative, the HZA and the German Government maintain that the wording of Regulation No 2454/93 points clearly and exclusively to a one-year time-

limit applicable to the guaranteeing association if it is not to be time-barred. However, pursuant to the third subparagraph of Article 454(3) of Regulation 2454/93, the guaranteeing association has the possibility, at the expiry of that time-limit, to obtain repayment of the sums it has been required to pay.

33. For its part, the Commission of the European Communities, like BGL and PFA, considers that the guaranteeing association, as surety, is entitled to submit proof of the place where the irregularity was actually committed, in the same way as the holder of the TIR carnet is entitled to do as the principal debtor. However, in contrast to BGL and PFA, the Commission maintains that the only time-limit for proof applicable to the guaranteeing association is that of one year from the date of notification of the non-discharge of the TIR operation. It refers in this regard to the case-law of the Court on the time-limit for furnishing proof applicable to the principal debtor. [13]

34. At the hearing the Commission stated that Regulation No 2787/2000 is to be interpreted as referring to a time-limit of three months, and not two years, from the date of the request for payment. As this new time-limit is shorter than that initially laid down, the principle of legitimate expectations prohibits the retroactive application of that regulation. Furthermore, contrary to the claims of PFA, in the opinion of the Commission the bringing of legal proceedings has no effect on the calculation of the time-limit applicable for furnishing proof. Finally, in common with the HZA and the German Government, the Commission states that this time-limit is prescriptive and does not rule out the possibility of a subsequent repayment to the guaranteeing association.

2. Assessment

35. In the first series of questions, the national court seeks to establish, in essence:

— what is the length of the time-limit laid down by Regulation No 2454/93 for furnishing proof of the place where the irregularity was committed, and

— whether this time-limit is applicable to the guaranteeing association in the context of legal proceedings, and if it is not complied with whether the association is precluded from offering that proof.

13 — See the *Met-Trans and Sagpol* judgment, cited above.

(a) The length of the time-limit for furnishing proof

36. In Question 1(b)(i), the national court asks in essence whether Articles 454 and 455 of Regulation No 2454/93 and Article 11 of the TIR Convention to which it refers are to be interpreted as meaning that the time-limit for furnishing proof of the place where an irregularity was committed — in the event of the non-discharge or conditional discharge of a TIR carnet — is limited to one year or extends to two years.

37. As all the parties in the present proceedings have stated, the Court has already had occasion to reply to this question as far as the time-limit for proof applicable to the holder of a TIR carnet is concerned. [14] It delivered the following findings: 'the first subparagraph of Article 454(3) of Regulation No 2454/93 unambiguously refers, as regards the length of the period in question, to Article 455(1) of that regulation. Article 455(1) in turn refers, as regards the time-limit it lays down, to Article 11(1) of the TIR Convention. Article 11(1) of the TIR Convention mentions only one time-limit, namely a period of one year'. [15] As these provisions apply to guaranteeing associations — a point on which I shall enlarge below — this case-law is bound to be transposed to them. It is therefore important to remind the national court that, if the TIR carnet is not discharged or is discharged conditionally, the time-limit for furnishing proof laid down in the version of Regulation No 2454/93 in force at the time of the facts in the case is one year, and not two years.

38. Contrary to the claims of PFA, no other reply can be given on this point in favour of a supposed retroactive application of amending Regulation No 2787/2000. Indeed, the first subparagraph of Article 4(2) of that regulation indicates that 'points 2 to 80 of Article 1 shall apply from 1 July 2001'. The provisions relating to the contested time-limit for furnishing proof fall within the scope of this rule. [16] It is apparent from this that the Community legislature was careful to exclude expressly the possibility of retroactive application of Regulation No 2787/2000 as far as the amending provisions in question are concerned. In other words, to permit the retroactive application of Regulation No 2787/2000 would be to disregard the clear and precise provisions of that regulation as to its temporal scope. It follows that Regulation No 2787/2000 was not applicable at the date of the facts in the case for the purposes of determining the length of the time-limit for furnishing proof. That having been said, as the national court has rightly pointed out, there remains a doubt

14 — See the *Met-Trans and Sagpol* judgment, cited above.

15 — Loc. cit., paragraph 44.

16 — The amending provisions in question are to be found at points 54 and 55 of Article 1 of Regulation No 2787/2000.

as to the length of the time-limit for proof laid down by the amending regulation, as in reality its wording refers to two very different time-limits (three months and two years).

39. It is apparent from the foregoing that Regulation No 2454/93, which alone is applicable at the date of the facts in the case — to the exclusion of Regulation No 2787/2000 — is to be interpreted as meaning that it lays down a time-limit of one year for furnishing proof of the place where an irregularity was committed if the TIR carnet was not discharged or was discharged conditionally.

(b) The enforceability of the time-limit for furnishing proof against the guaranteeing association in the context of legal proceedings

40. In order to answer the question as to the enforceability of the time-limit for furnishing proof against the guaranteeing association in the framework of legal proceedings it is first necessary to establish whether the guaranteeing association is entitled to adduce such proof. The question is a valid one, because the first subparagraph of Article 454(3) of Regulation No 2454/93 does not state who is entitled to do so. In common with BGL, PFA and the Commission, I believe that this preliminary question calls for a reply in the affirmative.

41. The system of external transit under cover of a TIR carnet gives the competent customs authorities an assurance that the payment of duties and taxes that may become payable will be covered by a guaranteeing association if the holder of the TIR carnet defaults. The competent customs authorities are, in principle, those of the place where the irregularity is committed unless it is impossible to establish that place, which justifies granting competence to the authorities that detected the irregularity. Consequently, if it is proved that the irregularity was committed in a Member State other than the one which initiated the recovery procedure, that procedure cannot succeed because the authorities do not have competence to take action. In other words, proof of the place where the irregularity was committed may be adduced as a ground of defence. The first subparagraph of Article 454(3) of Regulation No 2454/93, which provides for grounds of defence of this type, can be fully effective only if this plea can be relied upon by the guaranteeing association as well as the holder of the TIR carnet. The guaranteeing association is obliged to pay sums claimed 'jointly and severally' with the principal debtor.[17] Furthermore, the association must enjoy the same grounds of defence as those accorded to the holder of the TIR carnet. The principle of equality of arms between the parties to proceedings

17 — See the second sentence of Article 8(1) of the TIR Convention.

argues in favour of this. [18] It follows that the guaranteeing association is entitled, in the same way as the holder of the TIR carnet, to furnish proof of the place where the irregularity was committed.

42. This conclusion is all the more compelling in view of the nature of the presumption that the customs authorities which detected the irregularity in question have competence. It is a simple presumption, in other words it can be overturned by proof to the contrary. To allow only the holder of the TIR carnet to make use of this possibility, and not also the guaranteeing association, would in many cases preclude overturning the presumption in question. Indeed, it emerges from the report of the European Parliament of 20 February 1997 on the Community transit regime (hereinafter the 'enquiry report') that claims against guaranteeing associations are very frequent. [19] This finding also applies to external transit under cover of a TIR carnet. This simple presumption would therefore become virtually incontestable, contrary to the provisions of Regulation No 2454/93.

43. Consequently, we should set out from the principle that the guaranteeing association is entitled to furnish proof of the place where the irregularity was committed. Furthermore, in my view, it is of necessity subject to a time-limit in this context.

44. Since the reliance of the holder of the TIR carnet on such proof is subject to a time-limit, the same must apply to the guaranteeing association, in accordance with the ancillary nature of its claim and the principle of equality of arms among the parties. Furthermore, if the intention of the Community legislature had been to exempt the guaranteeing association from a temporal constraint for furnishing the proof in question it would presumably have taken care to state that. It has to be found that that is not the case, as the first subparagraph of Article 454(3) of Regulation No 2454/93 embodies that right to furnish the proof in question within a certain time-limit, without distinguishing between the unspecified beneficiaries of that right.

45. Does this time-limit have its place in the context of legal proceedings? The national court asks this question in general terms for the situation in which a Member State brings legal proceedings for payment of customs duties against a guaranteeing association and where the latter wishes to furnish proof that the place where the offence or irregularity was actually committed is in another Member State. The national court inclines to the view that the time-limit laid down in Regulation

18 — The principle of equality of arms between the parties contributes to the guarantee of a fair hearing, within the meaning of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Respect for this principle, as a general principle of Community law, is required in any proceedings, even those of an administrative nature (see the Opinion of Advocate General Darmon in Case C-49/88 *Al-Jubail Fertilizer Company and Saudi Arabian Fertilizer Company v Council* [1991] ECR I-3187). In my view, what is valid for the parties in one and the same proceedings must also be valid for the parties in two distinct proceedings, as would appear to be the case here (the HZA opened an administrative recovery procedure against the holder of the TIR carnet and later instituted legal proceedings against the guaranteeing association).

19 — See paragraph 1.1.5 in particular.

No 2454/93 applies exclusively to 'extrajudicial' proof.[20] I share that view.

46. In my opinion, this question of the time-limit for furnishing proof has to be examined in the light of the principle of procedural autonomy. According to settled case-law,[21] in the absence of relevant Community rules, it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing similar domestic actions and are not framed in such a way as to render impossible in practice the exercise of rights conferred by Community law.

47. It has to be acknowledged that Regulation No 2454/93 contains no provision on the length of the time-limit applicable for furnishing proof in the context of legal proceedings. Indeed, as PFA rightly points out,[22] the first subparagraph of Article 454(3) of Regulation No 2454/93 states that proof of the place where the irregularity was committed must be furnished 'to the satisfaction of the customs authorities'. The use of this expression suggests that the provisions apply to extrajudicial proof, since it is to be assessed by the customs authorities and not by a court. Furthermore, the provisions in the last sentence of Article 11(2) of the TIR Convention shed no light on this point, as they relate to the time-limit for making the claim for payment following legal proceedings, and not the time-limit for furnishing proof of the place where the irregularity was committed. It is apparent from these considerations that the Member States remain free to regulate the question of the time-limit for proof applicable in the context of legal proceedings, subject to compliance with the principles of equivalence and effectiveness. What concrete conclusions can be drawn from this analysis? In my view, a distinction must be made between a number of different sets of circumstances.

48. One such set of circumstances may cover the situation in which the customs authorities have brought legal proceedings from the outset against the guaranteeing association to recover payment, in other words without having first initiated an administrative procedure against it. Given the facts set out by the national court, I presume that the dispute in the main proceedings falls into this category. In such a situation, the guaranteeing association has not yet been able to furnish proof of the place where the offence was committed. Theoretically, it is not able to do so until it has been served with a writ. Moreover, this is the reason why, in the present case in the main proceedings, the guaranteeing association did not put forward that evidence

20 — See the order for reference (p. 11).

21 — See in particular to that effect the judgments in Cases 33/76 *Rewe* [1976] ECR 1989, paragraphs 5 and 6, 45/76 *Comet* [1976] ECR 2043, paragraph 13, C-128/93 *Fisscher* [1994] ECR I-4583, paragraph 39, C-410/92 *Johnson* [1994] ECR I-5483, paragraph 21, C-246/96 *Magorrian and Cunningham* [1997] ECR I-7153, paragraph 37, and C-78/98 *Preston and Others* [2000] ECR I-3201, paragraph 31.

22 — See paragraph 53 of its written observations.

until 8 May 1996, in other words a few months after being served with a writ in February of that year. In such circumstances, I consider that the time-limit for proof mentioned in the first subparagraph of Article 454(3) of Regulation No 2454/93 is not applicable. As much as it is essential, in accordance with the general principle of legal certainty, to impose certain time-limits for bringing legal proceedings in order to prevent the interminable questioning of established situations,[23] it is not essential to do the same for furnishing proof — by way of grounds of defence — in legal proceedings, which proceed at their own pace under the supervision of a court. In any case, the principles aimed at respect for the right to a fair hearing and effective legal protection argue to this effect.

49. A second set of circumstances may arise where the customs authorities have initiated judicial recovery proceedings before expiry of the one-year time-limit for furnishing proof that is applicable for the administrative procedure in question. In this case, the guaranteeing association remains entitled to submit the contested proof. For the reasons I have stated above, it can do so without having to comply with the time-limit set by Regulation No 2454/93, not because this previously applicable time-limit has been suspended or extended but because it is simply no longer applicable to the association. In other words, it is no longer possible to enforce against the guaranteeing association the expiry of the one-year time-limit for furnishing proof that applies to the administrative procedure, regardless of the progress of the judicial proceedings.

50. A third set of circumstances is that in which the customs authorities have taken judicial recovery proceedings against the guaranteeing association after expiry of the one-year time-limit applicable in the administrative procedure. In this case, a distinction has to be made between two situations. First, if the guaranteeing association has used the proof in question during the administrative procedure — within the permitted time-limit — but that proof has not satisfied the customs authorities, the guaranteeing association is entitled to introduce it again before a court and is not required to comply with a new time-limit. In other words, the expiry of the time-limit for furnishing proof in the administrative procedure cannot be held against the guaranteeing association. Hence, all the facts in the dispute between the customs authorities and the guaranteeing association in the administrative procedure will be brought before the court. By contrast, if the guaranteeing association has failed to raise this proof during the administrative procedure — within the permitted time-limit — it is no longer entitled to raise it during the legal proceedings. To permit the opposite would risk encouraging delaying tactics tainted with

23 — It is settled case-law that the setting of reasonable limitation periods for bringing proceedings satisfies the principle of effectiveness linked to procedural autonomy inasmuch as this requirement constitutes an application of the fundamental principle of legal certainty. See to this effect the judgments in Cases C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 28, and *Preston and Others*, cited above, paragraph 33.

bad faith. In other words, it is possible, and only in this case, to enforce in court against the guaranteeing association the expiry of the time-limit of one year that is applicable in the preceding administrative procedure. The proof in question must therefore be declared inadmissible.

51. Consequently, I propose that the Court reply to question 1(a) from the national court that the first subparagraph of Article 454(3) of Regulation No 2454/93 is to be interpreted as meaning that the time-limit set for furnishing proof of the place where the irregularity was committed applies only where such proof is furnished in an administrative recovery procedure and not in judicial proceedings. I also propose that the Court indicates, nevertheless, that the expiry of this time-limit is enforceable against a guaranteeing association using such proof in judicial proceedings if it failed to do so within the permitted time-limit in a previous administrative procedure, and that in this case the evidence in question is inadmissible.

(c) The starting point of the time-limit for furnishing proof

52. In view of the foregoing considerations, I think it useful to specify the starting point from which to measure the time-limit of one year laid down in Regulation No 2454/93 for furnishing proof (in the event of non-discharge or conditional discharge).

53. A reading of the first subparagraph of Article 454(3) of Regulation No 2454/93 could lead one to think that it refers to Article 11(1) of the TIR Convention on the length of the time-limit and on the point at which it begins. A reading of Article 11(1) of that Convention in conjunction with the second paragraph of the same article would also cause one to think that the starting point of this time-limit is set as the date of notification of non-discharge or conditional discharge. [24] However, I consider that this interpretation is to be rejected, because it conflicts with the fundamental principle of respect for the right to a fair hearing.

54. In accordance with settled case-law, the Court considers that this fundamental principle requires that, even in the absence of specific procedural rules, a person against whom a measure is liable to be taken which may gravely prejudice that person's interests must be placed in a position effectively to make known his views. [25]

24 — See the order for reference, p. 12.

25 — See in particular the judgments in Cases 121/76 *Moli* v *Commission* [1977] ECR 1971, paragraph 20, 85/87 *Dow Benelux* v *Commission* [1989] ECR 3137, and C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 46. More recently, see the judgments in the *Al-Jubail Fertilizer* case, paragraph 15 et seq., and in Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183, paragraph 43.

55. What is the scope of this fundamental principle in the context of the procedure established by Regulation No 2454/93? The first subparagraph of Article 454(3) of that regulation expressly provides for the possibility of furnishing proof of the place where the irregularity in question was committed. As I have already indicated, the use of this evidence is equivalent to that of a ground of defence. Now, it is obvious that a person against whom recovery proceedings have been taken is not able to raise this ground of defence until he has actually been notified of the claim for payment against him and provided that at that time the time-limit for that purpose has not expired.

56. What would be the situation if the time-limit for furnishing proof — applicable in the context of an administrative procedure — were measured from the date of notification of the non-discharge or conditional discharge of the TIR carnet? It is highly likely that the guaranteeing association would no longer be able to use the proof mentioned, as the first sentence of Article 11(2) of the TIR Convention provides that the claim for payment shall be made to the guaranteeing association at the earliest three months after the date of such notification and at the latest not more than two years after that date. It follows that, if the time-limit laid down for putting forward this proof were counted from the date of notification, that time-limit could have expired even before the guaranteeing association learned of the payment demand made against it. It is even conceivable that the customs authorities might wait until the last moment before serving a payment demand on the guaranteeing association, in other words almost two years after having notified the irregularity. If so, the guaranteeing association's time-limit for furnishing proof would have expired almost a year earlier. It could therefore not submit this proof during the administrative procedure. It is true that, in accordance with the principle of the right to a fair hearing, it could use it subsequently in judicial proceedings without the expiry of a time-limit for furnishing proof that it had been unable to use being enforced against it. Nevertheless, the fact remains that this would be contrary to the fundamental principle of observance of the rights of defence that have to be respected in an administrative procedure.

57. Furthermore, this way of calculating the time-limit for furnishing proof — which is applicable in administrative procedures — would enable the customs recovery authorities to guard against the risk of a declaration of lack of competence as a result of proof that the disputed irregularity had been committed in another Member State, at least in the situation where this question had not been brought before a court. This would ultimately change the nature of the presumption of competence on which the recovery system adopted by Regulation No 2454/93 rests, since that simple presumption would tend to become incontestable.

58. In my view, the one-year time-limit for proof should therefore run from the moment when the person entitled to furnish such proof has taken cognisance of the payment demand against him. In fact, Regulation No 2787/2000, [26] which became applicable after the date of the facts in the present case, so provides.

59. This analysis is not incompatible with the wording of the first subparagraph of Article 454(3) of Regulation No 2454/93, because although the reference it contains clearly relates to the length of the time-limit, there is doubt as to the point at which that time-limit commences. That being the case, and on the assumption that this reference also relates to the starting-point of the time-limit, which could be legally argued in the light of the fundamental principle of respect for the right to a fair hearing, I consider that it is not necessary, given the factual background to the dispute in the main proceedings (see paragraph 48 of this Opinion), [27] to declare these provisions invalid. Furthermore, Regulation No 2787/2000 clarified the provisions in question in a manner consistent with this principle.

26 — As a result of the amendment effected by Regulation No 2787/2000, the first subparagraph of Article 454(3) of Regulation No 2454/93 refers to Article 455(2) of the same regulation, which in turn refers to Article 11(3) of the TIR Convention. The two time-limits indicated therein run from the date when a claim for payment is made upon the guaranteeing association.

27 — Contrary to the situation in Case C-395/00 *Cipriani* [2002] ECR I-11877, with regard to Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

B — *The question of an obligation for the Member State initiating a recovery procedure to investigate*

60. In part (a) of its second question, the national court seeks to know in essence whether the Member State that detects an irregularity is required as against the guaranteeing association to investigate where that irregularity was committed and the identity of the principal customs debtor by seeking administrative assistance from another Member State to ascertain the facts. If the answer to this question is in the affirmative, the national court would like to know the legal force of such an obligation to investigate. I shall deal with all of these questions simultaneously.

1. Arguments of the parties

61. BGL and PFA maintain that the Member State which detects an irregularity has an obligation to investigate. In support of this argument they point out that the first subparagraph of Article 454(3) of Regulation No 2454/93 establishes a presumption of competence in favour of the Member State which detects the irregularity, a presumption that derogates from the principle that the Member State where the irregularity was committed has competence, as laid down both in Article 454(2) of

Regulation No 2454/93 and in Article 215 of Regulation 2913/92. They add that Regulation No 1468/81,[28] in the version in force at the time of the facts in the case, gives Member States the means of cooperation needed to meet this investigative obligation. They deduce from this that the Member State must prove that it has met this obligation and that, if it has not done so, the presumption of competence in its favour is to be set aside.

62. In contrast to BGL and PFA, the HZA and the German Government deny the existence of such an obligation to investigate. They point out, in particular, that the creation of an obligation to investigate would effectively overturn the burden of proof on the guaranteeing association or the principal debtor to establish the place where the irregularity was committed.

63. The Commission also denies the existence of an obligation to investigate. It points out that the burden of proof of the place where an irregularity was committed rests essentially with the operators, and not with the Member States. Furthermore, it considers that Regulation No 1468/81 merely facilitates coordination of the actions of the customs authorities in order to conserve the Community's own resources and not to enable operators to evade their responsibilities.

28 — OJ 1981 L 144, p. 1.

2. Assessment

64. I consider that Article 454 of Regulation No 2454/93 is to be interpreted as meaning that the Member State which detects an irregularity is not required to investigate either where that irregularity was committed or the identity of the customs debtors. This interpretation is based both on the wording of the provisions in question and on the intention of the Community legislature.

65. As far as the wording of Article 454 of Regulation No 2454/93 is concerned, it has to be stated that it contains no provision to this effect.

66. Indeed, contrary to the claims of BGL and PFA, the existence of an obligation to investigate cannot be deduced from the provisions of the first subparagraph of Article 454(3) of Regulation No 2454/93, which relate to the situation 'where it is not possible to determine in which territory the offence or irregularity was committed'. This formula merely refers to the factual circumstances in which the presumption of competence in favour of the Member State

that detected the irregularity can operate. It does not assume that these circumstances must prove to favour a fruitless investigation to ascertain indirectly where the irregularity was committed by identifying the customs debtors, and that this investigation must be undertaken by the customs authorities in question. To concede the opposite would in practice introduce a fresh irregularity into the recovery procedure against the guaranteeing association in addition to those provided for in Article 11(1) and (2) of the TIR Convention, to which Article 454(1) of Regulation No 2454/93 refers. This analysis can be compared with that made by the Court in the *SPKR* judgment [29] with regard to the provisions of the same regulation on the Community transit regime (Article 378(1)).

67. Contrary to the further claims of BGL and PFA, an obligation for the Member State concerned to investigate cannot be derived either from the provisions of the last subparagraph of Article 454(3) of Regulation No 2454/93, according to which 'the customs administrations of the Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties'. These provisions simply place on the Member States a duty of diligence to ascertain that an irregularity or offence has occurred [30] and consequently to initiate a recovery procedure. They do not mean that the Member States that detect an irregularity are only entitled to initiate a recovery procedure after having satisfied themselves, as the result of an investigation, that the place where that irregularity was committed cannot be determined.

68. To concede the opposite would, moreover, deprive these provisions of their effectiveness, in defiance of the intention of the Community legislature. Indeed, to await the results of an investigation to ascertain where an irregularity was committed — which often proves fruitless [31] — only delays measures to deal with and punish the irregularity, contrary to the duty of diligence placed on Member States by the provisions in question. Moreover, there is a danger that this situation will lead to the recovery procedure being barred through lapse of time and hence to the non-punishment of the irregularity.

29 — Case C-112/01 [2002] ECR I-10655, paragraph 35.

30 — This finding is generally reached as a result of a reply from the customs office of destination to an enquiry sent to it by the customs office of departure. This reply makes it possible to confirm the existence of an irregularity that until then had been only suspected because the customs office of departure had not received copy No 2 from the customs office of destination.

31 — As Advocate General Mischo indicated in his Opinion in Joined Cases *Met-Trans and Sagpol*, it is very difficult for an official authority to furnish proof of the place of an offence, which — by definition — has been deliberately concealed (paragraphs 103 and 104). These difficulties stem primarily from the fact that the offence or irregularity is associated with organised crime (see points 3.3.1, 3.3.4 and 3.3.6 of the enquiry report, cited above). Cigarettes are the preferred target of this form of criminality, as they are easy to handle and bear high rates of excise duty (see points 1.1.5 and 4.2.1.4 of the enquiry report).

This is precisely the reason why a presumption of competence in favour of the Member State that detects an irregularity was established. This presumption cannot be set aside on the ground that the Member State which detected an irregularity has not complied with a supposed obligation to investigate where it was committed, except to impede any recovery procedure, in defiance of the interests of the Community.

69. In this regard, it is necessary to recall the words of the Court in the *Met-Trans and Sagpol* judgment. At paragraph 37 it stated that 'the compensation regime provided for in the third and fourth subparagraphs of Article 454(3) of Regulation No 2454/93 institutes a mechanism for simplifying the administrative aspect and recovering duties and other charges in cases where uncertainty as to the place where the offences or irregularities vis-à-vis the customs provisions were committed might result in the sums owed being lost altogether'. It added that 'with that situation in mind, it is provided that, where the Member State in which the offence was committed cannot be determined with certainty, a provisional presumption arises that the Member State in which the offence or irregularity was detected has competence'. Finally, it stated that 'where it is subsequently established that the first State did have competence, the presumption in favour of the second State is rebutted and a compensation mechanism comes into operation between the two Member States, thus preventing the first State from being barred through lapse of time from recovering the duties and other charges'.

70. This system of presumption thus makes it possible to reconcile the different interests involved in a TIR operation. This is true of the Community's interests, as the duties and taxes accruing to it in the form of own resources can be duly recovered on account of the commission of an irregularity that terminates the preferential regime that is the external transit regime. It is also true of the Member States that detect an irregularity, as they are entitled to collect national duties and taxes through a recovery procedure intended to preserve the interests of the Community. It is also true of the Member States where it turns out that the irregularity was committed, because they are then entitled to collect the national duties in question. Finally, it is true of the operators, be they users, in other words beneficiaries of this preferential trade facilitation regime, or guaranteeing associations, as they can first contest the recovery procedure initiated by the Member State that detected the irregularity by furnishing proof — within a given time-limit — that the irregularity was committed in another Member State where the level of taxation is lower, and hence be prosecuted exclusively by that other Member State, and secondly obtain repayment of excess national duties and taxes applicable by furnishing this proof again. Indeed, contrary to the claims made at the hearing by BGL, it is apparent from

Article 457 of Regulation No 2454/93 that the guaranteeing associations are liable towards the customs authorities of each of the Member States crossed in the course of the TIR operation, and not solely towards the customs authorities of the Member State that approved them. This rule cannot be set aside by means of a simple deposit contract that has no legal authority. [32] It follows that the guaranteeing associations have every interest in having their guarantee invoked by the customs authorities of a Member State where the level of taxation is lower than that of the Member State that detected the irregularity and to benefit from repayment of the excess tax.

71. I consider that the introduction of an obligation for the Member State that detected an irregularity to investigate would jeopardise the general economy of the system, which rests on a balanced compromise aimed at reconciling the various interests involved.

72. These considerations are valid both for the obligation to investigate where the irregularity was committed and for that to ascertain the identity of the customs debtors, given the close link between these two pieces of information. Experience has shown that knowing the identity of the holder and user of the TIR carnet (that is to say the transporter and possibly the driver) makes it possible to obtain information of use in determining where the irregularity was committed. Consequently, as the Member States are not required to investigate where the irregularity was committed, it is not imperative for them to investigate the identity of the customs debtors. Conversely, it is logical that this task be entrusted to the guaranteeing associations, because they are in a position to satisfy themselves as to the identity of the holder and user of the TIR carnet when issuing it. [33] This responsibility is a necessary extension of the payment guarantee resulting from issuance of the TIR carnet. Moreover, the guaranteeing associations have every interest in knowing the identity of the persons involved, not least because this will make it easier for them to prove where the irregularity covered by their guarantee was committed.

32 — These considerations can be equated to those adopted by the Court in the *Met-Trans and Sagpol* judgment with regard to an administrative agreement between Member States prescribing a shorter time-limit than that foreseen in Regulation No 2454/93 (paragraph 48).

33 — This question about ascertaining the identity of the holder and user of the TIR carnet should no longer arise. Since 17 February 1999, the date on which Annex 9 of the TIR Convention came into effect, persons seeking access to the TIR regime must be authorised by the customs authorities. Such authorisation is subject to conditions, in particular the absence of convictions for serious or repeated offences against customs or tax legislation. The guaranteeing associations may issue TIR carnets only to persons in possession of such authorisation. Under a recommendation adopted by the Administrative Committee for the TIR Convention on 20 October 2000 and brought into effect on 1 April 2001 — pending the entry into force of the next amendment of the Convention — an individual identification number is allocated by the customs authorities as part of the authorisation procedure and is entered in the TIR carnet, under the supervision of the guaranteeing association, in addition to the name and address of the persons concerned.

73. Consequently, I propose that the Court reply to question 2(a) from the national court that the first subparagraph of Article 454(3) of Regulation No 2454/93 is to be interpreted as meaning that the Member State which detects an offence or irregularity is not required to investigate where the offence or irregularity was actually committed or the identity of the customs debtors.

74. As the reply to that question is in the negative, part (b) of the second question does not call for a reply.

VI — Conclusion

75. In the light of all these considerations, I propose that the Court reply as follows to the questions submitted for a preliminary ruling by the Bundesgerichtshof:

(1) The first subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code is to be interpreted as meaning that, in the event of the non-discharge or conditional discharge of the TIR carnet, the time-limit granted to the guaranteeing association to furnish proof of the place where the offence or irregularity was committed is one year.

(2) The provisions cited above are to be interpreted as meaning that the said time-limit only applies where that proof has been furnished in the course of an administrative recovery procedure and not in the course of judicial proceedings. However, the expiry of this time-limit is enforceable against a guaranteeing association introducing that proof in the course of judicial proceedings if the association has failed to adduce such proof within the permitted time-limit in the course of a preceding administrative procedure. In that case, the proof in question is inadmissible.

(3) The starting point of the one-year time-limit for furnishing proof that is applicable in the context of an administrative procedure and enforceable — in the circumstances described above — in the context of judicial proceedings is the date of receipt of the claim for payment by the person to whom it is addressed.

(4) The first subparagraph of Article 454(3) of Regulation No 2454/93 is to be interpreted as meaning that the Member State which detects an offence or irregularity is not required to investigate where the offence or irregularity was actually committed or the identity of the customs debtors.