JUDGMENT OF THE COURT (Second Chamber)

14 April 2005 *

In Case C-104/02,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 20 March 2002,

Commission of the European Communities, represented by G. Wilms, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by W.-D. Plessing and R. Stüwe, acting as Agents, assisted by D. Sellner, Rechtsanwalt,

defendant,

* Language of the case: German.

supported by

Kingdom of Belgium, represented by A. Snoecx, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 May 2004,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2004,

gives the following

Judgment

1 By its application the Commission of the European Communities has brought an action for a declaration that:

— by making own resources available to the Community too late, the Federal Republic of Germany has failed to fulfil its obligations under Article 49 of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1992 L 132, p. 1), or Article 379 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 (OJ 1993 L 253, p. 1) ('the implementing regulation'), read together with Article 2(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1);

— pursuant to Article 11 of Regulation No 1552/89, for the period up to 31 May 2000, and Article 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) for the period after 31 May 2000, the Federal Republic of Germany is required to pay into the Community budget the interest owing in the event of late entry in the accounts.

Legal framework

Community customs law

2 Various sets of substantively identical legislative rules applied in succession during the period from 1 January 1993 to 31 December 1996, the period to which the present action pertains.

3 As regards Community transit procedures, in 1993 the applicable provisions were Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit (OJ 1990 L 262, p. 1), and Regulation No 1214/92, as amended by Commission Regulation (EEC) No 3712/92 of 21 December 1992 (OJ 1992 L 378, p. 15) ('Regulation No 1214/92').

4 As regards the customs debts, in 1993 the applicable provisions were Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15), as amended by Council Regulation (EEC) No 4108/88 of 21 December 1988 (OJ 1988 L 361, p. 2) ('Regulation No 2144/87') and Commission Regulation (EEC) No 597/89 of 8 March 1989 laying down provisions for the implementation of Regulation No 2144/87 (OJ 1989 L 65, p. 11).

5 As regards accounting and recovery of customs debts, the applicable provisions in 1993 were Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt (OJ 1989 L 186, p. 1).

6 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code') codified the legislation applicable under Community customs law. That code was the subject of provisions in the implementing regulation. Those provisions have been in force since 1 January 1994.

7 Given that the different customs law schemes which applied successively during the period covered by the present infringement proceedings are substantively identical, the parties refer principally in their arguments only to the provisions which applied as from 1 January 1994, that is, the Customs Code and the implementing regulation. For that reason, the table below simply lists the provisions which applied successively during the periods to which the dispute pertains. The text of the provisions of the Customs Code and the implementing regulation are reproduced after the table.

Calendar year 1993	Calendar years 1994 and 1995
Articles 1 and 3(2)(a) of Regulation No 2726/90	Article 91(1)(a) and (2)(a) of the Customs Code
Article 11(1)(a) and (b) of Regulation No 2726/90	Article 96(1)(a) of the Customs Code
Article 2(1)(c) of Regulation No 2144/87	Article 203 of the Customs Code
Article 2(1)(d) of Regulation No 2144/87	Article 204 of the Customs Code
Article 2(1) of Regulation No 1854/89	Article 217(1) of the Customs Code
Article 3(3) of Regulation No 1854/89	Article 218(3) of the Customs Code
Article 4 of Regulation No 1854/89	Article 219 of the Customs Code
Article 6(1) and Article 7 of Regulation No 1854/89	Article 221(1) and (3) of the Customs Code
Article 22(1) and (4) of Regulation No 2726/90	Article 356(1) and (5) of the implementing regulation
Article 34(3) of Regulation No 2726/90	Article 378 of the implementing regulation
Article 49 of Regulation No 1214/92	Article 379 of the implementing regulation
Article 50 of Regulation No 1214/92	Article 380 of the implementing regulation

The Customs Code

8 Article 91(1)(a) and (2)(a) of the Customs Code provides:

'1. The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

...

2. Movement as referred to in paragraph 1 shall take place:

... under the external Community transit procedure,

...'.

9 According to Article 96(1)(a) and (b) of the Customs Code:

'The principal shall be the holder of the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time-limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.'

10 According to Article 203 of the Customs Code:

'1. A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

— the person who removed the goods from customs supervision,

— any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

— any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision,

and

— where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.'

11 According to Article 204 of the Customs Code:

'1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed,

or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.'

12 Article 215 of the Customs Code provides:

'1. A customs debt shall be incurred at the place where the events from which it arises occur.

2. Where it is not possible to determine the place referred to in paragraph 1, the customs debt shall be deemed to have been incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

3. Where a customs procedure is not discharged for goods, the customs debt shall be deemed to have been incurred at the place where the goods:

— were placed under that procedure

or

— enter the Community under that procedure.

4. Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.'

13 Article 217(1) of the Customs Code provides:

'Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).'

14 Under Article 218(3) of the Customs Code:

'Where a customs debt is incurred under conditions other than those referred to in paragraph 1, the relevant amount of duty shall be entered in the accounts within two days of the date on which the customs authorities are in a position to:

(a) calculate the amount of duty in question,

and

(b) determine the debtor.'

15 According to Article 219 of the Customs Code:

'1. The time-limits for entry in the accounts laid down in Article 218 may be extended:

(a) for reasons relating to the administrative organisation of the Member States, and in particular where accounts are centralised,

or

(b) where special circumstances prevent the customs authorities from complying with the said time-limits.

Such extended time-limit shall not exceed 14 days.

2. The time-limits laid down in paragraph 1 shall not apply in unforeseeable circumstances or in cases of force majeure.'

16 According to Article 221(1) and (3) of the Customs Code:

'1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

...

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. However, where it is as a result of an act that could give rise to criminal court proceedings that the customs authorities were unable to determine the exact amount legally due, such communication may, in so far as the provisions in force so allow, be made after the expiry of such three-year period.'

17 Article 236(1) of the Customs Code provides:

'Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220 (2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.'

The implementing regulation

18 According to Article 356(1) and (5) of the implementing regulation:

'1. The goods and the T1 document shall be presented at the office of destination.

...

5. Where the goods are presented at the office of destination after expiry of the time-limit prescribed by the office of departure and the failure to comply with the time-limit is due to circumstances which are explained to the satisfaction of the office of destination and are not attributable to the carrier or the principal, the latter shall be deemed to have complied with the time-limit prescribed.'

19 Article 378 of the implementing regulation provides:

'1. Without prejudice to Article 215 of the [Customs] Code, where the consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, such offence or irregularity shall be deemed to have been committed:

— in the Member State to which the office of departure belongs,

or

— in the Member State to which the office of transit at the point of entry into the Community belongs, to which a transit advice note has been given,

unless within the period laid down in Article 379(2), to be determined, proof of the regularity of the transit operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the customs authorities.

2. Where no such proof is furnished and the said offence or irregularity is thus deemed to have been committed in the Member State of departure or in the Member State of entry as referred to in the first paragraph, second indent, the duties and other charges relating to the goods concerned shall be levied by that Member State in accordance with Community or national provisions.

3. If the Member State where the said offence or irregularity was actually committed is determined before expiry of a period of three years from the date of registration of the T1 declaration, that Member State shall, in accordance with Community or national provisions, recover the duties and other charges (apart from those levied, pursuant to the second subparagraph, as own resources of the Community) relating to the goods concerned. In this case, once proof of such recovery is provided, the duties and other charges initially levied (apart from those levied as own resources of the Community) shall be repaid.

4. The guarantee covering the transit operation shall not be released until the end of the aforementioned three-year period or until the duties and other charges applicable in the Member State where the said offence or irregularity was actually committed have been paid.

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

20 According to Article 379 of the implementing regulation:

'1. Where a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of

departure shall notify the principal of this fact as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration.

2. The notification referred to in paragraph 1 shall indicate, in particular, the time-limit by which proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed must be furnished to the office of departure to the satisfaction of the customs authorities. That time-limit shall be three months from the date of the notification referred to in paragraph 1. If the said proof has not been produced by the end of that period, the competent Member State shall take steps to recover the duties and other charges involved. In cases where that Member State is not the one in which the office of departure is located, the latter shall immediately inform the said Member State.'

21 According to Article 380 of the implementing regulation:

'Proof of the regularity of a transit operation within the meaning of Article 378(1) shall be furnished to the satisfaction of the customs authorities inter alia:

(a) by the production of a document certified by the customs authorities establishing that the goods in question were presented at the office of destination or, where Article 406 applies, to the authorised consignee. That document shall contain enough information to enable the said goods to be identified,

or

(b) by the production of a customs document issued in a third country showing release for home use or by a copy or photocopy thereof; such copy or photocopy must be certified as being a true copy by the organisation which certified the original document, by the authorities of the third country concerned or by the authorities of one of the Member States. The document shall contain enough information to enable the goods in question to be identified.'

22 Article 859 of the implementing regulation provides:

'The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204(1) of the [Customs] Code, provided:

— they do not constitute an attempt to remove the goods unlawfully from customs supervision,

— they do not imply obvious negligence on the part of the person concerned, and

— all the formalities necessary to regularise the situation of the goods are subsequently carried out:

(1) exceeding the time-limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary storage or customs procedure in question, where the time-limit would have been extended had an extension been applied for in time;

(2) in the case of goods placed under a transit procedure, exceeding the time-limit for presentation of the goods to the office of destination, where such presentation takes place later;

(3) in the case of goods placed in temporary storage or under the customs warehousing procedure, handling not authorised in advance by the customs authorities, provided such handling would have been authorised if applied for;

(4) in the case of goods placed under the temporary importation procedure, use of the goods otherwise than as provided for in the authorisation, provided such use would have been authorised under that procedure if applied for;

(5) in the case of goods in temporary storage or placed under a customs procedure, unauthorised movement of the goods, provided the goods can be presented to the customs authorities at their request;

(6) in the case of goods in temporary storage or placed under a customs procedure, removal of the goods from the customs territory of the Community or their entry into a free zone or free warehouse without completion of the necessary formalities;

(7) in the case of goods having received favourable tariff treatment by reason of their end-use, transfer of the goods without notification to the

customs authorities, before they have been put to the intended use, provided that:

(a) the transfer is recorded in the transferor's stock records;

and

(b) the transferee is the holder of an authorisation for the goods in question.'

Community own resources

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

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

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

(b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community.

...'.

24 According to Article 2 of Regulation No 1552/89:

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

2. Paragraph 1 shall apply when a notification must be corrected.'

25 Article 11 of the same regulation provides:

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

Pre-litigation procedure

26 By letter of 12 January 1996, the Commission sent to the German authorities the report relating to an audit of customary own resources carried out by it in Germany between 6 and 17 March 1995. In that report, the Commission referred, with respect to the years 1993 and 1994, to certain delays under the Community transit system which, in its view, caused delays in making the Community own resources in question available. In its view, those delays were the result of non-compliance with the 14-month time-limit provided for in Article 49 of Regulation No 1214/92 and Article 379 of the implementing regulation, read together with Article 2(1) of Regulation No 1552/89.

27 Finding that the late making available of own resources gave rise to default interest pursuant to Article 11 of Regulation No 1552/89, the Commission requested the German authorities inter alia to instigate immediately the recovery procedure in the regional finance directorates for all undischarged T1 documents issued over 14 months previously, to check the late making available of own resources and to inform it thereof, and to provide it with a list showing for all regional directorates the delays in subsequent recovery relating to transit procedures not discharged since 1 January 1993.

28 A second audit, carried out by the Commission in November 1997 and relating to the years 1995 and 1996, revealed other cases of the 14-month time-limit referred to in Article 49 of Regulation No 1214/92 and Article 379 of the implementing regulation being exceeded.

29 The reason relied on by the German customs authorities to justify the delays, that is, that they were seeking first to identify the recipient of the goods or the shipper for

the purposes of payment, was dismissed by the Commission, having regard to the clear wording of Article 49 of Regulation No 1214/92 and Article 379 of the implementing regulation.

30 The Commission requested the German authorities to instigate immediately the recovery procedure for all undischarged T1 documents issued over the previous 14 months, to inform it of delays in achieving recovery, to guarantee henceforth the commencement, within 14 months, of the recovery procedure for undischarged transit documents, and to respond to its earlier audit report.

31 In their letter of 28 April 1998, the German authorities, whilst not contesting that the 14-month time-limit had been exceeded, stated that they were not required to collect import duties within 14 months after registration of the T1 document. In their view, Article 379 of the implementing regulation does not contain a mandatory time-limit, but rather merely an indicative one. The office of departure still has sufficient time, given the three-year time-limit provided for in Article 221(3) of the Customs Code, to proceed with recovery from the debtor. Consequently, there can be no question of default interest pursuant to Article 11 of Regulation No 1552/89.

32 By letter of 14 July 1998, the Commission reiterated its request to the German authorities to provide it, at the latest by 1 September 1998, with the information requested in its 1995 audit report so that it could calculate the default interest pursuant to Article 11 of Regulation No 1552/89.

33 In their letter of 18 September 1998, the German authorities reiterated and confirmed the arguments put forward earlier in their letter of 28 April 1998

concerning the 1997 audit report. The information requested again by the Commission's inspectors in that report was not provided to them.

34 On 15 November 1999, the Commission issued a letter of formal notice to the German authorities, setting out again its point of view, as described above, and asking the German authorities to submit their observations on the matter within two months.

35 In their reply of 1 February 2000, forwarded by letter of 24 February 2000, the German Government confirmed its view that the 14-month time-limit was merely indicative, meaning that duties could still be collected after the expiry of that time-limit if the investigation procedure had gone on for more than 11 months. It added that, in many cases, it was not possible to complete the inquiry procedure by the 11-month time-limit, since the exchange of information between the Member States could take longer. Moreover, pursuant to Articles 217 and 221 of the Customs Code, a total time-limit of three years was always allowed for collecting duties when the information necessary for calculating and entering the duties in the accounts was not available.

36 In its reasoned opinion of 19 July 2000, the Commission stated, in particular, that the Federal Republic of Germany's argument was not compatible with the clear wording of Article 379 of the implementing regulation. Furthermore, it followed from the meaning and purpose of that provision that an accelerated procedure was called for in order to detect irregularities early.

37 In correspondence of 14 September 2000, forwarded by a letter of the same day, the German Government informed the Commission that it maintained its position. In those circumstances, the Commission decided to bring the present action.

The action

38 By its action, the Commission is seeking, first, a declaration that the Federal Republic of Germany infringed Article 379(2) of the implementing regulation, which entered into force on 1 January 1994, and the third sentence of Article 49(2) of Regulation No 1214/92, which was applicable in 1993, read together with Article 2 of Regulation No 1552/89, by failing to make available in due time own resources in cases of late discharge of external Community transit operations detected in the period 1993 to 1996.

39 Second, the Commission asks the Court to order the Federal Republic of Germany to 'pay into the Community budget the interest owing in the event of late entry in the accounts' pursuant to Article 11 of Regulation No 1552/89 for the period up to 31 May 2000, and Article 11 of Regulation No 1150/2000 for the period after 31 May 2000.

Admissibility

Arguments of the parties

40 The German Government expresses doubts as to the admissibility of the action as a whole. Infringement proceedings are intended to bring existing infringements to an end. The existence of an infringement must be assessed solely on the basis of whether the Member State was in violation of Community law at the time the time-limit set out in the reasoned opinion expired. The Commission does not state that the Federal Republic of Germany infringed Community law on the date the time-

limit prescribed in the reasoned opinion of September 2000 expired. It is common ground that, long before that date, the German Government acted on comments made by Commission auditors to call on its customs offices to be more vigilant in complying with the time-limits provided for in Article 379 of the implementing regulation, although it did not abandon its view that those time-limits were not mandatory, contrary to the view maintained by the Commission.

41 The Commission counters that the action is admissible. It submits that the infringement is continuing because the interest owing for the late payment in question has not been paid into the Community budget which, in its view, clearly implies that the infringement is ongoing.

42 The German Government also questions the admissibility of the action on the ground that, in the second form of order sought, the Commission seeks to have the defendant ordered to pay the interest owing into the Community budget because of the late credit entry in its favour in the accounts. It follows from Article 228(1) EC that, in infringement proceedings, the Court may only make a finding of infringement, which leaves it for national bodies to determine the inferences to be drawn from that finding, it being understood that the infringement must cease immediately. The second form of order sought must, accordingly, be dismissed as inadmissible, since the Commission is thereby seeking nothing other than payment of interest allegedly owed.

43 The Commission replies that Article 11 of Regulation No 1552/89 provides for a specific and unconditional obligation to pay default interest. The Court has previously referred to such an obligation in other infringement actions (Case 303/84 *Commission* v *Germany* [1986] ECR 1171, paragraph 19). Nor does Article 228 EC prevent the Court from making appropriate declarations with a view to putting an end to an infringement it has found. Lastly, the Member State has no margin of discretion on the issue of how to end the infringement, as the payment of the default

interest in question is the only means of complying with a judgment which has upheld an infringement action.

Findings of the Court

44 As to the first plea of inadmissibility put forward, to the effect that when the time-limit prescribed in the reasoned opinion expired, the German authorities were complying with the time-limits provided for in Article 379 of the implementing regulation, the Court notes that, assuming that were true, the Federal Republic of Germany is refusing to pay the default interest claimed by the Commission for the period covered by the present action, that is, 1993 to 1996, during which those time-limits were exceeded, a fact which has been established and acknowledged by that Member State.

45 According to the well-established case-law of the Court (see, inter alia, Case C-96/89 *Commission* v *Netherlands* [1991] ECR I-2461, paragraph 38), there is an inseparable link between the obligation to establish the Communities' own resources, the obligation to credit them to the Commission's account within the prescribed time-limit and the obligation to pay default interest.

46 Therefore, if the Commission's plea, relating to the delay in entering the amount of the customs debt in the accounts and crediting the appurtenant own resources to the Commission's account, is well founded, the possibility cannot be excluded that not all of the consequences of the infringement had been brought to an end when the time-limit prescribed in the reasoned opinion expired, particularly the payment of default interest pursuant to Regulation No 1552/89. Consequently, if the alleged infringement does exist, there is still an interest in having that fact declared in a judgment.

47 The first plea of inadmissibility must, accordingly, be dismissed.

48 As to the second plea of inadmissibility, restricted to the second form of order sought, the Court notes that, in that portion of the action, the Commission is asking the Court to order the Federal Republic of Germany to 'pay into the Community budget the interest owing in the event of late entry in the accounts' pursuant to Article 11 of Regulation No 1552/89 for the period up to 31 May 2000, and Article 11 of Regulation No 1150/2000 for the period after 31 May 2000.

49 It is well established that the purpose of an action under Article 226 EC is to obtain a declaration that a Member State has failed to fulfil its Community obligations. When there is a finding of infringement, Article 228 EC expressly requires the Member State in question to take the measures necessary to comply with the judgment of the Court of Justice. The Court cannot, however, order the Member State to take specific measures.

50 Consequently, the Court cannot, in the context of infringement proceedings, rule on pleas like those in the present case which seek an order that the Member State pay default interest.

51 The forms of order sought in this case, in so far as they seek the payment of default interest pursuant to Article 11 of Regulation No 1552/89, must, accordingly, be declared inadmissible. It follows that the plea put forward in support of that part of the forms of order sought, based on infringement of that provision, must be dismissed as inadmissible.

52 Accordingly, the examination of this action will be limited to the plea relating to the Federal Republic of Germany's delay in making available own resources in the period 1993 to 1996, in violation of Article 49 of Regulation No 1214/92 or Article 379 of the implementing regulation, read together with Article 2(1) of Regulation No 1552/89.

Substance

Arguments of the parties

53 The Commission submits that it follows from the wording of Article 379 of the implementing regulation and Article 49 of Regulation No 1214/92, and also the purpose pursued by the Community legislature, that those provisions require customs authorities to ensure subsequent recovery of customs debts as soon as possible and at the latest at the end of the 14-month time-limit, when the authorities know the debtor and the amount of duties owing to be notified to him (Article 2(1) of Regulation No 1552/89).

54 The purpose of Article 379 of the implementing regulation is to encourage customs authorities to act as quickly as possible in order to avoid negative impact on the Community budget. The risk of not being able to establish the customs debt increases with time (debtor impossible to find or bankrupt). Thus, the 14-month time-limit, which applies only exceptionally, is a maximum time-limit which, if not complied with, leads to delays in the Member State's making own resources available.

55 Non-compliance with the time-limits laid down in Article 379 of the implementing regulation jeopardises the Community's interests and also the interests of the other Member States, which may have to cover financing needs in the Community budget when there are late entries of own resources.

56 The Federal Republic of Germany submits that neither Article 379 of the implementing regulation nor Article 49 of Regulation No 1214/92 imposes any maximum or mandatory time-limit on the authorities.

57 The very wording of Article 379(1) of the implementing regulation shows that no mandatory time-limit is laid down. Nor does that provision serve the interests of the Community in ensuring rapid recovery of customs duties, an area regulated solely by Article 217 et seq. of the Customs Code. The rules laid down in Article 378 et seq. of the implementing regulation, based on Article 215 EC, relate to matters preceding recovery, namely the establishment of the facts underlying the recovery, which may be delayed by certain circumstances.

58 The German Government submits that, if the investigation is delayed, the German customs authorities are unable to comply with the 11-month time-limit, most often due to circumstances which are not even attributable to them, but for which the customs administrations of other Member States are to be held accountable.

59 Like Article 379(1), Article 379(2) of the implementing regulation does not impose a maximum time-limit on customs authorities either. The very wording of the latter provision shows that the Community legislature does not require the authorities to have recovered the duties and contributions upon expiry or even before the expiry of a three-month time-limit.

60 If proof is submitted shortly before the expiry of the three-month time-limit, the customs authorities are required to ascertain its probative value. The declarant can also produce alternative forms of proof as provided for in Article 380 of the implementing regulation. It is only when the customs authorities have finished their investigation that they are in a position to determine whether a customs debt has been incurred and determine the amount thereof, as well as the identity of the debtor. Those investigations can sometimes take a very long time.

61 There is, moreover, nothing to warrant the conclusion that the Member States are required to proceed with recovery and making available of own resources in relation to the Community when, in relation to holders of a customs debt, they may still

effect recovery after a 14-month time-limit. Only the three-year time-limit laid down in Article 221(3) of the Customs Code is mandatory as regards the customs authorities.

62 The German Government states also that even if the two time-limits were considered to be mandatory, they cannot be cumulated because they are aimed at two different addressees. Article 379(1) of the implementing regulation seeks to encourage the Member States to carry out investigations as quickly as possible and to cooperate promptly, whereas Article 379(2) encourages the principal to cooperate actively in clarifying the situation, subject to having to pay duties in the Member State to which the office of departure belongs. Logically, only maximum time-limits addressed to the same parties may be added together.

63 Moreover, the time-limits laid down in Article 379(1) and (2) of the implementing regulation are necessarily supplemented by the time-limit by which the customs authorities must conduct investigations and checks on the proof referred to in Article 380 of that regulation.

64 Lastly, the provisions concerning the entry of the amount of the customs debt and notification thereof are covered by Articles 217 to 221 of the Customs Code. As long as the particulars necessary for the calculation and entry of the contributions are not available, the Community legislature allows three years for the recovery of the duties.

65 The Belgian Government, intervening in support of the forms of order sought by the German Government, submits that the expiry of the 14-month time-limit is not a deadline or a mandatory time-limit, but rather an indicative time-limit which marks

the point of departure for the establishment of the customs debt by the Member State.

66 The Belgian Government adds that the establishment of the customs debt implies that, pursuant to Article 220 et seq. of the Customs Code, the Member State has sufficient time. Upon expiry of the 14-month time-limit, the office of departure does not have all the particulars necessary for calculating the customs debt in question.

Findings of the Court

67 The Court notes at the outset that the German Government does not contest the Commission's findings of fact relating to the customs debts incurred following irregularities committed in the external Community transit system, debts which, during the period which is the subject of the present action, that is, from 1993 to 1996, were not the subject of a recovery procedure by the German customs authorities within the two-day time-limit referred to in Article 218 of the Customs Code following the expiry of the three-month time-limit referred to in the third sentence of Article 379(2) of the implementing regulation and the equivalent provisions which applied previously. However, unlike the Commission, the German Government considers that, by instigating the recovery procedure several months after the expiry of that three-month time-limit, it did not disregard its obligations under Community customs law.

68 The Court notes that under Article 379(1) of the implementing regulation, when a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure is to notify the principal of that fact as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration.

69 Although in Case C-112/01 *SPKR* [2002] ECR I-10655, paragraph 40, the Court held that non-compliance with the 11-month time-limit does not by itself prevent recovery of the customs debt from the principal, it also stated, at paragraph 34 of the same judgment, that that time-limit is directed at administrative authorities and has as its objective to ensure diligent uniform application, by those authorities, of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Community's own resources. Accordingly, compliance with the 11-month time-limit, although it does not have any effect on whether the customs debt is owed, is nevertheless mandatory for the Member States in respect of their Community obligations relating to the making available of Community own resources.

70 Moreover, pursuant to Article 379(2) of the implementing regulation, the notification referred to in Article 379(1) must state, in particular, the time-limit by which proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed may be furnished to the office of departure to the satisfaction of the customs authorities. That time-limit is three months as from the date of notification referred to in Article 379(1). If that proof has not been provided by the expiry of that time-limit, the competent Member State 'shall take steps to recover' the duties and other charges involved.

71 In paragraphs 24 and 25 of Case C-300/03 *Honeywell Aerospace* [2005] ECR I-689, the Court held that it follows from the very wording of Article 378(1) and Article 379(2) of the implementing regulation that notification by the office of departure to the principal of the time-limit by which the proof requested must be furnished is mandatory and must precede recovery of the customs debt. The time-limit is intended to protect the interests of the principal by allowing him three months in which to furnish, where appropriate, proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed. In those circumstances, the Member State to which the office of departure belongs may recover import duties only if, in particular, it has indicated to the principal that he has three months in which to furnish the proof requested and such proof has not been provided within that period.

72 Consequently, where, as in the present case, disputed consignments were not presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure must, with a view to making Community own resources available rapidly, notify that fact to the principal as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration. That notification must inform the addressee that he has three months during which proof of the regularity of the transit operation or of the place where the offence was actually committed may be provided to the office of departure to the satisfaction of the customs authorities. If that proof has not been provided at the end of that time-limit, the competent Member State 'shall take steps to recover' the customs debt.

73 In this context Article 217(1) of the Customs Code provides that any amount of import duties or export duties resulting from a customs debt must be 'calculated' by the customs authorities as soon as they 'have the necessary particulars' and be 'entered by those authorities in the accounting records'.

74 According to Article 218(3) of the Customs Code, the 'relevant amount of duty shall be entered in the account' within two days of the date on which the customs authorities are 'in a position to calculate the amount of duty in question, and determine the debtor' of the customs debt. Article 219 of the Customs Code allows for that time-limit to be extended to a maximum of 14 days either for reasons relating to the administrative organisation of the Member States or where special circumstances prevent the customs authorities from complying with the said time-limit. Under Article 221(1) of the Customs Code, the amount of duties must 'as soon as it has been entered in the accounts, ... be communicated to the debtor'.

75 In the present action, the Commission essentially criticises the German customs authorities for not having taken steps to recover the customs debt within two days of the expiry of the three-month time-limit provided for in Article 379(2) of the implementing regulation. More specifically, it criticises them for not having entered in the accounts the relevant amount of duties, in accordance with Article 218(3) of

the Customs Code, and for not having communicated the amount to the debtor pursuant to Article 221(1) of the Customs Code, procedures associated with the establishment of own resources referred to in Article 2(1) of Regulation No 1552/89.

76 The German Government submits that the Member States are not required to take steps to recover the customs debt immediately upon expiry of the three-month time-limit occurring after the expiry of the 11-month time-limit referred to in Article 379(1) of the implementing regulation.

77 That argument cannot be accepted.

78 As rightly pointed out by the Commission, it is clear from the very wording of the third sentence of Article 379(2) of the implementing regulation that the Member States are obliged to instigate the recovery procedure provided for therein upon expiry of the three-month time-limit referred to therein. That interpretation is also necessary in order to guarantee diligent and uniform application by the competent authorities of the provisions governing recovery of customs debts, with a view to making Community own resources available efficiently and speedily.

79 Nor is that interpretation incompatible with Article 221(3) of the Customs Code, which authorises communication of the amount of duties to be paid during a period of three years as from the time when the customs debt is incurred. That provision seeks primarily to ensure legal certainty by prescribing a maximum time-limit for communicating the amount of the customs debt to the debtor. It does not affect the obligations for customs authorities vis-à-vis the Community under the provisions of

the Customs Code and the implementing regulation for the purpose of securing diligent and uniform application of the provisions governing recovery of customs debts with a view to ensuring that Community own resources are made available efficiently and speedily.

80 Under Articles 217(1), 218(3), and 219 of the Customs Code, the entry in the accounts of the amount relating to customs debts such as those contemplated in the present action must take place within two days, which may be extended to but not exceed 14 days in all. In addition, the debtor must be informed of the amount of those debts as soon as it has been entered in the accounts, pursuant to Article 221(1) of the Customs Code. That time-limit starts to run from the date when the customs authorities have the necessary particulars and, therefore, are in a position to calculate the amount of duties and determine the debtor. Moreover, contrary to the position advocated by the German Government, this is precisely the case at the latest upon the expiry of the three-month time-limit referred to in Article 379(2) of the implementing regulation.

81 First, with respect to the finding that a customs debt was incurred, the Court notes that when, as in the cases contemplated in the present action, the consignments placed in the external Community transit procedure were not presented at the office of destination by the time-limit prescribed by the office of departure, the customs debt is presumed to have been incurred and the principal is presumed to be the debtor thereof. In such a case, and when the place of the offence or irregularity cannot be established, the office of departure must, pursuant to Article 379(1) of the implementing regulation, give notice of that fact to the principal before the end of the 11th month following the date of registration of the Community transit declaration.

82 Under the first and second sentences of Article 379(2), that notification must indicate the three-month time-limit which the addressee has in which to prove the regularity of the transit operation. As stated in paragraph 71 of this judgment, the competent customs authorities can take steps to recover the debt only when they have informed the principal that he has a three-month period in which to provide

proof of the regularity of the transit operation and that proof has not been produced at the end of that period.

83 Moreover, as the Advocate General stated in paragraph 50 of her Opinion, nothing warrants the conclusion that the examination of the proof presented in order to establish the regularity of the operation, such as that enumerated in a non-exhaustive manner in Article 380 of the implementing regulation, even if that evidence was produced on the last day of the three-month time-limit referred to earlier, justifies a derogation from the provisions of Articles 218 and 219 of the Customs Code for the purposes of the entry in the accounts of the amounts of duties and communication thereof to the debtor pursuant to Article 221(1) of the Customs Code.

84 Turning next to the determination of the debtor of the customs debt, the Court notes that, pursuant to Article 379(1) and (2) of the implementing regulation, at the end of that three-month time-limit, the principal is considered to be the debtor of the customs debt, regardless of whether the liability of other parties might be established. Consequently, at the latest upon expiry of the three-month time-limit, the customs authorities are manifestly in a position to identify the principal as debtor of the customs debt.

85 With respect to the determination of the amount of duties, the Court notes that, as explained by the Advocate General in paragraphs 57 to 62 of her Opinion, although the office of departure cannot be required to calculate systematically the amount of duties relating to the customs debt upon import for each transit operation undertaken when the transit declaration is filed, which is when that office, in principle, has the necessary particulars for calculating the duties in question, there is in any event nothing preventing such a calculation from being made as soon as the principal has been informed of the three-month period which he has to produce proof of the regularity of the operation, that is, at the latest at the end of the 11-month time-limit provided for in Article 379(1) of the implementing regulation.

86 Lastly, with respect to the decision by the competent customs authorities to take steps to recover the customs debt, Article 378(1) and (2) of the implementing regulation establishes a presumption of competence in favour of the Member State to which the office of departure belongs. In the three months provided for in Article 379(2) of that same regulation, proof that the offence was committed in another State may be produced by the principal. As rightly pointed out by the Commission, there is nothing to show that the assessment of the documents produced for that purpose, even assuming that they were provided on the last day of the three-month period, cannot be carried out within the two-day time-limit following the end of the three-month time-limit, increased in duly justified special cases by 12 supplementary days, giving a maximum time-limit of 14 days.

87 It follows from all of the foregoing that the Court must reject the German Government's argument that the 11-month and three-month time-limits are merely indicative and that it is not mandatory to instigate the recovery procedure upon expiry of the three-month time-limit because at the end of that time-limit the competent customs authorities are physically unable to instigate immediately the procedure to recover the customs debt.

88 Lastly, the communication of the amount of the debt to the principal immediately after the end of the three-month time-limit does not represent a disproportionate burden for him. If it should subsequently emerge that the Community transit operation took place in a lawful manner and within the time-limits allowed or that it ended late without any other irregularities, the principal may obtain reimbursement of the amounts paid, which, since the adoption of the Customs Code, is expressly provided for in Article 236(1) thereof, once it is established that, in accordance with Article 204(1) of the Customs Code, read together with Article 859 of the implementing regulation, the breach did not have any real impact on the proper functioning of the customs scheme in question.

89 As evidenced by the aforegoing considerations, late notification of the amounts of the relevant duties, in violation of Articles 221(1) and 218(3) of the Customs Code, necessarily implies a delay in the establishment of the Community's entitlement to the own resources referred to in Article 2 of Regulation No 1552/89. Under that provision, the entitlement in question is established 'as soon as' the competent authorities notify the debtor of the amount due, which must be done as soon as the debtor is known and the amount of entitlement can be calculated by the competent administrative authorities, in compliance with the relevant Community provisions, in this case the Customs Code and the implementing regulation.

90 Consequently, the Court finds that the first plea is founded as regards both the provisions of the Customs Code and of the implementing regulation and those of the regulations, in substance identical, which were applicable previously during the period covered by the present action.

91 In the light of the foregoing, the Court finds that, by making own resources available to the Community too late, the Federal Republic of Germany has failed to fulfil its obligations under Article 49 of Regulation No 1214/92 and Article 379 of the implementing regulation, read together with Article 2(1) of Regulation No 1552/89.

Costs

92 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. Since the Commission has applied for costs to be awarded against the Federal Republic of Germany and the latter has been essentially unsuccessful, it

must be ordered to pay the costs. In accordance with Article 69(4) of those Rules, the Kingdom of Belgium is to bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Declares that by making own resources available to the Community too late, the Federal Republic of Germany has failed to fulfil its obligations under Article 49 of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure and Article 379 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, read together with Article 2(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Communities' own resources;**

2. **Dismisses the remainder of the action;**

3. **Orders the Federal Republic of Germany to pay the costs;**

4. **Orders the Kingdom of Belgium to bear its own costs.**

[Signatures]