



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

22 November 2017*

(Reference for a preliminary ruling — Customs union — External transit — Road freight transport operation carried out under cover of a TIR carnet — Article 267 TFEU — Jurisdiction of the Court to interpret Articles 8 and 11 of the TIR Convention — TIR operation not discharged — Liability of the guaranteeing association — Article 8(7) of the TIR Convention — Duty of the competent authorities to require payment so far as possible from the person or persons directly liable before making a claim against the guaranteeing association — Explanatory notes annexed to the TIR Convention — Regulation (EEC) No 2454/93 — Article 457(2) — Community Customs Code — Articles 203 and 213 — Persons who acquired or held the goods and who were aware or should reasonably have been aware that they had been removed from customs supervision)

In Case C-224/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 12 April 2016, received at the Court on 20 April 2016, in the proceedings

Asotsiatsia na balgarskite predpriyatia za mezhdunarodni prevozi i patishtata (Aebtri)

v

Nachalnik na Mitnitsa Burgas,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: M. Bobek,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2017,

after considering the observations submitted on behalf of:

- the Asotsiatsia na balgarskite predpriyatia za mezhdunarodni prevozi i patishtata (Aebtri), by I. Krumov, avocat,
- the Nachalnik na Mitnitsa Burgas, acting on behalf of the Mitnitsa Svilengrad, by B. Borisov, M. Petrova, P. Dobрева and M. Bosilkova-Kolipatkova, acting as Agents,

* Language of the case: Bulgarian.

- the Bulgarian Government, by E. Petranova and L. Zaharieva, acting as Agents,
- the European Commission, initially by M. Wasmeier, B.-R. Killmann, E. Georgieva and L. Grønfeldt, acting as Agents, and subsequently by M. Wasmeier, B.-R. Killmann and E. Georgieva, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 July 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 267 TFEU, Articles 8 and 11 of the Customs Convention on the international transport of goods under cover of TIR carnets, signed in Geneva on 14 November 1975, and approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1), in its amended and consolidated version published by Council Decision 2009/477/EC of 28 May 2009 (OJ 2009 L 165, p. 1) ('the TIR Convention' or 'the Convention'), the third indent of Article 203(3) and Article 213 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1) ('the Customs Code'), and Article 457(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6) ('the implementing regulation').
- 2 The request has been made in proceedings between the Asotsiatsia na balgarskite predpriyatia za mezhdunarodni prevozi i patishtata (Association of Bulgarian Enterprises for International Transport and Roads, 'Aebtri'), the guaranteeing association, and the Nachalnik na Mitnitsa Burgas (Director of the Burgas customs office, Bulgaria) concerning a decision for the enforced recovery of a debt relating to customs duties and value added tax (VAT), together with statutory interest, arising as a result of irregularities committed during an international carriage of goods operation carried out under cover of a TIR carnet.

Legal context

The TIR Convention

- 3 The Convention entered into force for the European Economic Community on 20 June 1983 (OJ 1983 L 31, p. 13). All of the Member States are also parties to that convention.
- 4 The preamble of the TIR Convention is worded as follows:

'THE CONTRACTING PARTIES,

DESIRING to facilitate the international carriage of goods by road vehicle,

CONSIDERING that the improvement of the conditions of transport constitutes one of the factors essential to the development of cooperation among them,

DECLARING themselves in favour of a simplification and a harmonisation of administrative formalities in the field of international transport, in particular at frontiers,

HAVE AGREED as follows’.

5 Article 1 of the TIR Convention provides:

‘For the purposes of this Convention:

- (a) The term “TIR transport” shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the TIR procedure, laid down in this Convention;
- (b) the term “TIR operation” shall mean the part of a TIR transport that is carried out in a Contracting Party from a Customs office of departure or entry (*en route*) to a Customs office of destination or exit (*en route*);

...

- (e) the term “discharge of a TIR operation” shall mean the recognition by Customs authorities that the TIR operation has been terminated correctly in a Contracting Party. This is established by the Customs authorities on the basis of a comparison of the data or information available at the Customs office of destination or exit (*en route*) and that available at the Customs office of departure or entry (*en route*);
- (f) the term “import or export duties and taxes” shall mean 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;

...

- (o) the term “holder” of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made in the form of a TIR Carnet indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office *en route* and the Customs office of destination and for due observance of the other relevant provisions of the Convention;

...

- (q) the term “guaranteeing association” shall mean an association approved by the Customs authorities of a Contracting Party to act as surety for persons using the TIR procedure.’

6 Article 4 of the TIR Convention provides that goods carried under the TIR procedure are not to be subjected to the payment or deposit of import or export duties and taxes at customs offices *en route*.

7 For those facilities to be applied, the TIR Convention requires, as follows from Article 3(b) thereof, that the goods be accompanied throughout the transport operation by a standard document, the TIR carnet, which enables the regularity of the operation to be checked. It also requires that the transport operations be guaranteed by associations approved by the contracting parties, in accordance with the provisions of Article 6 of the convention.

- 8 The TIR carnet consists of a set of sheets each comprising vouchers No 1 and No 2, with the corresponding counterfoils, on which all the necessary information is set out, one pair of vouchers being used for each territory crossed. At the start of the transport operation, voucher No 1 is left with the customs office of departure. Discharge takes place once voucher No 2 has been returned from the customs office of exit in the same customs territory. This procedure is repeated for each territory crossed, each pair of vouchers in the carnet being used in turn.
- 9 Chapter II of the TIR Convention, entitled ‘Issue of TIR Carnets Liability of guaranteeing associations’, contains Articles 6 to 11 thereof.
- 10 Article 6(1) of that convention states:

‘Each Contracting Party may authorise associations to issue TIR Carnets, either directly or through corresponding associations, and to act as guarantors, as long as the minimum conditions and requirements, as laid down in Annex 9, Part I, are complied with. The authorisation shall be revoked if the minimum conditions and requirements contained in Annex 9, Part I are no longer fulfilled.’

- 11 Article 8 of that convention stipulates:

‘1. The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the customs laws and regulations of the country in which an irregularity has been noted in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

2. In cases where the laws and regulations of a Contracting Party do not provide for payment of import or export duties and taxes as provided for in paragraph 1 above, the guaranteeing association shall undertake to pay, under the same conditions, a sum equal to the amount of the import or export duties and taxes and any default interest.

...

7. When payment of the sums mentioned in paragraphs 1 and 2 of this article becomes due, the competent authorities shall so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association.’

- 12 Article 11 of the TIR Convention is worded as follows:

‘1. Where a TIR operation has not been discharged, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2, 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. The same provision shall apply where the certificate of termination of the TIR operation 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 in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the operation had not been discharged or that the certificate of termination of the TIR operation 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.

3. 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.'

13 Article 43 of the TIR Convention states:

'The Explanatory Notes set out in Annex 6 and in Part III of Annex 7 interpret certain provisions of this Convention and its Annexes. They also describe certain recommended practices.'

14 Article 48 of that convention provides:

'Nothing in this Convention shall prevent Contracting Parties which form a customs or economic union from enacting special provisions in respect of transport operations commencing or terminating in, or passing through, their territories, provided that such provisions do not attenuate the facilities provided for by this Convention.'

15 Article 51 of the TIR Convention states:

'The Annexes to this Convention form an integral part of the Convention.'

16 Annex 6 to the TIR Convention includes, inter alia, the following explanations:

Introduction to Explanatory Notes ...

(ii) The Explanatory Notes do not modify the provisions of this Convention or of its Annexes but merely make their contents, meaning and scope more precise, ...

0.8.7. Paragraph 7 Measures to be taken by the competent authorities in order to require payment from the person or persons directly liable shall include at least notification of the non-discharge of the TIR operation and/or transmission of the claim for payment to the TIR Carnet holder. ...'

17 Part I of Annex 9 to the TIR Convention contains the following passage:

'1. The minimum conditions and requirements to be complied with by associations in order to be authorised by Contracting Parties to issue TIR Carnets and act as guarantor in accordance with Article 6 of the Convention are:

...

(e) Establishment of a written agreement or any other legal instrument between the association and the competent authorities of the Contracting Party in which it is established. ...

(f) An undertaking in the written agreement or any other legal instrument under (e), that the association:

...

(iii) shall verify continuously and, in particular, before requesting authorisation for access of persons to the TIR procedure, the fulfilment of the minimum conditions and requirements by such persons as laid down in Part II of this Annex;

...

- (v) shall cover its liabilities to the satisfaction of the competent authorities of the Contracting Parties in which it is established with an insurance company, pool of insurers or financial institution. ...

...'

18 Article 8(7) of the TIR Convention was repealed with effect from 13 September 2012 and replaced by a provision with almost identical content, contained, from that time, in Article 11(2) of the Convention (OJ 2012 L 244, p. 1).

19 The explanatory note to that new Article 11(2) is worded as follows:

'The efforts to be made by the competent authorities to require payment from the person or persons liable shall include, at least, the sending of the claim for payment to the TIR carnet holder, at his address indicated in the TIR carnet, or the person or persons liable, if different, established in accordance with national legislation. ...'

The Customs Code

20 Contained under point I, entitled 'General provisions', of point B, entitled 'External transit, of Section 3, entitled 'Suspensive arrangements and customs procedures with economic impact' of Chapter 2, entitled 'Customs procedures', of Title IV, entitled 'Customs-approved treatment or use', of the Customs Code, Article 91 thereof provides as follows:

'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:

- (a) under the external Community transit procedure; or
- (b) under cover of a TIR carnet (TIR Convention) provided that such movement:
 - (1) began or is to end outside the Community;

...'

21 Under the same point I, Article 92 of the Customs Code states as follows:

'1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.'

22 Under point II, entitled ‘Specific provisions relating to external Community transit’, of point B of Section 3 of Chapter 2 of Title IV of the Customs Code, Article 96 thereof provides as follows:

‘1. The principal shall be the [holder of the procedure] under 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.

2. Notwithstanding the principal’s obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for 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.’

23 Articles 201 to 216 of the Customs Code form Chapter 2, entitled ‘Incurrence of a customs debt’, of Title VII, entitled ‘Customs debt’, of that code.

24 Article 203 of that code provides:

‘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

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.’

25 Article 213 of the Customs Code provides:

‘Where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt.’

The implementing regulation

26 Articles 454, 455, 455a and 457 of the implementing regulation are in Section 2, entitled ‘The TIR procedure’ of Chapter 9, entitled ‘Transport under the TIR or ATA procedure’, of Title II, entitled ‘Customs status of goods and transit’, of Part II, entitled ‘Customs-approved treatment or use’, of that regulation.

27 Article 454 of that regulation provides as follows:

‘The provisions of this section apply to the transport of goods under cover of TIR carnets where import duties or other charges within the Community are involved.’

28 Article 455 of the implementing regulation is worded as follows:

‘1. The customs authorities of the Member State of destination or exit shall return the appropriate part of Voucher No 2 of the TIR carnet to the customs authorities of the Member State of entry or departure without delay and at most within one month of the date when the TIR operation was terminated.

2. If the appropriate part of Voucher No 2 of the TIR carnet is not returned to the customs authorities of the Member State of entry or departure within two months of the date of acceptance of the TIR carnet, those authorities shall inform the guaranteeing association concerned, without prejudice to the notification to be made in accordance with Article 11(1) of the TIR Convention.

They shall also inform the holder of the TIR carnet, and shall invite both the latter and the guaranteeing association concerned to furnish proof that the TIR operation has been terminated.

3. The proof referred to in the second subparagraph of paragraph 2 may be furnished to the satisfaction of the customs authorities in the form of a document certified by the customs authorities of the Member State of destination or exit identifying the goods and establishing that they have been presented at the customs office of destination or exit.

...’

29 Article 455a of the implementing regulation provides:

‘1. Where the customs authorities of the Member State of entry or departure have not received proof within four months of the date of the acceptance of the TIR carnet that the TIR operation has been terminated, they shall initiate the enquiry procedure immediately in order to obtain the information needed to discharge the TIR operation or, where this is not possible, to establish whether a customs debt has been incurred, identify the debtor and determine the customs authorities responsible for entry in the accounts.

If the customs authorities receive information earlier that the TIR operation has not been terminated, or suspect that to be the case, they shall initiate the enquiry procedure forthwith.

...

3. To initiate the enquiry procedure, the customs authorities of the Member State of entry or departure shall send the customs authorities of the Member State of destination or exit a request together with all the necessary information.

4. The customs authorities of the Member State of destination or exit shall respond without delay.

...'

30 Article 457 of the implementing regulation provides as follows:

'1. For the purposes of Article 8(4) of the TIR Convention, when a TIR operation is carried out on the customs territory of the Community, any guaranteeing association established in the Community may become liable for the payment of the secured amount of the customs debt relating to the goods concerned in the TIR operation up to a limit per TIR carnet of EUR 60 000 or the national currency equivalent thereof.

2. The guaranteeing association established in the Member State competent for recovery under Article 215 of the Code shall be liable for payment of the secured amount of the customs debt.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

31 On 11 November 2008, a transit operation was initiated under cover of a TIR carnet at the Kapitan Andreevo (Bulgaria) customs checkpoint by Sargut, a limited liability company established in Turkey, which was both the holder of that carnet and the carrier of the goods concerned. The declared transport destination was a customs checkpoint in Romania.

32 Having received no information concerning the completion of that TIR operation, on 29 April 2009, the Bulgarian customs authorities initiated, pursuant to Article 455a of the implementing regulation, an enquiry procedure concerning the discharge of that operation by contacting the Romanian customs authorities. In their reply, the Romanian customs authorities indicated that neither the goods nor the TIR carnet concerned had been presented to them and that it was impossible for them to obtain information in that regard.

33 On 8 July 2009, the Kapitan Andreevo customs checkpoint sent to the Romanian authorities, for verification purposes, a copy of voucher No 2 of the TIR carnet which Sargut had submitted to it in the intervening period. In their reply of 28 August 2009, the Romanian authorities stated that that voucher had not been presented to the customs office of destination and that the document produced appeared to be inauthentic or falsified.

34 On 10 September 2009, the director of the Kapitan Andreevo customs checkpoint issued a decision setting the amount of the debt payable by Sargut in respect of the unpaid customs duties and VAT, together with statutory interest on those sums. Both Sargut and Aebtri were notified of that decision.

35 After its administrative appeal against that decision was rejected by the director of the Mitnitsa Svilengrad (Svilengrad customs office, Bulgaria), Sargut brought an action, on 27 October 2009, before the Administrativen sad Haskovo (Haskovo Administrative Court, Bulgaria), which was upheld by judgment of 28 January 2010. By judgment of 2 November 2010, the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) set aside that judgment and dismissed Sargut's action, having confirmed that the decision of 10 September 2009 was well founded.

36 By letter of 15 November 2010, Aebtri was invited to settle the debt, which it failed to do within the three-month period laid down in Article 11(3) of the TIR Convention.

37 On 7 June 2011, the director of the Svilengrad customs office requested the competent regional directorate of the Natsionalna agentsia za prihodite (National Revenue Agency, Bulgaria) to initiate proceedings against Sargut for the enforcement of the decision of 10 September 2009. Having been informed by that authority that no seizure had taken place and that no sum had been recovered for

the discharge of the debt at issue in the main proceedings, on 5 September 2012, the director of the Svilengrad customs office issued a decision against Aebtri for the enforced recovery of the amounts concerned, a decision which was upheld, on appeal, by decision of the director of the Customs Agency.

- 38 Aebtri brought an action contesting that decision, claiming that Article 8(7) of the TIR Convention had been infringed, since the Bulgarian authorities had not first sought to recover the debt from the principal debtors.
- 39 That action was dismissed by judgment of the Administrativen sad Haskovo (Haskovo Administrative Court), which considered, first, that the customs authority had done everything possible to claim payment of the debt from Sargut and, secondly, that, since the transit operation had not been properly completed, it had not been proven that the goods reached the recipient or that that recipient had acknowledged receipt with respect to the customs office of destination.
- 40 Aebtri appealed on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court) which states, first, that, although it is of the view that the Court has jurisdiction to interpret the relevant provisions of the TIR Convention, it nevertheless considers it necessary to confirm this by referring a question to the Court on that point.
- 41 The referring court points out, next, that the time limits laid down in Article 11(1) and (2) of the TIR Convention for the purposes of notifying the guaranteeing association of non-discharge and submitting a claim for payment were properly observed in the present case. It expresses doubts, however, as to whether the customs authorities fulfilled their obligation under Article 8(7) of that convention to require, so far as possible, payment of the sums in question from the holder of the TIR carnet as the person directly liable for payment of those sums before making a claim against the guaranteeing association.
- 42 That court states, in that regard, that, according to its own interpretation given on 25 March 2003 in plenary session, ‘where the claims referred to in Article 8(1) and (2) of the [TIR] Convention have become payable, customs authorities may seek payment from the guaranteeing association, provided that all possible measures have been taken to recover the sums from the resident or foreign persons who are the primary debtors’.
- 43 However, it became apparent, after the delivery of that interpretative decision, that separate chambers of the Varhoven administrativen sad (Supreme Administrative Court), ruling at last instance, had given different answers to the question whether all such measures had been taken in a situation such as that in the main proceedings.
- 44 The referring court refers, finally, to the various items of evidence adduced during the procedure which led to the decision of 5 September 2012. It refers, *inter alia*, in that regard, to an international bill of lading concerning the carriage of the goods in question, which contains the TIR carnet number, the number of the vehicle concerned and a reference to Irem Corporation SRL Romania as recipient of the goods, the signature and stamp of the latter and a statement that the goods were received on 13 November 2008. That court also refers to an ‘international consignment note’ for those goods with the stamp of the carrier, namely Sargut, Irem Corporation’s signature and stamp affixed on the same date, as well as an acknowledgement of receipt of the goods bearing Irem Corporation’s stamp and signature.
- 45 According to the referring court, those various documents permit the view that the goods in question in the main proceedings were received by Irem Corporation and that that company was aware, at the time of receipt, that those goods had been transported under cover of a TIR carnet. However, there is no proof that those goods were declared at the customs office of destination.

- 46 In those circumstances, the referring court considers that the Administrativen sad Haskovo (Haskovo Administrative Court) should have concluded that an obligation arose, on the part of the recipient of the goods, under Article 96(2) of the Customs Code, to present those goods itself at the customs office of destination. That customs office confirmed that neither the goods nor the TIR carnet were in fact presented to it.
- 47 To that extent, the question arises as to whether it must be concluded that that recipient was aware or should reasonably have been aware that those goods had been removed from customs supervision and that it was consequently primarily liable for the debt for the purpose of the third indent of Article 203(3) of the Customs Code, and whether or not the customs authority was, accordingly, also required to claim payment from that recipient before holding the guaranteeing association liable.
- 48 It is in those circumstances that the Varhoven administrativen sad (Supreme Administrative Court) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does the Court of Justice have jurisdiction, with a view to forestalling divergent judgments, to interpret, in a manner binding on the courts of the Member States, [the TIR Convention], in so far as concerns the scope of Articles 8 and 11 of that convention, with regard to the assessment of liability of a guaranteeing association, also referred to in Article 457(2) of [the implementing regulation]?
- (2) Does the interpretation of Article 457(2) of the [implementing regulation], in conjunction with Article 8(7) (now Article 11(2)) of [the TIR Convention] and the explanatory notes thereto, allow for a finding that, in a situation such as that in the present case, where the debts referred to in Article 8(1) and (2) [of the TIR Convention] become due, the customs authorities have required payment thereof so far as possible from the holder of the TIR carnet, who is directly liable for those sums, before bringing a claim against the guaranteeing association?
- (3) Must the recipient, who acquired or held goods known to have been conveyed under cover of a TIR carnet, where it was not established that those goods were presented and declared before the customs office of destination, be considered to be, on account of those circumstances alone, a person who should have been aware that those goods had been removed from customs supervision, and be recognised as jointly and severally liable within the meaning of the third indent of Article 203(3), in conjunction with Article 213, of [the Customs Code]?
- (4) If the answer to the third question is in the affirmative, does the customs administration’s failure to require payment of the customs debt from the recipient preclude the liability under Article 457(2) of the [implementing regulation] of the guaranteeing association, pursuant to Article 1(q) of the TIR Convention?’

Consideration of the questions referred

The first question

- 49 By its first question, the referring court asks, in essence, whether the Court of Justice has jurisdiction to give a preliminary ruling on the interpretation of Articles 8 and 11 of the TIR Convention.
- 50 As is apparent from the Court’s settled case-law, an international agreement concluded by the European Union constitutes an act of the institutions of the European Union within the meaning of point (b) of the first paragraph of Article 267 TFEU and the provisions of the agreement form an integral part of the legal order of the European Union, from the time it enters into force, with the result that the Court has jurisdiction to give a preliminary ruling on the interpretation of such an

agreement (see, inter alia, judgment of 30 April 1974, *Haegeman*, 181/73, EU:C:1974:41, paragraphs 3 to 6, and of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 60 and the case-law cited).

- 51 As observed in paragraphs 1 and 3 of the present judgment, the TIR Convention, to which all the Member States are also parties, was approved on behalf of the Community by Regulation No 2112/78 and entered into force for the Community on 20 June 1983.
- 52 As regards, more specifically, the provisions of Articles 8 and 11 of the TIR Convention, to which the referring court refers in its question, it must be noted that those provisions concern, in essence, the liability of guaranteeing associations in so far as concerns the payment of import duties and taxes in the event of irregularities relating to a TIR operation and the conditions under which such liability may be invoked by the competent customs authorities. Such provisions are accordingly intended, essentially, to safeguard the receipt of customs duties while facilitating customs operations for the external transit of goods.
- 53 In the light of the foregoing, the Court has jurisdiction to interpret Articles 8 and 11 of the TIR Convention, provisions concerning customs on whose scope it has, moreover, previously given a preliminary ruling (see, inter alia, judgments of 23 September 2003, *BGL*, C-78/01, EU:C:2003:490, paragraphs 47 and 70; of 5 October 2006, *Commission v Germany*, C-105/02, EU:C:2006:637, paragraphs 80 and 82; of 5 October 2006, *Commission v Belgium*, C-377/03, EU:C:2006:638, paragraphs 67 to 70, 86 and 88; and of 14 May 2009, *Internationale Verhuis- en Transportbedrijf Jan de Lely*, C-161/08, EU:C:2009:308, paragraphs 34 to 36).
- 54 The answer to the first question is, therefore, that the Court has jurisdiction to give a preliminary ruling on the interpretation of Articles 8 and 11 of the TIR Convention.

The second question

- 55 By its second question, the referring court asks, in essence, whether Article 457(2) of the implementing regulation and read in conjunction with Article 8(7) of the TIR Convention, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the customs authorities have fulfilled their obligation, as set out in the latter provision, to require payment of the import duties and taxes concerned, so far as possible, from the holder of the TIR carnet, as the person directly liable for those sums, before making a claim against the guaranteeing association.
- 56 It should be noted, first, that the rights and obligations of a guaranteeing association are governed by the TIR Convention, EU law, and the guarantee contract, subject to national law, which that association concluded with the Member State concerned (see, to that effect, judgment of 5 October 2006, *Commission v Belgium*, C-377/03, EU:C:2006:638, paragraph 84 and the case-law cited).
- 57 In the present case, the question referred seeks to determine the steps that the customs authorities are required to take in respect of the holder of a TIR carnet as the person directly liable for the duties and taxes payable as a result of an irregularity relating to a TIR operation, before being able to pursue recovery of those sums from a guaranteeing association.
- 58 The TIR Convention includes a provision specifically concerning this issue, which it is therefore appropriate to consider first. Article 8(7) of that convention provides that, before making a claim against the guaranteeing association, the competent authorities must so far as possible ‘require payment [of the sums concerned] from the person or persons directly liable’.

- 59 As regards EU law, it must be observed that, although both the Customs Code and the implementing regulation contain provisions which have the effect of incorporating the procedure laid down by the TIR Convention in that law, and at the same time specify certain rules governing the application of procedure, those provisions contain no indication as to the specific measures to be taken by the competent authorities for the purposes of requiring payment of the sums in question from the person or persons directly liable for those sums, before being able to make a claim against the guaranteeing association.
- 60 While Article 457(2) of the implementing regulation, to which the referring court refers in its question, clearly reaffirms the principle that the guaranteeing association is liable for payment of the secured amount of the customs debt, that provision contains no indication of a procedural nature concerning the conditions under which a claim may be made against such an association.
- 61 In the light of the above, in the present case, it is necessary merely to examine the scope of Article 8(7) of the TIR Convention.
- 62 As regards the interpretation of that provision, it must be noted that, in accordance with the Court's settled case-law, an international treaty must be interpreted by reference to the terms in which it is worded and in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties and Article 31 of the Vienna Convention of 21 March 1986 on the Law of Treaties between States and International Organisations or between International Organisations, which express to this effect general customary international law, state that a treaty is to be interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 40 and the case-law cited).
- 63 In the present case, it should be noted at the outset that Annex 6 to the TIR Convention contains explanatory notes which, as stated in Article 43 of that convention, interpret certain provisions of the convention. Article 51 of the TIR Convention provides that the annexes thereto form an integral part of the convention. Finally, it follows from point (ii) of the introduction to the explanatory notes in Annex 6 to the convention that those notes do not modify the provisions of the convention but merely make its contents, meaning and scope more precise.
- 64 Moreover, in view of the period during which the events in the main proceedings took place, it is necessary to take into consideration the explanatory note to Article 8(7) of the TIR Convention, as reproduced in paragraph 16 above. By contrast, since it is inapplicable *ratione temporis*, the explanatory note to Article 11(2) of the convention, in the version in force since 13 September 2012, as reproduced in paragraph 19 above and to which the referring court refers in its question, cannot be taken into account for the purposes of the main proceedings.
- 65 As regards, first, the wording of Article 8(7) of the TIR Convention, which, it must be pointed out at the outset, was drafted in English, French and Russian, the three versions being authentic, under that provision provides that when the duties and taxes referred to in Article 8(1) and (2) of the convention become due, the competent authorities must so far as possible 'require payment' from the person or persons directly liable before making a 'claim' against the guaranteeing association.
- 66 It must be pointed out that the terms 'requérir le paiement' and 'require payment' used respectively in the French and English versions of Article 8(7) of the TIR Convention are neither clear nor unequivocal, in particular with regard to the nature of the specific acts that they may involve on the part of the competent authorities concerned.

- 67 For its part, the explanatory note to Article 8(7) of the TIR Convention specifically states that the measures to be taken by the competent authorities in order to require such payment must include ‘at least notification of the non-discharge of the TIR operation and/or transmission of the claim for payment to the TIR Carnet holder’.
- 68 Although that explanatory note thus suggests, more clearly than the text of Article 8(7) of the TIR Convention itself, that it may, in some circumstances, suffice, for the purposes of requiring payment from the person directly liable for the debt, to have sent that person notification of the non-discharge and/or a claim, the question nonetheless remains, having regard to the use in that note of the expression ‘at least’, whether and, under what possible circumstances, compliance with the rule laid down in Article 8(7) could require the competent customs authorities to go beyond the minimum requirements indicated in the explanatory note.
- 69 It follows from the foregoing that neither the text of Article 8(7) of the TIR Convention nor that of the explanatory note to that provision make it possible, as they stand, to determine what specific acts the customs authorities must carry out with regard to the person directly liable for the debt for the purposes of satisfying their obligation imposed on them by Article 8(7).
- 70 As regards, next, the context surrounding that provision, it is necessary, for the purposes of interpreting it, to examine it in the light of the general structure of the convention of which it forms part and of the totality of the provisions contained therein (see, to that effect, judgment of 30 April 1974, *Haegeman*, 181/73, EU:C:1974:41, paragraph 10).
- 71 In that regard, it should be recalled, in the first place, that Article 4 of the TIR Convention provides that goods carried under the TIR procedure established by that convention must not be subjected to the payment or deposit of import or export duties and taxes at customs offices *en route*.
- 72 As the Court has previously observed, for those facilities to be applied, the TIR Convention requires, inter alia, that transport operations be guaranteed by associations approved by the contracting parties, in accordance with the provisions of Article 6 of the convention (see, to that effect, judgment of 23 September 2003, *BGL*, C-78/01, EU:C:2003:490, paragraph 5).
- 73 It follows, moreover, from Article 6(1) of the TIR Convention that an association’s authorisation to issue TIR carnets and the continuation of that authorisation are subject, inter alia, to the condition that the association must comply with the minimum conditions and requirements contained in Part 1 of Annex 9 to the convention. Those conditions and requirements include, as is clear from point 1(f)(iii) and (v) of Part I, an undertaking by that association, first, to verify continuously, and, in particular, before requesting authorisation for access of persons to the TIR procedure, the fulfilment of the minimum conditions and requirements by such persons as laid down in Part II of Annex 9 to the convention and, secondly, to cover its liabilities with an insurance company, pool of insurers or financial institution.
- 74 The guarantee required from the approved association thus seeks to ensure, and facilitate, the actual recovery, by the competent customs authorities, of unpaid duties and taxes, where the facilities referred to in paragraph 71 above have been improperly used, while at the same time making that association liable for the proper fulfilment of its obligations in the implementation of the TIR procedure.
- 75 It follows, inter alia, that the obligation laid down in Article 8(7) of the TIR Convention to require payment of the amounts at issue, first, from the person directly liable cannot be interpreted in such a way that the actual fulfilment of that obligation entails a risk of loss of the duties and taxes concerned. That obligation, furthermore, cannot lead to excessive procedural obligations on the part of the

competent customs authority which fail to take any account of the guaranteeing association's own responsibilities in implementing the TIR procedure, and which are incompatible with the objective, referred to in the above paragraph, of facilitating the recovery of the customs debt.

- 76 To require the competent customs authority first to exhaust all possibilities of recovery at its disposal against the person or persons directly liable for the debt, which would require it, in some cases, to bring legal proceedings and to initiate enforcement procedures against such persons, who might be established in other Member States or, as in the case in the main proceedings, in a third country, would, first, in the light of the time limits likely to be imposed as a result of such steps, put that authority at risk of no longer being able to recover the amounts at issue for which the guaranteeing association is liable. It is also necessary to take into account, in that regard, in particular, the time limits within which the request for payment must be made to the guaranteeing association under Article 11(2) of the TIR Convention.
- 77 Secondly, the consequence of such a requirement would be to impose potentially extremely onerous procedures on customs authorities, which do not appear consistent either with the fact that if it were necessary to deposit duties and taxes, a requirement waived under Article 4 of the TIR Convention, there would in fact be no need for those authorities to have recourse to such procedures, or with the division of liabilities under that convention between customs authorities and guaranteeing associations.
- 78 Moreover, that requirement would also give rise to the appreciable risk that that authority might be required, in the event of the insolvency of the person directly liable for the debt, definitively to bear the costs associated with enforced recovery, which are potentially high.
- 79 In the second place, it follows from Article 8(1) of the TIR Convention that, under the guarantee contract, guaranteeing associations undertake to pay the customs duties due from the persons directly liable and are, in that regard, jointly and severally liable with those persons for the payment of such sums, even though, under Article 8(7) of that convention, the competent authorities must so far as possible, require payment from the person directly liable before making a claim against the guaranteeing association (see, to that effect, judgment of 5 October 2006, *Commission v Belgium*, C-377/03, EU:C:2006:638, paragraph 86).
- 80 As the Advocate General observes, in essence, in point 44 of his Opinion, the existence of such liability means that the guaranteeing association is itself a debtor, together with the persons directly liable, in respect of the sums in question. It follows, furthermore, from the very nature of joint and several liability that each debtor is liable for the full amount of the debt and the creditor is, in principle, free to claim payment of that debt from one or more of the debtors as he chooses (see, to that effect, judgment of 18 May 2017, *Latvijas dzelzceļš*, C-154/16, EU:C:2017:392, paragraph 85).
- 81 In the light of the joint and several nature of the guaranteeing association's liability towards the customs authority, the requirement laid down in Article 8(7) of the TIR Convention to require payment of the amounts concerned from the person directly liable cannot be interpreted as leading to a situation in which the liability of the guaranteeing association becomes, in essence, entirely subsidiary to that of the person directly liable. That would be the case if that requirement had the consequence of obliging the competent customs authority to pursue recovery of the debt from the person directly liable as far as the enforcement stage.
- 82 Finally, as regards the objectives of the TIR Convention, it follows from the preamble thereto that, in concluding that convention, the contracting parties intended 'to facilitate the international carriage of goods by road vehicle' while considering that 'the improvement of the conditions of transport constitutes one of the factors essential to the development of cooperation among them' and declaring 'themselves in favour of a simplification and a harmonisation of administrative formalities in the field of international transport, in particular at frontiers'.

- 83 The objective of the TIR system established by that convention, whose very title, indeed, highlights the fact that it is a customs convention is, inter alia, as noted in recital 2 of Decision 2009/477, to enable goods to be transported within an international transit regime with a minimum of interference by customs administrations *en route* and to provide, through its international guarantee chain, relatively simple access to the required guarantees.
- 84 To interpret Article 8(7) of the TIR Convention as having the effect of obliging the competent customs authority to exhaust all possibilities of recovery from the person or persons directly liable for the debt before being able to claim payment from the guaranteeing association, would undermine the very balance between, on the one hand, the facilities granted by Article 4 of the TIR Convention and, on the other, one of the essential conditions which must govern their implementation, namely that the guaranteeing association will incur specific liability.
- 85 As the Advocate General observed in point 48 of his Opinion, such an interpretation would put at risk the objective of facilitating the international carriage of goods by road vehicle pursued by the TIR Convention.
- 86 In the light of the above, Article 8(7) of the TIR Convention, read in conjunction with the explanatory note to that provision, must be interpreted as meaning that a customs authority fulfils its obligations to require payment from the person directly liable where it complies with the minimum requirements indicated in that explanatory note.
- 87 In the present case, it is common ground that, prior to the issue, on 5 September 2012, of a decision for the enforced recovery of the debts at issue in the main proceedings against Aebtri, the competent customs authorities notified the TIR carnet holder that the TIR operation had not been discharged and claimed payment of those debts from it, with the result that the minimum requirements indicated in the explanatory note to Article 8(7) of the TIR Convention were properly fulfilled, at least in so far as concerns that holder. Moreover, those authorities even went beyond those minimum requirements, since, after claiming payment from the guaranteeing association, they applied to the competent tax authorities for enforced recovery from that holder.
- 88 In those circumstances, the answer to the second question is that Article 8(7) of the TIR Convention must be interpreted as meaning that, in a situation such as that in the main proceedings, the customs authorities have fulfilled the obligation laid down in that provision to require payment of the import duties and taxes concerned, so far as possible, from the holder of the TIR carnet as the person directly liable for those sums, before bringing a claim against the guaranteeing association.

The third question

- 89 By its third question, the referring court asks whether the third indent of Article 203(3) and Article 213 of the Customs Code must be interpreted as meaning that the fact that a recipient acquired or held goods which he knew to have been conveyed under cover of a TIR carnet and the fact that it has not been established that the goods were presented and declared to the customs office of destination, are sufficient, in themselves, for it to be concluded that such a recipient was aware or should reasonably have been aware that those goods had been removed from customs supervision within the meaning of the first of those provisions and therefore he must be held jointly and severally liable for the customs debt pursuant to the second of those provisions.
- 90 As a preliminary point, it must be borne in mind that, under Article 1(o) of the TIR Convention, the TIR carnet holder is responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR carnet relating thereto at the customs office of departure, the customs office *en route* and the customs office of destination.

- 91 That being so, the TIR Convention does not preclude a contracting party to it from providing, in its legislation, that persons other than the TIR carnet holder may also be directly liable for the import duties and taxes referred to in Article 8(1) of the convention. That provisions refers, in the plural form, to the ‘persons from whom the sums mentioned above are due’, with whom the guaranteeing association may be jointly and severally liable for payment, while Article 8(7) of that convention refers to payment of those sums by the ‘person or persons directly liable’ for such sums.
- 92 As regards EU law, it must be noted, in particular, that, under Article 203(1) of the Customs Code a customs debt on importation is incurred on the unlawful removal from customs supervision of goods liable to import duties (judgment of 20 January 2005, *Honeywell Aerospace*, C-300/03, EU:C:2005:43, paragraph 18 and the case-law cited).
- 93 As is apparent from the Court’s case-law, the concept of ‘unlawful removal from customs supervision’, in that provision, must be understood as encompassing any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for in Article 37(1) of the Customs Code (judgment of 20 January 2005, *Honeywell Aerospace*, C-300/03, EU:C:2005:43, paragraph 19 and the case-law cited).
- 94 Such is the case where, as in the main proceedings, the office of departure of the consignment concerned which has been cleared for the external transit procedure under a TIR carnet, has concluded that the consignment has not been presented at the office of destination and that the TIR procedure has not been discharged for the consignment in question (see, by analogy, judgment of 20 January 2005, *Honeywell Aerospace*, C-300/03, EU:C:2005:43, paragraph 20).
- 95 As regards the persons liable, it should be noted to begin with that the EU legislature intended, since the entry into force of the Customs Code, to lay down exhaustively the conditions for determining who are the debtors responsible for a customs debt (judgment of 17 November 2011, *Jestel*, C-454/10, EU:C:2011:752, paragraph 12 and the case-law cited).
- 96 In the event of a customs debt arising from the removal of goods from customs supervision, the persons who may be responsible for that customs debt are listed in Article 203(3) of the Customs Code, which identifies four categories of persons potentially liable for the duties.
- 97 Those categories include, as stated in the third indent of Article 203(3) of the Customs Code, 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.
- 98 As is clear from paragraphs 44 and 45 of the present judgment, the referring court, which refers to certain documents the origin of which and the date on which they were produced are not specified, considers that it can only be inferred from those documents that, at the time of receipt of the goods at issue in the main proceedings, the recipient of those goods was aware or should have been aware that they had been transported under cover of a TIR carnet. According to that court, those documents cannot, by contrast, be used to establish that those goods were presented at the customs office of destination.
- 99 In that regard, it must be noted at the outset that, contrary to what is stated in the order for reference as the premiss of the reasoning which led the referring court to entertain doubts as to the scope of the third indent of Article 203(3) of the Customs Code, Article 96(2) of that code cannot be interpreted as meaning that a recipient of goods who knew, at the time of their receipt, that they had been carried under cover of a TIR carnet, but did not obtain a guarantee that they had been presented to the customs office of destination, is obliged, by virtue of that provision, to present those goods himself at that office.

- 100 Article 96(2) of the Customs Code is not applicable where goods are being carried under cover of a TIR carnet.
- 101 As is clear from Article 91(2)(a) and (b) of that code, the movement of goods under the external transit procedure may take place either ‘under the external Community transit procedure’ or ‘under cover of a TIR carnet’.
- 102 Article 96 of that code constitutes, as is apparent from the wording of the title under which it appears, a specific provision relating to external Community transit.
- 103 It follows, first, that the recipient of goods transported under cover of a TIR carnet cannot be regarded as the person required to fulfil the obligations arising from the use of the customs procedure under which the goods have been placed, within the meaning of the fourth indent of Article 203(3) of the Customs Code.
- 104 Secondly, it follows that Article 96(2) of the Customs Code is irrelevant to the question whether, in a situation such as that in the main proceedings, the recipient of the goods may have the status of debtor in respect of the customs debt pursuant to the third indent of Article 203(3) of the Customs Code.
- 105 As observed in paragraph 97 above, according to the wording of that provision, a person has that status if it has been established, first that the recipient of the goods actually acquired or held them and, secondly, that he was aware or should reasonably have been aware, at the time of acquiring or receiving the goods, that they had been removed from customs supervision. The third indent of Article 203(3) of the Customs Code covers any person who, although not responsible for the unlawful removal of the goods from customs supervision from which the customs debt arose, and not himself required to clear the goods through customs, has nevertheless been involved in the unlawful removal either before or after that removal as a result of having acquired or held the goods (see, by analogy, judgment of 25 January 2017, *Ultra-Brag*, C-679/15, EU:C:2017:40, paragraph 22).
- 106 The second of the conditions laid down in the third indent of Article 203(3) of the Customs Code specifically covers the situation in which, at the time when he acquired or received the goods at issue, the recipient was aware or should reasonably have been aware that those goods had not been presented to the customs office of destination and that, consequently, any customs duties and taxes due had not been paid. Accordingly, the status of ‘debtor’ for the purposes of the third indent of Article 203(3) of the Customs Code is subject to conditions based on subjective criteria, namely whether natural or legal persons participated knowingly in acquiring or holding goods removed from customs supervision (see, by analogy, judgment of 3 March 2005, *Papismedov and Others*, C-195/03, EU:C:2005:131, paragraph 40 and the case-law cited).
- 107 Since that condition concerns considerations of a factual nature, in the light of the division of powers between the Courts of the European Union and the national courts, it is for the national courts to determine whether that condition is satisfied in a specific case (see, by analogy, judgment of 17 November 2011, *Jestel*, C-454/10, EU:C:2011:752, paragraph 21 and the case-law cited).
- 108 In order to do so, those courts must, in essence, carry out an overall assessment of the circumstances of the case before them (see, by analogy, judgment of 17 November 2011, *Jestel*, C-454/10, EU:C:2011:752, paragraph 23), taking into account in particular all the information which was available to the recipient or of which he should have reasonably been aware, particularly because of his contractual obligations (see by analogy, judgment of 17 November 2011, *Jestel*, C-454/10, EU:C:2011:752, paragraph 25) and, where appropriate, the experience of that recipient, as an economic operator, in importing goods transported under cover of TIR carnets.

- 109 In the present case, the referring court's question relates specifically to whether the fact that a recipient acquired or held goods and was aware or should have been aware, in view of the documents received or signed by him on receipt of those goods, that they had been transported under cover of a TIR carnet, where it has not, moreover, been established that those goods were presented and declared to the customs office of destination, suffices, in itself, for it to be concluded that that recipient was aware or should reasonably have been aware that those goods had been removed from customs supervision, within the meaning of the third indent of Article 203(3) of the Customs Code.
- 110 To adopt such an interpretation of that provision would be tantamount to inferring, in essence, on the basis of some kind of irrebuttable presumption, from the fact that a recipient knows or should reasonably be aware that the goods which he received were transported under cover of a TIR carnet, that he was aware or should have been aware that those goods had not, assuming that to be the case, been presented to the customs office of destination.
- 111 Such an interpretation, which failed to take account of the subjective conditions laid down in the third indent of Article 203(3) of the Customs Code, is not consistent either with the intention of the EU legislature, referred to in paragraph 95 above, to lay down exhaustively the conditions for determining who are the debtors responsible for the customs debt, or with the very letter and purpose of that provision (see, by analogy, judgment of 23 September 2004, *Spedition Ullustrans*, C-414/02, EU:C:2004:551, paragraphs 39, 40 and 42).
- 112 In that context, it should be pointed out in particular that no provision of the TIR Convention or of EU law has the purpose or effect of placing a personal obligation on the recipients of goods transported under cover of a TIR carnet to ensure that the goods delivered to them were in fact presented to the customs office of destination.
- 113 In the light of the foregoing, the answer to the third question is that the third indent of Article 203(3) and Article 213 of the Customs Code must be interpreted as meaning that the fact that a recipient acquired or held goods which he knew to have been conveyed under cover of a TIR carnet and the fact that it has not been established that those goods were presented and declared to the customs office of destination, are not sufficient, in themselves, for it to be concluded that such a recipient was aware or should reasonably have been aware that the goods had been removed from customs supervision within the meaning of the first of those provisions and must therefore be held jointly and severally liable for the customs debt pursuant to the second of those provisions.

The fourth question

- 114 As is clear from its wording, the fourth question was raised by the referring court only in the event that the Court answered the third question in the affirmative. In view of the negative answer to that question, there is no need to examine the fourth question.

Costs

- 115 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

- 1. The Court has jurisdiction to give preliminary rulings on the interpretation of Articles 8 and 11 of the Customs Convention on the international transport of goods under cover of TIR carnets, signed in Geneva on 14 November 1975, and approved on behalf of the**

European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978, in its amended and consolidated version published by Council Decision 2009/477/EC of 28 May 2009.

- 2. Article 8(7) of the Customs Convention on the international transport of goods under cover of TIR carnets, approved on behalf of the Community by Regulation No 2112/78, in its amended and consolidated version published by Decision 2009/477, must be interpreted as meaning that, in a situation such as that in the main proceedings, the customs authorities have fulfilled the obligation laid down in that provision to require payment of the import duties and taxes concerned, so far as possible, from the holder of the TIR carnet as the person directly liable for those sums, before bringing a claim against the guaranteeing association.**
- 3. The third indent of Article 203(3) and Article 213 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, must be interpreted as meaning that the fact that a recipient acquired or held goods which he knew to have been conveyed under cover of a TIR carnet and the fact that it has not been established that those goods were presented and declared to the customs office of destination, are not sufficient, in themselves, for it to be concluded that such a recipient was aware or should reasonably have been aware that those goods had been removed from customs supervision within the meaning of the first of those provisions and must therefore be held jointly and severally liable for the customs debt pursuant to the second of those provisions.**

[Signatures]