JUDGMENT OF THE COURT (First Chamber)

19 March 2009 *

In Case C-275/07,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 8 June 2007,

Commission of the European Communities, represented by G. Wilms, M. Velardo and D. Recchia, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by I.M. Braguglia, acting as Agent, and G. Albenzio, avvocato dello Stato,

defendant,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Borg Barthet (Rapporteur), E. Levits and J.-J. Kasel, Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 April 2008,

after hearing the Opinion of the Advocate General at the sitting on 11 June 2008,

gives the following

Judgment

1 By its application, the Commission of the European Communities claims that the Court should declare that:

— by refusing to pay the Commission default interest totalling EUR 847.06 in respect of delay in entering customs entitlements in the accounts and by refusing to bring

national provisions into line with the Community rules concerning the entry in the accounts of uncontested customs operations covered by comprehensive security in respect of a Community transit operation, and

— by refusing to pay the Commission default interest totalling EUR 3 322 in respect of failure to comply with the time-limits prescribed by the Community rules for the entry in 'A' accounts of customs entitlements relating to transit operations, as provided for in the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva (Switzerland) on 14 November 1975 (OJ 1978 L 252, p. 2; 'the TIR Convention'),

the Italian Republic has failed to fulfil its obligations under 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) and, in particular, under Article 6(2)(a) thereof, as replaced with effect from 31 May 2000 by 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), and, in particular, under Article 6(3)(a) thereof.

Legal context

The TIR Convention

2 The Italian Republic is a party to the TIR Convention, as is the European Community, which approved it by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978

L 252, p. 1). That convention became effective in respect of the Community on 20 June 1983 (OJ 1983 L 31, p. 13).

3 The TIR Convention provides, in particular, that goods carried under the TIR procedure which it establishes are not to be subject to the payment or deposit of import or export duties, or taxes, at customs offices en route.

4 For those privileges to be applied, the TIR Convention requires 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 TIR Convention.

5 A 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, counterfoil No 1 is left with the customs office of departure; discharge takes place once counterfoil No 2 is returned from the customs office of exit in the same customs territory. The procedure is repeated for each territory crossed, the various pairs of vouchers in the carnet being used in turn. For the purposes of the TIR Convention, the European Community constitutes a single customs territory.

6 Article 8 of the TIR Convention provides, inter alia, that:

‘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 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.'

7 Under Article 11 of the TIR Convention:

'1. Where a TIR carnet has not been discharged or has been discharged conditionally, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8(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 or conditional discharge. The same provision shall apply where the certificate of discharge was obtained in an improper or fraudulent manner, save that the period shall be two years.

2. The claim for payment of the sums referred to in Article 8(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 carnet had not been discharged or had been discharged conditionally or that the certificate of discharge had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the abovementioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.

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.'

The Community customs rules

Regulation (EEC) No 2913/92

8 Under Article 92 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code'):

'The external transit procedure shall end when the goods and the corresponding documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.'

9 Under 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.'

10 Under Article 217(1) of the Customs Code:

'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).'

11 Article 221(1) of the Customs Code provides as follows:

'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.'

Regulation (EEC) No 2454/93

12 Under Article 348 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'):

'1. The office of departure shall accept and register the T1 declaration, prescribe the period within which the goods must be presented at the office of destination and take such measures for identification as it considers necessary.

2. The office of departure shall enter the necessary particulars on the T1 declaration, retain its own copy and return the others to the principal or his representative.'

13 Article 356 of the Implementing Regulation provides as follows:

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

2. The office of destination shall record on the copies of the T1 document the details of controls carried out and shall without delay send a copy to the office of departure and retain the other copy.

…'

14 Under 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.’

15 Article 454 of the Implementing Regulation provides as follows:

‘1. This Article shall apply without prejudice to the specific provisions of the TIR and ATA Conventions concerning the liability of the guaranteeing associations when a TIR or an ATA carnet is being used.

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

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

…

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

16 Under Article 455(1) and (2) of that regulation:

'1. Where an offence or irregularity is found to have been committed in the course of or in connection with a transport operation carried out under cover of a TIR carnet or a transit operation carried out under cover of an ATA carnet, the customs authorities shall notify the holder of the TIR carnet or ATA carnet and the guaranteeing association within the period prescribed in Article 11(1) of the TIR Convention or Article 6(4) of the ATA Convention, as the case may be.

2. Proof of the regularity of the operation carried out under cover of a TIR carnet or an ATA carnet within the meaning of the first subparagraph of Article 454(3) shall be furnished within the period prescribed in Article 11(2) of the TIR Convention or Article 7(1) and (2) of the ATA Convention, as the case may be.'

The system of the Communities' own resources

17 Article 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) — replaced, with effect from 1 January 1995, by Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the European Communities' own resources (OJ 1994 L 293, p. 9) — provides as follows:

'The Communities shall be allocated resources of their own in accordance with the following Articles in order to ensure the financing of their budget.

The budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources.'

18 Under Article 2(1)(b) of Decision 88/376 and of Decision 94/728, revenue from the following are to constitute own resources entered in the budget of the Communities:

'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.'

19 Under Article 8(1) of Decision 88/376 and of Decision 94/728:

'The Community own resources referred to in Article 2(1)(a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules. The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budget authority. Member States shall make the resources under Article 2(1)(a) to (d) available to the Commission.'

20 The second, eighth and thirteenth recitals in the preamble to Regulation No 1552/89, which are similar to the second, fifteenth and twenty-first recitals in the preamble to Regulation No 1150/2000, state as follows:

'Whereas the Community must have the own resources referred to in Article 2 of Decision 88/376/EEC, Euratom available in the best possible conditions and accordingly arrangements must be laid down for the States to provide the Commission with the own resources allocated to the Communities;

...

Whereas the own resources must be made available in the form of an entry of the amounts due in an account opened for this purpose in the name of the Commission with the Treasury or with the body appointed by each Member State; whereas in order to restrict the movements of funds to that which is necessary for the implementation of

the budget, the Community must confine itself to drawing on the abovementioned accounts solely to cover the Commission's cash requirements;

…

Whereas close cooperation between Member States and the Commission is likely to facilitate the correct application of this Regulation.'

21 Under Article 1 of Regulation No 1552/89 and of Regulation No 1150/2000:

'The Community's own resources provided for in [Decisions 88/376 and 94/728], hereinafter referred to as 'own resources', shall be made available to the Commission and inspected as specified in this Regulation, without prejudice to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax [OJ 1989 L 155, p. 9] and [Council] Directive 89/130/EEC, Euratom [of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices (OJ 1989 L 49, p. 26)].'

22 Article 2 of Regulation No 1552/89 provides as follows:

'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.'

23 That provision was amended with effect from 14 July 1996 by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996 (OJ 1996 L 175, p. 3), and the ensuing content was reproduced in Article 2 of Regulation No 1150/2000, which provides that:

'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 94/728/EC, Euratom shall be established as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor.

2. The date of the establishment referred to in paragraph 1 shall be the date of entry in the accounting ledgers provided for by the customs regulations.

…

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

24 Article 6(1) and (2)(a) of Regulation No 1552/89 (now Article 6(1) and (3)(a) of Regulation No 1150/2000) provides as follows:

'1. Accounts for own resources shall be kept by the Treasury of each Member State or by the body appointed by each Member State and broken down by type of resources.

2. (a) Entitlements established in accordance with Article 2 shall, subject to point (b) of this paragraph, be entered in the accounts [currently referred to as 'A accounts'] at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established.'

25 Under Article 8 of Regulation No 1552/89 and of Regulation No 1150/2000:

'Corrections carried out under [Article 2(2) and Article 2(4) respectively] shall be added to or subtracted from the total amount of established entitlements. They shall be recorded in the accounts as specified in [Article 6(2)(a) and (b) and Article 6(3)(a) and (b) respectively] and in the statements as specified in [Article 6(3) and Article 6(4) respectively] in accordance with the date of these corrections.

Corrections in respect of cases of fraud and irregularities already notified to the Commission shall be singled out.'

26 Under Article 9(1) of Regulation No 1552/89 and of Regulation No 1150/2000:

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

27 Article 10(1) of Regulation No 1552/89 and of Regulation No 1150/2000 is worded as follows:

> 'After deduction of 10% by way of collection costs in accordance with Article 2(3) of [Decision 88/376 and Decision 94/728 respectively], entry of the own resources referred to in Article 2(1)(a) and (b) of [those decisions] shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2…'

28 Under Article 11 of Regulation No 1552/89 and of Regulation No 1150/2000:

> '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.'

29 Under Article 12(1) of Regulation No 1552/89 and of Regulation No 1150/2000:

'The Commission shall draw on the sums credited to the accounts referred to in Article 9(1) to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget.'

30 Article 17(1) and (2) of Regulation No 1552/89 and of Regulation No 1150/2000 provides as follows:

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

2. Member States shall be free from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure*, these amounts have not been collected. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is impossible in the long term for reasons which cannot be attributed to them. …'

Pre-litigation procedure

Infringement Case No 2003/2241

31 In the context of an audit of traditional own resources carried out in April 1994, the Commission formed the view that in a number of Community transit operations, the Italian Republic had failed to initiate the procedure for the recovery of entitlements within the prescribed time-limits, contrary to Article 379 of the Implementing Regulation.

32 By letter of 15 June 2001, the Commission asked the Italian Republic, under Article 11 of Regulation No 1150/2000, to pay default interest amounting to ITL 31 564 893 in respect of delays relating to transit files deemed to be irregular.

33 Following an investigation carried out by the Italian Republic, it was established that of the 201 transit documents regarded as not having been discharged, 11 had in fact been discharged, although they had been transmitted out of time by the office of destination. In those circumstances, the Italian Republic stated, in a note of 31 July 2001, that it was willing to pay default interest in respect of the transit documents which had not been discharged, while it disputed the lawfulness of the Commission's claim in the case of documents discharged out of time.

34 The Italian Republic indicated in that regard that, since the transit documents had been presented in good time at the customs office of destination, no customs debt had been incurred under Article 204 of the Customs Code. Consequently, no default interest was due.

35 Subsequently, the Commission discovered another case of late discharge, which led it to amend the total amount of default interest claimed from the Italian Republic.

36 Since the Commission did not accept the Member State's arguments and since the latter re-affirmed its refusal to pay the interest, the Commission sent a letter of formal notice to the Italian Republic on 3 February 2004 in which it re-stated its complaints and rejected the Member State's arguments.

37 As the Italian Republic maintained its position in its reply of 8 June 2004, the Commission sent it a reasoned opinion on 5 July 2005, calling on it to adopt, within two months of receiving that opinion, the measures necessary to comply with its obligations thereunder.

38 In response to the reasoned opinion, the Italian Republic re-affirmed its position and stated that the appropriate way of resolving the matter was to bring it before the Court of Justice.

Infringement Case No 2006/2266

39 On the basis of a letter which the Italian Republic sent to the Court of Auditors of the European Communities on 27 January 1999, the Commission identified four uncontested Community transit operations under the TIR Convention covered by comprehensive security, with regard to which it considered that discharge had taken place outside the time-limits laid down in Regulation No 1552/89.

40 Consequently, the Commission claimed the payment of default interest from the Italian Republic for the period between the time at which the own resources should have been made available to the Commission and the date on which the Italian Republic should have made the appropriate rectification, following rectification of the notice to the debtor.

41 As in Infringement Case No 2003/2241, the Italian Republic refused to pay default interest. It contended that, in the absence of a customs debt, hence of a principal obligation, payment of default interest would unduly modify the legal nature of such interest by assimilating it to a penalty for a formal failure to observe the time-limits laid down in Regulation No 1552/89 for performance of the operations provided for thereunder.

42 On 4 July 2006, the Commission sent the Italian Republic a letter of formal notice claiming payment of default interest in the amount of EUR 3 322.

43 Since it did not receive any observations from the Italian Republic within the prescribed time-limits, the Commission issued a reasoned opinion on 12 October 2006, to which the Italian Republic replied by note of 12 December 2006. The latter agreed that it was appropriate to bring the case before the Court of Justice, together with Infringement Case No 2003/2241.

44 In those circumstances, the Commission decided to bring the present action.

The action

Arguments of the parties

45 The Commission claims that Article 11 of Regulation No 1552/89 was infringed both in Infringement Case No 2003/2241 and in Infringement Case No 2006/2266.

46 With regard to Infringement Case No 2003/2241, the Commission first claims that since the customs office of departure did not receive proof of discharge of an operation by the end of the time-limits laid down in Article 379 of the Implementing Regulation, the operation in question must be deemed to be irregular, thereby giving rise to a customs debt. The key role in establishing and making available Community resources is played by the customs office of departure, which means that it cannot legitimately be argued, for the purpose of annulling retroactively the obligations of the Member States under Article 379 of the Implementing Regulation, that the customs office of destination had given notice out of time that the goods had arrived in accordance with due procedure.

47 The Commission claims that the time-limits laid down in the Community rules are absolute, as is required by their purpose, which is to ensure uniform application of the provisions concerning recovery of customs debts with a view to making the resources concerned rapidly available. The competent Member State is required to establish the Community's own resources, even if it disputes the basis thereof, failing which the principle of the financial equilibrium of the Communities would be undermined.

48 The Commission concludes that if the time-limits laid down in Article 379 of the Implementing Regulation expire without proof of the regularity of the transit operation being furnished, the competent Member State is required, under Article 6 of Regulation No 1552/89, to enter the uncontested amounts covered by security in the 'A' account

without delay and, therefore, to make them available to the Commission in accordance with Article 10 of that regulation.

49 The Commission goes on to argue, by reference to the wording of Article 11 of Regulation No 1552/89, that the obligation on the Member State concerned to pay interest stems from simple failure to make the entry of those entitlements in the accounts, or from failure to do so in good time, irrespective of any other condition.

50 With regard to the argument put forward by the Italian Republic that default interest is not due in respect of the operations in question on the ground that no customs debt was ever incurred, the Commission argues first that the wording of Article 379 of the Implementing Regulation indicates precisely the contrary, that is to say, it shows that a customs debt can be incurred where one of the two structural conditions laid down in that provision materialise, in other words, where the customs operation is irregular or where the debtor has failed to furnish proof of its regularity.

51 The Commission next argues that the default interest referred to in Article 11 of Regulation No 1522/89 is not the interest owed by the debtor as a result of late payment of duties, but default interest owed directly by the Member State because of simple failure to enter the customs duties in the accounts or because of its failure to do so in good time. Accordingly, failure to act can be imputed to the Member State as soon as the entry is not made in the accounts, and it is immaterial in that regard whether or not the pecuniary claim to the customs duties could later become enforceable against the debtor.

52 Moreover, the Commission denies that the fact of requiring payment of default interest where, following a late discharge, the transit operations are found to be regular amounts to using default interest as a penalty. It argues that the obligation to pay default interest is triggered merely by the infringement of obligations laid down in the Community rules, without it being necessary for actual financial loss to have been incurred.

53 In the context of Infringement Case No 2006/2266, the Commission claims that, on the expiry of the time-limits laid down in Article 11 of the TIR Convention, the customs office of departure should have taken steps to recover the duties.

54 Where the customs office of departure does not receive proof of the discharge of the transit operations within 15 months of the date of its acceptance of the TIR carnet, the operations in question must be deemed to be irregular and, in consequence, must give rise to a customs debt.

55 The Commission adds that, in such cases, the Member State is required to establish the Community's entitlement to the own resources, pursuant to Article 2 of Regulation No 1552/89, as soon as the competent administrative authorities are able to calculate the amount of entitlement arising from the customs debt and to identify the debtor. However, according to the case-law of the Court, the authorities in the Member State of departure are deemed to be competent to recover the customs debt.

56 The Commission concludes that, in the situations at issue in the present case, the Italian Republic should have established the Community's entitlement to the own resources and made the appropriate entry in the 'A' accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established. It adds that the Italian Republic should also have initiated the procedure for recovery under Article 11(2) of the TIR Convention in order to ensure the efficient and rapid availability of the own resources to the Commission.

57 Under those circumstances, the Commission claims — in the context of the two abovementioned infringement cases — payment of interest for the period between the time at which the own resources should have been placed at its disposal and the time at which the Italian Republic should have made the appropriate rectification, following rectification of the notice to the debtor in accordance with Article 8 of Regulation No 1552/89.

58 The Italian Republic, referring to the terms of Article 379 of the Implementing Regulation, points out that the regularity of the transit operations at issue is not disputed and that proof of their regularity was furnished in good time, which means that there can be no question of delay in the recovery of duties owed to the Community. The Italian Republic concludes that the conditions in which the obligation to pay default interest arises under Article 11 of Regulation No 1150/2000, which refers to 'any delay in making the entry in the account', are not satisfied since no entry had to be made in the present case.

59 The Italian Republic also contends that the Community suffered no loss, there being no Community funds to recover since, in its view, there was no irregularity in the way the Community transit operations had been carried out. In that regard, it states that the question is whether the ancillary obligation to pay default interest can exist notwithstanding the absence of a principal obligation.

60 In addition, the Italian Republic contends that the competent administration cannot be accused of any delay in recovering the duties and that the late notice to the Community institutions of the actual discharge of the operations is due to the fact that the office of destination was late in transmitting the information.

61 The Italian Republic also states that the circumstances at the material time — namely, the operating difficulties encountered in the Community transit procedure following the enlargement of the European Union to include certain EFTA States — led to a period of general delay in returning 'copy 5s'. In that context, the Community customs offices of departure considered that it was logical, in cases where there was no sign that an irregularity had been committed, not to recover the amounts levied at once so as to avoid having to refund those amounts if it transpired that the operations in question had been regular and that the delay was due, as in the present case, to a simple administrative error.

62 Lastly, the Italian Republic contends that claiming default interest in such a case amounts to using default interest as a penalty, which is not its proper role.

Findings of the Court

63 The Commission claims that the Italian Republic has failed to fulfil its obligations under Regulation No 1552/89 and, in particular, under Article 6(2)(a) thereof. Inter alia, it complains that the Italian Republic refused to pay it default interest, first, in respect of the late entry in the accounts of customs entitlements relating to Community transit operations and, secondly, in respect of its failure to comply with the time-limits prescribed by the Community rules for entry in the 'A' accounts of customs entitlements relating to transit operations, as provided for in the TIR Convention.

64 Under Article 6(1) of Regulation No 1552/89, Member States are to keep accounts for own resources with the Treasury or with the body appointed by them. Under Article 6(2)(a) of Regulation No 1552/89, Member States are required to enter entitlements 'established in accordance with Article 2' of that regulation in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established.

65 Under Article 2 of Regulation No 1552/89, the Community's entitlement to the own resources is to be established as soon as the amount due has been notified to the debtor by the competent department of the Member State. Notification to the debtor is to be given as soon as the competent customs authorities are in a position to calculate the amount of duties arising from a customs debt and to identify the debtor (Case C-392/02 *Commission* v *Denmark* [2005] ECR I-9811, paragraph 61).

66 Under Article 11 of Regulation No 1552/89, any delay in making the entries in the account referred to in Article 9(1) of that regulation gives rise to the payment of interest by the Member State concerned at the interest rate applicable to the entire period of delay. That interest is payable in respect of any delay, regardless of the reason for the delay in making the entry in the Commission's account (see Case C-460/01 *Commission* v *Netherlands* [2005] ECR I-2613, paragraph 91).

67 In those circumstances, it must be ascertained whether the Italian Republic was required to establish the Community's entitlement to the own resources and to enter it in the account provided for in Article 6(1) of Regulation No 1552/89 and, if so, whether it is liable to pay default interest pursuant to Article 11 of that regulation.

The existence of Community entitlement to own resources

68 In the context of external Community transit, the customs authorities are in a position to calculate the amount of duties and to identify the debtor at the latest upon the expiry of the three-month time-limit referred to in Article 379(2) of the Implementing Regulation, that is to say, by the end of the 14th month following the date of registration of the Community transit declaration (see *Commission* v *Netherlands*, paragraph 71). Consequently, the Community's entitlement to the own resources must be established no later than that date.

69 In the context of the international transport of goods under cover of TIR carnets, it is apparent from Article 11 of the TIR Convention that that will be the situation at the latest at the end of a period of three years from the date of acceptance of the TIR carnet by the customs authorities.

70 In the present case, it is common ground both in Infringement Case No 2003/2241 and in Infringement Case No 2006/2266 that the consignments were presented at the customs office of destination in good time, but that the latter failed to return the documents attesting to the regularity of the operations immediately to the office of departure.

71 However, Article 379(1) of the Implementing Regulation provides that where a 'consignment has not been presented at the office of destination', the office of departure is to notify the principal of this fact, whereas Article 455(1) of the Implementing Regulation and Article 11(1) of the TIR Convention provide that, if a TIR carnet has not been discharged, the customs authorities are to notify the holder of the TIR carnet.

72 The Italian Republic contends that no customs debt was incurred, with the result that there can be no question of delay in recovering the Community's entitlements.

73 That argument must be rejected.

74 It should be borne in mind, first, that Article 356 of the Implementing Regulation provides that when goods are presented at the office of destination, that office is to 'send a copy [of the T1 document] to the office of departure'.

75 Secondly, it should be borne in mind that, pursuant to Article 379(1) of the Implementing Regulation, it is the responsibility of the office of departure to notify the principal of the irregularity of the transit operation.

76 It follows that, as the Advocate General remarked in point 66 of her Opinion, that provision should be interpreted from the viewpoint of the office of departure, in other words, as meaning that if the office of departure has not been informed, by the end of the period which it prescribed pursuant to Article 348(1) of the Implementing Regulation, that the goods have been presented at the office of destination, it must assume that the goods have not been presented at the office of destination.

77 A different interpretation of Article 379(1) of the Implementing Regulation would render meaningless the procedure provided for in Article 379(2) thereof for proving the regularity of the transit operation.

78 It follows that, where the office of departure has no information concerning the arrival of the goods at the office of destination, the consequences are the same as those flowing from failure to present the consignment at the office of destination. That interpretation is in conformity with the objective of ensuring diligent uniform application, by the customs authorities, of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Community's own resources (see, to that effect, Case C-104/02 *Commission* v *Germany* [2005] ECR I-2689, paragraph 69).

79 Thus, on expiry of the period 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 (see, to that effect, *Commission* v *Netherlands*, paragraph 72, and *Commission* v *Germany*, paragraph 81).

80 It must therefore be considered that, at that stage, there is a presumption that a customs debt exists. As the Advocate General pointed out in point 69 of her Opinion, that presumption is open to rebuttal. Consequently, if it should subsequently emerge that the transit operation took place in a lawful manner, the principal may obtain reimbursement of the amounts paid (see, to that effect, *Commission* v *Germany*, paragraph 88).

81 Article 379(1) of the Implementing Regulation requires the office of departure, where a consignment has not been presented at the office of destination, to 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'.

82 It is common ground that this did not happen in the present case.

83 In that regard, the fact — referred to by the Italian Republic — that there was, at the material time, a period of general delay in sending back copies of T1 documents to the office of departure can have no effect on the obligation of the customs authorities to notify the principal.

84 Since the objective of Article 379(1) of the Implementing Regulation is to ensure diligent uniform application of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Communities' own resources, the notification of the offence or the irregularity must, in any event, be made as quickly as possible, that is to say, as soon as the customs authorities are aware of that offence or irregularity, hence well before expiry of the maximum period of 11 months referred to in that provision (see, by analogy, Case C-377/03 *Commission* v *Belgium* [2006] ECR I-9733, paragraph 69, and Case C-312/04 *Commission* v *Netherlands* [2006] ECR I-9923, paragraph 54).

85 It follows from the foregoing that the Italian authorities were required to notify the principal of the irregularity of the transit operations at issue within the time-limits laid down in Article 379(1) of the Implementing Regulation, that is to say, at the latest, before the end of the 11th month following the date of registration of the Community transit declaration.

86 In accordance with the third sentence of Article 379(2) of the Implementing Regulation, the Member States are obliged to initiate the recovery procedure provided for therein upon expiry of the three-month period subsequent to the date of notification referred to in Article 379(1).

87 Where the principal is not given notification, as was the case in the present proceedings, that person cannot be required to pay the customs debt (see, to that effect, Case C-230/06 *Militzer & Münch* [2008] ECR I-1895, paragraph 39). It must nevertheless be held that at the end of that period, Community entitlement to the own resources arises. That interpretation is necessary in order to ensure 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 (see, to that effect, *Commission* v *Germany*, paragraph 69).

88 In the context of consignments under cover of TIR carnets, it is also common ground that the Italian customs authorities had not, by the end of the period prescribed for presentation of the goods, received any document from the customs office of destination concerning the carrying out of the transit operations in question.

89 In those circumstances, they should have assumed, pending proof to the contrary, that the goods had not been presented at the office of destination. That interpretation is consistent with the broad logic of Article 455 of the Implementing Regulation and is compatible with the procedure, provided for in the second paragraph of that article, for proving the regularity of the transit operation.

90 Consequently, it must be held that, at that stage, there is a presumption that a customs debt exists. As in the case of Community transit operations, the consequences of the office of departure's lack of information concerning the arrival of the goods at the office of destination are the same as those flowing from refusal to discharge the TIR carnet.

91 It is apparent from Article 455(1) of the Implementing Regulation, read in conjunction with Article 11(1) and (2) of the TIR Convention, that, in the event of non-discharge of the TIR carnet, the claim for payment of the customs debt must, in principle, be lodged no later than three years after the date of acceptance of the carnet (*Commission* v *Belgium*, paragraph 68).

92 In the absence of notification of the irregularity to the holder of the TIR carnet and the guaranteeing association within a period of one year from the date of acceptance of the carnet, the competent authorities will not have the right to claim payment of the customs debt from the guaranteeing association.

93 Notwithstanding the fact that the Italian customs authorities did not notify the guaranteeing association, it must be held that at the end of the maximum period of three years from the date of acceptance of the carnet, Community entitlement to the own resources arose, so as to ensure diligent uniform application by the competent authorities of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Communities' own resources (see, to that effect, *Commission* v *Germany*, cited above, paragraph 69).

94 It follows from all the foregoing considerations that the Italian Republic was required under Article 2(1) of Regulation No 1552/89 to establish the existence of the Community's entitlement to the own resources and enter it in the own resources account, as provided for in Article 6(2)(a) of that regulation.

Default interest

95 It should be noted that the present action concerns only the payment of default interest under Article 11 of Regulation No 1552/89.

96 Admittedly, pursuant to that provision, any delay in making the entries in the account referred to in Article 9(1) of Regulation No 1552/89 gives rise to the payment of default interest by the Member State concerned at the interest rate applicable to the entire period of delay. That interest is payable regardless of the reason for the delay in making the entry in the Commission's account (Case C-460/01 *Commission* v *Netherlands*, paragraph 91).

97 The Commission maintains that that provision applies to any lateness in entering the own resources in the account referred to in Article 9(1) of Regulation No 1552/89 regardless of the reason for the delay and without it being necessary for there to have been actual financial loss.

98 However, it is important to note, first, that — as the Advocate General remarked in point 90 of her Opinion — in most of the legal systems of the Member States, default interest is ancillary to the principal obligation.

99 Secondly, it should be pointed out that it does not expressly follow from the terms of Article 11 of Regulation No 1552/89 that the default interest provided for therein applies to situations where it emerges subsequently that the principal obligation does not exist. If the Community legislature had wished to extend the scope of that provision to such situations, it could have expressly done so therein but it did not.

100 Thirdly, and lastly, it is certainly true that the Court has accepted that although an error committed by the customs authorities of a Member State results in the debtor not having to pay the duties in question, it does not affect that Member State's obligation to pay default interest or the entitlements which should have been established, in the context of making available own resources (*Commission* v *Denmark*, paragraph 63).

101 However, the present case falls to be distinguished from *Commission* v *Denmark* inasmuch as it emerged subsequently that the consignments had been presented to the office of destination in good time, with the result that the customs debts had ceased to exist; and, as is clear from Article 2(1)(b) of Decisions 88/376 and 94/728, it is precisely the customs debt that is the basis of the Community's entitlement to the own resources.

102 It must therefore be held that the non-existence of customs debts in the present case entails the non-existence of a right to default interest under Article 11 of Regulation No 1552/89 on the part of the Commission.

103 The action must therefore be dismissed as unfounded.

Costs

104 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 Italian Republic has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs.

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

1. Dismisses the action.

2. Orders the Commission of the European Communities to pay the costs.

[Signatures]