JUDGMENT OF THE COURT (SECOND CHAMBER)
18 FEBRUARY 1982 [1]

SIC — Società Italiana Cauzioni v Amministrazione delle Finanze dello Stato (reference for a preliminary ruling from the Tribunale, Milan)

(Community transit — Release of guarantor)

Case 277/80

Free movement of goods — Community transit — External Community transit — T 1 document — Discharge at the office of departure — Non-discharge — Release of guarantor — Conditions

(Regulation No 542/69 of the Council, Art. 35, as amended by Regulation No 1079/71, Art. 1)

Article 35 of Regulation No 542/69 of the Council of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation No 1079/71 of 25 May 1971, must be interpreted as meaning that, unless the guarantor has been notified by the customs authorities of the non-discharge of the T 1 declaration within the period of twelve months from the date of its registration, the guarantor is then, in the absence of any fraud of which he may be guilty, in any event released from his obligations.

In Case 277/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Division of the Tribunale [District Court], Milan, for a preliminary ruling in the proceedings pending before that court between

SIC — SOCIETÀ ITALIANA CAUZIONI — COMPAGNIA DI ASSICURAZIONI E RIASSICURAZIONI SpA, having its registered office in Rome, represented by Alfredo Cutrera and Gregorio Leone, Advocates, 12 Viale Elvezia, Milan,

1 — Language of the Case: Italian.

and

AMMINISTRAZIONI DELLE FINANZE DELLO STATO [State Finance Administration], represented by the Avvocatura Distrettuale dello Stato [District State Legal Advisory Office], Via Freguglia, Milan,

on the interpretation of Article 35 of Regulation (EEC) No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125), as supplemented by Regulation (EEC) No 1079/71 of the Council of 25 May 1971 (Official Journal, English Special Edition 1971 (I), p. 285),

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

1. On 21 November and 21 December 1975 and 2 January 1976 the limited partnership Sas Alimentari Molteni di Ambrogio Paolo Molteni & C. carried out three indirect transit operations in frozen beef which it withdrew from its private bonded warehouse No 173, the declared destination being Switzerland.

The three operations were effected under Type T 1 customs declarations No 69/FD, No 183/FD and No 3/FD CME respectively, which were guaranteed by SIC — Società Italiana Cauzioni — Compagnia di Assicurazione e Riassi-

curazioni SpA (Italian Guarantee Company — Insurance and Reinsurance Company), [hereinafter referred to as "SIC"], under Policy No 271011972 of 5 May 1972, lodged with and accepted by the customs office in Turin on 5 June 1970.

The third copy of those declarations was in each case returned stamped by the Swiss customs authorities in Geneva as confirming the arrival of the goods at their destination, so that the operations were deemed to have been discharged on 13 and 30 December 1975 and 21 January 1976.

Following upon investigations carried out on its own initiative by the Nucleo Regionale di Polizia Tributaria della Guardia di Finanza [Regional Centre of the Fiscal Police Branch of the Revenue Enforcement Department], Milan, acting in conjunction with its counterpart in Como and in liaison with the Swiss customs authorities in Como and in Geneva, it transpired, however, that the third copy of the customs declarations had been falsified and that it was necessary to take the view that the frozen beef had not left Italian territory and had been consumed in Italy, customs duties being thereby evaded. Consequently, on 6 September 1977, the customs authorities in Milan served on SIC a demand for payment of LIT 310 481 170 (LIT 11 306 200 in respect of interest and LIT 299 174 970 in respect of customs duties) together with further interest accruing and costs.

2. SIC contested that demand before the Tribunale [District Court], Milan, by writ served on 19 September 1977. It pleaded that the customs authorities were out of time in exercising their right to demand payment of the customs duties from the guarantor — or more precisely that that right was extinguished.

That plea was based on Article 35 of Regulation (EEC) No 542/69 (Official Journal, English Special Edition 1969 (I) p. 125), as supplemented by Article 1 of Regulation (EEC) No 1079/71 of 25 May 1971 (Official Journal, English Special Edition 1971 (I), p. 285), according to which: "The guarantor shall be released from his obligations towards the Member States through which goods were carried in the course of a Community transit operation when the T 1 document has been discharged at the office of departure.

Where the guarantor has not been notified by the office of departure of the non-discharge of the T 1 document, he shall be released from his obligations on expiry of a period of twelve months from the date of registration of the T 1 declaration."

SIC, the plaintiff in the main action, in fact maintained under the above-mentioned rule and in the absence of any notification from the customs office of the non-discharge of the T 1 transit document, it was to be considered as released on 2 January 1977 from its obligation as guarantor with regard to the operation for which the demand for payment of duty was issued, inasmuch as the first communication sent to it by the customs authorities was dated 20 January 1977, which is subsequent to the period of one year laid down in the second paragraph of Article 35 of the above-mentioned regulation.

The Amministrazione delle Finanze dello Stato [State Finance Administration], the defendant in the main action, denied that Article 35 applied in the present case in so far as — with regard to its first paragraph — the discharge documents, although in existence, subsequently proved to be invalid, whilst — with regard to the second subparagraph — those documents, although invalid and of no effect, were nevertheless brought into being within the period of twelve months from the date of the registration of the T 1 declarations, thus preventing the extinction of the right at issue.

3. The positions thus adopted before the Tribunale, Milan, are the result of a disagreement on the interpretation of the scope of the second paragraph of Article 35 of the above-mentioned EEC Regulation. According to the plaintiff in the main action, the notification of non-discharge within the compulsory time-limit of twelve months from the date of registration of the T 1 delcaration is always necessary for the purpose of preventing the guarantor being released from his obligations. According to the defendant, on the other hand, for the purpose of preserving the guarantee it is sufficient for the customs office of departure to be able to discharge the declarations by a simple formal check of the third copy, on its return, without prejudice to the possibility of later holding the discharge to be null and void where — as in the present case — subsequent investigations demonstrate *a posteriori* that the legal preconditions for such discharge are lacking.

4. By order of 9 October 1980, lodged at the Court Registry on 12 December 1980, the First Civil Division of the Tribunale, Milan, stayed the proceedings and requested the Court of Justice to give a preliminary ruling on the following question:

"With regard to Article 35 of Regulation (EEC) No 542/69 of 18 March 1969, as supplemented by Article 1 of Regulation (EEC) No 1079/71 of 25 May 1971, is it always incumbent on the Amministrazione Finanziaria [Finance Administration] to intimate, within 12 months of the date of registration of a T 1 declaration, the non-discharge of that document, in order to preserve the guarantee referred to in those provisions?"

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the parties to the main action and the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations

1. In its observations *SIC* points out first that the Community transit procedure was introduced (a) to facilitate the movement of goods by simplifying the formalities carried out when frontiers are crossed and (b) to guarantee, during carriage, payment of the customs duties payable on the goods by means of an undertaking to be given by a "principal" who is to be responsible for the proper conduct of the operation and is obliged to provide a guarantee for the purpose of guaranteeing the recovery of customs duties and other taxes chargeable.

It notes that, by means of Regulation No 1079/71 of 25 May 1971, the Council added a second paragraph to Article 35 of Regulation No 542/69, which provides that the guarantor is to be released from his obligations "when the T 1 document has been discharged at the office of departure", with a view to ensuring certainty in the law by authorizing the guarantor's release on expiry of a period of twelve months from the date of registration of the T 1

declaration where he has not been notified by the office of departure of the non-release of that document.

According to SIC, it results both from the purpose and from the wording of the above-mentioned provision that in this case it was to be released from its obligations as guarantor on 21 November and 20 December 1976 and 2 January 1977 respectively, owing to the fact that the three T 1 Community transit documents, completed by Molteni and covered by its guarantee by means of guarantee certificates, were registered on 21 November and 20 December 1975 and 2 January 1976, and no notification of the non-discharge of the T 1 transit document was sent to it within the period of twelve months from the date of registration of each of the three documents.

In answer to the Italian Government's argument to the effect that SIC was not released from its obligations as guarantor and that it could not be argued that the customs authorities' right was extinguished owing to the fact that, on the one hand, having regard to the provisions of Article 1 of Regulation No 1079/71, the discharges were carried out within the period of twelve months from the date of registration and that, on the other, having regard to the provisions of Article 35 of Regulation No 542/69, the discharges, although they were indeed given, were subsequently discovered to be invalid, the plaintiff in the main action puts forward the following arguments.

Regulation No 1079/71 leaves out of account the "period" within which the national customs authorities may grant a discharge as well as the nature of the reasons which have led to the customs duties' not being paid. The only precondition for the guarantor's release from his obligations is that no notification of non-discharge should have been sent to him within the period of twelve months after the registration of the T 1 document. That rule, which is laid down soleley for the protection of the guarantor, in accordance with the principle of "certainty in the law" — which was the reason for the amendment to Article 35 of Regulation No 542/69 by means of Regulation No 1079/71 of 25 May 1971 — is to be considered as a penalty by way of "forfeiture" as against the customs authorities and not just as the termination of a limitation period.

Thus it is only notification of non-discharge which can "interrupt" or "suspend" the running of the period of twelve months, thus preventing the authorities' right from being extinguished and maintaining the guarantor's obligation to make the payment for which, as guarantor, he is liable, and it is not necessary to take into consideration the time at which the customs authorities effect the discharge or, conversely, establish the artificial nature of the movement of goods.

So far as the guarantor is concerned, only receipt of notification of non-discharge within twelve months from the date of registration is relevant. In the absence of such notification the guarantor is released, but not the principal, who, as the trader who effected the transit or as owner of the goods, remains liable for payment of the duties.

The Italian Government's argument to the effect that Article 1 of Regulation No 1079/71 is not applicable to this case because the declarations were discharged before the expiry of the period of one year as a result of fraud, so that the customs authorities were unable to give notice of the "non-discharge", is rejected by SIC as a sophism which is contrary to the wording and spirit of the Community rules.

According to the plaintiff in the main action, the introduction of the guarantee constitutes a fundamental part of the Community transit procedure. By simplifying customs procedures and thereby relying even more on traders, thus making concessions to the requirements of trade and the need for goods to flow more freely, the Community legislature nevertheless provided against the possibility of abuse or fraud by the introduction of a guarantee. The transit guarantee in fact operates only in respect of the evasion of duties determined by the customs authorities in the course of the transport of goods which are subject to customs clearance or the transit documents have been interfered with. To state that Article 1 of Regulation No 1079/71 does not apply wherever there is fraud amounts, in these circumstances, purely and simply to a denial in every case that the Community provisions in question apply.

SIC also regards as irrelevant the Italian customs administration's statement that the artificial nature of the movement of the goods and of the discharges means that the discharges, although existing in law, are void or invalid *ex tunc*.

It contends that the artificial nature of the discharges amounts to the offence of smuggling, liable to criminal prosecution and, moreover, easily established by resort to the "mutual customs assistance" provided for by the Convention signed in Rome on 7 September 1967.

Therefore it is sufficient, according to SIC, to ensure that the guarantor is notified of the results of the discharge operation within twelve months from the date of registration, since the Community rules in question leave out of account the "validity or invalidity" of the discharge and merely require that the guarantor should be notified of the "non-discharge".

SIC notes that if the contrary argument were admitted, it would in practice lead to the inapplicability of the Community rule, in view, on the one hand, of the fact that the operation of the guarantee is in any event strictly tied to the commission of an offence and, on the other, of the fact that the artificial nature of the movements evidenced by the transit documents constitutes a condition *sine qua non* for the commission of the offence in question.

SIC also considers as wholly irrelevant the Finance Administration's argument to the effect that, in accordance with the literal interpretation of the regulation which it put forward itself, the guarantor will become liable to pay under the guarantee whenever it is not possible "to impute some negligence to the office of departure".

SIC maintains that the Community rules contained in Regulation No 1079/71 were not intended to "penalize" the customs authorities for any omissions of which they have been guilty, or for difficulties encountered on the level of the ascertainment of offences for which they are not responsible. The Community legislature merely sought objectively to exclude the operation of the guarantee in the absence of notification within a period considered to be reasonable to enable the departments involved to carry out checks, without there being any necessity to consider the reasons for the absence of notification.

In conclusion, it is not a question of "punishing" the customs authorities or of "compensating" the undertakings

required to give a guarantee, if after a year it is discovered that a discharge was based on an unlawful act. In a case of that kind the body which furnished a guarantee is released by the Community legislature from its obligation under the guarantee, so that it may be certain of its ability to meet other risks inherent in furnishing other guarantees, having regard to its available resources.

SIC thus concludes that any limitative or restrictive interpretation other than the one just set out would infringe the Communitiy rule and be clearly contrary to the preamble to the regulation at issue. It proposes that the question submitted to the Court by the Tribunale, Milan, should be answered as follows:

"1. Under Article 35 of Regulation (EEC) No 542/69 of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation (EEC) No 1079/71 of 25 May 1977, the customs authorities are obliged, whenever they intend to preserve the guarantee given by the guarantor, to notify the guarantor, in any event and on every occasion, within a period of twelve months from the date of registration, of the non-discharge of that document.

2. In the absence of such 'notification' within the prescribed period of twelve months, the guarantor is to be released from his obligations whatever the reason for or cause of the absence of notification."

2. The *Italian Government* points out that it is impossible to grasp the full extent of the problem without taking into account the following factors in the context of this case:

The "discharge" of the T 1 declarations, in the sense of a simple check on the basis of the document returned to the office of departure, was carried out within a month after the registration of each of the declarations;

The discovery that the copy of the T 1 forms returned to the office of departure had been falsified was notified to the office of departure after the period of twelve months had expired, even if the date of the last registration is taken as the commencement of that period.

In substance, there are therefore two aspects to the problem to be resolved by the national court, which may be formulated as follows:

(a) For the purpose of the first paragraph of Article 35 of Regulation No 542/69, is the guarantor released from his obligations even if it later becomes apparent that the discharge of the T 1 form is invalid because the document discharged, being fraudulent, is void?

(b) If the guarantor is not released, is it in any event necessary, in order to preserve the guarantee, for the office of departure to notify the guarantor of the fact that the T 1 document has not been discharged within the period of twelve months from the date of registration?

In the opinion of the Italian Government both parts of the question put to the Court should be answered in the negative.

According to the Italian Government, the concept of "discharge" has a double meaning in the provisions of the first paragraph of Article 35 of Regulation No 542/69:

First it refers to the actual check which is carried out by the office of departure by comparing the copy of the document retained (under Article 17 (2) of that

regulation) and the copy returned to it by the office of destination (under Article 26);

Secondly, it refers to the verification to which the release of the guarantor, as a legal effect, is linked.

The Italian Government goes on to state that the actual carrying out of the check is an event which actually occurred and may not be treated as if it had not. On the other hand, although in law it continues to exist, the verification may later be found to be invalid or of no effect.

Moreover, the discharge in the sense of the actual carrying out of the check continues to exist even if it is based on falsified documents; on the other hand, verification based on falsified documents is an invalid act, which is not capable of resulting in the release of the guarantor.

The effect in question goes to the very basis of the right, that is to say the extinguishment of the obligation under the guarantee, and it can only result from an act which is in itself valid and capable of producing effects. An examination based on a "void document", that is to say a falsified document, does not exhibit those characteristics.

As a result, according to the Italian Government, it may be considered that on the basis of the first paragraph of Article 35, the release of the guarantee can arise only out of valid verification, capable of producing effects, resulting from a positive verification of the conformity of the document held by the office of departure with that held by the office of destination. As it appears that the document held by the office of destination was falsified, there was no valid verification, capable of producing effects; the guarantor therefore may not be considered as released from its obligations.

Furthermore, according to the Italian Government, it must be determined whether the second paragraph of Article 35 of Regulation No 542/69 must also apply when the office of departure has discharged the T 1 document within the prescribed period, in so far as it has physically compared the copy of the document retained by it with that returned to it by the office of destination.

In its view, that question must be answered in the negative, on the grounds that, if the office of departure has made the physical comparison described above and at that time everything seemed to be in order, it is difficult to see how it could be considered that that office must nevertheless notify the guarantor of the non-discharge in order to preserve the right to require enforcement of the guarantee.

According to the Italian Government it might be arguable whether, in making the comparison between those documents, the office of departure was negligent, but the office in question may not be required to contradict its own findings once it has discharged the document, by notifying the guarantor within the prescribed period that the discharge had not taken place.

In this regard, the Italian Government considers that the dispute pending in the main action is significant. It points out that the comparison of the copies of the T 1 declaration was made on the basis of documents which had been skilfully falsified and the office of departure legitimately considered the T 1 documents as discharged. Since the fraudulent nature of the documents was discovered more than twelve months after the registration of the declarations, the Italian Government questions the justification for requiring the office of departure to notify the guarantor of the

non-discharge of the T 1 documents within the stated period.

With regard to SIC's arguments concerning the second recital in the preamble to Regulation No 1079/71, to the effect that the period prescribed in the second paragraph of Article 35 is intended to meet the requirement of making the guarantor's position certain and unassailable after the period of twelve months from the date of registration of the declarations has expired without being used, the Italian Government recognizes that that is indeed the aim of the said second paragraph and it is precisely because of this need for certainty in the law that the Community legislature did not wish the office of departure to be able to delay the discharge of the T 1 forms at will.

It notes that the release, which is in addition subject to the condition that the guarantor has not been notified of the non-discharge, was thus introduced as a form of penalty for the failure of the office of departure which not only does not carry out the discharge within the prescribed period, but which, in addition, does not take care to notify the guarantor that the discharge has not yet taken place.

Nevertheless, according to the Italian Government it may be considered that the second paragraph of Article 35 seeks to impose on the office of departure an obligation to carry out inquiries in order to check whether the fundamental conditions, which enable it to carry out a valid and effective discharge of the transit documents, are met, even if that is desirable.

The Italian Government thus emphasizes that, according to the view supported by the opposite party, before discharging the T 1 documents every office of departure would have to undertake an inquiry for every transit operation to ensure that the documents in question were not falsified.

It notes that as a result no discharge could be carried out within the prescribed period, the notices of non-discharge sent to guarantors would multiply, a situation would arise contrary to the aim set out in the second recital in the preamble to Regulation No 1079/71 inasmuch as the guarantors' obligations would be extended in time, and all transit operations would be delayed, contrary to the aim of Regulation No 542/69.

In the Italian Government's opinion, if the guarantor does not have to be released in the event of fraud, it is then necessary to admit that the customs office of departure may carry out the discharge within the prescribed period by making a physical comparison of the documents without checking the fundamental requirements (the fraudulent nature of the documents, for example), and that, provided that that operation was carried out within the prescribed period, the second paragraph of Article 35 and the release therein provided for, is inapplicable.

Moreover, in this connection it would also have to be admitted that the release of the guarantor within the meaning of the first paragraph of Article 35 results from only a valid verification, capable of producing effects, resulting from the positive check on the conformity of the T 1 document retained by the office of departure with that of the office of destination.

According to the Italian Government, there are no grounds for objecting that under that interpretation the guarantor's obligation is unlimited in time, subject to the relevant limitation periods. It submits that such an effect would also arise in the opposite case, in so far as the offices of departure would not fail to notify the guarantor at regular intervals of the non-discharge of the T 1 form, as they would be forced to do, because of the application of the release provided for in

the second paragraph of Article 35, until they were certain that the material requirements for a positive verification were fulfilled. It adds that there would be no justification either for objecting that this interpretation is too exacting so far as the guarantor is concerned.

In this regard the Italian Government notes that the paragraph added to the original text of Article 35 of Regulation No 542/69 did not alter either the scope or the content of the guarantee, nor did it change the duration of the latter into an unlimited duration. The objective of the above-mentioned paragraph which supplemented the original provision was simply to penalize the office of departure's failure to act, a penalty which may however be avoided by a simple notice of non-discharge, which need not even give the grounds on which it is based.

Furthermore, according to the Italian Government it is appropriate to repeat that the inevitable results of declaring that the release provided for in the second paragraph of Article 35 applies to cases similar to that of the dispute in the main action would be much more severe for the guarantor. His obligation would be preserved for a long time by means of notices of non-discharge until the favourable conclusion of inquiries made by the customs authorities. In conclusion, the Italian Government wishes the Court of Justice to answer the question put to it by the Tribunale, Milan, in the negative, by stating:

"A discharge later found to be invalid and of no effect because it is based on fraudulent documents is not capable of releasing the guarantor within the meaning of the first paragraph of Article 35 of Regulation No 542/69.

In so far as the discharge is carried out within the prescribed period by means of actual verification the office of departure may no longer be obliged to grant the release provided for in the second paragraph of the said Article 35."

3. The *Commission of the European Communities* notes that the two events having as their effect the release of the guarantor's obligations provided for in Article 35 of Regulation No 542/69 took place in this case.

The T 1 declarations were discharged and more than twelve months had elapsed since registration when the Customs Office, Milan, requested payment of the duties from SIC.

The Commission notes that the Tribunale, Milan, has not asked the Court a question concerning the possible consequences as against the guarantor of an annulment of the discharge. Thus, considering only the second factor leading to the extinguishment of his obligation, that is to say, release on expiry of the prescribed period, it points out that according to the second recital in the preamble to Regulation No 1079/71 the provision in question was introduced because "the need for certainty in the law" entails "that persons who act as guarantors be afforded the certainty of being released from their obligations on expiry of a fixed period which it seems appropriate to set at twelve months calculated from the date of registration of the Community transit declaration".

The contents of the provision are therefore clear. The guarantor is released from his obligations on expiry of a period of twelve months from the date of registration, unless he has been notified of the non-discharge of the T 1 documents. The Commission further notes that the objective of the provision

is achieved in the following manner: if the customs offices entertain doubts as to the regularity of the operation, they must warn the guarantor of this; otherwise, the guarantor is released from his obligations.

The Commission observes that the argument relating to discharges in this case, relied upon by the Finance Administration and reproduced in the order making the reference, to the effect that "those documents, although invalid and of no effect, were nevertheless drawn up within twelve months from the date of registration of the T 1 declarations, thus preventing the release provided for", is not clear. According to the Commission, the Italian administration itself admits that it is necessary to perform an "act" in the twelve months following registration in order to prevent forfeiture. The Commission maintains that that act may not, however, be any "act", and may certainly not be a dicharge, which might have the opposite effect. It can therefore only be the notification provided for in the second paragraph of Article 35 of Regulation No 542/69.

The Commission points out that the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 (approved by Council Regulation (EEC) No 2112/78 of 25 July 1978) (Official Journal 1978, L 252, p. 1) contains a similar provision in Article 11, which, however, provides for a period of two years for the release of the guarantor's obligation in the event of fraud, and notes that that provision was not adopted in the Community legislation on transit.

In conclusion, the Commission suggests that the Court should give the following reply to the question submitted to it by the Tribunale, Milan:

"The second paragraph of Article 35 of Regulation No 542/69 must be interpreted as meaning that the guarantor is released from his obligations if he has not been notified of the non-discharge of the T 1 declaration upon the expiry of a period of twelve months from the date of registration of that declaration."

III — Oral procedure

At the sitting on 8 October 1981, oral argument was presented by the following: Gregorio Leone of the Milan Bar, for Società Italiana Cauzioni; I. M. Graguglia, acting as Agent, for the Italian Government; and M. A. Prozzillo, acting as Agent, assisted by Mr Ruah, expert, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 3 December 1981.

Decision

1 By order of 9 October 1980 which was received at the Court on 12 December 1980, the First Civil Division of the Tribunale [District Court], Milan, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 35 of Regulation

No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125), as supplemented by Regulation No 1079/71 of the Council of 25 May 1971 (Official Journal, English Special Edition 1971 (I), p. 285).

2 In order to facilitate the transport of goods within the Community and, in particular, to simplify the formalities to be carried out when internal frontiers are crossed, Regulation No 542/69 of the Council which, as supplemented, applies to the facts of the case before the Tribunale, Milan, provides a Community transit procedure which, for goods which do not satisfy the conditions laid down in Articles 9 and 10 of the EEC Treaty, is that for external Community transit, governed by Articles 12 to 38 inclusive of the regulation.

3 According to Article 12 (1) and (3) of the regulation, any goods that are to be carried under the procedure for external Community transit must be covered by a declaration on form T 1 in accordance with Annex A to the regulation signed by the person who requests permission to effect the transit operation, that is to say, the "principal" who, according to the definition provided in Article 11 (a) of the same regulation, "makes himself responsible to the competent authorities for the execution of the operation in accordance with the rules."

4 The external Community transit operation commences, according to Article 17 of the regulation, with the registration of the T 1 declaration at the office of departure and ends when the office of destination sends a copy of that declaration to the office of departure in accordance with Article 26.

5 On the other hand, Article 27 (1) of the regulation provides: "In order to ensure collection of the duties and other taxes which one of the Member States is authorized to charge in respect of goods passing through its territory in the course of Community transit, the principal shall furnish a guarantee, except as otherwise provided in this regulation". Article 27 (2) states: "The guarantee may be comprehensive, covering a number of Community transit operations, or individual, covering a single Community transit operation". In addition, Article 27 (3) provides: "Subject to the provisions of Article 33 (2), the guarantee shall consist of the joint and several guarantee of a natural or legal third person established in the

Member State in which the guarantee is provided who is approved as a guarantor by that Member State".

6 The first paragraph of Article 35 of the regulation provides: "The guarantor shall be released form his obligations towards the Member States through which goods were carried in the course of a Community transit operation when the T 1 document has been discharged at the office of departure". To this provision, Article 1 of Regulation No 1079/71 of the Council of 25 May 1971 added a second paragraph which is worded as follows:

"Where the guarantor has not been notified by the office of departure of the non-discharge of the T 1 document, he shall be released from his obligations on expiry of a period of twelve months from the date of registration of the T 1 declaration".

7 It is apparent from the order making the reference that the plaintiff in the main action, Società Italiana Cauzioni, Compagnia di Assicurazioni e Riassicurazioni SpA, (hereinafter referred to as "SIC"), contested a demand sent to it by the customs authorities for discharge of its obligations as guarantor of three transport operations in frozen beef effected on 21 November and 21 December 1975 and 2 January 1976 under type T 1 customs forms which were subsequently discovered by the fiscal police in Milan to be fraudulent, in so far as the third copy of the T 1 form had been falsified so as to indicate that the goods in question had left Italian territory, which they in fact had not done.

8 SIC contends that the customs authorities have lost the right to demand from it, as guarantor, payment of the customs duties in respect of the fraudulent carriage of goods. It maintains that it should be considered as released from its obligations under the guarantee as a result both of the discharge of the T 1 document, of which it was formally notified by the competent customs authorities on 13 December and 30 December 1975 and 21 January 1976, and of the expiry of the period of twelve months from the date of registration of the T 1 declaration, in the absence of notification to it by the office of departure of the non-discharge of the T 1 document.

9 The Italian authorities submit that the discharge, which is based on documents obtained by fraud, must be considered as invalid and ineffective and therefore of no effect as regards the release of the guarantor under the first paragraph of Article 35 of Regulation No 542/69. Such release should be the result only of a valid verification by means of a positive check on the conformity of the office of departure's copy of the T 1 document with that of the office of destination.

10 With regard to the release of the guarantor under the conditions laid down in the second paragraph of Article 35 of Regulation No 542/69, the Italian authorities contend that to the extent to which the discharge of the T 1 document was carried out in good time, that is to say before expiry of the period of twelve months from the date of registration of the T 1 declaration, by means of an actual verification, although the conditions determining its substantive validity are subsequently discovered not to exist, the customs authorities ought no longer to be bound to effect the release provided for by that paragraph.

11 According to the Italian authorities, unless the customs authorities are to be obliged to carry out lengthy inquiries and to notify the guarantor systematically of the non-discharge of the T 1 document, contrary to the objective aimed at by the adoption of Regulation No 1079/71, the discharge later discovered to be invalid ought not to have the effect of releasing the guarantor and the second paragraph of Article 35 of Regulation No 542/69 ought in this case to be inapplicable.

12 With a view to solving that problem, the Tribunale, Milan, referred to the Court the following question:

"With regard to Article 35 of Regulation (EEC) No 542/69 of 18 March 1969, as supplemented by Article 1 of Regulation (EEC) No 1079/71 of 25 May 1971, is it always incumbent on the Amministrazione Finanzaria [Finance Administration] to intimate, within twelve months of the date of registration of a T.1 declaration, the non-discharge of that document, in order to preserve the guarantee referred to in those provisions?"

13 Article 35 of Regulation No 542/69 of the Council, as supplemented by Regulation No 1079/71 of the Council, seeks to ensure certainty in the law for persons who act as guarantors for transit operations in accordance with the provisions of the regulation in question, in particular by providing for their release from their obligation upon the expiry of a period of twelve months from the date of registration of the Community transit declaration, where they have not been notified by the office of departure of the non-discharge of the T 1 document. Such release, linked with expiry of that period, like the release as a result of notice of discharge, is not subject to any other condition.

14 In addition, it is clear from the provisions of Article 35 of Regulation No 542/69, as supplemented by Regulation No 1079/71 of the Council, that within the framework of the function assigned to it in the procedure set out in Article 35 of Regulation No 542/69, notification of discharge can neither prevent the guarantor's release nor take the place of notification of non-discharge of the T 1 document and thus have an effect contrary to that expressly attached to that formality by the provision in question.

15 Without prejudice to the effects which fraud on the part of the guarantor himself might have had on his release from his obligations as guarantor, a situation which does not emerge from the question put to the Court, it therefore follows that the guarantor is automatically released upon the expiry of the period of twelve months without notification of non-discharge.

16 Therefore the reply to the question put by the Tribunale, Milan, should be that Article 35 of Regulation No 542/69 of the Council of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation No 1079/71 of 25 May 1971, must be interpreted as meaning that unless the guarantor is notified by the customs authorities of the non-discharge of the T 1 declaration within the period of twelve months from the date of registration of the declaration, then, in the absence of any fraud of which he may be guilty, the guarantor is in any event released from his obligations.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Tribunale, Milan, by order of 9 October 1980, hereby rules:

Article 35 of Regulation No 542/69 of the Council of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation No 1079/71 of the Council of 25 May 1971, must be interpreted as meaning that, unless the guarantor has been notified by the customs authorities of the non-discharge of the T 1 declaration within the period of twelve months from the date of registration of the declaration, then, in the absence of any fraud of which he may be guilty, the guarantor is in any event released from his obligations.

Due Chloros Grévisse

Delivered in open court in Luxembourg on 18 February 1982.

For the Registrar

H. A. Rühl

Principal Administrator

O. Due

President of the Second Chamber