JUDGMENT OF THE COURT (Third Chamber)

14 May 2009 *

In Case C-161/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hof van beroep te Antwerpen (Belgium), made by decision of 8 April 2008, received at the Court on 18 April 2008, in the proceedings

Internationaal Verhuis- en Transportbedrijf Jan de Lely BV

v

Belgische Staat,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues, U. Lõhmus and A. Arabadjiev, Judges,

* Language of the case: Dutch.

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Internationaal Verhuis- en Transportsbedrijf Jan de Lely BV, by S. Sablon, advocaat,

— the Belgian Government, by J.-C. Halleux, acting as Agent,

— the Commission of the European Communities, by S. Schønberg and F. Ronkes Agerbeek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2(1) to (3) of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents (OJ 1991 L 148, p. 11) ('the implementing regulation'), read in conjunction with Article 11 of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975 ('the TIR Convention').

2 The application was made in the course of proceedings between Internationaal Verhuis- en Transportbedrijf Jan de Lely BV ('Jan de Lely') and the Belgische Staat concerning the recovery of duties and taxes due as a result of an international transport operation carried out under cover of a TIR carnet.

Legal background

The provisions applicable to TIR transit

3 The Kingdom of Belgium is a party to the TIR Convention, as is also the European Community, which approved it by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1). The Convention entered into force for the Community on 20 June 1983 (OJ 1983 L 31, p. 13).

4 The TIR Convention provides, inter alia, that goods carried under the TIR procedure which it establishes are not to be subjected to the payment or deposit of import or export duties and taxes at customs offices en route.

5 For those privileges to be applied, the TIR Convention requires that the goods be accompanied throughout their transport 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.

6 Article 6(1) of the TIR Convention thus provides:

'Subject to such conditions and guarantees as it shall determine, each Contracting Party may authorise associations to issue TIR Carnets, either directly or through corresponding associations, and to act as guarantors.'

7 The TIR carnet consists of a set of sheets each comprising vouchers No 1 and No 2, with the corresponding counterfoils, on which all the necessary information is set out, one pair of vouchers being used for each territory crossed. At the start of the transport operation, voucher No 1 is left with the customs office of departure. Discharge takes place once voucher No 2 has been returned from the customs office of exit in the same customs territory. This procedure is repeated for each territory crossed, each pair of vouchers in the carnet being used in turn.

8 Article 8 of the TIR Convention provides as follows:

'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.

3. Each Contracting Party shall determine the maximum sum per TIR carnet, which may be claimed from the guaranteeing association on the basis of the provisions of paragraphs 1 and 2 above.

4. The liability of the guaranteeing association to the authorities of the country where the customs office of departure is situated shall commence at the time when the TIR carnet is accepted by the customs office. In the succeeding countries through which goods are transported under the TIR procedure, this liability shall commence at the time when the goods enter these countries …

…

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.'

9 Article 11 of the TIR Convention is worded as follows:

'1. Where a TIR carnet has not been discharged or has been discharged conditionally, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2, from the guaranteeing association unless, within a period of one year from the date of acceptance of the TIR carnet by those authorities, they have notified the association in writing of the non-discharge 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, paragraphs 1 and 2, shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the 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.'

10 Article 19 of the TIR Convention provides:

'The goods and the road vehicle, the combination of vehicles or the container shall be produced with the TIR carnet at the customs office of departure. The customs authorities of the country of departure shall take such measures as are necessary for satisfying themselves as to the accuracy of the goods manifest and either for affixing the customs seals or for checking customs seals affixed under the responsibility of the said customs authorities by duly authorised persons.'

11 Under Article 21 of the TIR Convention:

'At each customs office en route and at customs offices of destination, the road vehicle, the combination of vehicles or the container shall be produced for purposes of control to the customs authorities together with the load and the TIR carnet relating thereto.'

12 Article 37 of the TIR Convention states:

'When it is not possible to establish in which territory an irregularity was committed, it shall be deemed to have been committed in the territory of the Contracting Party where it is detected.'

Community law

13 Article 1 of Council Regulation (EEC) No 719/91 of 21 March 1991 on the use in the Community of TIR carnets and ATA carnets as transit documents (OJ 1991 L 78, p. 6) states:

'Where, in accordance with the provisions in force, goods are transported from one point in the Community to another under the procedure for the international transport of goods under cover of TIR carnets (TIR Convention), the Community shall, for the purposes of the rules governing the use of the TIR carnet for such transport, be considered to form a single territory, as defined by Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community …, as last amended by Regulation (EEC) No 4151/88…'

14 Article 10 of Regulation No 719/91 provides:

'1. This Article shall apply without prejudice to the specific provisions of the TIR and the 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 noted unless, within a period to be determined, proof is furnished, to the satisfaction of the competent authorities, of the regularity of the operation or of the place where the offence or irregularity has actually been committed.

If, in the absence of such proof, the said offence or irregularity remains deemed to have been committed in the Member State in which it was noted, the duties and other charges relating to the goods in dispute shall be levied by that Member State in accordance with Community or national provisions.

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

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

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

15 Article 2 of the implementing regulation provides:

‘1. Where an infringement or an 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 competent 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 Article 10(3) of Regulation (EEC) No 719/91 must 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.

3. Such proof may be furnished to the satisfaction of the competent authorities:

(a) by the presentation of a document certified by the customs authorities establishing that the goods in question have been produced at the office of destination. This document must carry enough information to enable the goods to be identified; or

(b) by the presentation of a customs document issued in a third country showing release for consumption, or a copy or photocopy thereof; such copy or photocopy must be certified as being a true copy, either by the body which endorsed the

original document, or by the authorities of the third country concerned, or by the authorities of one of the Member States. This document must carry enough information to enable the goods in question to be identified; or

(c) for the purposes of the ATA Convention, by the evidence referred to in Article 8 of that Convention.'

16 Regulation No 719/91 and the implementing regulation have been repealed respectively by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and by Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1), which were applicable from 1 January 1994.

17 The first subparagraph of Article 454(3) of Regulation No 2454/93, in its original version, provides:

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

18 On 26 November 1992, a TIR carnet — TABAK 9445594 — was accepted by the kantoor der douane en accijnzen te Antwerpen (Customs and Excise Office, Antwerp) (Belgium) for the transport of cigarettes to Macedonia. The holder of the carnet was Jan de Lely. The guaranteeing association for this transport operation was the Fédération royale belge des transporteurs (Royal Belgian Federation of Transport and Logistic Service Providers) ('Febetra').

19 On or about 27 November 1992, the trailer used for the transport and the consignment of those cigarettes was stolen in Limburg an der Lahn (Germany).

20 Having established that the TIR carnet accepted in Antwerp had not been discharged, the Belgische Staat claimed the import and excise duties relating to that transport operation and issued an enforcement order. In that connection, the non-discharge of the TIR carnet was notified to Febetra by letter of 4 March 1993.

21 However, the holder of the TIR carnet was not informed of its non-discharge until 17 November 1994.

22 Jan de Lely challenged the enforcement order before the Rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp).

23 Before that court, Jan de Lely sought to have that enforcement order set aside.

24 During the proceedings at first instance, Jan de Lely produced, first, a report drawn up on 13 February 1993 by the local police in Kerkrade (Netherlands), from which it is apparent that the theft took place on or about 27 November 1992 in Germany and, second, the decisions delivered by the Arrondissementsrechtbank (District Court) Maastricht in October 1993 sentencing those responsible for the theft.

25 By decision of 17 October 2003, the Rechtbank van eerste aanleg te Antwerpen dismissed Jan de Lely's application.

26 Jan de Lely thereupon brought an appeal against that decision before the Hof van beroep te Antwerpen (Court of Appeal, Antwerp).

27 In those circumstances, the Hof van beroep te Antwerpen decided to stay the proceedings and to refer the following three questions to the Court for a preliminary ruling:

'1. Must Article 2(1) of [the implementing regulation], read in conjunction with Article 11(1) of the [TIR Convention], be interpreted as meaning that the period laid down in Article 11(1) of the TIR Convention applies only for the benefit of the guaranteeing association, but not for that of the carnet holder, and that exceeding the period of one year from the date of acceptance of the TIR carnet in respect of the carnet holder affects entitlement to recover the customs debt or the excise duties and special excise duties and the liability for payment, and that exceeding the period of one year prejudices the right of the competent customs authorities to proceed to recovery of that debt?

2. Must Article 2(2) and (3) of [the implementing regulation], read in conjunction with Article 11(1) and (2) of the [TIR Convention], be interpreted as meaning that

the period laid down therein applies only for the furnishing of proof as to the regularity of the transport operation, but not for the furnishing of proof as to the place where the offence or irregularity was committed?

3. Must Article 2(2) and (3) of [the implementing regulation], read in conjunction with Article 11(1) and (2) of the [TIR Convention], be interpreted as meaning that, in so far as the period laid down therein also applies for the furnishing of proof as to the place where the offence or irregularity was committed, that period is not a strict period and that the carnet holder may still furnish that proof even after that period has expired?'

The questions referred for a preliminary ruling

The first question

28 By its first question, the referring court asks essentially whether Article 2(1) of the implementing regulation, read in conjunction with Article 11(1) of the TIR Convention, must be interpreted as meaning that failure to comply with the period within which the non-discharge of the TIR carnet is to be notified to the carnet holder has the consequence that the competent customs authorities forfeit the right to recover the duties and taxes due in respect of an international transport operation of goods carried out under cover of that carnet.

Observations of the parties

29 The appellant in the main proceedings observes, first of all, that it follows expressly from the combined provisions of Article 2(1) of the implementing regulation and Article 11(1) of the TIR Convention that the competent authorities are required to

notify the TIR carnet holder and the guaranteeing association of the offence or irregularity within one year from the date of acceptance of the TIR carnet. That notification enables the TIR carnet holder to forward the proof which it has in order to determine rapidly the State responsible for recovering the customs duties. The appellant in the main proceedings goes on to argue that failure to act within that period has the consequence that the customs debt may no longer be recovered if the person concerned is able to furnish proof of the place where the offence or irregularity was actually committed. That, it argues, is the case in the main proceedings. Lastly, the appellant in the main proceedings submits that it follows from the provisions of the TIR Convention, in particular Article 8(1) and (7), that payment must first be claimed from the TIR carnet holder before a claim is brought against the guaranteeing association. It would for that reason be illogical if the debt were time-barred as against the guaranteeing association but not as against the carnet holder.

30 The Belgian Government takes the view that the period prescribed in Article 2(1) of the implementing regulation refers to the period of one year from the date of acceptance of the TIR carnet, as laid down in Article 11(1) of the TIR Convention. It submits that the period provided for in Article 2(1) of the implementing regulation should not, however, be regarded as a limitation period. Neither Article 2(1) of the implementing regulation nor the basic regulation, namely Regulation No 719/91, nor other Community provisions contain any indications to that effect. On the contrary, it follows from the actual wording of Article 11(1) of the TIR Convention and from the purpose of that convention that the period provided for is a limitation period, but only with respect to the guaranteeing association. The TIR Convention does not concern the methods for recovery of sums due from the TIR carnet holder.

31 Similarly, the Commission of the European Communities takes the view that the period mentioned in Article 11(1) of the TIR Convention is clearly a limitation period with respect to the guaranteeing association. By contrast, such a conclusion does not apply in so far as the legal relations between the TIR carnet holder and the competent authorities are concerned. It follows from the wording of the provisions in question and from the TIR Convention as a whole that the holder of a TIR carnet is subject to a duty of care with regard to transport carried out under cover of that TIR carnet. Unlike the guaranteeing association, that holder is therefore deemed to be informed of any

offences or irregularities committed during the transport operation and can for that reason foresee that the competent authorities will proceed to recover from it any amounts due.

32 The Commission adds that the period for notification of the TIR carnet holder is intended merely to encourage the competent authorities to initiate in good time the procedure which will result in payment of the customs debt. Therefore, that period safeguards the Community's interest in having own resources made rapidly available. Failure to act within the period for notification of the TIR carnet holder thus has no effect on whether that customs debt is payable. Such an interpretation also corresponds to the position under the legislation currently in force.

The Court's reply

33 It must be observed, first of all, that, where an infringement or an irregularity is found to have been committed in the course of or in connection with a transport operation carried out under cover of a TIR carnet, the period within which the holder of a TIR carnet must be notified of the non-discharge of that carnet is determined by Article 2(1) of the implementing regulation.

34 According to Article 2(1) of that regulation, the competent authorities are to notify the TIR carnet holder and the guaranteeing association within the period prescribed in Article 11(1) of the TIR Convention.

35 Article 11(1) of the TIR Convention provides that the competent authorities do not have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2, of the TIR Convention 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 that association in writing of the non-discharge (see, in that regard, Case C-275/07 *Commission* v *Italy* [2009] ECR I-2005, paragraph 92).

36 Although it is clear that the notification period with respect to the TIR carnet holder is one year from the acceptance of the TIR carnet by those authorities (see Case C-312/04 *Commission* v *Netherlands* [2006] ECR I-9923, paragraph 50), the question remains open, however, as to whether the reference in Article 2(1) of the implementing regulation to the period prescribed in Article 11(1) of the TIR Convention concerns only the actual length of that period or whether, on the other hand, it also relates to the consequences of the expiry of that period, that is to say, failure to comply with that period has the consequence that the debt may no longer be recovered. Article 11(1) of the TIR Convention provides that it is only with respect to the guaranteeing association that a customs debt may no longer be recovered in the case where that period has not been observed.

37 As regards the TIR carnet holder, it must be observed, first, that neither Article 2(1) of the implementing regulation nor any other provision in that regulation sets out the effects of non-compliance with the notification period (see, to that effect, Case C-112/01 *SPKR* [2002] ECR I-10655, paragraph 28).

38 Next, it should be noted that an implementing regulation must be given, if possible, an interpretation that is consistent with the provisions of the basic regulation and of the international agreements concluded by the Community (see, inter alia, Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52; *SPKR*, paragraph 29; and Case C-76/00 P *Petrotub and Republica* [2003] ECR I-79, paragraph 57).

39 Consequently, the effects of failure to comply with the period referred to in Article 2(1) of the implementing regulation must be determined by taking account, first, of Regulation No 719/91 and, second, of the TIR Convention.

40 No provision of Regulation No 719/91 or the TIR Convention suggests that failure to comply with the period for notification of the TIR carnet holder referred to in Article 2(1) of the implementing regulation would lead to the extinction of the debt on its part and would therefore exempt it from the obligation to pay that debt (see, to that effect, *SPKR*, paragraph 30).

41 On the contrary, as the Commission rightly argues, it is clear from the general scheme of the TIR Convention that, with respect to the TIR carnet holder, the notification period, as is clear from the implementing regulation, is not a limitation period.

42 The obligations arising from the TIR Convention with respect to the carnet holder show that the latter is deemed to be informed of any offence or irregularity committed in the course of a transport operation carried out under the TIR regime.

43 Thus, it is clear, in particular from Articles 19 and 21 of the TIR Convention, that the TIR carnet holder must ensure that the road vehicle and goods are presented at the customs office of departure and that the vehicle and load, together with the carnet relating to it, are presented to each customs office on route and at the customs office of destination. It follows that the TIR carnet holder is, unlike the guaranteeing association, deemed to be aware of the progress of the transport operation covered by that carnet.

44 In those circumstances, failure to comply with the one-year period resulting from the implementing regulation has no bearing on whether the duties and taxes relating to the transport operation are actually due and does not affect the right of the competent authorities to recover them from the TIR carnet holder.

45 Contrary to the submissions of the appellant in the main proceedings, the question whether the TIR carnet holder is in a position, in the case where no action has been

taken within the period, to furnish proof of the place where the offence or irregularity was actually committed is irrelevant for the determination of whether that notification period is limitative in nature.

46 Admittedly, in its judgment in *SPKR*, the Court was called on to interpret a provision also concerning the failure to comply with a notification period, namely that laid down in Article 379(1) of Regulation No 2454/93 concerning the external transit procedure. The Court held, in that regard, that non-compliance with the 11-month period laid down by that article did not exonerate the principal from the obligation to pay a customs debt where, in particular, the amount of that debt was notified to it within the limitation period provided for and the person concerned was unable to produce the evidence as to where the offence or irregularity had been committed, as laid down by another article of the same regulation (see *SPKR*, paragraph 32).

47 According to the appellant in the main proceedings, it is clear from that judgment that failure to act within that period does not have the consequence that the customs debt may no longer be recovered if the person concerned was unable to furnish proof of where the offence or irregularity was committed. From this it concludes, *a contrario*, that failure to act within that period has the consequence that that debt may no longer be recovered if the person concerned is in a position to furnish such proof.

48 However, the Court held in the *SPKR* judgment that failure to comply with the notification period concerned in that case did not by itself prevent recovery of the customs debt (see Case C-460/01 *Commission* v *Netherlands* [2005] ECR I-2613, paragraph 60). In paragraph 32 of the *SPKR* judgment the Court noted that, after the expiry of the notification period, the recoverability of that debt remains subject to other conditions such as, among others, the absence of proof of the place where the offence or irregularity was committed.

49 Contrary to the submissions of the appellant in the main proceedings, the Court thus in no way linked expiry of the notification period to the possibility of furnishing proof of the place where the offence or irregularity was committed.

50 Lastly, it must be pointed out that the objective of Article 2(1) of the implementing regulation is to ensure diligent and uniform application of the provisions relating to the recovery of duties and taxes in order to secure rapid and effective availability of the Communities' own resources (see Case C-312/04 *Commission* v *Netherlands*, paragraph 54, and, by analogy, Case C-460/01 *Commission* v *Netherlands*, paragraph 60).

51 In the light of that objective, the one-year period with respect to the TIR carnet holder must therefore, as the Commission observes, be regarded as constituting a procedural rule which is directed only at the administrative authorities with a view to encouraging them to intervene as soon as possible (see, to that effect, *SPKR*, paragraph 34).

52 Having regard to all of the foregoing, the answer to the first question is that Article 2(1) of the implementing regulation, read in conjunction with Article 11(1) of the TIR Convention, must be interpreted as meaning that failure to comply with the period within which the holder of a TIR carnet is to be notified of its non-discharge does not have the consequence that the competent customs authorities forfeit the right to recover the duties and taxes due in respect of the international transport of goods made under cover of that carnet.

The second question

53 By its second question, the referring court asks whether Article 2(2) and (3) of the implementing regulation, read in conjunction with Article 11(1) and (2) of the TIR Convention, must be interpreted as determining only the period within which proof must be furnished as to the regularity of the transport operation, but not the period within which proof must be furnished of the place where the offence or irregularity was committed.

Observations of the parties

54 The appellant in the main proceedings takes the view that the principle of legal certainty precludes Article 2(2) and (3) of the implementing regulation from being interpreted as also laying down the period within which proof must be furnished of the place where an offence or irregularity was committed.

55 For its part, the Belgian Government takes the view that it is for the national court to apply the national provisions governing the production of evidence, as Article 2(2) of the implementing regulation prescribes a period within which proof must be furnished only as regards the regularity of the operation, and not for establishing the place where the offence or irregularity was actually committed. Furthermore, it submits, that interpretation is confirmed, first, by Article 2(3) of the implementing regulation, which provides only for proof of the regularity of the operation carried out under cover of the TIR carnet, and, second, by the entry into force of the first subparagraph of Article 454(3) of Regulation No 2454/93, by which the Community legislature has henceforth expressly provided for a period within which proof must be furnished of the place where the offence or irregularity was committed.

56 The Belgian Government states that, in any event, it is necessary to adopt a flexible approach in order to give the competent authorities time to determine the place where the offence or irregularity actually took place.

57 The Commission also takes the view that it is for the national court, in the absence of a period laid down by Community legislation, to determine, according to the principles of national law governing evidence, whether, in the particular case submitted to it and in the light of all the circumstances, the proof as to the place where the offence or irregularity was committed was provided in time. In its assessment, the national court should take account of the fact, first, that the TIR carnet holder must not be in a position in which it is materially impossible to furnish the abovementioned proof and, second, that the period must not be so long as to make it legally and materially impossible to recover the amounts due in another Member State.

The Court's reply

58 With regard to the period within which proof must be furnished of the place where the offence or irregularity was committed, Article 10(3) of Regulation No 719/91 provides that, where it is not possible to determine in which territory the offence or irregularity was committed, it is to be deemed to have been committed in the Member State where it was noted unless, within a period to be determined, proof is furnished, to the satisfaction of the competent authorities, of the regularity of the operation or of the place where the offence or irregularity was actually committed.

59 Article 10(3) of Regulation No 719/91 was put into effect by Article 2(2) of the implementing regulation, which determines — by reference to Article 11(2) of the TIR Convention — the period within which proof of the regularity of the operation must be furnished. However, Article 2(2) of the implementing regulation is silent as to the period applicable for furnishing proof as to the place where the offence or irregularity was committed.

60 According to its wording, Article 2(2) of the implementing regulation thus applies only to the period within which proof must be furnished of the regularity of the operation, and not to the period within which proof must be furnished as to the place where the offence or irregularity was committed.

61 That finding is, as the Belgian Government observes, confirmed by the wording of Article 2(3), which refers to the furnishing of proof only as regards the regularity of the transport operation.

62 Next, it must be noted that Article 2(2) of the implementing regulation cannot be interpreted as meaning that the period prescribed therein also corresponds to the period within which proof as to the place where the offence or irregularity was committed must be furnished.

63 It is for the legislature to determine the period within which proof must be furnished of the place where the offence or irregularity was committed. In that connection, the period within which that proof must be furnished has subsequently been determined by the first subparagraph of Article 454(3) of Regulation No 2454/93, that is to say, the regulation implementing Regulation No 2913/92. However, Regulation No 2454/93 is not applicable *ratione temporis* in the present case.

64 It is true that, as far as the guaranteeing association is concerned, the Court, in its judgment in Case C-78/01 *BGL* [2003] ECR I-9543, held that the period available to that association to furnish proof of the place where the offence or irregularity was committed is two years, which period starts to run from the date on which the claim for payment was sent to it.

65 However, it should be noted that in the *BGL* judgment the Court gave a ruling in a very specific context, namely that of Articles 454 and 455 of Regulation No 2454/93 as they applied to the facts forming the basis of that case. As indicated in paragraph 63 of the present judgment, those articles expressly provided for a period within which proof had to be furnished of the place where the offence or irregularity was committed, whereas there is no such Community measure in the present case, as those articles are not applicable *ratione temporis*.

66 Thus, as the Belgian Government and the Commission submit, given that there is no Community legislation governing the period within which proof must be furnished of the place where the offence or irregularity was committed, it is for the national court to determine, according to the principles of its national law on evidence, whether, in the specific case before it and in the light of all the circumstances, that proof was furnished within the period prescribed (see, by analogy, Joined Cases C-310/98 and C-406/98 *Met-Trans and Sagpol* [2000] ECR I-1797, paragraphs 29 and 30).

67 However, it is for the Court to indicate certain criteria or principles of Community law which must be complied with when that assessment is being made (see, by way of analogy, Case C-309/06 *Marks & Spencer* [2008] ECR I-2283, paragraph 61).

68 Therefore, the national court must, first of all, take account of the fact that the purpose of the proof of the place where the offence or irregularity is committed is to contest the jurisdiction of the Member State which recovers the duties and taxes while identifying the Member State which will have jurisdiction to recover those duties where the presumption as to the place of the offence or irregularity is considered to be rebutted (*BGL*, paragraph 54).

69 That other Member State must be determined speedily, so that it can take the necessary measures to recover the amounts due. The full effectiveness of Community law would therefore be affected if national law provided for a period which is too long to make it legally and materially possible to recover amounts due in another Member State (*BGL*, paragraph 55).

70 Second, it must be recalled that respect for the right to a fair hearing in any procedure brought against a person which may lead to an act adversely affecting that person in particular a procedure which may lead to the imposition of penalties, constitutes a fundamental principle of Community law. That principle requires that any person on whom a penalty may be imposed must be placed in a position in which he can effectively make known his view of the matters on the basis of which the penalty is imposed and can produce any evidence relevant to his defence (see Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959 ('*Tubemeuse*'), paragraphs 46 and 47; Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40; and *BGL*, paragraph 52).

71 It follows that the national court, when determining the period within which proof is to be furnished of the place where the offence or irregularity was committed, in a case such as that in the main proceedings, must ensure that it is not materially impossible for the TIR carnet holder to furnish that proof (see, to that effect, *BGL*, paragraph 66).

72 In the light of the foregoing, the answer to the second question is that Article 2(2) and (3) of the implementing regulation, read in conjunction with Article 11(1) and (2) of the TIR Convention, must be interpreted as determining only the period within which proof is to be furnished of the regularity of the transport operation, and not the period within which proof must be provided as to the place where the offence or irregularity was committed. It is for the national court to determine, according to the principles of national law on evidence, whether, in the specific case before it and in the light of all the circumstances, that proof was furnished within the period prescribed. However, the national court must determine that period in compliance with Community law and, in particular, must take account of the fact, first, that the period must not be so long as to make it legally and materially impossible to recover the amounts due in another Member State, and, second, that that period must not make it materially impossible for the TIR carnet holder to furnish that proof.

The third question

73 In the light of the answer to the second question, there is no need to reply to the third question.

Costs

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

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

1. **Article 2(1) of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents, read in conjunction with Article 11(1) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as meaning that failure to comply with the period within which the holder of a TIR carnet is to be notified of its non-discharge does not have the consequence that the competent customs authorities forfeit the right to recover the duties and taxes due in respect of the international transport of goods made under cover of that carnet.**

2. **Article 2(2) and (3) of Regulation No 1593/91, read in conjunction with Article 11(1) and (2) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as determining only the period within which proof is to be furnished of the regularity of the transport operation, and not the period within which proof must be provided as to the place where the offence or irregularity was committed. It is for the national court to determine, according to the principles of national law on evidence, whether, in the specific case before it and in the light of all the circumstances, that proof was furnished within the period prescribed. However, the national court must determine that period in compliance with Community law and, in particular, must take account of the fact, first, that the period must not be so long as to make it legally and materially impossible to recover the amounts due in another Member State, and, second, that that period must not make it materially impossible for the TIR carnet holder to furnish that proof.**

[Signatures]