JUDGMENT OF THE COURT (First Chamber)

5 October 2006 *

In Case C-377/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 9 September 2003,

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

applicant,

v

Kingdom of Belgium, represented by E. Dominkovits and also A. Goldman and M. Wimmer, acting as Agents, assisted by B. van de Walle de Ghelcke, avocat,

defendant,

* Language of the case: French.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, J. N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges,

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 4 May 2005,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2006,

gives the following

Judgment

1 By its application, the Commission of the European Communities requests the Court to declare that:

— by failing properly to discharge certain transit documents (TIR carnets), with the result that the own resources arising therefrom were not correctly accounted for or made available to the Commission within the prescribed periods,

— by failing to forward to the Commission all the other undisputed customs duties treated in the same way (entry in the B accounts instead of entry in the A accounts) in respect of the Belgium customs authority's failure to release TIR carnets since 1996,

— by refusing to pay default interest on the amounts owing to the Commission,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1), which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own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), which had identical subject-matter.

Legal framework

The TIR Convention

2 The Customs Convention on the International Transport of Goods under Cover of TIR Carnets ('the TIR Convention') was signed in Geneva (Switzerland) on 14 November 1975. The Kingdom of Belgium is a party to the 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 entered into force for 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 and taxes at customs offices en route.

4 For those facilities to be applied, the TIR Convention requires that the goods be accompanied throughout the transport operation by a standard document, the TIR carnet, which serves to check the regularity of the operation. It also requires that the transport operations be guaranteed by associations approved by the contracting parties, in accordance with the provisions of Article 6 of the Convention.

5 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.'

6 A TIR carnet consists of a set of sheets each comprising vouchers No 1 and No 2 with the corresponding counterfoils, on which appears all the necessary information. One pair of vouchers is 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, using the pairs of vouchers in the one carnet.

7 TIR carnets are printed and distributed by the International Road Transport Union ('IRU'), established in Geneva. The issuance to users is done by the national guaranteeing associations authorised to do so by the administrations of the contracting parties. The TIR carnet is issued by the guaranteeing association of the country of departure, the guarantee provided being covered by the IRU and a pool of insurers established in Switzerland ('the pool of insurers').

8 Article 8 of the TIR Convention provides:

'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 are imported ... .

5. The liability of the guaranteeing association shall cover not only the goods which are enumerated in the TIR carnet but also any goods which, though not enumerated therein, may be contained in the sealed section of the road vehicle or in the sealed container. It shall not extend to any other goods.

6. For the purpose of determining the duties and taxes mentioned in paragraphs 1 and 2 of this Article, the particulars of the goods as entered in the TIR Carnet shall, in the absence of evidence to the contrary, be assumed to be correct.

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 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 legislation

10 Under Article 451 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'), applicable as from 1 January 1994:

'1. Where, in accordance with Articles 91(2)(b) and (c) and 163(2)(b) of the [Community Customs] Code, goods are transported from one point in the customs territory of the Community to another:

— under the procedure for the international transport of goods under cover of TIR carnets (TIR Convention),

— under cover of ATA carnets (ATA Convention),

the customs territory of the Community shall, for the purposes of the rules governing the use of the TIR or ATA carnet for such transport, be considered to form a single territory.

...'

11 According to Article 454 of the implementing regulation:

'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.

...'

12 Article 455(1) and (2) of the implementing regulation provides:

'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.'

13 From 1 January 1992 to 31 December 1993, the following were applicable: Article 10(1) and (2) 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), the wording of which is, essentially, identical to that of Article 454(1) and (2) of the implementing regulation, and Article 2(1) and (2) of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation No 719/91 (OJ 1991 L 148, p. 11), drafted in the same terms as Article 455(1) and (2) of the implementing regulation.

14 Article 457 of the implementing regulation provides:

'For the purposes of Article 8(4) of the TIR Convention, where a consignment enters the customs territory of the Community or starts from a customs office of departure

situated in the customs territory of the Community, the guaranteeing association shall become or shall be responsible to the customs authorities of each Member State the territory of which the TIR consignment enters, up to the point at which it leaves the customs territory of the Community or up to the customs office of destination in that territory.'

The system of the Communities' own resources

15 Article 2 of Regulation No 1552/89, which features in Title I, entitled 'General provisions', states:

'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.

...'

16 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), the content of which was reproduced in Article 2 of Regulation No 1150/2000, which provides:

'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 ...'

17 Article 6(1) and (2)(a) and (b) of Regulation No 1552/89, set out under Title II, entitled 'Accounts for own resources' (now Article 6(1) and (3)(a) and (b) of Regulation No 1150/2000), provides:

'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.

(b) Established entitlements not entered in the accounts referred to in point (a), because they have not yet been recovered and no security has been provided shall be shown in separate accounts [currently referred to as "B accounts"] within the period laid down in point (a). Member States may adopt this procedure where established entitlements for which security has been provided have been challenged and might, upon settlement of the disputes which have arisen, be subject to change.'

18 Article 9 of Regulations No 1552/89 and No 1150/2000, set out under Title III, entitled 'Making available own resources', reads as follows:

'1. 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.

This account shall be kept free of charge.

2. The amounts credited shall be converted by the Commission and entered in its accounts ...'

19 According to Article 10(1) of Regulations No 1552/89 and No 1150/2000, included in the same Title III:

'After deduction of 10% by way of collection costs in accordance with Article 2(3) of [Decisions 88/376 and 94/728], 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.

However, for entitlements shown in [the B] accounts under [Article 6(2)(b) and Article 6(3)(b), respectively], the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.'

20 Under Article 11 of Regulations No 1552/89 and No 1150/2000, also set out under Title III:

'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.'

21 Article 17(1) and (2) of those regulations, under Title VII, entitled 'Provisions concerning inspection measures', provides:

'1. Member States shall take all requisite measures to ensure that the amount 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

22 The Commission's agents carried out an inspection of traditional own resources in Belgium from 18 to 22 November 1996, and from 1 to 5 December 1997. The relevant inspection reports indicate that in connection with the customs transit system certain irregularities had been found in the establishment, accounting and making available of own resources, and also in the application of the TIR procedure. Those irregularities had arisen because of default or delays in payment of own resources to the Commission through non-compliance with the accounting rules laid down in Article 6(2) of Regulation No 1552/89.

23 With respect to the 1996 inspection, by letter of 12 May 1999 the Commission again notified the Belgian authorities of the irregularities referred to in the inspection report. As to the 1997 inspection, the Commission found that the Belgian authorities had not made any accounting entries for the files referred to in tables 1 and 2 of the inspection report with respect to the TIR carnets which had not been discharged for the amounts established, which were covered by security and were uncontested. The amounts in question were entered in the B accounts following the Commission's inspection, on the ground that the guaranteeing association had challenged the orders for payment made against it.

24 Since the Commission took the view that those debts had not been challenged by the debtor, it requested, by letter of 2 February 2000, that the abovementioned amounts be entered in the A accounts. It also called on the Belgian authorities to provide, for the period from 1 January 1995 to 1 December 1997, a statement of all undischarged TIR carnets with indications as to their establishment and entry in the accounts. They were also asked to enter forthwith in the A accounts any amounts which were secured and uncontested.

25 In their reply of 12 February 2001, relating to the 1996 inspection, and in that of 31 May 2000, concerning the 1997 inspection, the Belgian authorities challenged the Commission's complaints.

26 Unconvinced by the arguments put forward by the Kingdom of Belgium, on 23 October 2001 the Commission sent it a letter of formal notice in which it reiterated its position and called on the Belgian authorities to submit their observations on the matter. The Belgian authorities replied by letter of 17 January 2002, again challenging the Commission's line of argument.

27 Finding that reply to be unsatisfactory, on 26 June 2002 the Commission sent a reasoned opinion to the Kingdom of Belgium. The Kingdom of Belgium was invited to take the measures necessary to comply with the reasoned opinion within two months of receipt thereof. The Belgian authorities replied by letter of 6 September 2002, in which they maintained their position.

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

Admissibility of the action

Arguments of the parties

29 The Kingdom of Belgium claims, first, that the Commission may not, in the present proceedings, rely upon pleas in law alleging infringement of the provisions of Regulation No 1150/2000, themselves based on Regulation No 1552/89, as amended by Regulation No 1355/96, applicable since 14 July 1996. Such pleas are inadmissible because they are not based on the provisions of Regulation No 1552/89, in its original version, which were applicable to the facts of this case, as the requests for payment relating to all of the TIR carnets at issue here were issued before 14 July 1996.

30 Second, the application has become moot, and therefore inadmissible, in so far as it relates to late entry of amounts in the B accounts. In fact, this was done immediately when the Commission notified its inspection report, that is, before the reasoned opinion was sent. Failure to make such an entry can, therefore, no longer be the subject-matter of an action for failure to fulfil obligations.

31 As to the first plea of inadmissibility, the Commission contends that the conditions for the creation of entitlement for the Communities to a customs debt remained identical before and after the codification effected by Regulation No 1150/2000; the provisions of Regulation No 1152/89, as amended by Regulation No 1355/96, do not affect the provisions at issue in the present dispute. This view is, moreover, shared by the Kingdom of Belgium, which acknowledges that Article 2 of Regulation No 1150/2000 provides for four conditions which are identical to those provided for in Article 2 of Regulation No 1552/89. Accordingly, the first plea of inadmissibility is unfounded.

32 As to the alleged partial inadmissibility of the action in so far as it concerns late entry of the amounts in the B accounts, the Commission observes that for the majority of the 33 cases referred to, the Belgian authorities had not entered anything either in the B accounts or, a fortiori, in the A accounts, when the inspection was carried out in November 1996. The disputed amounts appeared in the B accounts only in December 1997. Since the Kingdom of Belgium refuses to communicate the other, similar files, the possibility also cannot be excluded that there are other cases where no accounting entry was made. Moreover, the mistaken entry in the B accounts, instead of an entry in the A accounts, has the same effect as a late entry, with the result that default interest is owing.

Findings of the Court

33 Regarding the first plea of inadmissibility, the Court notes that it is settled case-law that, in the context of proceedings under Article 226 EC, the existence of a failure to fulfil obligations must be assessed in the light of the Community legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion (see, inter alia, Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 42, and Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 32).

34 Although the claims as stated in the application cannot in principle be extended beyond the failures to fulfil obligations alleged in the operative part of the reasoned opinion and in the letter of formal notice, it is none the less the case that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the initial version of a Community act, subsequently amended or repealed, and which were maintained in force under the new provisions. Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the initial version of the act in question, as otherwise it would constitute a breach of the essential formal requirements of the infringement procedure (see, to that effect, Case C-363/00 *Commission* v *Italy* [2003] ECR I-5767, paragraph 22).

35 Accordingly, the Commission's action for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Regulation No 1150/2000 is admissible.

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

37 Therefore, if the Commission's plea, relating to incorrect accounting entries of the customs debt and a delay in making available the corresponding own resources, is well founded, the possibility cannot be excluded that not all of the consequences of the infringement had been brought to an end when the period prescribed in the reasoned opinion expired, particularly the payment of default interest pursuant to Regulation No 1150/2000. Consequently, if the alleged infringement does exist, there is still an interest in having that fact declared in a judgment (see, to that effect, Case C-104/02 *Commission* v *Germany* [2005] ECR I-2689, paragraphs 45 and 46).

38 Furthermore, as pointed out by the Court in paragraph 47 of its judgment in Case C-363/00 *Commission* v *Italy*, failure by a Member State to fulfil an obligation imposed by a rule of Community law is sufficient to constitute a breach of Treaty obligations and the fact that the failure had no adverse effects is irrelevant, as is the view that it gave the Member State concerned no advantage.

39 Accordingly, this plea must also be rejected.

Substance

The first plea: irregularities affecting the treatment of certain TIR carnets, with the result that own resources were not dealt with correctly in the accounts or paid within the time-limits

Arguments of the parties

40 The Commission claims that, when the inspections were carried out in Belgium in November 1996 and December 1997, the Commission's agents found irregularities in the establishment, accounting and making available of own resources, and also in the application of the TIR Community transit procedure, in relation to operations which had been accepted by the Belgian customs offices in the period from 1992 to 1994.

41 As to the irregularities found in 1996, out of 33 undischarged TIR operations, in 20 cases the Belgian authorities entered the entitlements thus established in the B accounts only one year after the inspection carried out by the Commission's agents. In two other cases, the customs debt was time-barred because the customs authorities had not made in good time the necessary notifications, namely the notification of the non-discharge of the TIR carnet to the guaranteeing association and the claim for payment to the debtor and/or the guaranteeing association. Regarding those two cases, the payment of a certain amount, together with default interest, to the Commission's account had been accepted by the Belgian authorities but had not been effected.

42 In other cases, whereas the TIR carnets, accepted in 1993, were covered by security, the Belgian authorities entered the corresponding amounts in the A accounts after expiry of the period laid down in Article 6(2)(a) of Regulation No 1552/89 (now Article 6(3)(a) of Regulation No 1150/2000), after having obtained payment of those amounts by the guaranteeing association in August 1999. Under Article 455 of the implementing regulation and Article 11 de the TIR Convention, the Belgian authorities should have established the own resources in question at the latest 15 months after acceptance of the TIR carnets and entered them in the A accounts at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were established.

43 Lastly, as regards a number of TIR carnets for a total amount exceeding BEF 156 million, also secured and not challenged by the debtor, the Belgian authorities did not enter the relevant amounts in the A accounts because, following the introduction of restrictive measures against the guaranteeing association, the latter had challenged those measures. At that time, the Belgian authorities were asked to modify generally their position concerning entry in the accounts of the TIR carnets which had not been discharged, in accordance with the terms referred to in paragraph 42 of this judgment, and to enter forthwith in the A accounts any amounts which were secured and uncontested, within the time-limits laid down in the Community legislation.

44 At the time of the 1997 inspection, the Commission's agents found that the Belgian authorities had not made any accounting entries for the files referred to in tables 1 and 2 of the appurtenant report with respect to the undischarged TIR carnets, even though the amounts in question were established, covered by security and uncontested by the debtor. Subsequently to that inspection, the Belgian authorities did enter those amounts in the B accounts, referring to the action brought by the guaranteeing association against the restrictions directed against it.

45 In its reply, the Commission states that, in the present proceedings, it is criticising the Kingdom of Belgium for having established the entitlements only one year after the inspections carried out by the Commission, although the Belgian authorities were aware of the irregularities long before those inspections; for having failed to enter the amounts in question in the A accounts, even though they were secured and uncontested, before the expiry of the period laid down in Article 6(3)(a) of Regulation No 1150/2000; for having failed to pay those amounts to the Commission in accordance with Articles 9 and 10(1) of Regulation No 1150/2000; for having failed to pay the relevant amount in two cases of infringement recognised by those authorities; and for having failed to communicate the data relating to other, similar files.

46 The Commission rejects the explanations put forward by the Belgian Government to justify the irregularities and delays in making entries noted during the two inspections in question. Those delays greatly exceeded the time-limits laid down in Article 6(3) of Regulation No 1150/2000, both for entry in the A accounts and for entry in the B accounts. The delay in making entries in the A accounts led to a delay in making available the own resources in question, thereby triggering default interest.

47 The Belgian authorities' line of argument, to the effect that the absence of a time-limit under both Community and Belgian law within which the challenge to the customs debt must be lodged justifies the possibility of being able to lodge a challenge after expiry of the period laid down by Regulation No 1150/2000 for entry

in the accounts of that debt, cannot be accepted. Such reasoning would render nugatory the effect of Article 6(3) of that regulation, the purpose of which is to ensure the smooth functioning of the Communities' own resources system. According to the Commission, the automatic procedure provided for in Article 11 of that regulation, relating to the payment of interest on arrears, applies once the Member State concerned is late in making the entry in the accounts.

48 Moreover, the mere failure to pay the entitlements owing cannot be interpreted as a 'challenge' within the meaning of Article 6(3)(b) of Regulation No 1150/2000, since the debtor may have omitted to pay the debt for some other reason such as error or oversight. Nor have the Belgian authorities provided any evidence showing that the established entitlements were challenged in such a manner as to result in the debt's being annulled.

49 As to whether the customs duties which were inspected in 1997 were covered by an overall guarantee, the Commission contends that the guarantees are at least partly sufficient to cover the debts in question. No distinction is made according to the quality of the guarantee, with the result that the amounts concerned and covered by a guarantee should also have been entered in the A accounts and paid to the Commission within the prescribed periods.

50 The Commission also refuses to accept that a mere challenge by the guaranteeing associations may justify the entry of the entitlements in question in the B accounts. Regarding the TIR files referred to in the report on the November 1996 inspection, the conditions laid down in Article 6(3)(b) of Regulation No 1150/2000 were not fulfilled in respect of either the TIR carnets for which the Belgian authorities in the meantime paid the entitlements or for those which are still entered in the B accounts. The same is true of a certain number of the TIR files referred to in the report on the December 1997 inspection. In all those cases, under Article 455 of the

implementing regulation and Article 11 of the TIR Convention, the Belgian authorities should have established the own resources at issue at the latest 15 months (12 + 3) after acceptance of the TIR carnets concerned and entered them in the A accounts within the time-limits because they were amounts which were covered by a guarantee and uncontested by the debtor.

51 According to the Commission, the guaranteeing association's challenge related primarily to acceptance by it of the debts, not to the validity of those debts. In any event, such a challenge is not decisive in the present case, because it was lodged after the date by which the entitlements in question should have been entered in the A accounts and made available to the Commission.

52 The Belgian Government merely refers to hypothetical situations, without stating the reason or reasons for the challenge of the claims by the guaranteeing association, when it is the Belgian authorities which have the burden of proving those reasons. According to the Commission's findings, in certain cases, the association challenged those claims only by bringing an action against a summons issued months, even as much as one year, after the claim for payment had been sent. The Commission observes that the amounts covered by the TIR guarantee which were not challenged should have been entered in the A accounts and therefore paid to the Commission well before the cancellation of the reinsurance contract by the pool of insurers.

53 As to the claims from the files examined during the 1996 inspection, the Commission submits that it is the date on which the TIR procedure commenced and from which the guarantee was provided that is decisive. Since those files had not been challenged by the date when those entitlements should have been made available to the Commission, those amounts should have been entered in the A accounts. The fact that those files were included in the arbitration proceedings opened by the IRU against the pool of insurers does not alter in any way the fact that

those claims were not challenged at the time they fell due. As to the claims from the files examined during the 1997 inspection, the cancellation of the insurance contract by the pool of insurers may not be relied upon because a guarantee had been provided under the TIR procedure for all of the files in question and the cancellation of the reinsurance contract did not affect that guarantee.

54 Regulation No 1150/2000 does not draw a distinction between 'genuine' and 'non-genuine' security, or between 'personal' or 'real' security. The Member States are free to determine which type of security they require, with the only condition being that that guarantee must be effective and adequate, failing which it is the Member State which must suffer the consequences and not the Community.

55 The Commission states that the entry of own resources for the purposes of Article 10 of Regulation No 1150/2000 is inextricably linked to their establishment, which does not presuppose that the amounts concerned have been collected, but simply that they have been taken into account. There would be an obligation to make an accounting entry of the amounts even if the Member States have not collected the funds in question.

56 Lastly the Commission states that the Belgian authorities appear to allege that the 72 files in question were fraud cases. However, it has information pertaining only to the 33 cases referred to in the report on the inspection for 1996. For all the other similar cases, it asked the Belgian authorities to make the amounts in question available. The Belgian authorities failed to supply all the information required when the inspections were carried out and thus failed to fulfil their obligation of genuine cooperation.

57 The Belgian authorities also stated that they did not wish to jeopardise the criminal investigation into fraudsters by bringing an action for recovery. Those authorities are thus attempting to justify, on the basis of Article 11(1) of the TIR Convention,

that an extended period of two years for notifying the non-discharge should apply for all the files. In fact, for 31 of the 33 files inspected, the Belgian authorities notified the guaranteeing association a much shorter time, ranging from one day to a few months. Moreover, the alleged wish not to compromise a criminal investigation does not justify a prolonged lack of action on the part of the Belgian authorities to recover from the holder or the guaranteeing association. The two-year period referred to by the Belgian authorities favours only the guaranteeing association, which may prove that the TIR operation was carried out properly within such an extended period, whereas a one-year period applies in respect of the debtor.

58 According to the Kingdom of Belgium, the present proceedings have their origin in the structural crisis experienced by the transport system under cover of TIR carnets in the years 1995 to 1997, due to the fact that at the end of 1994 the pool of insurers had cancelled its insurance contract with the IRU and the guaranteeing associations, and had refused since then to pay customs debts which arose prior to 1994. All those files were included in the arbitration proceedings opened by the IRU against the pool of insurers in order to obtain, through judicial proceedings, payment of the amounts owing. The arbitration panel ruled in favour of the pool of insurers in approximately one-third of the 3000 cases, and that pool is no longer liable for payment of the customs debts which arose prior to the end of 1994. The IRU has appealed.

59 As to the undischarged TIR carnets accepted by the Belgian customs offices, it has not been possible to obtain voluntary payment from the debtor or from the Belgian guaranteeing association, since the latter has objected to all claims arising from a TIR carnet. As that situation may affect the value of the claim, an entry of the disputed amounts in the B accounts complies with Community legislation.

60 Apart from two TIR carnets in respect of which the Kingdom of Belgium has acknowledged that the claim for payment was late, the Commission has not alleged

that the establishment of the claim was not carried out in accordance with Article 2 of Regulation No 1552/89. The conditions necessary for that establishment are fulfilled only as from the date on which the guaranteeing association is requested to pay. Unlike the Commission, the Kingdom of Belgium contends that Article 11(1) of the TIR Convention, read together with Article 11(2), states clearly that the Member State must send its claim for payment to the guaranteeing association at the latest three years (1 + 2) after acceptance of the TIR carnet, unless, as in the present case, the discharge has been obtained in a fraudulent or improper manner, in which case the maximum period is four years (2 + 2). For all of the TIR carnets at issue here, which were discharged in a fraudulent or improper manner, the establishment of the claim, which was carried out within the legal time-limit following lengthy investigations to determine the amount and the identity of the debtors, which were necessary for the establishment, took place at a time when the former pool of insurers was no longer fulfilling its obligations.

61 The Belgian Government also states that it is not sufficient that any type of security be established, irrespective of its quality, for the purposes of an entry in the A accounts, and that an entry in the B accounts is possible even when the holder of the TIR carnet does not formally challenge the customs debt.

62 Since the purpose of Article 6(2)(b) of Regulation No 1552/89 is to avoid a situation in which the Member State itself has to suffer the consequences of unrecovered entitlements, security for the purposes of that provision must be enforceable within the period referred to therein. In any event, the claim for recovery was sent to the guaranteeing association before July 1996 and, for all the TIR carnets at issue, the period for the entry of the amount of the customs debt in the own resources accounts expired as from the time the pool of insurers had already cancelled the reinsurance contract. Accordingly, the entry of those amounts in the B accounts was duly justified until the time of actual recovery, where applicable, of the security.

63 In any event, the distinction drawn by the Commission for the entry in the B accounts, depending on whether the claim for payment is challenged by the person

directly liable or by the guaranteeing association, is unfounded. Moreover, the Commission's contention that the establishment must be made in writing within the period prescribed for entry of own resources in the accounts (first day after the 19th day of the second month following establishment) disregards Community law, especially Regulation No 1552/89 and the TIR Convention.

Findings of the Court

64 As pointed out by the Advocate General in points 49 to 51 of her Opinion, the first plea in the application comprises a number of parts. First of all, it asks for a declaration that the Belgian authorities omitted to make the prescribed notifications concerning the customs debts relating to two of the TIR carnets covered by the present proceedings (see paragraph 41 of this judgment) and, therefore, a declaration concerning the uncontested failure by the Kingdom of Belgium to fulfil its obligations under Regulation No 1150/2000. Second, the Court is being asked to rule that, in the light of the results of the two inspections of own resources carried out by the Commission concerning other transport operations of goods under cover of TIR carnets accepted in the period 1992 to 1994, the Kingdom of Belgium, at least in some cases, first, made late accounting entries of the own resources resulting from the TIR carnets which had not been discharged properly and, second, entered those own resources in the B accounts instead of in the A accounts, with the result that the own resources were not made available to the Commission or were made available late. It is common ground in this connection that the amounts of the claims relating to the TIR carnets accepted in the period 1992 to 1994, which are covered by the present action, were entered in the B accounts one year after the inspections carried out in 1996 and 1997.

65 The Court notes at the outset that, since the Belgian Government acknowledges that it did not, within the prescribed time-limits, make the notifications required by the customs legislation concerning the debts relating to two of the TIR carnets covered

by the present proceedings, which led to the customs debt's being time-barred and, therefore, non-compliance with the obligations under Regulation No 1150/2000, that part of the first plea is well founded.

— The allegedly late accounting entries of the entitlements

66 Under Article 454(2) of the implementing regulation, where it is found that, in the course of or in connection with a transport operation carried out under cover of a TIR carnet, an offence or irregularity has been committed in a particular Member State, the recovery of duties and other charges which may be payable is to be effected by that Member State in accordance with Community or national provisions, without prejudice to the institution of criminal proceedings. In that case, under Article 455(1) of that regulation, the customs authorities are to notify the holder of the TIR carnet and the guaranteeing association within the period prescribed in Article 11(1) of the TIR Convention, that is, within one year of the date of acceptance of the TIR carnet by those authorities in the event of non-discharge. That period is extended to two years in the event of a discharge obtained in a fraudulent or improper manner.

67 Under Article 11(2) of the TIR Convention, the claim for payment is to be made to the guaranteeing association at the earliest three months after the notification of the non-discharge or discharge obtained in an improper or fraudulent manner and at the latest not more than two years after that date, save in cases which, during the abovementioned period of two years, become the subject of legal proceedings, in which event any claim for payment is to be made within one year of the date on which the decision of the court becomes enforceable.

68 It is apparent from a combined reading of those provisions that, in the event of non-discharge, 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 TIR carnet, that period being extended to four years in the event of a discharge obtained in a fraudulent manner.

69 It must be borne in mind, however, that since the objective of Article 455(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 (see, by analogy, inter alia Case C-460/01 *Commission* v *Netherlands* [2005] ECR I-2613, paragraphs 60, 63, 69 and 70), the notification of the offence or the irregularity must, in any event, be lodged as quickly as possible, namely as soon as the customs authorities are aware of that offence or irregularity, such as in this case where they were aware in at least 31 cases, well before expiry of the maximum periods of one year and, in the case of fraud, two years, as referred to in Article 11(1) of the TIR Convention.

70 For the same reasons, the claim for payment for the purposes of Article 11(2) of the TIR Convention must be sent as soon as the customs authorities are able to send it, such as in this case where that was possible in most of the cases relating to the 1996 inspection, about which the Commission had relevant information before the expiry of the period of two years from the notification of the offence or irregularity to the parties concerned, that is, from February 1995.

71 Since the Commission is not seeking a declaration of failure to fulfil obligations under the provisions of the TIR Convention and those of the implementing regulation, but rather infringement of Article 6 of Regulation No 1150/2000 concerning accounts for own resources, it is appropriate to examine the issue of whether, in entering the disputed amounts only one year after the inspections carried out by the Commission in 1996 and 1997, the Kingdom of Belgium failed to comply with that provision.

72 Article 6(1) of Regulation No 1150/2000 states that Member States are to keep accounts for own resources with the Treasury or with the body appointed by them. Under Article 6(3)(a) and (b), Member States are bound to enter entitlements 'established in accordance with Article 2' 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, either in the A accounts or, subject to certain conditions, in the B accounts.

73 According to Article 2(1) and (2) of Regulation No 1150/2000, the Community's entitlement to own resources is 'established' as soon as the conditions provided for by the customs legislation have been met concerning the 'entry' of the entitlement in the accounts and the 'notification' of the debtor. The date to be borne in mind for the establishment referred to in Article 2(1) is the date of the 'entry' provided for by the customs legislation.

74 Regarding the 'entry' and the 'notification' of the debtor, Article 2 of Regulation No 1150/2000 refers to the customs legislation, namely the implementing regulation, the TIR Convention and 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 claim for payment under Article 11(2) of the TIR Convention must therefore also be regarded as being a 'notification' within the meaning of Article 2 of Regulation No 1150/2000.

75 As noted by the Court in paragraph 59 of Case C-392/02 *Commission* v *Denmark* [2005] ECR I-9811, it follows from Articles 217, 218 and 221 of the Customs Code that those conditions are met when the customs authorities have the necessary particulars and, therefore, are in a position to calculate the amount of duties and determine the debtor (see, to that effect, Case C-460/01 *Commission* v *Netherlands*, paragraph 71, and Case C-104/02 *Commission* v *Germany*, paragraph 80). Member States may not dispense with determining claims, even where these are disputed; otherwise, it would have to be accepted that the financial equilibrium of the Communities may be disrupted by the conduct of a Member State (Case C-392/02 *Commission* v *Denmark*, paragraph 60).

76 Consequently, the Member States are required to establish the Communities' entitlement to own resources as soon as their customs authorities are in a position to calculate the amount of duties arising from a customs debt and determine the debtor (Case C-392/02 *Commission* v *Denmark*, paragraph 61) and, therefore, to enter those entitlements in the accounts in accordance with Article 6 of Regulation No 1150/2000.

77 In the present case, it is common ground that the Belgian authorities made the accounting entries only one year after the inspections carried out by the Commission in 1996 and 1997 and that the relevant claims for payment, the dispatch of which assumes that the Belgian customs authorities were in a position to calculate the amount of duties arising from that debt and determine the debtor, were sent well before those inspections. In those circumstances, the accounting entries, which should have been made within the time-limit laid down in Article 6(3) of Regulation No 1150/2000, in this case as from the time at which the claims for payment were sent, clearly were made late.

— The allegedly incorrect entry of the entitlements in the B accounts

78 As noted by the Court in paragraph 66 of the judgment in Case C-392/02 *Commission* v *Denmark*, under Article 17(1) and (2) of Regulation No 1150/2000, Member States are required to take all requisite measures to ensure that the amounts corresponding to the duties established under Article 2 thereof are made available to the Commission. Member States are to be free from that obligation solely if, for reasons of *force majeure*, those amounts could not be collected or if it appears that recovery is impossible in the long term for reasons which cannot be attributed to them.

79 In regard to accounts for own resources, Article 6(3)(a) and (b) of Regulation No 1150/2000 stipulates that the Member States are obliged to include in the A

accounts the entitlements established in accordance with Article 2 of the same regulation, 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, without prejudice to the option of entering in the B accounts, within the same time-limit, the established entitlements which have 'not yet been recovered' and for which 'no security has been provided', and also entitlements established and 'for which security has been provided [and] have been challenged and might, upon settlement of the disputes which have arisen, be subject to change'.

80 For the purpose of making own resources available, Article 9(1) of Regulation No 1150/2000 states that each Member State is to credit own resources to the account opened in the name of the Commission in accordance with the procedure laid down in Article 10 thereof. Under Article 10(1), after deduction of collection costs, entry of the own resources is to 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 of that regulation, except for entitlements shown in the B accounts under Article 6(3)(b) of that regulation, for which of the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were 'recovered'.

81 In this regard, the Belgian Government first of all claims that, as the entitlements covered by the present proceedings were 'challenged' within the meaning of Article 6(3)(b) of Regulation No 1150/2000, the amounts at issue could validly be entered in the B accounts.

82 Indeed, as the Belgian Government correctly submits, the guaranteeing associations, which, under Article 8(1) of the TIR Convention, are jointly and severally liable with the holder of the TIR carnet to pay the customs duties which may be due, may, like the holder, bring a challenge against the entitlements themselves (see, to that effect, concerning proof of the place where the irregularity occurred, Case C-78/01 *BGL* [2003] ECR I-9543, paragraphs 50 to 53). The Commission contends, however, that

the disputes referred to by the Belgian Government concern the enforcement of the security and not the existence or amount of the claims in dispute. The Belgian Government has, moreover, failed to demonstrate that the conditions laid down in Article 6(3)(b) of Regulation No 1150/2000 are met in the present case, namely that the entitlements at issue in the present proceedings were challenged by those associations within the prescribed periods and might, upon settlement of the disputes which have arisen, be subject to change.

83 The Belgian Government claims, second, that the unrecovered entitlements at issue could legitimately be entered in the B accounts because they were not effectively covered by security within the meaning of Article 6(3)(b) of Regulation No 1150/2000. It maintains that, due to the collapse, as from 1993, of the security system on which the system of transit under cover of a TIR carnet is based, following on the refusal by the pool of insurers to reimburse the Belgian guaranteeing associations, that security was not enforceable due to insolvency of the guarantor, so that the entitlements in question had to be entered in the B accounts as unsecured claims.

84 The Court notes that the guaranteeing association's rights and obligations under the TIR Convention are governed simultaneously by that convention, Community law and the security agreement, subject to Belgian law, which it concluded with the Kingdom of Belgium (see, to that effect, Case C-78/01 *BGL*, paragraph 45).

85 Under Article 193 of the Customs Code, the security requested to ensure payment of a customs debt may be provided by a guarantor and, under Article 195 of the same code, the guarantor is to undertake in writing to pay jointly and severally with the debtor the secured amount of a customs debt which falls to be paid.

86 With more specific reference to the transport of goods under cover of TIR carnets, referred to in Article 91(2)(b) of the Customs Code, Article 8(1) of the TIR Convention indicates that, through the security agreement, the guaranteeing associations likewise undertake to pay the customs duties owed by the debtor and are jointly and severally liable with those the debtors for the payment of those amounts, even though, under Article 8(7) thereof, the competent authorities are, so far as possible, to require payment from the person directly liable before making a claim against the guaranteeing association.

87 In those circumstances, it cannot be disputed that the security provided by the guaranteeing associations in the context of a TIR operation comes within the concept of security within the meaning of Article 6(3)(b) of Regulation No 1150/2000.

88 However, under Article 8(3) of the TIR Convention, it is for the Member States to determine the maximum sum per TIR carnet which may be claimed from the guaranteeing association.

89 Accordingly, as the Commission, moreover, acknowledges, the established entitlements relating to TIR operations must in principle be entered in the A accounts and made available to the Commission in accordance with Article 10 of Regulation No 1150/2000 up to the ceiling agreed upon for the TIR system, even where, as may be the case, the customs debt exceeds that amount.

90 That interpretation is in keeping with the objectives pursued by the establishment of the B accounts, which is intended, as indicated by recital (11) in the preamble to Regulation No 1150/2000, not only to enable the Commission to monitor more

closely Member States' action to recover own resources, but also to take account of the financial risk for them.

91 The Belgian Government's line of argument, to the effect that the crisis in the TIR system which led to the collapse of the security system on which the TIR system was based meant that, as from 1993, the disputed claims were in reality no longer secured and that the corresponding amounts therefore had to be entered in the B accounts, cannot be accepted.

92 Without its being necessary to examine whether the security system established by the TIR Convention was no longer functioning properly at the material time, it appears that, as the Commission has contended, the unilateral decision by the Belgian authorities to enter those entitlements in the B accounts infringes the obligation which Member States have under Article 17(1) of Regulation No 1150/2000 to take all requisite measures to ensure that the own resources established in accordance with the conditions laid down in that regulation are made available to the Commission.

93 Article 17(1) of Regulation No 1150/2000 is a specific expression of the obligation of genuine cooperation under Article 10 EC, which requires Member States, when they encounter problems in the application of Community law, to submit those problems to the Commission (see, by analogy, inter alia Case C-499/99 *Commission* v *Spain* [2002] ECR I-6031, paragraph 24) and, in addition, does not allow them to introduce national safeguard measures in response to objections, reservations or conditions which the Commission might put forward (see, by analogy, Case 804/79 *Commission* v *United Kingdom* [1981] ECR 1045, paragraph 32). In the present case, it is common ground that the Kingdom of Belgium acted unilaterally, without submitting the problems encountered in the application of Community law to the Commission, even after the latter had expressed objections.

94 That obligation is all the more important because, as the Court noted in paragraph 54 of its judgment in Case C-392/02 *Commission* v *Denmark*, shortfalls in revenues of own resources must be offset either by another own resource or by an adjustment of expenditure.

95 Nor may the Belgian Government rely on there being a case of *force majeure* within the meaning of Article 17(2) of Regulation No 1150/2000. It is settled case-law that the concept of *force majeure* must be understood in the sense of abnormal and unforeseeable circumstances, outside the control of the party relying thereupon, the consequences of which, in spite of the exercise of all due care, could not have been avoided (see, inter alia, Case 145/85 *Denkavit* [1987] ECR 565, paragraph 11). By its unilateral decision to enter the entitlements in dispute in the B accounts, without submitting the problem to the Commission and despite the latter's objections, the Kingdom of Belgium clearly did not exercise all due care to avoid the consequences alleged.

96 The late and incorrect entry of the entitlements in the B accounts resulted in late entry of the relevant own resources in the Commission's account; such entry must, under Articles 9 and 10 of Regulation No 1150/2000, take place within the same period as that laid down for entering those entitlements in the A accounts pursuant to Article 6(3)(a) of that regulation.

97 In the light of all the above considerations, the different parts of the first plea are well founded.

The second plea: the failure to notify the Commission of other amounts entered incorrectly in the B accounts

98 The Court finds, first, that neither in the application nor in the reply does the Commission elaborate on this head of claim and, second, that the form of order sought by the Commission seeks a declaration of failure to fulfil obligations only in respect of Articles 6, 9, 10 and 11 of Regulation No 1150/2000.

99 In those circumstances, the second plea must be rejected.

The third plea: the failure to pay default interest on the amounts owing to the Commission

Arguments of the parties

100 The Commission claims that, since the Belgian authorities have not yet made available a large portion of the amounts owing and that, since those which have been made available were provided late, default interest is owing pursuant to Article 11 of Regulation No 1150/2000. According to the Commission, that interest is owing on the entire amount covered by the security, which should have been entered in the A accounts.

101 The Belgian Government, by contrast, maintains that since the Belgian authorities have not yet had the opportunity actually to recover the amounts pertaining to 66 carnets covered by the present proceedings, the period for making those

entitlements available to the Communities has not yet started to run, with the result that, accordingly, no question of default interest can arise. As for the customs duties recovered in 1999 following payment by the pool of insurers, these were made available to the Commission within the prescribed time-limits. In the alternative, the Belgian Government contends that the Commission's calculations of default interest are incorrect because, out of the six TIR carnets in question for which the security was enforced by that pool in 1999, the Belgian State in fact paid more than the amount owed, whereas the Commission seems to take the view that the basic amount to be used for the calculation of the default interest is the amount which the Belgian State paid and not the amount it actually owed.

Findings of the Court

102 Under Article 11 of Regulation No 1150/2000, 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, inter alia, Case C-460/01 *Commission* v *Netherlands*, paragraph 91).

103 Consequently, the omissions and delays in making the entries of own resources in the Commission's account found under the first plea give rise to entitlement, pursuant to the said Article 11 of Regulation No 1150/2000, to default interest the non-payment of which is not contested by the Kingdom of the Belgium; the third plea is thus well-founded.

104 Given that the Commission is not seeking by the present action a declaration of failure to fulfil obligations with respect to each of the TIR carnets listed before the Court, and in the absence of a claim containing actual figures, it is not necessary to determine for the purposes of the present proceedings the amount of default interest owing.

105 In the light of the above considerations, the Court finds that:

— by failing to enter in the accounts, or by making a late entry in the accounts of, the own resources arising from the TIR carnets which had not been discharged properly, by placing them in the B accounts instead of entering them in the A accounts, with the result that the relevant own resources were not made available to the Commission within the time-limits,

— by refusing to pay default interest on the amounts owing to the Commission,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Regulation No 1150/2000, which, as from 31 May 2000, repealed and replaced Regulation No 1552/89, which had identical subject-matter.

Costs

106 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the Kingdom of Belgium and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

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

1. Declares that

— by failing to enter in the accounts, or by making a late entry in the accounts of, the own resources arising from the TIR carnets which had not been discharged properly, by placing them in the B accounts instead of entering them in the A accounts, with the result that the relevant own resources were not made available to the Commission of the European Communities within the time-limits,

— by refusing to pay default interest on the amounts owing to the Commission of the European Communities,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, which, with effect from 31 May 2000, repealed and replaced 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, which had identical subject-matter;

2. Dismisses the remainder of the action;

3. Orders the Kingdom of Belgium to pay the costs.

[Signatures]