JUDGMENT OF THE COURT (First Chamber)

5 October 2006 *

In Case C-275/04,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 29 June 2004,

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

applicant,

v

Kingdom of Belgium, represented by E. Dominkovits and M. Wimmer, acting as Agents,

defendant,

* Language of the case: French.

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson, acting as Agent, and by M. Angiolini and R. Anderson, Barristers,

intervener,

THE COURT (First Chamber),

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

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

having regard to the written procedure and further to the hearing on 6 April 2006,

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

gives the following

Judgment

1 By its application, the Commission of the European Communities seeks a declaration by the Court that:

— by failing to enter in the accounts referred to in Article 6(3)(a) 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) the entitlements established within the prescribed periods, and

— by failing to verify whether, since 1 January 1995, other delays in making own resources available occurred following a late entry in the accounts referred to in Article 6(3)(a) of Regulation No 1150/2000, by destroying the records covering that period and by failing to inform the Commission of those delays in order to enable it to calculate the default interest owing in terms of Article 11 of that regulation due to a delay in making own resources available,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 3, 6, 9, 10 and 11 of Regulation No 1150/2000 which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989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), the purpose of which is the same, and Article 10 EC.

Legal framework

The system of the Communities' own resources

2 Article 2 of Regulation No 1552/89, which features in Title I ('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.

...'

3 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 is replicated 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.

...'

4 The first paragraph of Article 3 of Regulations No 1552/89 and No 1150/2000, which also features in Title I, states:

'Member States shall take all appropriate measures to ensure that the supporting documents concerning the establishment and making available of own resources are kept for at least three calendar years, counting from the end of the year to which these supporting documents refer.'

5 The second paragraph of Article 3 of Regulation No 1552/89 provides:

'If verification of these supporting documents by the national administration alone or in conjunction with the Commission shows that a finding to which they relate may have to be corrected, they shall be kept beyond the time-limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.'

6 The third paragraph of Article 3 of Regulation No 1150/2000 states:

'If verification pursuant to Articles 18 and 19 of this Regulation or Article 11 of Regulation (EEC, Euratom) No 1553/89 of the supporting documents referred to in the first and second paragraphs shows that a correction is required, they shall be kept beyond the time-limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.'

7 Article 6(1) and (2)(a) and (b) of Regulation No 1552/89, featuring in Title II ('Accounts for own resources') (now Article 6(1) and 3(a) and (b) of Regulation No 1150/2000), states:

'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 [commonly referred to as the 'A accounts'] at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established.

(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 [commonly referred to as the '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.'

8 Article 9 of Regulations No 1552/89 and No 1150/2000, featuring in Title III ('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 ...'

9 According to Article 10(1) of Regulations No 1552/89 and No 1150/2000, which also features in Title III:

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

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.'

10 Under Article 11 of Regulations No 1552/89 and No 1150/2000, which also features in 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.'

11 Article 18 of Regulation No 1552/89 (now Article 18 of Regulation No 1150/2000), which features in Title VII ('Provisions concerning inspection measures'), states:

'1. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources referred to in Article 2(1)(a) and (b) [of Decisions 88/376 and 94/728, respectively]. The Commission shall exercise its powers as specified in this Article.

2. Accordingly, Member States shall:

— carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection,

— associate the Commission, at its request, with the inspection measures which they carry out.

Member States take all steps required to facilitate these inspection measures. Where the Commission is associated with these measures, Member States shall place at its disposal the supporting documents referred to in Article 3.

...'

Community customs legislation

12 Article 217(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code') states:

'Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

...'

13 Article 218(3) of the Customs Code provides:

'Where a customs debt is incurred under conditions other than those referred to in paragraph 1, the relevant amount of duty shall be entered in the accounts within two days of the date on which the customs authorities are in a position to:

(a) calculate the amount of duty in question, and

(b) determine the debtor.'

14 Article 219 of the Code states:

'1. The time-limits for entry in the accounts laid down in Article 218 may be extended:

(a) for reasons relating to the administrative organisation of the Member States, and in particular where accounts are centralised, or

(b) where special circumstances prevent the customs authorities from complying with the said time-limits.

Such extended time-limit shall not exceed 14 days.

2. The time-limits laid down in paragraph 1 shall not apply in unforeseeable circumstances or in cases of *force majeure*.'

15 Article 220(1) of the Customs Code provides:

'Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 or has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be

recovered or which remains to be recovered shall be entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor (subsequent entry in the accounts). That time-limit may be extended in accordance with Article 219.'

16 Article 221(1) of the Customs Code states:

'As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.'

17 Article 243 of the Customs Code provides:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6(2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

18 Article 245 of the Customs Code states:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

19 Article 246 of the Customs Code provides:

'This title shall not apply to appeals lodged with a view to the annulment or revision of a decision taken by the customs authorities on the basis of criminal law.'

20 Article 378(1) and (2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1) ('the implementing regulation') states:

'1. Without prejudice to Article 215 of the [Customs] Code, where the consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, such offence or irregularity shall be deemed to have been committed:

— in the Member State to which the office of departure belongs,

or

— in the Member State to which the office of transit at the point of entry into the Community belongs, to which a transit advice note has been given,

unless within the period laid down in Article 379(2), to be determined, proof of the regularity of the transit operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the customs authorities.

2. Where no such proof is furnished and the said offence or irregularity is thus deemed to have been committed in the Member State of departure or in the Member State of entry as referred to in the first paragraph, second indent, the duties and other charges relating to the goods concerned shall be levied by that Member State in accordance with Community or national provisions.'

21 Article 379 of the implementing regulation provides:

'1. Where a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure shall notify the principal of this fact as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration.

2. The notification referred to in paragraph 1 shall indicate, in particular, the time-limit by which proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed must be furnished to the office of departure to the satisfaction of the customs authorities. That time-limit shall be three months from the date of the notification referred to in paragraph 1. If the said proof has not been produced by the end of that period, the competent Member State shall take steps to recover the duties and other charges involved. In cases where that Member State is not the one in which the office of departure is located, the latter shall immediately inform the said Member State.'

Pre-litigation procedure

22 During an inspection of traditional own resources carried out from 1 to 5 December 1997, members of the Commission's staff found at the Antwerp customs office inter alia three files relating to external Community transit declarations which had not been cleared (T1 declarations of 10 June 1996, 20 December 1995 and 17 January 1996, respectively), where the enforced recovery of the corresponding own resources involved amounts which, according to the Commission, were guaranteed and undisputed, although they had been entered in the B accounts on their being established and in the A accounts only on their actual recovery. The amounts of the customs duties in question were BEF 1 800 (EUR 44.62), BEF 8 292 (EUR 205.55) and BEF 4 509 (EUR 111.78), respectively.

23 By letter of 28 April 1998, the Commission sent the Belgian authorities Report No 97-0-1 relating the December 1997 inspection and invited the Belgian authorities to take the measures necessary to ensure compliance with the Community provisions relating to accounting entries and to enter of their own accord the amounts of the established, secured and undisputed entitlements in the A accounts, as it had been established within the prescribed periods that they had not been cleared. The Commission also requested those authorities to verify whether, since 1 January 1995, other delays in the making available of own resources had arisen as the result of late entry in the A accounts. Lastly, the Commission drew the attention of those authorities to the provisions of Article 11 of Regulation No 1552/89 regarding the payment of default interest.

24 In their reply of 8 October 1998, the Belgian authorities stated that they complied with the Community rules and, accordingly, that the call for an investigation covering all Belgian customs offices from 1 January 1995 no longer served any purpose.

25 In its letter of 2 February 2000, the Commission noted that it was for the Member States to ensure the efficient recovery of own resources and, in particular, amounts covered by a guarantee issued under the external transit procedure (T1 declaration, TIR carnet, ATA carnet, etc.) Accordingly, such amounts could be entered in the B accounts only if they were properly challenged, which meant in particular that the time-limits laid down in that regard had to be complied with and that a written appeal must have been lodged. The Commission accordingly repeated its call on the Belgian authorities to ensure that their practice complied with the relevant Community legislation.

26 By letter of 31 May 2000, the Belgian authorities repeated that their position in relation to the treatment of T1 declarations and TIR carnets that had not been cleared complied with Community legislation.

27 The Commission once again disputed that argument and sent a letter of formal notice to the Kingdom of Belgium on 13 November 2001, in which it restated its objections and rejected the arguments put forward by the Belgian authorities, and invited them once again to provide a record of all external Community transit declarations that had not been cleared within the prescribed periods since 1 January 1995, with a clear indication of how they were dealt with for accounting purposes. It also reminded the Belgian authorities of their obligation to pay default interest in accordance with Article 11 of Regulation No 1552/89.

28 As the Kingdom of Belgium maintained its position in its reply of 12 March 2002, the Commission sent a reasoned opinion to that Member State on 28 October 2002, calling on it to adopt within two months of the date of notification of that opinion the measures necessary to comply with its obligations thereunder.

29 On 19 December 2002, the Belgian authorities asked the Commission to extend to 28 January 2003 the period for replying to the reasoned opinion. By letter of 30 January 2003, they indicated that, as a similar case involving the Federal Republic of Germany was pending before the Court (Case C-105/02), the Court's decision in that case should be awaited before adjudication on the present matter.

30 It was in those circumstances that the Commission decided to bring the present action.

31 By order of the President of the Court of 30 November 2004, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the forms of order sought by the Kingdom of Belgium.

The action

Admissibility of the action

32 The Belgian Government observes that, at the time when the entitlements relating to the Communities' own resources at issue in the present case arose, the legislation which applied was Regulation No 1552/89.

33 The Commission states in that regard that the conditions for the creation of an entitlement of the Communities to a customs debt remained the same before and after the codification effected by Regulation No 1150/2000.

34 It is the Court's settled case-law in that regard 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).

35 Although the heads of claim set out 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 measure, 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 measure in question, as otherwise it would constitute a breach of the essential procedural requirements governing infringement procedings (see, to that effect, Case-363/00 *Commission* v *Italy* [2003] ECR I-5767, paragraph 22).

36 It is not in dispute that the obligations arising under Articles 3, 6(1) and (3)(a) and (b), 9(1), 10(1) and 11 of Regulation No 1150/2000 were already applicable by virtue of Articles 3, 6(1) and (2)(a) and (b), 9(1), 10(1) and 11 of Regulation No 1552/89 (see, as regards Articles 9(1) and 11, Case C-363/00 *Commission* v *Italy*, paragraph 23).

37 As regards Article 2(1) of Regulation No 1552/89, the Court has held that the Communities' entitlement to own resources for the purposes of that provision is established 'as soon as' the competent authorities notify the debtor of the amount due, which must be done as soon as the debtor is known and the amount of the entitlement can be calculated by the competent administrative authorities, in compliance with the relevant applicable Community provisions (see, inter alia, Case C-460/01 *Commission* v *Netherlands* [2005] ECR I-2613, paragraph 85). Similarly, the Court has held that Article 2 of Regulation No 1552/89, as amended by Regulation No 1355/96 and replicated in Article 2 of Regulation No 1150/2000, must be interpreted as meaning that 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* [2005] ECR I-9811, paragraph 61).

38 In those circumstances, as, moreover, the Belgian Government accepts, the obligations arising under Article 2 of Regulation No 1150/2000 with respect to the establishment of an entitlement of the Communities to own resources were already applicable by virtue of Article 2 of Regulation No 1552/89.

39 Accordingly, the Commission's action is admissible in so far as it seeks a declaration that the Kingdom of Belgium failed to fulfil the obligations imposed on it by virtue of Articles 3, 6, 9, 10 and 11 of Regulation No 1150/2000.

Substance

The first objection, based on the late entry of the established entitlements in the A accounts

— Arguments of the parties

40 The Commission argues that, in accordance with Article 6(3)(b) of Regulation No 1150/2000, entitlements established but not recovered, for which no security has been provided, may be entered in the B accounts. The same applies in regard to entitlements established but not recovered, and for which security has been provided, where there has been a challenge within the prescribed period, provided that the challenge is in writing. Amounts which have been established and guaranteed and are undisputed must, for their part, be entered in the A accounts within the prescribed period, without awaiting their actual recovery.

41 Moreover, according to well-established case-law (Case C-96/89 *Commission* v *Netherlands* [1991] ECR I-2461, paragraph 38), the obligation to credit amounts to the A accounts is not linked to the receipt of the entitlements by the Member State. Contrary to what the United Kingdom Government also contends, that obligation exists as soon as the entitlement is established and guaranteed and is undisputed, even if the sums in question have not been received.

42 In order So that In orderIn order for the mandatory period laid down under Articles 6(3)(a) and 10 of Regulation No 1150/2000 in relation to the accounting for, and making available of, own resources not to be deprived of all practical effectiveness, the Member States must observe that period as regards the entering of the amounts in question in the accounts and their being made available, irrespective of the existence of a national rule which provides that the debtor may challenge the customs debt after the expiry of that period. That obligation does not prevent the debtor, after the period has expired, from lodging an appeal which may lead to an annulment or a correction of the debt (Articles 2(4) and 8 of Regulation No 1150/2000).

43 According to the Commission, the word 'challenge' refers in the first place to the appeal procedure laid down in Articles 243 and 245 of the Customs Code, and only in the second place to the national legislation, which must be consistent with the Community legislation. If the Community legislation does not include a complete set of rules relating to appeals in customs matters, challenges to entitlements must, in any event, as Article 243 of the Customs Code states, be 'lodged', which means, contrary to what the United Kingdom Government also contends, that there must be an express and visible act on the debtor's part against the constitution of the debt, that is to say, the challenge must be in writing. A mere failure to pay is not sufficient in that regard. Such an approach ensures compliance with the principle of the parallelism of forms, in that the debt is also constituted in writing, and allows evidence to be presented as to any lack of consent to the debt being constituted, as well as guaranteeing the requirement that there be rapid and uniform availability of own resources (see, inter alia, Case C-112/01 *SPKR* [2002] ECR I-10655, paragraph 34 et seq.).

44 In addition, the refusal of the guarantor to cover the debtor's customs debt does not, in principle, mean that it challenges the validity of the debt guaranteed, but rather that it challenges the obligation to pay such a debt once its enforced recovery has commenced. Even if it were to be accepted that a challenge on the guarantor's part is to be considered as a challenge for the purposes of Article 6(3)(b) of Regulation No 1150/2000, such a challenge would, in any event, have no effect on the obligation laid down under that provision that an entry be made, since the Belgian authorities

themselves have accepted that, in the present case, the challenge by the obligant guarantor had been made after the expiry of the mandatory and peremptory period for the making of an entry in relation to own resources.

45 Moreover, the Kingdom of Belgium did not maintain or adduce evidence to the effect that the entitlements in question had been challenged by the guarantor.

46 Nor can the Belgian authorities invoke the fact that the comprehensive nature of a guarantee prevents them from knowing whether it in fact covers a T1 declaration, since Article 6(3)(b) of Regulation No 1150/2000 makes no distinction as to the type of cover provided by the guarantee. The guarantor's liability is, in any case, ancillary. The Member States are free to determine what type of guarantees they require in order to secure a customs debt, the only condition being that the guarantee be effective and adequate, failing which those Member States must bear the consequences. The contrary interpretation, which the United Kingdom Government shares, has no basis in the wording of Article 6 of Regulation No 1150/2000.

47 It is clear from Article 195 of the Customs Code that the customs authorities may refuse to accept a guarantee where it does not appear certain to ensure payment of the customs debt. Where a comprehensive guarantee is provided, the final subparagraph of Article 192(1) of the Code provides that the amount of such security is to be set at a level enabling the customs debts in question to be covered at all times. Those provisions show clearly that the fact that a guarantee is not adequate to cover the customs debt has no effect on the existence of the obligation to ensure that that debt is secured by a guarantee. The Belgian authorities' contention that the entry of an amount in the A accounts can never exceed the amount guaranteed has no basis in Regulation No 1150/2000 and cannot therefore be accepted.

48 The Belgian Government observes that, where a T1 declaration has not been cleared or has been fraudulently cleared, Article 2 of Regulation No 1552/89 lays down four conditions which must be satisfied for the establishment of entitlement of the Communities to the amount of a customs debt: the customs authorities must have established that clearance has not occurred; they must have been in a position to calculate the amount legally owed; they must have been able to identify the debtor; and they must have been in a position to inform the debtor that the customs debt is due.

49 The Belgian Government also states that where a declaration is not cleared and the principal does not furnish proof of the regularity of the transit or of the place of the offence or irregularity within three months of the notification that clearance has not occurred, which must be done within 11 months of registration of the declaration, the Member State of departure must proceed to recover the entitlements owing on the basis of Articles 378 and 379 of the implementing regulation.

50 After they have been established, the entitlements must be entered in the accounts for own resources (the same entry in the accounts is involved as that referred to in Articles 217 and 220 of the Customs Code) kept by each Member State pursuant to Article 6(1) and (2) of Regulation No 1552/89. Where an amount which has not yet been recovered is secured by a guarantee, it is to be entered in the A accounts, although the amount entered must not exceed the sum guaranteed. Where entitlements established and secured by guarantees are the subject of challenges and might upon settlement of the disputes which have arisen be subject to change, the amount secured by a guarantee is to be entered in the B accounts.

51 Once the establishment has been made, the own resources should also be made available to the Commission (Article 10 of Regulation No 1552/89), save where there is *force majeure* or recovery is impossible for reasons for which the Member State is not responsible (Article 17 of that regulation). Any delay will give rise to payment of default interest (Article 11 of that regulation).

52 According to the Belgian Government, it is clear from Articles 10 and 17 of Regulation No 1552/89 that the B accounts were created in order to allow Member States to make amounts available as soon as they have been recovered and thus seeks to avoid the Member State itself being liable for amounts which could not be recovered within the period laid down under Article 6(2)(a) of Regulation No 1552/89.

53 The Belgian Government also maintains that Article 6(2)(b) of Regulation No 1552/89 applies to challenges to entitlements where the established entitlements have been brought to the debtor's attention (in other words, after they are notified, that is to say after they have been entered in the accounts), so that, where established entitlements have not been recovered, it is always open to the Member States to enter the amount of the entitlements in the B accounts, given that they cannot know at that time whether these will subsequently be challenged by the debtor.

54 The Belgian Government takes the view that Regulation No 1552/89 does not establish any link between the appeal procedure laid down under Articles 243 and 245 of the Customs Code and the notion of 'challenge' referred to in Article 6(2)(b) of Regulation No 1552/89, and that no specification is given as to the form in which such challenges must be brought. Furthermore, there is no provision in Community legislation which governs the manner and the time in which a debt must be challenged. It is therefore necessary in the event to refer to the national legislation or administrative customs which apply in the Member State.

55 During 1997, when, according to the Commission, the formal challenges ought to have been made, no administrative appeal procedure was open to debtors in Belgium and a failure to clear, or the fraudulent discharge of, external Community transit documents would, moreover, have been subject to a criminal penalty. According to the Belgian Government, that did not, however, prevent a debtor from bringing an informal challenge (subject to no conditions as to form or timing). In that regard, the fact that the principal did not act upon the demand for payment was

interpreted by the administration, applying presumptions and its long experience of irregularities in the Community transit system, as being, *per se*, a challenge to the entitlements.

56 The Belgian Government also argues that in most cases the guarantee was comprehensive and was constituted so as to secure a number of declarations. While the customs office of departure could, when validating the T1 declaration, check the existence and the validity of the guarantee through the certificate and that declaration, it was not authorised to verify whether the comprehensive guarantee had already served in other offices to secure other T1 declarations or whether the comprehensive guarantee had not already been fully exhausted or even whether the document had not been forged. As a result, since the office of departure could not, at the end of the period laid down under Article 379(2) of the implementing regulation, be certain that the guarantee was effective, the entry of the amounts in question in the B accounts was accordingly justified. Furthermore, the guarantor was also entitled to challenge the decision of the customs authorities, because that decision had adverse consequences for it. Consequently, the Commission has not shown that the Kingdom of Belgium infringed Community legislation in the cases which are the subject of the present proceedings.

57 The United Kingdom essentially argues that, where an entitlement is fully guaranteed by an individual guarantee (pursuant to Article 373 of the implementing regulation), when the Member State can ensure that the security is effective and sufficient and has a discretion as to what form of security to require, that State is obliged to enter the amount in the A accounts at the end of the relevant period (pursuant to Article 6(3)(a) of Regulation No 1150/2000), unless a challenge which might change the amount of the entitlements in question has been brought by the principal, the guarantor or any other person in accordance with national law before the end of that period. Where an entitlement is unsecured, in whole or in part, and the customs authorities have properly exercised their power under Community law to grant a waiver or accept a reduced level of guarantee pursuant to Article 361 of the implementing regulation, the debt is to be treated, for the purposes of the legislation, as unsecured and it must be entered in the B accounts. In the alternative,

where an entitlement is secured only in part, the Member State should be permitted to enter in the A accounts only that proportion which is, in fact, secured. Further and alternatively, where an entitlement is secured by a comprehensive guarantee, the entitlement is nevertheless to be treated as unsecured until such time as the customs authorities have established that there remains sufficient cover and that the entitlement is, therefore, actually covered by effective and sufficient security.

— Findings of the Court

58 In the present case, neither the existence of the customs debt nor the amount of the entitlements at issue, namely EUR 44.62, EUR 205.55 and EUR 111.78, is contested. Conversely, the Belgian Government challenges the Commission's objection that it was late in entering the amounts at issue in the A accounts, that is to say, that it did so only after their actual recovery at the end of 1997.

59 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), the Member States are obliged to enter entitlements 'established in accordance with Article 2' of that 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, either in the A accounts or, subject to certain conditions, in the B accounts.

60 Article 2(1) and (2) of Regulation No 1150/2000 provides that the Communities' entitlement to own resources is 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. The date of the establishment

referred to in paragraph 1 is the date of the entry in the accounting ledgers provided for by the customs legislation.

61 Regarding the 'entry' and the 'notification' of the amount to the debtor, Article 2 of Regulation No 1150/2000 refers to the customs legislation, that is to say, in the present case, to the Customs Code and the implementing regulation.

62 As the Court held in paragraph 59 of *Commission* v *Denmark*, it is apparent 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 arising from a customs debt and to determine the debtor (see, to that effect, Case C-460/01 *Commission* v *Netherlands*, paragraph 71, and Case C-104/02 *Commission* v *Germany* [2005] ECR I-2689, 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 (*Commission* v *Denmark*, paragraph 60).

63 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 to determine the debtor (*Commission* v *Denmark*, paragraph 61) and, therefore, to enter those entitlements in the accounts in accordance with Article 6 of Regulation No 1150/2000.

64 In the present case, it is not alleged either that the Belgian authorities were late in establishing the entitlement to own resources in question or that they failed to enter the established entitlements in the accounts immediately after they were established, but rather that they entered the amounts at issue, which had been established and

notified to the principal debtor in compliance with the provisions of the Customs Code and the implementing regulation, in the B accounts instead of entering them in the A accounts within the period laid down by Article 6(3)(a) of Regulation No 1150/2000.

65 With regard to accounting in respect of own resources, Article 6(3)(a) and (b) of Regulation No 1150/2000 stipulates that the Member States are obliged to enter entitlements established in accordance with Article 2 of that regulation in the A accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established, without prejudice to the option of entering in the B accounts, within the same timescale, 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', which 'have been challenged and might, upon settlement of the disputes which have arisen, be subject to change'.

66 For the purposes 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, except for entitlements shown in the B accounts under Article 6(3)(b) of that regulation, for which 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'.

67 The Belgian Government argues, first, that the entitlements which are the subject of these proceedings were 'challenged' for the purposes of Article 6(3)(b) of Regulation No 1150/2000, with the result that the amounts in question could properly be entered in the B accounts until their actual recovery. For there to be a challenge within the meaning of that provision, it is necessary only that there be a refusal to

pay; a formal appeal is not required. Such a challenge may equally as well be made by the guarantor as by the principal debtor.

68 It must be held in that regard that a mere failure to pay the amounts at issue cannot be treated as being the same as a challenge to the entitlements for the purposes of Article 6(3)(b) of Regulation No 1150/2000. The third subparagraph of Article 243(1) of the Customs Code expressly states that an appeal, which is open to any person against decisions taken by the customs authorities which relate to the application of customs legislation and which concern him directly and individually, must be 'lodged' in the Member State where the decision has been taken or applied for, and Article 243(2) provides that the right of appeal may be exercised initially 'before the customs authorities', and then 'before an independent body'. The requirement of a formal appeal for which Article 243 thus provides is imposed for reasons of legal certainty and makes possible the diligent and uniform application of the customs provisions in order to secure rapid and effective availability of the own resources of the Communities (see, inter alia, Case C-460/01 *Commission* v *Netherlands*, paragraph 60).

69 In those circumstances, and in the absence of any evidence of a challenge to the entitlements at issue by the principal debtor within the period laid down by Article 6(3)(b) of Regulation No 1150/2000, it must be held that the Belgian Government has not proved that the conduct of the principal debtor could have justified the entry of those entitlements in the B accounts.

70 As regards the argument that a challenge for the purposes of Article 6(3)(b) of Regulation No 1150/2000 may also be brought by the guarantor, suffice it to observe that in the present case it has not been shown, or even claimed, by the Belgian Government that the entitlements in question were challenged by the guarantor before the expiry of the period laid down by that provision or that the entitlements at issue might, upon settlement of the disputes which have arisen, be subject to change.

71 The Belgian Government argues, secondly, that the unrecovered entitlements in question could quite properly be entered in the B accounts, since effective security had not been provided for them for the purposes of Article 6(3)(b), on the expiry of the period laid down for the entry of the entitlements at issue in the accounts.

72 It is sufficient to hold in that regard that the Belgian Government, which acknowledges that the entitlements at issue were secured by a guarantee, has not shown on any view that that guarantee was inadequate to ensure payment of those amounts on the expiry of the period referred to above.

73 The incorrect entering of the entitlements in the B accounts gave rise to a delay in the crediting of the own resources in question to the Commission's account, which must, in accordance with Articles 9 and 10 of Regulation No 1150/2000, be done within the same period as that which is laid down for the entry of those entitlements in the A accounts pursuant to Article 6(3)(a) of that regulation.

74 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 default interest by the Member State concerned for the entire period of delay. That interest is payable regardless of the reason for the delay in crediting those entitlements to the Commission's account (see, inter alia, Case C-460/01 *Commission* v *Netherlands*, paragraph 91).

75 Accordingly, the delays established in crediting the own resources to the Commission's account give rise to an entitlement, in accordance with Article 11

of Regulation No 1150/2000, to default interest, the non-payment of which is not disputed by the Kingdom of Belgium.

76 The Commission's first objection, alleging infringement of Articles 6, 9. 10 and 11 of Regulation No 1150/2000, is accordingly well founded.

The second objection, based on a refusal to communicate information to the Commission

— Arguments of the parties

77 As regards the objection based on the refusal of the Belgian authorities to provide to the Commission a record of uncleared Community transit declarations since 1995 relating to other operations involving a delay in crediting that institution's account, the Commission states that those authorities were fully aware that it was considering whether a correction going beyond a few isolated cases was required, and that they should accordingly have kept not only the documents that were checked when the inspection was carried out, but also all documents given the same accounting treatment going beyond three calendar years from the end of the year to which those supporting documents referred. By destroying those documents, the Belgian authorities infringed Article 3 of Regulation No 1150/2000. Furthermore, the Kingdom of Belgium is subject to the obligation of cooperation arising under Article 10 EC and should therefore have communicated that information to the Commission (see Case C-10/00 *Commission* v *Italy* [2002] ECR I-2357, paragraphs 88 and 89). The course of events shows clearly that, contrary to what the Belgian Government maintains, it could not assume that the Commission was satisfied with the replies which the former had provided to the Commission during the pre-litigation stage of the procedure.

78 The Belgian Government observes that the obligations of the Member States relating to the monitoring of own resources are expressly and clearly laid down in Article 18 of Regulation No 1552/89.

79 The Kingdom of Belgium argues that it was entitled to take the view that it had correctly applied the Community rules.

80 According to that Government, the request, as made by the Commission, to check all external Community transit declarations validated in a Belgian customs office which had not been cleared by the 14th month after their validation, that is to say, approximately 10 000 declarations each year, and to provide accounting information for a period of over three years, was not sufficiently precise in terms of what it covered and was not proportionate to the findings made by the members of the Commission's staff who had carried out the inspection (three uncleared T1 declarations relating to an amount of EUR 44.62, EUR 205.55 and EUR 111.78, respectively). In addition, it was quite impossible to open approximately 30 000 files, first, in the light of the available resources and personnel and, secondly, because the records were no longer kept (beyond the mandatory period of three years). It was impossible for the Belgian Government, under reasonable conditions and without disrupting its staff and services, to procure the documents or to provide the verification requested (see, by way of analogy, Case C-10/00 *Commission* v *Italy*, paragraph 91).

81 For the years 1995 to 1997 alone, the retention of the documents would have involved some 12 million declarations together with their supporting documents, without taking into account the declarations for the current year. The resources requiring to be allocated for retention and storage represented a significant material and financial burden. It was impossible, materially and financially, to extend for several more years the period during which those documents were kept.

— Findings of the Court

82 According to settled case-law, Article 10 EC makes it clear that the Member States are required to cooperate in good faith with the enquiries of the Commission pursuant to Article 226 EC, and to provide the Commission with all the information requested for that purpose (see, inter alia, Case C-478/01 *Commission* v *Luxembourg* [2003] ECR I-2351, paragraph 24).

83 As regards the obligation on the Member States to take, in genuine cooperation with the Commission, the measures necessary to ensure the application of the Community provisions relating to the establishment of potential own resources, the Court has held that that obligation, which was given more specific expression with regard to verification in Article 18 of Regulation No 1552/89, means in particular that where the Commission is largely dependent on information provided by the Member State concerned, that Member State is required to make supporting documents and other relevant documentation available to the Commission under reasonable conditions, to enable it to verify whether, and, as the case may be, to what extent the amounts concerned relate to the Communities' own resources (Case C-10/00 *Commission* v *Italy*, paragraphs 89 to 91).

84 Following the checks carried out by members of the Commission's staff in Belgium in December 1997, which disclosed a number of cases of established entitlements that were no longer open to challenge relating to operations covered by T1 documents which were entered in the B accounts, whereas, according to the Commission, they should have been entered in the A accounts, that institution had, on several occasions, and as early as April 1998, requested the Belgian authorities to verify whether, since 1 January 1995, other delays in making own resources available had arisen as the result of a delay in making an entry in the A accounts and, where relevant, to notify those cases to it, so as to enable it to calculate the default interest owing in terms of Article 11 of Regulation No 1150/2000 by reason of a delay in making own resources available.

85 In not acceding to that request, the Kingdom of Belgium failed to comply with the obligations imposed on it under Article 10 EC.

86 As was mentioned in paragraph 84 of this judgment, the reason for the Commission's request was the finding, during the inspection carried out in December 1997, that there were a number of cases which, according to that institution, disclosed an infringement of Regulation No 1552/89. The Commission was thus fully entitled to request the Kingdom of Belgium to provide information relating to other similar cases after 1 January 1995 precisely where, by virtue of the first paragraph of Article 3 of that regulation, the Member States are required to take all appropriate measures to ensure that the supporting documents concerning the establishment and making available of own resources are kept for at least three calendar years, counting from the end of the year to which those supporting documents refer.

87 The extent and the complexity of the duties required of the customs administration cannot be taken into consideration, if only because the Belgian authorities justify their position on the basis of an incorrect interpretation of the Community regulations which has not been accepted by the Court (see paragraphs 67 and 68 of this judgment).

88 In destroying the records covering that period, including those relating to the three cases which form the subject-matter of these proceedings, the Belgian Government has manifestly infringed its obligations under Article 3 of Regulation No 1150/2000, the third paragraph of which provides that, if verification by the national administration, alone or in conjunction with the Commission, of the supporting documents concerning an establishment of own resources shows that a correction is

required, those supporting documents are to be kept beyond the time-limit laid down in the first paragraph of that article for a sufficient period to permit the correction to be made and monitored.

89 In those circumstances, the second objection, based on an infringement of Article 10 EC and Article 3 of Regulation No 1150/2000, is also well founded.

90 In the light of the foregoing, it must be held that:

— by failing to enter in the accounts referred to in Article 6(3)(a) of Regulation No 1150/2000 the entitlements established within the prescribed periods,

— by failing to verify whether, since 1 January 1995, other delays in making own resources available occurred following a late entry in the accounts referred to in Article 6(3)(a) of Regulation No 1150/2000, by destroying the records covering that period and by failing to inform the Commission of those delays in order to enable it to calculate the default interest owing in terms of Article 11 of that regulation due to a delay in making own resources available,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 3, 6, 9, 10 and 11 of Regulation No 1150/2000 which, with effect from 31 May 2000, repealed and replaced Regulation No 1552/89, the purpose of which is the same, and Article 10 EC.

Costs

91 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 asked that the Kingdom of Belgium be ordered to pay the costs and the latter has been unsuccessful in its defence, the Kingdom of Belgium must be ordered to pay the costs. In accordance with Article 69(4), the United Kingdom is to bear its own costs.

On those grounds, the Court (First Chamber) hereby

1. Declares that:

by failing to enter in the accounts referred to in Article 6(3)(a) 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 the entitlements established within the prescribed periods,

by failing to verify whether, since 1 January 1995, other delays in making own resources available occurred following a late entry in the accounts referred to in Article 6(3)(a) of Regulation No 1150/2000, by destroying the records covering that period and by failing to inform the Commission of those delays in order to enable it to calculate the default interest owing in terms of Article 11 of that regulation due to a delay in making own resources available,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 3, 6, 9, 10 and 11 of Regulation No 1150/2000 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, the purpose of which is the same, and Article 10 EC;

2. **Orders the Kingdom of Belgium to pay the costs;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

[Signatures]