

**Judgment of the Court (Second Chamber) of 1 October 2009 — Commission of the European Communities v Kingdom of Belgium**

(Case C-219/08) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Freedom to provide services — Unjustified obstacle — Posting of workers who are nationals of non-member States)*

(2009/C 282/18)

Language of the case: French

**Parties**

*Applicant:* Commission of the European Communities (represented by: E. Traversa, J.-P. Keppenne and G. Rozet, Agents)

*Defendant:* Kingdom of Belgium (represented by: C. Pochet, Agent, and M. Detry, avocat)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC — Unjustified obstacle to the free provision of services — Posting of workers who are nationals of third countries

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders the Commission of the European Communities and the Kingdom of Belgium each to bear its own costs..

<sup>(1)</sup> OJ C 183, 19.07.2008.

**Judgment of the Court (First Chamber) of 1 October 2009 (reference for a preliminary ruling from the Finanzgericht Köln — Germany) — Gaz de France — Berliner Investissement SA v Bundeszentralamt für Steuern**

(Case C-247/08) <sup>(1)</sup>

*(Free movement of capital — Profits distributed to a parent company exempt from withholding tax in the Member State of the subsidiary — Concept of ‘company of a Member State’ — ‘Société par actions simplifiée’ under French law)*

(2009/C 282/19)

Language of the case: German

**Referring court**

Finanzgericht Köln

**Parties to the main proceedings**

*Applicant:* Gaz de France — Berliner Investissement SA

*Defendant:* Bundeszentralamt für Steuern

**Re:**

Reference for a preliminary ruling — Finanzgericht Köln (Germany) — Interpretation of Articles 43 EC, 48 EC, 56(1) EC and 58(1)(a) and (3) EC, and Article 2(a) and paragraph (f) of the Annex to Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Concept of ‘company of a Member State’ — Refusal, in the Member State of the subsidiary, to grant an exemption from withholding tax to a parent company taking the legal form of a ‘société par actions simplifiée’ in French law, since that form of company does not, at the material time, appear on the list in the annex to the directive

**Operative part of the judgment**

1. Article 2(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, read in conjunction with point (f) of the annex to that directive, must be interpreted as meaning that a company under French law in the form of a ‘société par actions simplifiée’ cannot be considered to be a ‘company of a Member State’ within the meaning of that directive before that directive was amended by Council Directive 2003/123/EC of 22 December 2003;
2. Examination of the question has not revealed any factor of such a kind as to affect the validity of Article 2(a) of Directive 90/435 read in conjunction with point (f) of the annex thereto and Article 5(1) of that directive.

<sup>(1)</sup> OJ C 223, 30.08.2008.

**Judgment of the Court (Sixth Chamber) of 1 October 2009 — Commission of the European Communities v Republic of Malta**

(Case C-252/08) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Pollution and nuisance — Combustion plants — Limitation of emissions of certain pollutants into the air)*

(2009/C 282/20)

Language of the case: English

**Parties**

*Applicant:* Commission of the European Communities (represented by: L. Flynn and A. Alcover San Pedro, Agents)

*Defendant:* Republic of Malta (represented by: S. Camilleri, Agent)