4. *Community law does not preclude the national court from proceeding on the assumption, based on the declaration by the customs authorities, that the 'entry in the accounts' of the amount of import or export duty within the meaning of Article 217 of Regulation No 2913/92 took place before that amount was communicated to the debtor, provided that the principles of effectiveness and equivalence are observed;*

5. *Article 221(1) of Regulation No 2913/92 must be interpreted as meaning that the communication of the amount of duty to be recovered must have been preceded by the entry in the accounts of that amount by the customs authorities of the Member State concerned and that, if it has not been entered in the accounts in accordance with Article 217(1) of Regulation No 2913/92, that amount may not be recovered by those authorities, which however remain entitled to proceed with a new communication of that amount, in accordance with the conditions laid down by Article 221(1) of Regulation No 2913/92 and the limitation rules in force at the time the customs debt was incurred;*

6. *Although the amount of import duty or export duty remains 'legally owed' within the meaning of Article 236(1), first subparagraph, of Regulation No 2913/92, even where that amount was communicated to the person liable without having been entered in the accounts beforehand in accordance with Article 221(1) of that regulation, the fact remains that, if such communication is no longer possible because the period laid down in Article 221(3) of that regulation has expired, that person must in principle be able to obtain repayment of that amount from the Member State which levied it.*

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (Third Chamber) of 21 January 2010 (reference for a preliminary ruling from the Tribunal de première instance de Mons — Belgium) — Société de Gestion Industrielle (SGI) v État belge

(Case C-311/08) ([1])

(Freedom of establishment — Free movement of capital — Direct taxation — Income tax legislation — Determination of the taxable income of companies — Companies having a relationship of interdependence — Unusual or gratuitous advantage granted by a resident company to a company established in another Member State — Addition of the amount of the advantage in question to the profits of the resident company which granted it — Balanced allocation of the power to tax between Member States — Combating tax avoidance — Prevention of abuse — Proportionality)

(2010/C 63/11)

Language of the case: French

Referring court

Tribunal de première instance de Mons

Parties to the main proceedings

Applicant: Société de Gestion Industrielle (SGI)

Défendant: État belge

Re:

Reference for a preliminary ruling — Tribunal de première instance de Mons (Belgium) — Interpretation of Articles 12, 43, 48 and 56 EC — Permissibility of a national law providing for the taxation of a resident company on an unusual or gratuitous advantage granted to a non-resident company with which it has a relationship of interdependence but which does not provide for such taxation where the same advantage is granted to a resident company

Operative part of the judgment

Article 43 EC, read in conjunction with Article 48 EC, must be interpreted as not precluding, in principle, legislation of a Member State, such as that at issue in the main proceedings, under which a resident company is taxed in respect of an unusual or gratuitous advantage where the advantage has been granted to a company established in another Member State with which it has, directly or indirectly, a relationship of interdependence, whereas a resident company cannot be taxed on such an advantage where the advantage has been granted to another resident company with which it has such a relationship. However, it is for the referring court to verify whether the legislation at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation, taken together.

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Third Chamber) of 28 January 2010 — European Commission v French Republic

(Case C-333/08) ([1])

(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Quantitative restriction on imports — Measure having equivalent effect — Prior authorisation scheme — Processing aids, and foodstuffs whose preparation involved the use of processing aids, from other Member States where they are lawfully manufactured and/or marketed — Procedure allowing economic operators to obtain the entry of such substances on a 'positive list' — Mutual recognition clause — National legislative context creating a situation of legal uncertainty for economic operators)

(2010/C 63/12)

Language of the case: French

Parties

Applicant: European Commission (represented by: B. Stromsky, Agent)

Defendant: French Republic (represented by: G. de Bergues and R. Loosli-Surrans, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 28 EC — Scheme of prior authorisation for processing aids, and foodstuffs the preparation of which involved the use of processing aids, from other Member States where they were lawfully manufactured and/or marketed — Lack of justification and/or non-compliance with the principle of proportionality

Operative part of the judgment

The Court:

1. *By laying down, for processing aids and foodstuffs whose preparation involved the use of processing aids from other Member States where they are lawfully manufactured and/or marketed, a prior authorisation scheme not complying with the principle of proportionality, the French Republic has failed to fulfil its obligations under Article 28 EC.*

2. *The French Republic is ordered to pay the costs.*

([1]) OJ C 285, 8.11.2008.

Judgment of the Court (Third Chamber) of 14 January 2010 — European Commission v Czech Republic

(Case C-343/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/41/EC — Activities and supervision of institutions for occupational retirement provision — Partial failure to transpose within the prescribed time-limit — No institutions for occupational retirement provision located in the national territory — Competence of Member States to organise their own national retirement pension system)

(2010/C 63/13)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: M. Šimerdová and N. Yerrell, Agents)

Defendant: Czech Republic (represented by: M. Smolek, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ 2003 L 235, p. 10)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Articles 8, 9, 13, 15 to 18 and 20(2) to (4) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, the Czech Republic has failed to fulfil its obligations under Article 22(1) of that directive;*

2. *Dismisses the action as to the remainder;*

3. *Orders the Czech Republic to pay the costs.*

([1]) OJ C 272, 25.10.2008.

Judgment of the Court (Grand Chamber) of 26 January 2010 — Internationaler Hilfsfonds eV v European Commission

(Case C-362/08 P) ([1])

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Action for annulment — Notion of 'measure open to challenge' for the purposes of Article 230 EC)

(2010/C 63/14)

Language of the case: German

Parties

Appellant: Internationaler Hilfsfonds eV (represented by: H. Kaltenecker and R. Karpenstein, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: P. Costa de Oliveira, S. Fries and by T. Scharf, Agents)

Re:

Appeal brought against the judgment delivered by the Court of First Instance (Fifth Chamber) on 5 June 2008 in Case T-141/05 *Internationaler Hilfsfonds e.V.* v *Commission*, by which the Court of First Instance dismissed as inadmissible the action for annulment of the decision allegedly contained in the Commission's letter of 14 February 2005 refusing to grant the appellant access to certain documents relating to Contract LIEN 97-2011 concerning the co-financing of a medical aid programme organised in Kazakhstan — Inadmissibility of an action for annulment brought against a measure that merely confirms an earlier decision not contested within the time-limit for initiating proceedings — Wrong classification of the contested measure — Inadmissibility of an action for annulment brought against a measure constituting an initial response, for the purposes of Article 7(1) of Regulation No 1049/2001 — Wrong interpretation of Article 7(2) of Regulation No 1049/2001