2. *Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in circumstances where the EUR. 1 certificates issued for the importation of goods into the European Union are cancelled on the ground that the issue of those certificates was marred by irregularities and that the preferential origin indicated on those certificates could not be confirmed during a subsequent verification, the importer cannot object to post-clearance recovery of the import duties by claiming that the possibility cannot be ruled out that, in reality, some of those goods have that preferential origin.*

([1]) OJ C 274, 9.10.2010.

Judgment of the Court (Third Chamber) of 15 December 2011 (reference for a preliminary ruling from the Corte suprema di cassazione — Italy) — Banca Antoniana Popolare Veneta SpA, incorporating Banca Nazionale dell'Agricoltura SpA v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-427/10) ([1])

(VAT — Recovery of VAT paid but not due — National legislation under which actions may be brought for the recovery of sums paid but not due, before different courts and subject to different time-limits, depending on whether the claimant is the recipient of the services or their supplier — Possibility for the recipient to claim a VAT refund from the supplier after the expiry of the time-limits within which the supplier is able to bring an action against the tax authority — Principle of effectiveness)

(2012/C 39/08)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Banca Antoniana Popolare Veneta SpA, incorporating Banca Nazionale dell'Agricoltura SpA

Defendants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Article 17(3) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Recovery of tax paid but not due — National legislation under which actions may be brought for recovery before different courts and subject to different time-limits, depending on whether the claimant is the recipient/client of the service on which VAT was paid (10 years) or the supplier/provider of that service (2 years) — Possibility for the recipient/client to claim reimbursement of the VAT from the supplier/provider after expiry of the period during which the latter may bring an action — Principles of tax neutrality, effectiveness and non-discrimination

Operative part of the judgment

The principle of effectiveness does not preclude national rules governing the recovery of sums paid but not due, under which the time-limits for a civil law action for recovery of sums paid but not due, brought by the recipient of services against the supplier, a taxable person for the purposes of VAT, are more generous than the specific time-limits for a fiscal law action for a tax refund, brought by the supplier against the tax authority, provided that it is possible for that taxable person effectively to claim reimbursement of the VAT from the tax authority. That condition is not satisfied where the application of such rules has the effect of totally depriving the taxable person of the right to obtain from the tax authority a refund of the VAT paid but not due, which the taxable person has himself had to pay back to the recipient of his services.

([1]) OJ C 288, 23.10.2010.

Judgment of the Court (Eighth Chamber) of 15 December 2011 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Niels Møller v Haderslev Kommune

(Case C-585/10) ([1])

(Integrated pollution prevention and control — Directive 96/61/EC — Annex I, subheading 6.6(c) — Installations for the intensive rearing of pigs with more than 750 places for sows — Inclusion or non-inclusion of places for gilts)

(2012/C 39/09)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Niels Møller

Defendant: Haderslev Kommune

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of subheading 6.6 of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) — Facilities intended for intensive poultry and pig farming having over 750 places for sows — Whether or not to include places for gilts (pigs after first heat which have not yet farrowed)

Operative part of the judgment

The expression 'places for sows', in subheading 6.6(c) of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it includes places for gilts (female pigs which have already been serviced, but have not yet farrowed).

([1]) OJ C 38, 5.2.2011.

Judgment of the Court (Eighth Chamber) of 15 December 2011 — European Commission v French Republic

(Case C-624/10) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — Articles 168, 171, 193, 194, 204 and 214 — Legislation of a Member State obliging a seller or provider established outside the national territory to designate a tax representative and to identify him or herself for VAT purposes in that Member State — Legislation allowing deductible VAT paid by the seller or provider established outside the national territory to be offset against the VAT collected by him or her in the name and on behalf of his or her customers)

(2012/C 39/10)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Afonso, acting as Agent)

Defendant: French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 168, 171, 193, 194, 204 and 214 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation imposing the designation of a tax representative by a seller or provider established outside the national territory — Duty to identify oneself for VAT purposes — Nature and scope of the right to deduct

Operative part of the judgment

The Court:

1. *Declares that, by providing in Title IV of Administrative Instruction 3 A-9-06 No 105 of 23 June 2006 for an administrative concession derogating from a value added tax reverse charge scheme and necessitating, among other things, the designation of a tax representative by a seller or provider established outside of France, that the seller or provider identifies him or herself for value added tax purposes in France and the offsetting of deductible value added tax that he or she has paid against that which he or she has collected in the name and on behalf of his or her customers, the French Republic has failed to fulfil its obligations under Council Directive of 28 November 2006 on the common system of value added tax, and, in particular, Articles 168, 171, 193, 194, 204 and 214 thereof;*

2. *Orders the French Republic to pay the costs.*

([1]) OJ C 72, 5.3.2011.

Action brought on 18 October 2011 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-530/11)

(2012/C 39/11)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Oliver, L. Armati, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to transpose fully and apply correctly Articles 3(7) and 4(4) of Directive 2003/35/EC ([1]) of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EC ([2]) and 96/61/EC ([3]), the United Kingdom has failed to fulfil its obligations under that Directive;

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

According to Articles 3(7) and 4(4) of Directive 2003/35/EC of the European Parliament and the Council, judicial proceedings relating to environmental matters must not be prohibitively expensive. This implements Article 9(4) of the Aarhus convention on access to information, public participation in decision-making and access to justice in environmental matters which has been concluded by the Union and most of the Member States.

The Commission claims that the United Kingdom has failed to transpose these provisions in all three of its jurisdictions (England and Wales, Scotland and Northern Ireland).