Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3) — Mechanically separated meat, frozen, obtained by mechanical deboning of fowls — Classification under heading 0207 14 10 (frozen cuts of fowls, boneless) or heading 0207 14 99 (frozen offal of fowls, other) of the Combined Nomenclature — Charge on surplus stocks of agricultural products held by operators — Determination of the amount of the transitional stock and the surplus stock for the purpose of that charge

Operative part of the judgment

1. *Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003, must be interpreted as meaning that products such as those at issue in the main proceedings constituted of frozen mechanically separated meat obtained after the mechanical deboning of fowls and destined for human consumption must be classified in subheading 0207 14 10 of the Combined Nomenclature.*

2. *Article 4(2) of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, as amended by Commission Regulation (EC) No 230/2004 of 10 February 2004, does not preclude national legislation such as Article 6(1) of the Law on the surplus stock charge (Üleliigse laovaru tasu seadus), as amended by the Law of 25 January 2007, under which an operator's surplus stock is determined by deducting from the stock actually held on 1 May 2004 the transitional stock defined as the average stock on 1 May of the previous four years of activity multiplied by a coefficient of 1.2 corresponding to the growth of agricultural production observed in the Member State in question during that four-year period.*

3. *Regulation No 1972/2003 does not preclude the levying of a charge on an operator's surplus stock even if he is able to prove that he obtained no advantage when marketing that stock after 1 May 2004.*

(1) OJ C 171, 5.7.2008.

Judgment of the Court (Fourth Chamber) of 29 October 2009 (reference for a preliminary ruling from the Østre Landsret (Denmark)) — NCC Construction Danmark A/S v Skatteministeriet

(Case C-174/08) (1)

(Sixth VAT Directive — Article 19(2) — Deduction of input tax — Hybrid taxable person — Goods and services used for both taxable and exempt activities — Calculation of the deductible proportion — Definition of 'incidental real estate transactions' — Self-supply — Principle of fiscal neutrality)

(2009/C 312/08)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: NCC Construction Danmark A/S

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Østre Landsret — Interpretation of the second sentence of Article 19(2) of the Sixth Council Directive 77/388/EEC 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 — Building business engaged in the sale of buildings constructed by it on its own account with a view to resale — Goods and services used for activities which do and do not give rise to entitlement to deduct VAT paid upstream — Calculation of pro rata deduction — Concept of incidental real estate transactions

Operative part of the judgment

1. *Article 19(2) of the Sixth Council Directive 77/388/EEC 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 is to be interpreted as meaning that the sale, in the case of a building business, of buildings constructed on its own account cannot be classified as an 'incidental real estate transaction' within the meaning of that provision, where that activity constitutes the direct, permanent and necessary extension of its business. In those circumstances, it is not necessary, in this case, to assess to what extent that sales activity, viewed separately, entails a use of goods and services on which value added tax is payable.*

2. *The principle of fiscal neutrality cannot preclude a building business, which is required to pay value added tax on supplies relating to construction effected on its own account (self-supply), from being unable fully to deduct the value added tax relating to the general costs incurred thereby, since the turnover from the sale of buildings thus constructed is exempt from value added tax.*

(1) OJ C 171, 5.7.2008.

Judgment of the Court (Second Chamber) of 29 October 2009 — Commission of the European Communities v Ireland

(Case C-188/08) (1)

(Failure of a Member State to fulfil obligations — Directive 75/442/EEC — Waste — Domestic waste waters discharged through septic tanks in the countryside — Waste not covered by other legislation — Failure to transpose)

(2009/C 312/09)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán, D. Lawunmi and M. Wilderspin, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement, so far as domestic waste waters discharged through septic tanks is concerned, of Articles 4, 7, 8, 9, 10, 11, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — Waste not covered by other legislation

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, save in County Cavan, all the laws, regulations and administrative provisions necessary to comply with Articles 4 and 8 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, as regards domestic waste waters disposed of in the countryside through septic tanks and other individual waste water treatment systems, Ireland has failed to fulfil its obligations under that directive;*

2. *Orders Ireland to pay three quarters of the costs of the Commission of the European Communities and to bear its own costs;*

3. *Orders the Commission of the European Communities to bear one quarter of its own costs.*

(1) OJ C 197, 2.8.2008.

Judgment of the Court (Third Chamber) of 29 October 2009 — Commission of the European Communities v Republic of Finland

(Case C-246/08) (1)

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — Article 2(1) and Article 4(1) and (2) — Meaning of 'economic activities' — Public legal aid offices — Legal aid services provided in legal proceedings in return for a part contribution paid by the recipient — Meaning of 'direct link' between the service rendered and the consideration received)

(2009/C 312/10)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: P. Aalto and D. Triantafyllou, acting as Agents)

Defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2(1) and 4(1), (2) and (5) of Sixth Council Directive 77/388/EEC 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) — National legislation providing for different treatment for VAT purposes of legal advice services depending on whether they are provided by private legal advisers or by advisers working in public legal aid offices — Distortions of competition

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Commission of the European Communities to pay the costs.*

(1) OJ C 209, 15.08.2008.