

French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) — Interpretation of 'ne bis in idem' principle — Scope — Decision by which a police authority terminates criminal proceedings

Operative part of the judgment

The Court:

The ne bis in idem principle enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990, does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.

⁽¹⁾ OJ C 22, 26.1.2008.

Judgment of the Court (Third Chamber) of 18 December 2008 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Afton Chemical Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-517/07) ⁽¹⁾

(Directive 92/81/EEC — Excise duty on mineral oils — Article 2(2) and (3) and Article 8(1)(a) — Directive 2003/96/EC — Taxation of energy products and electricity — Article 2(2), (3) and (4)(b) — Scope — Fuel additives which are mineral oils or energy products but are not used as motor fuel — National taxation regime)

(2009/C 44/33)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Appellant: Afton Chemical Limited

Respondents: Commissioners for Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 2(3) and 8(1) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), Articles 2(3) and 4(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) and Article 3 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Mineral oils added to fuel for purposes other than increasing the power of the vehicle but not intended to be sold or used as fuel — To be taxed as motor fuel?

Operative part of the judgment

Article 2(3) and Article 8(1) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, as regards the period ending on 31 December 2003, and Article 2(3) and (4) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, as regards the period from 1 January to 31 October 2004, are to be interpreted as meaning that fuel additives, such as those at issue in the main proceedings, which are 'mineral oils' within the meaning of Article 2(1) of Directive 92/81 or 'energy products' within the meaning of Article 2(1) of Directive 2003/96, but which are not intended for use, offered for sale or used as motor fuel, must be made subject to the taxation regime imposed by those directives.

⁽¹⁾ OJ C 22, 26.1.2008.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Handelsgericht Wien — Austria) — Friederike Wallentin-Hermann v Alitalia — Linee Aeree Italiane SpA

(Case C-549/07) ⁽¹⁾

(Carriage by air — Regulation (EC) No 261/2004 — Article 5 — Compensation and assistance to passengers in the event of cancellation of flights — Exemption from the obligation to pay compensation — Cancellation due to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken)

(2009/C 44/34)

Language of the case: German

Referring court

Handelsgericht Wien