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

Parties to the main proceedings

Applicant: Friederike Wallentin-Hermann

Defendant: Alitalia — Linee Aeree Italiane SpA

Re:

Reference for a preliminary ruling — Handelsgericht Wien — Interpretation of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Concepts of 'extraordinary circumstances' and 'reasonable measures' — Cancellation of a flight on account of an engine defect — Substantially higher rate of cancellations due to technical defects than that of other airlines

Operative part of the judgment

1. *Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, is not decisive for the interpretation of the grounds of exemption under Article 5(3) of Regulation No 261/2004.*

2. *The frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 can be concluded.*

3. *The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of Article 5(3) of Regulation No 261/2004 and, therefore, to relieve that carrier of its obligation to pay compensation provided for by Articles 5(1)(c) and 7(1) of that regulation.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — In the proceedings brought by Erich Stamm, Anneliese Hauser

(Case C-13/08) ([1])

(Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Equal treatment — Self-employed frontier workers — Agricultural lease — Agricultural structure)

(2009/C 44/35)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Erich Stamm, Anneliese Hauser

Interested party: Regierungspräsidium Freiburg

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 12(1), 13(1) and 15(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 6) — Applicability of the principle of equal treatment to self-employed frontier workers — Farmer with Swiss nationality residing in Switzerland having entered into a lease agreement for land for agricultural use located in Germany.

Operative part of the judgment

Pursuant to Article 15(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, a contracting party must accord to the 'self employed frontier workers', within the meaning of Article 13 of that annex, of the other contracting party no less favourable treatment as regards access to self-employed activity and the pursuit thereof in the host State than that which is accorded by that State to its own nationals.

([1]) OJ C 92, 12.4.2008.