



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
KOKOTT  
delivered on 21 May 2015<sup>1</sup>

**Case C-251/14**

**György Balázs**

v

**Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága (Request for a preliminary ruling from the**

**Kecskeméti Közigazgatási és Munkaügyi Bíróság (Hungary))**

(Approximation of laws — Directive 98/70/EC — Quality of petrol and diesel fuels — Additional quality requirements under a technical standard — Directive 98/34/EC — Procedure for the provision of information in the field of technical standards and regulations)

### I – Introduction

1. Differences in the fuel specifications applied by the Member States can have an adverse effect on the internal market. For that reason, the object of Directive 98/70/EC<sup>2</sup> is to remove certain barriers to trade in the fuel sector by laying down specifications. Likewise, the European standardisation policy pursued by the standards organisations recognised by the European Union is also, in principle, intended to facilitate the free movement of goods and services.<sup>3</sup>

2. A standard for diesel fuels adopted by the European Committee for Standardisation ('CEN') contains not only the requirements laid down in the Fuel Directive but also a specification concerning the flash point of diesel fuel. Hungary has transposed that CEN standard into a national standard whose application is, in principle, voluntary. It is only because of a Hungarian provision referring to the latter standard that the flash point specification has become binding for the purposes of the sale of diesel at service stations.

3. The first question that arises in the present case, therefore, is whether the binding nature of such a specification is compatible with the Fuel Directive.

<sup>1</sup> — Original language: German.

<sup>2</sup> — Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ 1998 L 350, p. 58), in the version of Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ 2003 L 284, p. 1, 'the Fuel Directive').

<sup>3</sup> — See the General Guidelines for the Cooperation between CEN, Cenelec and ETSI and the European Commission and the European Free Trade Association — 28 March 2003 (OJ 2003 C 91, p. 7).

4. In addition, the referring court asks questions about the requirements which, in accordance with Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations,<sup>4</sup> must be satisfied by a provision of national law which declares specifications contained in a standard to be legally binding.

## II – Legal framework

### A – EU law

#### 1. The Fuel Directive

5. The purpose of the Fuel Directive is set out in the first recital in the preamble to that directive as follows:

‘Whereas disparity between the laws or administrative measures adopted by the Member States on specifications of conventional and alternative fuels used by vehicles equipped with positive-ignition and compression-ignition engines creates barriers to trade in the Community and may thereby directly affect the establishment and functioning of the internal market and the international competitiveness of the European vehicle and refining industries; whereas in accordance with the provisions of Article 3b of the Treaty, it therefore appears necessary to approximate the laws in this field.’

6. The second recital in the preamble reads:

‘Whereas Article 100a(3) of the Treaty envisages that Commission proposals aimed at the establishment and functioning of the internal market and concerning, inter alia, health and environmental protection will take as a base a high level of protection.’

7. Recital 20 in the preamble states:

‘Whereas, in order to protect human health and/or the environment in specific agglomerations or in specific ecologically sensitive areas with special problems of air quality, Member States should be permitted, subject to a procedure established in this Directive, to require that fuels may be marketed only if they comply with more stringent environmental specifications than established under this Directive; whereas this procedure is a derogation from the information procedure laid down in Directive 98/34/EC. ...’

8. The ambit of the Fuel Directive is governed by Article 1 thereof, which provides:

‘This Directive sets technical specifications on health and environmental grounds for fuels to be used for vehicles equipped with positive-ignition and compression-ignition engines.’

9. Article 4(1)(e) of the Fuel Directive contains the following provisions on the quality of diesel fuel:

‘By no later than 1 January 2009, Member States shall ensure ... that diesel fuel may be marketed in their territory only if it complies with the environmental specification set out in Annex IV except for the sulphur content which shall be a maximum of 10 mg/kg’.

<sup>4</sup> — Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), in the version of Council Directive 2006/96/EC of 20 November 2006 adapting certain directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania (OJ 2006 L 363, p. 81).

10. Article 5 of the Fuel Directive provides for the free circulation of fuels:

‘No Member State may prohibit, restrict or prevent the placing on the market of fuels which comply with the requirements of this Directive.’

11. Article 6 of the Fuel Directive allows Member States, subject to certain conditions, to adopt more stringent environmental specifications than those laid down in the directive.

12. Annex IV to the Fuel Directive sets out the environmental specifications for market fuels to be used for vehicles equipped with compression ignition engines. Limits are laid down for the following parameters: cetane number, density at 15 °C, distillation, polycyclic aromatic hydrocarbons and sulphur content.

13. The Fuel Directive was amended by Directive 2009/30/EC<sup>5</sup> (‘Directive 2009/30’). In accordance with Article 5 thereof, that amending directive entered into force on the 20th day following its publication in the Official Journal, that is to say on 25 July 2009, and, in accordance with Article 4 thereof, was to be transposed by 31 December 2010. It is not applicable to the present case, which has its origin in an excise duty audit carried out on 5 October 2009, given that it was only by laws adopted in 2010 and 2011 that Hungary transposed the Fuel Directive.<sup>6</sup>

14. It is important, however, to draw attention to recital 31 in the preamble to Directive 2009/30 because it refers to CEN standard EN 590, the standard at issue in these proceedings:

‘It is appropriate to adapt Annex IV to Directive 98/70/EC to enable the placing on the market of diesel fuels with a higher biofuel content (B7) than envisaged in standard EN 590:2004 (B5). This standard should be updated accordingly and should establish limits for technical parameters not included in that Annex, such as oxidation stability, flash point, carbon residue, ash content, water content, total contamination, copper strip corrosion, lubricity, kinematic viscosity, cloud point, cold filter plugging point, phosphorous content, acid index, peroxides, acid index variation, injector fouling and addition of additives for stability.’

2. Directive 98/34

15. In accordance with Directive 98/34, Member States are required to consult the Commission before adopting specific legislation which may adversely affect the internal market.

16. Article 1 of Directive 98/34 contains the key definitions:

‘3. ‘technical specification’, a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures. ...

5 — Directive of the European Parliament and the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EC (OJ 2009 L 140, p. 88)

6 — See the Hungarian provisions implementing that directive which are listed on EUR-Lex.

6. ‘standard’, a technical specification approved by a recognised standardisation body for repeated or continuous application, with which compliance is not compulsory and which is one of the following:

— ...,

— European standard: a standard adopted by a European standardisation body and made available to the public,

— national standard: a standard adopted by a national standardisation body and made available to the public.

...

11. ‘technical regulation’, technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States ... prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

De facto technical regulations include:

— laws, regulations or administrative provisions of a Member State which refer either to technical specifications ..., compliance with which confers a presumption of conformity with the obligations imposed by the aforementioned laws, regulations or administrative provisions,

— ...’

### B – *European standards*

17. The CEN is recognised by the European Union and the EFTA as the European standards organisation.<sup>7</sup> It adopted a standard for European diesel fuels (EN 590:1993) for the first time in 1993. That standard provided for a permissible flash point of at least 55 °C which was also prescribed in the standards which replaced it: EN 590:1999, EN 590:2004, EN 590:2009 and EN 590:2013.

### C – *Hungarian law*

1. Ministerial Order on the quality requirements applicable to engine fuels

18. Paragraph 9(1)(C) of Ministerial Order 20/2008 of the Ministry of Transport, Telecommunications and Energy of 22 August 2008 on the quality requirements applicable to engine fuels (‘the Ministerial Order’) states that it transposes Directive 2003/17/EC amending the Fuel Directive<sup>8</sup> (‘Directive 2003/17’). There are no apparent deviations from the directive.

<sup>7</sup> — See the General Guidelines for the Cooperation between CEN, Cenelec and ETSI and the European Commission and the European Free Trade Association, cited in footnote 3, and Annex I to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation (OJ 2012 L 316, p. 12), which entered into force on 1 January 2013.

<sup>8</sup> — Directive of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels (OJ 2003 L 76, p. 10).

## 2. Law on the establishment of national standards

19. Paragraph 6 of Law XXVIII of 1995 on the establishment of national standards ('the Law on the establishment of national standards') provides as follows in relation to the binding nature of a national standard:

'1. Application of the national standard shall be voluntary.

2. A legal provision with technical content may refer to a national standard the application of which is to be regarded as also fulfilling the relevant requirements laid down in the legal provision in question.

...'

## 3. Law on excise duties

20. Paragraph 110(13) of Law No CXXVII of 2003 on excise duties and the special rules on the marketing of products subject to excise duties ('the Law on excise duties') governs inter alia the sale of biodiesel:

'... Only gas oil falling under tariff heading 2710 19 41 and heating oil falling under tariff headings 2710 19 41 and 2710 19 45 that comply with the applicable Hungarian standard, as well as ... biodiesel and E85 that comply with the applicable Hungarian standard, may be sold, exclusively at the pump, from the storage tanks of other service stations [that is to say, service stations other than those for the refuelling of aircraft]. ...

...'

## III – Facts and request for a preliminary ruling

21. On 5 October 2009, the administrative authority of first instance carried out an excise duty audit on the diesel fuel reserves held by György Balázs.

22. An analysis of a sample taken showed that the flash point of the diesel fuel did not comply with the provisions of Hungarian standard MSZ EN 590:2009. It had a flash point of 44 °C rather than the 55 °C prescribed.<sup>9</sup> That standard was not available in Hungarian on the day of the audit.

23. On 21 March 2013, the Kiskőrös office of the Provincial Customs and Tax Directorate of Bács-Kiskun found that György Balázs had infringed the Law on excise duties and ordered him to pay a fine of HUF 4 418 080, excise duties in the amount of HUF 883 616 and experts' fees in the amount of HUF 58 900. The Regional Customs and Tax Directorate of Dél-alföld, forming part of the National Treasury and Customs Authority, confirmed that decision on 13 June 2013.

24. György Balázs challenged that decision before the Administrative and Labour Court, Kecskemét ('the referring court'). It was in the course of those proceedings that the referring court put the following questions to the Court:

'(1) Must Article 4(1) and Article 5 of [the Fuel Directive] be interpreted as meaning that, in addition to the quality requirements laid down in the national legislation adopted on the basis of that directive, other national legislation may not impose on a fuel supplier quality requirements set out in a national standard that go beyond those provided in the directive?

<sup>9</sup> — The request for a preliminary ruling states, presumably as a result of a typing error, that the standard provides for a flash point of 53 °C.

- (2) Must Article 1(6) and (11) of Directive [98/34] be interpreted as meaning that, if a technical regulation is in force (in this case, a ministerial order adopted on the basis of enabling legislation), the application of a national standard adopted in the same field can only be voluntary, that is to say, the legislation may not prescribe the mandatory application thereof?
- (3) Is the criterion of availability to the public of the national standard laid down in [Article 1](6) of Directive [98/34] met by a rule that, at the time when it ought, according to the administrative authority, to have been applied was not available in the national language?

25. Written observations have been submitted by Mr Balázs, the Greek and Hungarian Governments and the European Commission. The hearing of 23 April 2015 was also attended by the Regional Customs and Tax Directorate of Dél-alföld, but not by Mr Balázs or Greece.

#### IV – Legal assessment

26. At the hearing, the Regional Customs and Tax Directorate argued that the questions raised by the referring court bear no relation to the main proceedings. The contested decision simply seeks to recover unpaid excise duties. No penalty for infringement of the specifications for diesel fuels has been imposed.

27. If the Regional Customs and Tax Directorate thereby sought to demonstrate that the request for a preliminary ruling is not relevant to the decision in this case and is therefore inadmissible, it must be stated in rebuttal of that argument that, so far as concerns the assessment of relevance, the referring court enjoys a prerogative which, other than in the case of manifest errors, is not in principle reviewed by the Court.<sup>10</sup>

28. When questioned, however, the Regional Customs and Tax Directorate conceded that the flash point analysis results were used as the basis for the finding that Mr Balázs sold a fuel that was subject to a higher rate of duty than the diesel fuel on which duty has been paid. Consequently, the flash point requirements are indeed relevant to the taxation of the fuel in question. For that reason alone, the questions raised by the referring court are not, even by the standard of the argument put forward by the Regional Customs and Tax Directorate, manifestly irrelevant to the decision in the pending dispute.

29. It is therefore necessary to answer the request for a preliminary ruling.

#### A – *The first question — additional requirements for fuels*

30. By its first question, the referring court wishes to ascertain, in essence, whether Member States may, in addition to the requirements laid down in the Fuel Directive, impose further quality requirements with respect to the placing on the market of diesel fuels.

##### 1. Derogation from Article 5 of the Fuel Directive

31. Under Article 5 of the Fuel Directive, no Member State may prohibit, restrict or prevent the placing on the market of fuels which comply with the requirements of that directive.

<sup>10</sup> — Judgments in *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 54) and *Quelle* (C-404/06, EU:C:2008:231, paragraphs 19 and 20).

32. Contrary to the view expressed by Hungary and by Greece, the Fuel Directive does not simply impose minimum requirements. Rather, the Commission is right to say that, subject to the safeguard clause contained in Article 6 thereof,<sup>11</sup> that directive expresses prohibition of the creation of barriers to market entry within the ambit of the directive.<sup>12</sup>

33. That interpretation of the Fuel Directive not only follows from its wording but also is consistent with its legal basis and its objectives as set out in the recitals in its preamble.

34. The Fuel Directive was originally adopted on the basis of the competence in matters relating to the internal market provided for in Article 100a ECT (later Article 95 EC, now Article 114 TFEU). The amendments made to the directive up until the time of the facts of the main proceedings, in particular those introduced by Directive 2003/17, were also carried out on the basis of the competence in matters relating to the internal market provided for in Article 95 EC. In all versions [of the Fuel Directive], it is that competence which makes it possible to approximate the laws of the Member States. The first recital in the preamble to the Fuel Directive accordingly states that the purpose of that directive is to approximate the laws of the Member States, that is to say, to remove any disparities.

35. That objective of the Fuel Directive of eliminating obstacles to trade would not be attainable if the Member States were free to widen the fuel requirements provided for therein. The provisions of the Fuel Directive are therefore to be understood not as minimum rules but rather as exhaustive provisions.<sup>13</sup>

36. That interpretation is supported by the way the prohibition laid down in Article 5 of the Fuel Directive is linked to the safeguard clause in Article 6, already provided for by the rule on competence in matters relating to the internal market, now Article 114(10) TFEU: Article 6 of the Fuel Directive allows the Member States, in narrowly defined conditions and subject to a European test procedure, to adopt more stringent environmental specifications. This is further underpinned by recital 20 in the preamble to the Fuel Directive, which states that Member States are to be permitted, subject always to a procedure established in that directive, to require that fuels be marketed only if they comply with more stringent environmental specifications than are established under the directive.

37. The strict conditions thus applicable to derogation from the Fuel Directive are necessary only because the directive does *not* lay down minimum requirements but is rather, in principle, definitive.<sup>14</sup>

38. Nor, finally, contrary to the view taken by the Regional Customs and Tax Authority, are there any grounds for refusing to allow retail traders such as Mr Balázs to rely on Article 5 of the Fuel Directive. On the contrary, Member States could easily circumvent that prohibition if it were not applicable to the retail trade.

11 — See in that regard points 36 and 45 below.

12 — See the judgment in *Belgische Petroleum Unie and Others* (C-26/11, EU:C:2013:44, paragraphs 33 and 36).

13 — See to that effect the judgments in *Commission v Denmark* (278/85, EU:C:1987:439, paragraph 22) and *Cindu Chemicals and Others* (C-281/03 and C-282/03, EU:C:2005:549, paragraph 44).

14 — See the judgments in *Commission v France* (C-53/00, EU:C:2002:252, paragraph 19 et seq.); *Commission v Greece* (C-154/00, EU:C:2002:254, paragraph 15 et seq.); and *González Sánchez* (C-183/00, EU:C:2002:255, paragraph 28 et seq.).

## 2. Scope of the directive

39. The prohibition laid down in Article 5 of the Fuel Directive is, however, limited to the ambit of the directive.<sup>15</sup> In accordance with Article 1 thereof, that directive applies to technical specifications *on health and environmental grounds* for fuels to be used for vehicles equipped with positive-ignition and compression-ignition engines.<sup>16</sup>

40. Two conclusions may be drawn from that regulatory link to Article 1 of the Fuel Directive.

41. As I stated in my Opinion in *Belgische Petroleum Unie and Others*, the prohibition laid down in the Fuel Directive is not to be treated like the comprehensive prohibition of restrictions of the basic freedoms. Article 5 of the Fuel Directive does not, therefore, preclude any restriction of the marketing of fuels that comply with the law, but is applicable at most only to *technical* fuel specifications. This means that pricing rules and rules on the advertising of fuels or the taxation of mineral oil products, for example, are not caught by the prohibition of restrictions laid down in Article 5 of the Fuel Directive.<sup>17</sup>

42. For the purposes of the present case, it must be added to the foregoing that the prohibition laid down in Article 5 of the Fuel Directive does not even apply to all technical specifications for fuels, but only to those ‘*on health and environmental grounds*’, referred to in Article 1. This is confirmed by the second recital in the preamble to the Fuel Directive, according to which, in its proposal, the Commission took as a basis a high level of protection in relation to health and environmental protection, whereas the fields of ‘safety’ and ‘consumer protection’, also referred to in this context as matters falling within the internal market competence, are not mentioned.

43. Amending Directives 2000/71 and 2003/17 did not include those two fields within the scope of the Fuel Directive either.<sup>18</sup> Rather, the second recital in the preamble to Directive 2003/17 too continues to refer only to ‘health and environmental protection’. It must be assumed in this regard that, for the purposes of specifying the flash point of diesel, the concept of ‘safety’ would actually be of particular interest, since it encompasses the technical safety of goods.<sup>19</sup>

44. It is true that the most recent amending Directive (Directive 2009/30) also contains specific rules on metallic fuel additives which the Court has attributed to the objective of consumer protection.<sup>20</sup> However, it is doubtful whether those rules are intended to secure a definitive harmonisation of consumer protection. What is more, they are not yet applicable for the purposes of the main proceedings. Nor, therefore, is there any need for the Court to comment on those rules in the present proceedings.

15 — See the judgment in *Toolex* (C-473/98, EU:C:2000:379, paragraph 27 et seq.), concerning legislation on chemical products.

16 — See my Opinion in *Belgische Petroleum Unie and Others* (C-26/11, EU:C:2012:480, point 43).

17 — My Opinion in *Belgische Petroleum Unie and Others* (C-26/11, EU:C:2012:480, point 41 et seq.).

18 — The most recent amending directive (Directive 2009/30), on the other hand, also contains, on the initiative of the Parliament in particular, rules which the Court has attributed to the objective of consumer protection; see the judgment in *Afton Chemical* (C-343/09, EU:C:2010:419, paragraphs 48, 49, 55, 56, 88, 92 and 95). Those amendments are not yet applicable for the purposes of the main proceedings, however.

19 — Pipkorn, J., Bardenhewer-Rating, A., and Taschner, H. C., in: von der Groeben, H., and Schwarze, J. (eds.), *Kommentar zum Vertrag über die Europäische Union und zur Gründung der Europäischen Gemeinschaft*, 6<sup>th</sup> edition, Nomos, Baden-Baden 2003, Volume 2, Article 95 EC, p. 1436, paragraph 72; Tietje, S., in: Grabitz/Hilf/Nettesheim (eds.), *Das Recht der Europäischen Union*, 43<sup>rd</sup> supplement March 2011, Article 114 TFEU, paragraph 146; Kahl, in: Calliess/Ruffert (eds.), *EUV/AEU*, 4<sup>th</sup> edition 2011, Article 114 TFEU, paragraph 36; and Lieble/Schröder, in: Streinz (ed.), *EUV/AEU*, 2<sup>nd</sup> edition 2012, Article 114 TFEU, paragraph 80.

20 — Judgment in *Afton Chemical* (C-343/09, EU:C:2010:419, paragraphs 48, 49, 55, 56, 88, 92 and 95).

45. In keeping with the fact that the objective pursued by the Fuel Directive is confined to health and environmental matters, the safeguard clause contained in Article 6(1) of the Fuel Directive authorises the Member States, on a supplementary basis, to lay down more stringent *environmental* specifications only if they protect ‘the health of the population in a specific agglomeration or the environment in a specific ecologically sensitive area’. The objective of the exceptionally permissible measures adopted by Member States is thus also restricted to health and environmental matters.

46. Therefore, the Fuel Directive does not harmonise specifications in matters of safety and consumer protection.

47. Consequently, while Article 5 of the Fuel Directive does in principle preclude all national rules which rely on technical specifications for fuels laid down on health and environmental grounds, it does not preclude reliance on other specifications, in particular in so far as those grounds relate to fuel safety or consumer protection.

### 3. Application of the prohibition of restrictions under Article 5 of the Fuel Directive

48. There are two legal provisions in Hungary that govern the placing on the market of fuels: the Ministerial Order and the Law on excise duties.

49. Paragraph 9 of the Hungarian Ministerial Order states that it transposes the quality requirements laid down in the Fuel Directive, as defined by amending Directive 2003/17. Furthermore, the Ministerial Order itself does not contain any requirements applicable to diesel fuels, such as a limit for the flash point, which go beyond [those in] the version of the Fuel Directive currently in force. Nor does it declare any additional quality requirements contained in a national or European standard to be legally binding. Paragraph 3(2) of the Ministerial Order simply establishes a presumption that fuels complying with the requirements laid down in the relevant national standard or the corresponding European standard satisfy the requirements of the Ministerial Order.

50. That provision contains no discernible infringement of Article 5 of the Fuel Directive.

51. Although Hungarian standard MSZ EN 590:2009, which corresponds to CEN standard EN 590:2009, contains additional quality requirements, in particular a flash point limit, the application of a national standard is, in principle, voluntary, in accordance with Paragraph 6(1) of the Hungarian Law on the establishment of standards.

52. However, Paragraph 110(13) of the Hungarian Law on excise duties contains a provision on the sale of diesel fuels. In accordance with that provision, service stations may sell only diesel fuels complying with the relevant Hungarian standard. The standard and its additional requirements thus acquire binding effect under Hungarian law.

53. It is true that, at first sight, Paragraph 110(13) of the Law on excise duties appears to apply only to selling arrangements, which is to say that it determines what products may be sold at service stations. However, since, in practice, service stations are the only points of sale which end consumers use, that provision actually lays down requirements applicable to ‘diesel fuel’ as a product which cannot be regarded as selling arrangements.<sup>21</sup>

54. The technical specification of flash point, however, is based not on health or environmental grounds, which, in accordance with Article 1 of the Fuel Directive, it must be in order to fall within the scope of that directive, but on grounds of safety and consumer protection.

21 — Judgments in *Canal Satellite Digital* (C-390/99, EU:C:2002:34, paragraph 30) and *Dynamic Medien* (C-244/06, EU:C:2008:85, paragraph 31).

55. The flash point of a material gives an indication of its inflammability and explosivity, and is thus a key parameter of product safety. It indicates the lowest temperature at which the fuel vaporises to such an extent as to be capable of forming positively ignitable mixtures with air.<sup>22</sup>

56. Furthermore, all those present at the hearing agreed that compliance with the flash point requirement laid down in the standard is important to the performance and protection of motor vehicle engines. That parameter is thus also intended to protect consumers against damage to their vehicles.

57. Consequently, Article 5 of the Fuel Directive is not applicable, at least so far as the specification of the flash point of diesel fuel is concerned.

58. Consistent with that conclusion is the fact that, in recital 31 in the preamble to amending Directive 2009/30, the EU legislature expressly calls for CEN standard EN 590:2004 to be updated and to establish limits for technical parameters not included in the Fuel Directive, including flash point. That appeal would make very little sense if the Fuel Directive itself precluded such additional requirements. Although a CEN standard is not as such binding, there is every reason to make the parameters contained in it binding, at least in so far as they contribute towards product safety.

59. The fact that there are no harmonised fuel specification requirements based on safety considerations does not, however, give the Member States unlimited discretion to introduce such national technical specifications in relation to the placing on the market of fuels.<sup>23</sup>

60. If an area has not been definitively harmonised at EU level, a Member State may subject the placing on the market of a product only to requirements that comply with obligations under the Treaty, in particular the principle of the free movement of goods set out in Articles 34 TFEU and 36 TFEU.<sup>24</sup> Furthermore, in accordance with Article 8 of Directive 98/34, that Member State must communicate draft regulations giving binding effect to technical specifications to the Commission before they enter into force, so that these can be preventively monitored by reference to the provisions on the free movement of goods.<sup>25</sup>

#### 4. Answer to the first question referred

61. In those circumstances, the answer to the first question referred must be that the Fuel Directive harmonises in full only those technical specifications of diesel fuel that are based on health and environmental grounds. Conversely, the prohibition laid down in Article 5 of the Fuel Directive does not prevent a Member State laying down additional fuel specifications relating to matters of safety, such as a limit for the flash point of diesel fuels.

22 — For a technical definition, see, for example:

<http://www.urz.uni-heidelberg.de/saphelp/helpdata/DE/35/26bf45afab52b9e10000009b38f974/content.htm>, last visited on 13 April 2015.

23 — Opinion of Advocate General Trstenjak in *Fra.bo* (C-171/11, EU:C:2012:176, point 22). See also the judgments in *Lidl Magyarország* (C-132/08, EU:C:2009:281, paragraph 45) and *Brandsma* (C-293/94, EU:C:1996:254, paragraph 10 et seq.).

24 — Judgment in *Commission v Portugal* (C-432/03, EU:C:2005:669, paragraph 35). See also the judgment in *Toolex* (C-473/98, EU:C:2000:379, paragraph 33).

25 — See the judgments in *CIA Security International* (C-194/94, EU:C:1996:172, paragraph 40); *Lidl Italia* (C-303/04, EU:C:2005:528, paragraph 22); *Sandström* (C-433/05, EU:C:2010:184, paragraph 42); and *Belgische Petroleum Unie and Others* (C-26/11, EU:C:2013:44, paragraph 49).

*B – The second question — Binding nature of standards additional to technical specifications*

62. By the second question, the referring court wishes to ascertain whether it follows from the definitions of a ‘standard’ in Article 1(6) of Directive 98/34 and of a ‘technical regulation’ in Article 1(11) of that directive that when, in a particular field, there is a binding technical regulation in place, any additional ‘standards’ must be non-binding.

63. The basis for that question would appear to be that, in accordance with Article 1(6) of Directive 98/34, a ‘standard’ is non-binding, whereas, in accordance with Article 1(11) of that directive, a ‘technical regulation’ is binding.

64. In Hungary, there is a directly binding technical specification for diesel fuels, namely the Ministerial Order, which transposes the Fuel Directive. In addition, however, the current Hungarian standard applicable to the sale of diesel fuels by service stations is also binding, in accordance with Paragraph 110(13) of the Hungarian Law on excise duties.

65. It must be pointed out first of all in this regard that, in accordance with the first subparagraph of Article 8(1) of Directive 98/34, a standard too may be given binding effect when a Member State transposes a European or international standard, such as a CEN standard, into a technical regulation. I cannot see any reason why such transposition should be precluded in the case of national standards, particularly if those standards themselves correspond to CEN standards.

66. Furthermore, Directive 98/34 does not contain any provision preventing a Member State from declaring a number of technical specifications in a particular field to be binding.

67. Nor, likewise, does the distinction between non-binding standards and binding technical regulations make it impossible for a number of binding technical regulations to exist alongside each another. That distinction is intended only to indicate that different information procedures apply, that applicable to standards being laid down in Articles 2 to 6 of Directive 98/34 and that applicable to technical regulations being laid down in Articles 8 and 9 of that directive.

68. If the parallel application of several regimes were to prompt doubts as to the standard to be observed in a particular case, this would raise questions from the point of view of EU law only if rules of EU law were affected. Such rules would include the specifications laid down in the Fuel Directive, but the request for a preliminary ruling gives no indication that their application in Hungary is adversely affected. At all events, Directive 98/34 contains no provisions on such conflicts of rules.

69. The answer to the second question must therefore be that Directive 98/34 does not prohibit the Member States, when a technical regulation is in force under a provision of law, from prescribing the mandatory application of an additional national standard adopted in that field.

*C – The third question — Availability in the national language*

70. By the third question, the referring court wishes to ascertain whether a national standard which, at the time when the administrative authority considers that it should have been applied, was not available in the national language satisfies the criterion of availability to the public which Article 1(6) of Directive 98/34 lays down with respect to national standards.

71. That question refers to the fact, referred to in the request for a preliminary ruling, that, at the time of the infringement, Hungarian standard MSZ EN 590:2009 was not available in Hungarian but only in English.

72. When considered in isolation, it is not clear to what extent the question as to whether the Hungarian standard complies with the definition contained in Article 1(6) of Directive 98/34 is relevant to the settlement of the dispute in the main proceedings. My understanding of this question is that it is asking, rather, whether Directive 98/34 precludes a technical specification not available to the public because it does not exist in the national language from having binding effect.

73. That having been clarified, I should say, first of all, that it is doubtful whether availability to the public within the meaning of Article 1(6) of Directive 98/34 presupposes availability in the national language. The criterion of availability to the public is, after all, referred to not only in the context of national standards but also in connection with European and international standards. In the vast majority of Member States, however, the latter two types of standard will not exist in the national language. Thus, the official languages of CEN/CENELEC are English, French and German.<sup>26</sup> It is none the less unnecessary for a standard to exist in all three languages. Given that the EU legislature must have been aware of that fact, it cannot be assumed that availability to the public presupposes availability in the relevant national language.

74. In the present case, however, there is no need to decide whether the same is also true of national standards. After all, the main proceedings are concerned not with the effects of a standard as a non-binding technical specification but with the *binding nature* of specifications contained in a standard. The issue, therefore, is the effectiveness of technical regulations within the meaning of Article 1(11) of Directive 98/34.

75. However, the definition of a technical regulation contains no reference either to the criterion of availability to the public or to the language of the regulation. Nor does any other element of Directive 98/34 support the inference of a rule concerning the applicability of technical regulations which refers to the language in which those regulations are drafted.

76. The answer to the third question must therefore be that Directive 98/34 does not require the Member States to make technical regulations available in their official language.

## V – Conclusion

77. I therefore propose that the Court answer the request for a preliminary ruling as follows:

- (1) Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC, in the version of Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, harmonises in full only those technical specifications of diesel fuel that are based on health and environmental grounds. Conversely, the prohibition in Article 5 of the Fuel Directive does not prevent a Member State from laying down additional fuel specifications relating to matters of safety, such as a limit for the flash point of diesel fuels.
- (2) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, in the version of Council Directive 2006/96/EC of 20 November 2006, does not prohibit the Member States, when a technical regulation is in force under a provision of law, from prescribing the mandatory application of an additional national standard adopted in that field.

26 — See Section 8 of Part 2 of CEN/CENELEC's Internal Regulations — Common Rules for Standardization Work, [http://boss.cen.eu/ref/IR2\\_E.pdf](http://boss.cen.eu/ref/IR2_E.pdf), last visited on 13 April 2015.

- (3) Directive 98/34 does not require the Member States to make technical regulations available in their official language.