



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 October 2015*

(Reference for a preliminary ruling — Approximation of laws — Quality of diesel fuels — National technical specification imposing additional quality requirements compared to EU law)

In Case C-251/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Kecskemét, Hungary), made by decision of 23 April 2014, received at the Court on 26 May 2014, in the proceedings

György Balázs

v

Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, F. Biltgen, E. Levits, M. Berger and S. Rodin (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 23 April 2015,

after considering the observations submitted on behalf of:

- Mr Balázs, by M. Miskuly, ügyvéd,
- the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága, by B. Gyenge, jogtanácsos,
- the Hungarian Government, by M. Fehér and G. Koós, acting as Agents,
- the Greek Government, by I. Bakopoulos and V. Stroumpouli, acting as Agents,
- the European Commission, by A. Tokár and K. Mifsud-Bonnici, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 May 2015,

* Language of the case: Hungarian.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 4(1) and 5 of 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), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1) ('Directive 98/70'), and Article 1(6) and (11) of 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 (OJ 1998 L 204, p. 37), as amended by Council Directive 2006/96/EC of 20 November 2006 (OJ 2006 L 363, p. 81) ('Directive 98/34').
- 2 The request has been made in proceedings between Mr Balász and the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága (Regional Customs and Tax Directorate of Dél-alföld, forming part of the National Treasury and Customs Authority; the 'Regional Customs and Tax Directorate') concerning the lawfulness of an administrative decision imposing on him, *inter alia*, a tax fine for not paying excise duties owed on his diesel fuel reserves.

Legal context

EU law

Directive 98/70

- 3 Article 1 of Directive 98/70, entitled 'Scope', states:

'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.'
- 4 Article 4 of that directive, entitled 'Diesel fuel', provides, in paragraph 1(e):

'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.'
- 5 Article 5 of that directive, entitled 'Free circulation', provides:

'No Member State may prohibit, restrict or prevent the placing on the market of fuels which comply with the requirements of this Directive.'
- 6 Article 6 of the directive, entitled 'Marketing of fuels with more stringent environmental specifications', states:

'1. By way of derogation from Articles 3, 4 and 5 and in accordance with Article 95(10) of the Treaty, a Member State may take measures to require that in specific areas, within its territory, fuels may be marketed only if they comply with more stringent environmental specifications than those provided for in this Directive for all or part of the vehicle fleet with a view to protecting the health of the population in a specific agglomeration or the environment in a specific ecologically or

environmentally sensitive area in that Member State, if atmospheric or ground water pollution constitutes, or may reasonably be expected to constitute, a serious and recurrent problem for human health or the environment.

2. A Member State wishing to make use of a derogation provided for in paragraph 1 shall submit its request in advance, including the justification for it, to the Commission. The justification shall include evidence that the derogation respects the principle of proportionality and that it will not disrupt the free movements of persons and goods.

...'

- 7 Annex IV to Directive 98/70 sets environmental specifications for market fuels to be used for vehicles equipped with compression ignition engines. Limits are laid down in that annex for the following parameters: cetane number, density at 15 °C, distillation, polycyclic aromatic hydrocarbons and sulphur content.

Directive 2009/30/EC

- 8 Recital 31 in the preamble to Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70 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/EEC (OJ 2009 L 140, p. 88) states:

'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.'

Directive 98/34

- 9 Article 1 of Directive 98/34 provides:

'For the purposes of this Directive, the following meanings shall apply:

...

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.

...

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,

...’

- 10 The first subparagraph of Article 8(1) of that directive provides:

‘Subject to Article 10, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where these have not already been made clear in the draft.’

European standards

- 11 As is stated in Annex I to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ 2012 L 316, p. 12), the European Committee for Standardisation is recognised by the European Union as a European standardisation organisation.
- 12 The European Committee for Standardisation adopted for the first time in 1993 a standard for European diesel fuels (EN 590:1993), which prescribed, *inter alia*, a flash point, or ignition point, indicating the lowest temperature at which fuel vaporises to such an extent as to be capable of forming positively ignitable mixtures with air, that temperature being at least 55 °C for those fuels. That value was also prescribed in the standards which replaced it: EN 590:1999, EN 590:2009 and EN 590:2013.

Hungarian law

Ministerial Order 20/2008 and Hungarian standard MSZ EN 590:2009

- 13 At the time of the facts of the main proceedings, quality requirements relating to diesel were set by Ministerial Order 20/2008 of the Ministry of Transport, Telecommunications and Energy of 22 August 2008 on the quality requirements applicable to engine fuels. That order, intended to transpose, *inter alia*, Directive 98/70, contained no requirement regarding the flash point of diesel fuels.
- 14 Hungarian standard MSZ EN 590:2009, on the other hand, which was intended to transpose European standard EN 590:2009, did contain such a requirement as to the flash point of diesel fuel.

Law XXVIII of 1995 on the establishment of national standards

- 15 Paragraph 3(c) and (h) of Law XXVIII of 1995 on the establishment of national standards provides:

‘The following basic principles shall apply to the national standards:

...

- (c) the voluntary nature of participating in national standardisations and of applying national standards,

...

- (h) adaptation to international and European standardisation.’

- 16 Paragraph 6(1) of that law states:

‘The application of national standards shall be voluntary.’

- 17 Paragraph 8(1)(b) of the same law provides:

‘The tasks of the Hungarian Standards Institution include:

...

- (b) the publication of European standards as national standards, in accordance with the harmonisation objectives relating thereto and with the time-limits imposed on the member bodies of the European standardisation organisations.’

Law on excise duties

- 18 Paragraph 110(13) of Law CXXVII of 2003 on excise duties and the special rules on the marketing of products subject to excise duties (‘the Law on excise duties’) provides:

‘Only ... gas oil falling under tariff heading 2710 19 41, heating oil falling under tariff headings 2710 19 41 and 2710 19 45 ... and biodiesel and ethanol E85 compliant with the Hungarian standards in force may be sold from the storage tanks of [service stations other than those for the refuelling of aircraft], and only by means of a fuel pump. ...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 19 On 5 October 2009, Mr Balász's diesel fuel reserves underwent a tax audit under the excise duties legislation.
- 20 In an analysis of a sample taken on that occasion, it was found that the flash point of the diesel fuel did not comply with the requirements of Hungarian standard MSZ EN 590:2009. The value measured was 44 °C as opposed to the value above 55 °C that was permitted under that standard.
- 21 At Kiskőrös (Hungary), the local office of the Regional Customs and Tax Directorate of Bács-Kiskun, part of the National Treasury and Customs Administration, found, by decision of 21 March 2013, that Mr Balázs had infringed the Law on excise duties and ordered him to pay a fine of HUF 4 418 080 (approximately EUR 14 138) by way of tax fine, HUF 883 616 (approximately EUR 2 828) by way of excise duties and HUF 58 900 (approximately EUR 189) by way of expert's fees. The Regional Customs and Tax Directorate upheld that decision on 13 June 2013.
- 22 Mr Balász challenged the decision before the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Kecskemét) relying, in particular, on Directive 98/34 and Law XXVIII of 1995 on the establishment of national standards, according to which the application of a national standard, such as Hungarian standard MSZ EN 590:2009, is voluntary.
- 23 The referring court observes, moreover, that that standard was not available in the Hungarian language at the time of the tax audit at issue in the main proceedings.
- 24 In those circumstances, the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Kecskemét) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
- '(1) Must Article 4(1) and Article 5 of Directive 98/70 ... be interpreted as meaning that quality requirements prescribed by way of national standard that are supplementary to those contained in that directive, apart from the quality requirements laid down in the national legislation adopted on the basis of that directive, may not be imposed on fuel suppliers?
- (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 standard not available in the national language at the time when, in the authority's view, it should have been applied?'

Admissibility of the request for a preliminary ruling

- 25 At the hearing, the Regional Customs and Tax Directorate disputed the admissibility of the request for a preliminary ruling on the ground that the questions referred bore no relation to the facts of the main proceedings. In its view, the decision challenged before the referring court involves only unpaid excise duties and does not specifically penalise the infringement of quality requirements for diesel fuels.
- 26 In that regard, it is appropriate to point out that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for

a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, judgments in *Budějovický Budvar*, C-478/07, EU:C:2009:521, paragraph 63; *Zanotti*, C-56/09, EU:C:2010:288, paragraph 15; and *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27).

- 27 In the present case, even supposing that the decision challenged before the referring court does not specifically seek to penalise the infringement of the quality requirements for diesel fuels, it does not change the fact that, as the Regional Customs and Tax Directorate has accepted, the results of the flash point analysis, in any event, showed that Mr Balázs had sold a fuel which is subject to a higher rate of duty than that applicable to diesel fuels.
- 28 In those circumstances, it cannot be argued that the interpretation of EU law that is sought by the referring court manifestly bears no relation to the purpose of the main proceedings.
- 29 The request for a preliminary ruling is therefore admissible.

Consideration of the questions referred for a preliminary ruling

The first question

- 30 By its first question, the referring court essentially asks whether Articles 4(1) and 5 of Directive 98/70 must be interpreted as meaning that they preclude a Member State from laying down in its national law quality requirements that are additional to the ones contained in that directive for the marketing of diesel fuels, such as that relating to the flash point at issue in the main proceedings.
- 31 In order to answer this question, it is appropriate, as a preliminary matter, first to note that, under Article 5 of Directive 98/70, no Member State may prohibit, restrict or prevent the placing on the market of fuels which comply with the requirements of that directive.
- 32 Second, it is apparent from the legal basis on which Directive 98/70 and its subsequent amendments were adopted, namely, Article 100a of the EC Treaty and Article 95 EC (now Article 114 TFEU), respectively, which seek to harmonise the laws of the Member States with a view to the establishment and functioning of the internal market, as well as from the first recital in the preamble to that directive, that its purpose is to approximate the laws of the Member States in order to remove any disparities in specifications for fuels.
- 33 Thus, it is apparent both from the wording of Article 5 of Directive 98/70 and from the objective of that directive that it seeks, as regards, in particular, the specifications laid down in Article 4(1) of that directive, read in combination with Annexes II and IV thereto, to impose comprehensive requirements from which the Member States may derogate only under the strict conditions set out in Article 6 of that directive.
- 34 Nevertheless, as the Advocate General observed in points 39 to 47 of her Opinion, the finding made in the preceding paragraph is valid only within the limits of the scope *ratione materiae* of Directive 98/70, that is to say, provided that fuel technical specifications which that directive seeks to harmonise are at issue.
- 35 It is clear from the wording of Article 1 of that directive, which defines its scope, that it deals with technical specifications on health and environmental grounds for the fuels concerned.

- 36 In line with that objective of Directive 98/70, the specifications set out in Annexes I to IV to that directive are referred to as 'Environmental specifications'.
- 37 Moreover, the derogation regime provided for in Article 6 of that directive pertains only to the adoption of more stringent environmental specifications than those provided for in the directive, namely, as is apparent from paragraph 1 of that article, those which protect 'the health of the population in a specific agglomeration or the environment in a specific ecologically or environmentally sensitive area'.
- 38 It follows that Directive 98/70 does not have the objective of harmonising all the quality requirements or technical specifications that could apply to the fuels covered or, consequently, of prohibiting the Member States from providing for restrictions or derogations in that regard, but rather is aimed only at fuel technical specifications that have an environmental impact in the sense of that directive, namely, those which are based on environmental and health considerations.
- 39 With regard to the specification of the flash point of diesel fuel, at issue in the main proceedings, it is clear both from the technical definition of that parameter, as it is set out in paragraph 12 of this judgment, and from what was stated by the parties to the main proceedings at the hearing, that that specification primarily serves to ensure the safety of diesel fuel as a product and is also important for the performance and protection of motor vehicle engines. Establishing the flash point is thus also intended to protect consumers against damage being caused to their vehicles.
- 40 Therefore, Directive 98/70, and Article 5 thereof in particular, is not applicable to a specification such as that of the flash point at issue in the main proceedings and thus cannot preclude Member States from subjecting the placing on the market of diesel fuels to such a requirement, in so far as it does not constitute a technical specification relating to health and the environment for the purposes of that directive.
- 41 In addition, it should be noted that recital 31 in the preamble to Directive 2009/30 expressly states that standard EN 590:2004 'should be updated accordingly and should establish limits for technical parameters not included in [Annex IV to Directive 98/70]', including the flash point. This goes to support the fact that the directive does not preclude that kind of additional parameter from the outset.
- 42 In so far as the specification at issue in the main proceedings thus does not fall within the scope of the field harmonised by Directive 98/70, it should be observed, in the first place, that it is clear from the case-law of the Court that a Member State may subject the placing on the market in its territory of a product not covered by technical specifications harmonised or recognised at EU level to requirements which comply with obligations under the FEU Treaty, in particular, in the present case, the principle of the free movement of goods set out in Articles 34 TFEU and 36 TFEU (see, to that effect, judgments in *Commission v Portugal*, C-432/03, EU:C:2005:669, paragraph 35, and *Lidl Magyarország*, C-132/08, EU:C:2009:281, paragraph 45).
- 43 In the second place, it should be noted that, in accordance with Article 8 of Directive 98/34, Member States must, in order to allow preventive control under the provisions on the free movement of goods and, in particular, in relation to the justification of the obstacles that could be created in that regard, communicate to the Commission before their entry into force the draft provisions by which technical specifications are given binding effect (see, to that effect, judgments in *Sandström*, C-433/05, EU:C:2010:184, paragraph 42, and *Belgische Petroleum Unie and Others*, C-26/11, EU:C:2013:44, paragraphs 49 and 50).
- 44 Having regard to the foregoing considerations, the answer to the first question is that Articles 4(1) and 5 of Directive 98/70 must be interpreted as meaning that they do not preclude a Member State from laying down in its national law quality requirements that are additional to the ones contained in

that directive for the marketing of diesel fuels, such as that relating to the flash point at issue in the main proceedings, since it does not constitute a technical specification of diesel fuels relating to the protection of health and the environment for the purposes of that directive.

The second question

- 45 As a preliminary point, it should be noted that the order for reference states that Hungarian standard MSZ EN 590:2009, which provides for the specification concerning the flash point of diesel fuel at issue in the main proceedings and the purpose of which is to transpose European standard EN 590:2009, was made mandatory in Hungarian law pursuant to Paragraph 110(13) of the Law on excise duties.
- 46 In that context, by its second question, the referring court essentially asks whether Article 1(6) and (11) of Directive 98/34 must be interpreted as meaning that a Member State is precluded from making a national standard such as the Hungarian standard MSZ EN 590:2009 at issue in the main proceedings mandatory.
- 47 In that regard, it should be pointed out, in the first place, that there is nothing in Article 1(6) of Directive 98/34, which contains only one definition of what constitutes, *inter alia*, a European or national standard for the purposes of that directive, or in paragraph 11 of that article, which defines ‘technical regulation’, that would suggest that such a standard cannot, in whole or in part, be made mandatory by the legislature of a Member State.
- 48 In the second place, it should be noted that, according to the wording of the first subparagraph of Article 8(1) of Directive 98/34, a European or international standard may be made mandatory by a Member State by transposing it in a technical regulation that has, by definition, binding force. As the Advocate General observed in point 65 of her Opinion, there is no reason to suppose that matters would be different as regards a national standard, in particular where, as in the case in the main proceedings, it corresponds to a European standard.
- 49 In such circumstances, the answer to the second question is that Article 1(6) and (11) of Directive 98/34 must be interpreted as meaning that a Member State is not precluded from making a national standard such as Hungarian standard MSZ EN 590:2009 at issue in the main proceedings mandatory.

The third question

- 50 As a preliminary point, it should be noted that the information provided by the referring court shows that, at the time of the facts of the main proceedings, Hungarian standard MSZ EN 590:2009 was not available in the Hungarian language, but only in English.
- 51 It is in that context and having regard to the criterion of availability to the public of standards, laid down in Article 1(6) of Directive 98/34, that, by its third question, the referring court essentially asks whether that provision must be interpreted as meaning that it requires a national standard within the meaning of that provision to be made available in the official language of the Member State concerned.
- 52 In that regard, as has already been pointed out in paragraph 47 of this judgment, Article 1(6) contains only one definition of what constitutes a standard for the purposes of that directive, that provision aiming, moreover, not to prescribe, as such, requirements relating to standards, but to lay down a procedure for the provision of information in the field of technical standards and, thus, preventive control with a view to protecting the free movement of goods (see, to that effect, judgment in *Belgische Petroleum Unie and Others*, C-26/11, EU:C:2013:44, paragraph 49).

- 53 Thus, in the absence of any indication, to that effect, in the directive, it cannot be inferred from Article 1(6) of the same directive that a standard, within the meaning of that provision, available in the English language must be made available in the language of the Member State concerned.
- 54 Having regard to the foregoing considerations, the answer to the third question is that Article 1(6) of Directive 98/34 must be interpreted as meaning that it does not require a national standard within the meaning of that provision to be made available in the official language of the Member State concerned.

Costs

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Articles 4(1) and 5 of 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, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as meaning that they do not preclude a Member State from laying down in its national law quality requirements that are additional to the ones contained in that directive for the marketing of diesel fuels, such as that relating to the flash point at issue in the main proceedings, since it does not constitute a technical specification of diesel fuels relating to the protection of health and the environment for the purposes of that directive.**
2. **Article 1(6) and (11) of 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, as amended by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that a Member State is not precluded from making a national standard such as Hungarian standard MSZ EN 590:2009 at issue in the main proceedings mandatory.**
3. **Article 1(6) of Directive 98/34/EC, as amended by Directive 2006/96, must be interpreted as meaning that it does not require a national standard within the meaning of that provision to be made available in the official language of the Member State concerned.**

[Signatures]