Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

11 July 2019*

(Reference for a preliminary ruling — Environment — Directive 2009/28/EC — Article 3(3)(a) — Promotion of the use of energy from renewable sources — Production of electricity by solar photovoltaic plants — Alteration of a support scheme — Principles of legal certainty and the protection of legitimate expectations)

In Joined Cases C-180/18, C-286/18 and C-287/18,

Three REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decisions of 25 January 2018, received at the Court on 9 March 2018, in the proceedings

Agrenergy Srl (C-180/18 and C-286/18)

Fusignano Due Srl (C-287/18)

v

Ministero dello Sviluppo Economico,

intervening party:

Gestore dei servizi energetici (GSE) SpA,

THE COURT (Tenth Chamber),

composed of C. Lycourgos, President of the Chamber, M. Ilešič and I. Jarukaitis (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 14 March 2019,

after considering the observations submitted on behalf of:

– Agrenergy Srl and Fusignano Due Srl, by V. Cerulli Irelli and M.A. Lorizio, avvocati,

– Gestore dei servizi energetici (GSE) SpA, by A. Segato and A. Pugliese, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Aiello, avvocato dello Stato,

* Language of the case: Italian.

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

– the Greek Government, by M. Tassopoulou, A. Magrippi and E. Tsaousi, acting as Agents,

– the Spanish Government, by A. Rubio González, acting as Agent,

– the European Commission, by G. Gattinara and T. Maxian Rusche and K. Talabér-Ritz, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 3(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

2 The requests have been made in proceedings between Agrenergy Srl (Cases C-180/18 and C-286/18) and Fusignano Due Srl (Case C-281/18) and the Ministero dello Sviluppo Economico (Ministry for Economic Development, Italy) concerning the lawfulness of a ministerial decree and whether those undertakings are entitled to the incentive rates set by an earlier ministerial decree.

Legal context

European Union law

3 Recital 25 of Directive 2009/28 is in the following terms:

‘Member States have different renewable energy potentials and operate different schemes of support for energy from renewable sources at the national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced on their territory. For the proper functioning of national support schemes it is vital that Member States can control the effect and costs of their national support schemes according to their different potentials. One important means to achieve the aim of this Directive is to guarantee the proper functioning of national support schemes, as under Directive 2001/77/EC [of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ 2001 L 283, p. 33)], in order to maintain investor confidence and allow Member States to design effective national measures for target compliance. …’

4 Article 1 of Directive 2009/28, headed ‘Subject matter and scope’, provides:

‘This Directive establishes a common framework for the promotion of energy from renewable sources. It sets mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport. …’

5 Article 3 of Directive 2009/28, entitled 'Mandatory national overall targets and measures for the use of energy from renewable sources', provides:

'1. Each Member State shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in the third column of the table in part A of Annex I. Such mandatory national overall targets are consistent with a target of at least a 20% share of energy from renewable sources in the [Union's] gross final consumption of energy in 2020. In order to achieve the targets laid down in this Article more easily, each Member State shall promote and encourage energy efficiency and energy saving.

2. Member States shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I.

3. In order to reach the targets set in paragraphs 1 and 2 of this Article Member States may, inter alia, apply the following measures:

(a) support schemes;

…'

Italian law

6 Article 23 of decreto legislativo n. 28 — Attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE (Legislative Decree No 28 transposing Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC) of 3 March 2011 (Ordinary Supplement to GURI No 71 of 28 March 2011) ('Legislative Decree No 28/2011') provides, as is apparent from the documents before the Court, that the following principles are to be applied: that (i) measures must be introduced gradually in order to protect investments made; (ii) measures must be proportionate to the objectives; and (iii) the structure of support schemes must be flexible, in order to take account of market mechanisms and technological developments concerning renewable energy sources and energy efficiency.

7 Article 25 of Legislative Decree No 28/2011 provides as follows:

'1. The production of electricity by plants which use renewable energy sources and entered into operation no later than 31 December 2012 shall be encouraged by the mechanisms in existence at the date when the present decree enters into force …

…

10. … Incentives for the production of electricity using solar photovoltaic plants which enter into operation after [31 May 2011] shall be governed by decree of [the Ministry for Economic Development] adopted in collaboration with the Ministro dell'ambiente e della tutela [del territorio] e del mare (Ministry for the Environment and the Protection of Natural Resources and the Sea, Italy)

after consulting the Conferenza unificata (Unified State Council for the Regions and Local Authorities, Italy), as referred to in Article 8 of decreto legislativo n. 281 (Legislative Decree No 281) of 28 August 1997, by 30 April 2011, on the basis of the following principles:

(a) the setting of an annual limit on the total electrical power produced by photovoltaic plants that are eligible for incentive rates;

(b) the setting of incentive rates taking into account the lower cost of technology and plants and incentive measures applied in Member States of the European Union;

(c) the provision of incentive rates and differentiated shares taking into account the nature of the location of the plants;

(d) the application of the provisions of Article 7 of decreto legislativo n. 387 (Legislative Decree No 387) of 29 December 2003, in so far as they are compatible with this paragraph.'

8 Article 1(2) of decreto ministeriale — Incentivazione della produzione di energia elettrica da impianti solari fotovoltaici (Ministerial Decree on incentive measures for the production of electricity by solar photovoltaic plants) of 5 May 2011 (GURI No 109 of 12 May 2011) ('the Fourth Energy Tariff') applied, until 31 December 2016, to photovoltaic plants which entered into operation after 31 May 2011, for an indicative power target at national level of approximately 23 000 megawatts (MW), corresponding to a total annual indicative cost for incentive measures in the region of EUR 6 billion to 7 billion.

9 Article 2 of the Fourth Energy Tariff stated as follows:

'General criteria of the support scheme:

1. The support scheme shall be implemented on the basis of indicative targets for power generated that take account of developments over time and must be compatible with the annual expenditure forecasts.

2. Without prejudice to the transitional provisions governing eligibility for the incentives provided for in respect of 2011 and 2012, if the indicative annual costs established for each year or part of a year are exceeded, that shall not restrict eligibility for the incentive rates but shall have the effect of further reducing those rates for the following period, taking into account the total annual indicative cost referred to in Article 1(2).

3. Where the lower of the total annual indicative cost values referred to in Article 1(2) is reached, the rules governing incentives set out in this decree may be reviewed by decree of the Ministry for Economic Development in collaboration with the Ministry for the Environment and the Protection of Natural Resources and the Sea, after consulting the [Unified State Council for the Regions and Local Authorities] in such a way as to promote, in any event, further development in this sector.'

10 Article 6 of the Fourth Energy Tariff provided as follows:

'General conditions for entitlement to incentive rates:

1. Plants shall be entitled to incentive rates in accordance with the rules and in compliance with the conditions laid down in this decree.

2. Large plants which entered into operation no later than 31 August 2011 shall be directly entitled to incentive rates, without prejudice to the requirement to notify the Gestore dei servizi energetici (GSE) SpA (national grid manager) that the plant has entered into operation, within 15 working days of that event.

3. For 2011 and 2012, large plants which are not included among those referred to in paragraph 2 shall be entitled to incentive rates if the following two other conditions are met:

(a) the plant was entered on the register referred to in Article 8 with the necessary ranking to fall within the specific cost limits established for each of the reference periods set out in Article 4(2). In that connection, the cost ceiling for 2011 includes costs relating to incentive measures for large plants which entered into operation no later than 31 August 2011. If all the costs relating to incentive measures for large plants which entered into operation no later than 31 August 2011 and for plants entered in the register referred to in Article 8 mean that, for 2011, the cost ceiling for that period is exceeded, the excess shall give rise to a reduction in the same amount as the costs limit for the second half of 2012;

…'

11 The preamble to decreto ministeriale — Attuazione dell'art. 25 del decreto legislativo del 3 marzo 2011, n. 28, recante incentivazione della produzione di energia elettrica da impianti solari fotovoltaici (Ministerial Decree implementing Article 25 of Legislative Decree No 28 of 3 March 2011 introducing incentive measures for the production of electricity by solar photovoltaic plants) of 5 July 2012 (Ordinary Supplement to GURI No 159 of 10 July 2012) ('the Fifth Energy Tariff'), is worded as follows:

'With regard to solar photovoltaic energy, the sharp fall in the costs of plants has led to rapid growth in the number of plants, one of the effects of which has been to raise the costs relating to the provision of support, as well as agricultural land being taken over.

A number of other European countries have adopted measures to reduce the number of incentives for photovoltaic plants in view of the high level of support-related costs and the fall in the cost of plants. It is also necessary, for the purpose of maintaining competition and protecting end users, to adopt European incentive standards.

As regards the future development of the sector, there is significant room for reducing incentives by comparison with those granted in recent years, bearing in mind the level of incentives given in other European countries and the usual return on investments.

The future development of solar photovoltaic energy must focus on applications which make it possible to reduce the amount of agricultural land being taken over, to stimulate technological innovation and energy efficiency and to make further advances in so far as concerns environmental protection and economic benefits …'

12 Article 1 of the Fifth Energy Tariff provides as follows:

'1. In accordance with Article 25(10) of the Legislative Decree [No 28/2011] and in the light of the provisions of Article 2(3) of the Ministerial Decree of 5 May 2011, this decree lays down the rules governing incentives for the production of electricity of photovoltaic origin which must be applied once the total annual indicative cost of EUR 6 billion for incentive measures has been reached. …

…

5. This decree shall cease to be applicable in any event on the expiry of the period of 30 calendar days following the date on which a total annual indicative cost of EUR 6.7 billion is reached. The date on which that annual value of EUR 6.7 billion is reached shall be communicated by the Electricity and Gas Authority, on the basis of information provided by GSE, in accordance with the procedures laid down in paragraph 2.'

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

13 Agrenergy and Fusignano Due are undertakings engaged in the construction, management and maintenance of plants producing energy from renewable sources. The plants in question in the main proceedings were set up in 2011 and entered into operation on 29 February 2012. Cases C-180/18 and C-286/18 concern ground-based photovoltaic plants installed by Agrenergy on agricultural land in the municipality of Fusignano (Italy) and the municipality of Massa Lombarda (Italy), respectively. Case C-287/18 concerns a plant installed by Fusignano Due in the municipality of Fusignano.

14 According to scheme introduced by Legislative Decree No 28/2011, the owner of a photovoltaic plant connected to the national grid with a nominal power of at least 1 kilowatt (kW) will receive a favourable rate from GSE for the energy produced. Entitlement to those rates depends on the ranking of the economic operators concerned in the computerised register in which they are entered and this may be reduced depending on whether the limits on incentive costs granted in an earlier period were exceeded.

15 The applicants in the main proceedings challenged the Fifth Energy Tariff, which considerably reduced the incentives for the production of electricity using solar photovoltaic plants, before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy). They claim that they are entitled to the most advantageous incentive rate available under the Fourth Energy Tariff, arguing that the plants concerned fulfil the requirements for entitlement to the incentive scheme provided for by that tariff.

16 The Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) dismissed the actions before it, on the ground that the failure to open the register for the second half of 2012 was lawful in the light of Article 6 of the Fourth Energy Tariff, as all the costs relating to the incentive scheme for large plants which entered into operation before 31 August 2011 and the number of beneficiaries included on that register had resulted in the costs limit imposed for that period being exceeded. As indicated by the GSE, according to that court, the cost of the incentive measures for the benefit of those plants and the plants which had been entered in the previous register had the effect of exhausting the funds available for the second half of 2012, which explained why that register was not opened.

17 Moreover, that court considered that support schemes for plants producing energy from renewable sources are not a mandatory requirement but are just one of the possible methods by which Member States may meet the renewable energy targets set by Directive 2009/28. The Fifth Energy Tariff reviewed the incentive scheme through consistent and sensible application of the principles of gradualness, flexibility, efficacy and efficiency laid down by that directive.

18 The applicants in the main proceedings appealed against the decisions of the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) before the Consiglio di Stato (State Council, Italy). In support of their appeals, they argue, in essence, that they had been unable to receive the most advantageous rates provided for by the Fourth Energy Tariff because GSE had failed to open the register for the second half of 2012 and contend that the Fifth Energy Tariff is contrary to Italian law and to Directive 2009/28 and infringes the principle of the protection of legitimate expectations.

19 The referring court notes that the transitional arrangements referred to in Article 1 of the Fifth Energy Tariff are applicable to plants 'entered with the necessary ranking in the registers' for the scheme provided for by the Fourth Energy Tariff, not to plants which, had those registers been opened, would simply have fulfilled the requirements for inclusion in those registers. As a consequence, the plants of the applicants in the main proceedings were not eligible for the rate provided for by the Fourth Energy Tariff as they were classed as not ranking high enough to receive funding in the relevant register.

20 Moreover, the referring court is of the view that the fact that the cost ceiling fixed in advance by the national legislation at issue was reached meant that it was lawful not to open the register for the second half of 2012, as the funds provided had already been exhausted. GSE duly publicised that fact, with the result the applicants in the main proceedings cannot rely on a legitimate expectation that they might have obtained the incentive rate provided for in the Fourth Energy Tariff.

21 The referring court considers that the Italian legislation in question is compatible with Directive 2009/28, as the latter does not impose any obligation on Member States to introduce a fixed support scheme for energy production from renewable sources. According to that court, that directive is designed to promote the production of energy from renewable sources and identifies targets for the share of energy to be produced from such sources out of the national total. The setting up of support schemes for that production is one of the possible methods that the Member States can use in that regard and such schemes are, therefore, optional. Moreover, recital 25 of Directive 2009/28 emphasises the structural flexibility of support schemes, which must adapt to the circumstances and budgetary constraints of the Member States. That approach is adhered to by the legislation at issue in the main proceedings, which provides for support schemes that are applicable depending on the need at any particular moment.

22 Furthermore, it is apparent from the preamble to the Fifth Energy Tariff that the reduction in incentive measures is attributable to the fact that the Italian Republic is ahead of its targets for energy production from renewable sources; plants cost less than in the past; the cost to the public finances is becoming more of a burden; other Member States are also cutting their incentive schemes; land use should be restricted; and investment in energy efficiency, heat and transport, considered to be methods that on average are more efficient, is a priority.

23 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings in each of the joined cases and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 3(3)(a) of Directive [2009/28] be interpreted — including in view of the general principle of the protection of legitimate expectations and the overall system of rules introduced by that directive regarding the provision of incentives for the production of energy from renewable sources — as rendering incompatible with EU law national legislation which allows the Italian Government, in subsequent implementing decrees, to reduce or even remove incentive rates introduced earlier?'

Consideration of the question referred

24 By its question, the referring court seeks to ascertain, in essence, whether Article 3(3)(a) of Directive 2009/28, read in the light of the principles of legal certainty and the protection of legitimate expectations, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows a Member State to provide for the reduction, or even the removal, of incentive rates for energy produced by solar photovoltaic plants which were introduced previously.

25 It should be borne in mind that the purpose of Directive 2009/28, as set out in Article 1 thereof, is to lay down a common framework for the promotion of energy from renewable sources by setting, inter alia, mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy.

26 Article 3(3)(a) of Directive 2009/28 provides that Member States may apply support schemes in order to reach the targets set in Article 3(1) and (2) of the directive, under which (i) each Member State is to ensure that the share of energy from renewable sources in gross final consumption of energy in 2020 is at least its national overall target, as set out in Part A of Annex I to the directive, and (ii) Member States are to introduce measures effectively designed to ensure that the share of energy from such sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I to the directive.

27 The Court has held that, as is apparent from the very wording of Article 3(3)(a) of Directive 2009/28 and, in particular, the word 'may', Member States are not under any obligation, for the purposes of promoting the use of energy produced using renewable sources, to adopt support schemes. They therefore have discretion as to the measures they consider appropriate for the purpose of reaching the mandatory national overall targets set in Article 3(1) and (2) of the directive, read in conjunction with Annex I thereto (see, to that effect, judgment of 20 September 2017, *Elecdey Carcelen and Others*, C-215/16, C-216/16, C-220/16 and C-221/16, EU:C:2017:705, paragraphs 31 and 32). That discretion means that Member States are free to adopt, alter of withdraw support schemes, provided that, inter alia, those targets are met.

28 Moreover, it should be noted that, as is apparent from settled case-law, where Member States adopt, in that way, measures by which they implement EU law, they are required to respect the general principles of that law, which include the principle of legal certainty (judgment of 1 July 2014, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 125 and the case-law cited).

29 It is also the Court's settled case-law that the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires that rules of law be clear and precise and that the application of those rules be predictable for individuals, especially where they may have negative consequences for individuals and undertakings (see, to that effect, judgment of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 77).

30 In particular, that principle requires that legislation enables those concerned to know precisely the extent of the obligations which are imposed on them, and that those persons are able to ascertain unequivocally what their rights and obligations are and take steps accordingly (see, inter alia, judgment of 1 July 2014, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 128 and the case-law cited).

31 With regard to the principle of the protection of legitimate expectations, it is the Court's established case-law that that principle may be relied on by any economic operator on whose part national authorities have created reasonable expectations. However, where a prudent and circumspect economic operator could have foreseen the adoption of a measure likely to affect his interests, he cannot plead that principle if the measure is adopted. Moreover, economic operators cannot justifiably claim a legitimate expectation that an existing situation which may be altered by the national authorities in the exercise of their discretionary power will be maintained (judgment of 10 September 2009, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 53 and the case-law cited).

32 Furthermore, as the case concerns a scheme introduced by national legislation, the procedures for dissemination of information normally used by the Member State which adopted it and the circumstances of the case must be taken into account when the referring court makes an overall and

specific assessment of whether the legitimate expectations of the economic operators covered by that legislation were duly respected (judgment of 10 September 2009, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 57).

33 It is for the referring court to determine whether national legislation such as that at issue in the main proceedings is consistent with those principles, as the Court, when giving a preliminary ruling under Article 267 TFEU, has jurisdiction only to provide the national court with all the criteria for the interpretation of EU law which may enable it to determine the issue of compatibility (judgment of 1 July 2014, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraph 126 and the case-law cited).

34 The referring court may take into account, for that purpose, all relevant factors which are apparent from the terms, objectives or general scheme of the legislation concerned (judgment of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 81 and the case-law cited).

35 In order to provide a useful answer to the referring court, the following matters, which are apparent from the file submitted to the Court, must be noted in particular.

36 In the first place, Legislative Decree No 28/2011, which transposed Directive 2009/28 into Italian law, already provided, in Article 25(10) thereof, that incentives for the production of electricity by solar photovoltaic plants were to be governed by ministerial decree and that such a decree was to be based on the principles that (i) an annual limit on the total electrical power generated by photovoltaic plants that may be eligible for incentive rates was to be set and (ii) that such rates were to be set which take into account the lower cost of technology and plant and incentive measures applied in other Member States as well as the nature of the location of the plants.

37 In the second place, the Fourth Energy Tariff, adopted pursuant to the foregoing provision, provided, first, in Article 6(2) thereof, that large plants that entered into operation no later than 31 August 2011 were directly entitled to incentive rates. However, it is common ground that the plants at issue in the main proceedings did not meet that requirement, as they entered into operation after that date.

38 Moreover, Article 6(3)(a) of the Fourth Energy Tariff imposed, for plants which did not form part of those that had entered into operation by that date at the latest, an eligibility requirement for incentive measures, namely that they should be entered in one of the registers opened by GSE with the necessary ranking. Those registers were, in principle, opened every 6 months and plants were entered in the register in accordance with a classification system which determined their entitlement to incentive measures. GSE states that it published on its website (i) a 'photovoltaic counter' indicating the number of plants benefiting from incentive measures and the annual cost of providing those incentives and (ii) notices stating that the registers would not be opened when the costs ceiling was reached.

39 In that regard, the Fourth Energy Tariff limited the total annual indicative costs for incentive measures to EUR 6 billion, which corresponded to an indicative power target at national level of approximately 23 000 MW and meant that, when that target was reached, new registers would not be opened. That energy tariff also provided that when that amount was reached, the incentive scheme could be altered. The amount of EUR 6 billion was in fact reached in March 2012 and, accordingly, the register of 'large plants' was not opened for the second half of 2012. Pursuant to Article 25 of Legislative Decree No 28/2011, the Fifth Energy Tariff was adopted.

40 The Italian Government contends that the applicants in the main proceedings must have been aware of those circumstances. They acknowledge, in their written observations, that they were aware of a GSE communication concerning the fact that the funds for incentives provided for by the Fourth Energy Tariff had run out and that a new register would not be opened.

41 It follows that, subject to verifications to be carried out by the referring court, the possibility of receiving the incentive rates provided for by the Fourth Energy Tariff depended on (i) whether a solar photovoltaic plant was entered with the necessary ranking in a register opened by GSE, and (ii) the fact that the cap on indicative incentive costs had not been exceeded during the previous period. Such an incentive was not therefore available to all solar photovoltaic plant operators and was not guaranteed for a specific period but was dependent on the conditions and circumstances outlined above.

42 All of those conditions are clearly apparent from the national legislation at issue in the main proceedings, so that the application of those conditions should, in principle, have been foreseeable for the economic operators concerned, which is also a matter for verification by the referring court.

43 It is clear from the documents before the Court that the legislative provisions at issue in the main proceedings were duly published, that they were sufficiently precise and that the applicants in the main proceedings were aware of their content.

44 Moreover, those provisions were of such a kind as to indicate at once to prudent and circumspect economic operators that the support scheme applicable to solar photovoltaic plants might be altered, or even withdrawn, by the national authorities in order to take account of changes in certain circumstances and that, consequently, it could not be claimed with any certainty, on the basis of those legislative provisions, that such a scheme would be maintained for a given period.

45 By the adoption of the Fifth Energy Tariff, the Italian legislature seems to have provided specifically, in the light of changes in certain circumstances, that the incentive scheme was to be altered under the conditions set out in that tariff.

46 In the light of the foregoing, and subject to findings that fall within the jurisdiction of the referring court alone, it does not appear that the legislation at issue in the main proceedings is such as to infringe the principles of legal certainty and the protection of legitimate expectations or that it is incompatible with Directive 2009/28.

47 In the light of all the foregoing considerations, the answer to the question referred is that, subject to verifications to be carried out by the referring court taking into account all the relevant factors, Article 3(3)(a) of Directive 2009/28, read in the light of the principles of legal certainty and the protection of legitimate expectations, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a Member State to provide for the reduction, or even the removal, of incentive rates for energy produced by solar photovoltaic plants which were introduced previously.

Costs

48 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 (Tenth Chamber) hereby rules:

Subject to verifications to be carried out by the referring court taking into account all the relevant factors, Article 3(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, read in the light of the principles of legal certainty and the protection of legitimate expectations, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a Member State to provide for the reduction, or even the removal, of incentive rates for energy produced by solar photovoltaic plants which were introduced previously.

[Signatures]