JUDGMENT OF THE COURT (Third Chamber)

10 September 2009*

In Case C-201/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hessisches Finanzgericht (Germany), made by decision of 8 May 2008, received at the Court on 16 May 2008, in the proceedings

Plantanol GmbH & Co. KG

v

Hauptzollamt Darmstadt,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh (Rapporteur), J.N. Cunha Rodrigues, U. Lõhmus and P. Lindh, Judges,

* Language of the case: German.

Advocate General: J. Mazák,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 6 May 2009,

after considering the observations submitted on behalf of:

— Plantanol GmbH & Co. KG, by J. Runkel, manager,

— Hauptzollamt Darmstadt, by M. Völlm and K. Goldmann, acting as Agents,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the United Kingdom Government, by S. Ossowski, acting as Agent, and by P. Mantle, Barrister,

— the Commission of the European Communities, by W. Mölls, B. Schima and K. Gross, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 3 of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (OJ 2003 L 123, p. 42) and the principles of legal certainty and the protection of legitimate expectations.

2 The reference was made in the course of proceedings between Plantanol GmbH & Co. KG and Hauptzollamt Darmstadt (Principal Customs Office, Darmstadt) (Germany) concerning payment of energy tax for May 2007.

Legal framework

Community rules

Directive 2003/30

3 According to the recitals 10, 12, 14, 19, 20, 22 and 27 to Directive 2003/30:

‘(10) Promoting the use of biofuels in transport constitutes a step towards a wider application of biomass which will enable biofuel to be more extensively developed in the future, whilst not excluding other options and, in particular, the hydrogen option.

…

(12) Pure vegetable oil from oil plants produced through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, can also be used as biofuel in specific cases where its use is compatible with the type of engines involved and the corresponding emission requirements.

…

(14) Bioethanol and biodiesel, when used for vehicles in pure form or as a blend, should comply with the quality standards laid down to ensure optimum engine performance …

(19) In its resolution of 18 June 1998 [OJ 1998 C 210, p. 215], the European Parliament called for an increase in the market share of biofuels to 2% over five years through a package of measures, including tax exemption, financial assistance for the processing industry and the establishment of a compulsory rate of biofuels for oil companies.

(20) The optimum method for increasing the share of biofuels in the national and Community markets depends on the availability of resources and raw materials, on national and Community policies to promote biofuels and on tax arrangements, and on the appropriate involvement of all stakeholders/parties.

…

(22) Promotion of the production and use of biofuels could contribute to a reduction in energy import dependency and in emissions of greenhouse gases. In addition, biofuels, in pure form or as a blend, may in principle be used in existing motor vehicles and use the current motor vehicle fuel distribution system. The blending of biofuel with fossil fuels could facilitate a potential cost reduction in the distribution system in the Community.

…

(27) Measures should be introduced for developing rapidly the quality standards for the biofuels to be used in the automotive sector, both as pure biofuels and as a blending component in the conventional fuels. Although the biodegradable fraction of waste is a potentially useful source for producing biofuels, the quality standard has to take into account the possible contamination present in the waste to avoid special components damaging the vehicle or causing emissions to deteriorate.'

4 Article 1 of Directive 2003/30 provides:

'This Directive aims at promoting the use of biofuels or other renewable fuels to replace diesel or petrol for transport purposes in each Member State, with a view to contributing to objectives such as meeting climate change commitments, environmentally friendly security of supply and promoting renewable energy sources.'

5 Article 2 of that directive states:

'1. For the purpose of this Directive, the following definitions shall apply:

(a) "biofuels" means liquid or gaseous fuel for transport produced from biomass;

(b) "biomass" means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

…

2. At least the products listed below shall be considered biofuels:

(a) "bioethanol": ethanol produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel;

(b) "biodiesel": a methyl-ester produced from vegetable or animal oil, of diesel quality, to be used as biofuel;

…

(j) "pure vegetable oil": oil produced from oil plants through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, when compatible with the type of engines involved and the corresponding emission requirements.'

6 Article 3 of the directive is worded as follows:

‘1. (a) Member States should ensure that a minimum proportion of biofuels and other renewable fuels is placed on their markets, and, to that effect, shall set national indicative targets.

(b) (i) A reference value for these targets shall be 2%, calculated on the basis of energy content, of all petrol and diesel for transport purposes placed on their markets by 31 December 2005.

(ii) A reference value for these targets shall be 5.75%, calculated on the basis of energy content, of all petrol and diesel for transport purposes placed on their markets by 31 December 2010.

2. Biofuels may be made available in any of the following forms:

(a) as pure biofuels or at high concentration in mineral oil derivatives, in accordance with specific quality standards for transport applications;

(b) as biofuels blended in mineral oil derivatives, in accordance with the appropriate European norms describing the technical specifications for transport fuels (EN 228 and EN 590);

(c) as liquids derived from biofuels, such as ETBE (ethyl-tertio-butyl-ether), where the percentage of biofuel is as specified in Article 2(2).

…

4. In the measures that they take, the Member States should consider the overall climate and environmental balance of the various types of biofuels and other renewable fuels and may give priority to the promotion of those fuels showing a very good cost-effective environmental balance, while also taking into account competitiveness and security of supply.

…'

Directive 2003/96

7 The purpose of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) is to impose, at Community level, taxation on energy products other than merely the mineral oils covered by Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), as amended by Council Directive 94/74/EC of 22 December 1994 (OJ 1994 L 365, p. 46), and by Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ 1992 L 316, p. 19), as amended by Directive 94/74.

8 Article 1 of Directive 2003/96 provides that Member States are to tax energy products in accordance with the directive.

9 Article 2 of the directive provides:

'1. For the purposes of this Directive, the term "energy products" shall apply to products:

(a) falling within [combined nomenclature, "CN"] codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;

(b) falling within CN codes 2701, 2702 and 2704 to 2715;

…

3. …

In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.

…

5. References in this Directive to [CN codes] shall be to those of Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [OJ 2001 L 279, p. 1].

…'

10 Article 16 of Directive 2003/96 is worded as follows:

'1. Member States may, without prejudice to paragraph 5, apply an exemption or a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products are made up of, or contain, one or more of the following products:

— products falling within CN codes 1507 to 1518;

…

3. The exemption or reduction in taxation applied by Member States shall be adjusted to take account of changes in raw material prices to avoid over-compensating for the extra costs involved in the manufacture of the products referred to in paragraph 1.

…'

Regulation No 2031/2001

11 Annex I to Regulation No 2031/2001 provides that colza oil is covered by CN subheading 1514 and gas oil is covered by CN subheading 2710.

National legislation

The Mineral Oil Tax Law

12 The Mineral Oil Tax Law (Mineralölsteuergesetz), as amended by the Law of 23 July 2002 to amend the Mineral Oil Tax Law and other Laws (BGBl. 2002 I, p. 2778, 'the Mineral Oil Tax Law'), contained a Paragraph 2a, entitled 'Reduced rates of tax for biofuel', which provided as follows:

'1. The rates of taxation laid down in Paragraphs 2(1) and 3(1) shall be reduced until 31 December 2008 in accordance with the quantity of biofuel shown to be contained in the mineral oils covered by those paragraphs.

2. Biofuels are energy products obtained exclusively from biomass …. Energy products partly obtained from biomass within the meaning of the first sentence shall be considered to be biofuels in respect of the part of the blend so obtained. Methyl-esters produced from vegetable oils shall constitute biofuels.

3. The Federal Minister of Finance … shall submit a report to the Bundestag [the lower house of the Federal Parliament] every two years, the first report to be submitted not later than 31 March 2004, concerning the marketing of biofuels, and the changes in the price of biomass and crude oil, and shall propose in that report, if necessary, an adjustment of the reduced tax rates applied to biofuels adopted to changes in the market.'

13 The Second Law for the Amendment of Tax Law provisions — Tax Amendment Law of 2003 (Zweites Gesetz zur Änderung steuerrechtlicher Vorschriften-Steueränderungsgesetz 2003) of 15 December 2003 (BGBl. 2003 I, p. 2645) amended Paragraph 2a(1) and (2) of the Mineral Oil Tax Law with effect from 1 January 2004, in order to extend the application of the reduced tax rates to biofuels until 31 December 2009 and to enlarge the scope of those rates to include biofuels intended for heating. Subparagraph 3 of that paragraph was amended as follows:

'The grant of a tax advantage should not lead to overcompensation for the additional costs connected with the production of the biofuels intended as motor fuels or heating fuels referred to in subparagraph 1; to that end, the Federal Minister of Finance … shall submit each year to the Bundestag, commencing on 31 March 2005, a report concerning, in particular, the marketing of biofuels intended as motor fuels or heating fuels, and changes in the price of biomass and crude oil and the price of fuels and combustibles, and shall propose in that report, where overcompensation exists, an adjustment of the reduced tax rates applied to biofuels intended as motor fuels or heating fuels adapted to the changes in the market resulting from the price of raw materials. In that regard, account should be taken of the effects on the protection of the environment and the climate, the protection of natural resources, the external costs of the various fuels, security of supplies and the realisation of the objective of a minimum content of biofuels and other renewable fuels in accordance with [Directive 2003/30].'

The Law on the Taxation of Energy

14 Paragraph 1 of the Law to Provide New Rules for the Taxation of Energy Products and to Amend the Law on the Taxation of Electricity (Gesetz zur Neuregelung der Besteuerung von Energieerzeugnissen und zur Änderung des Stromsteuergesetzes) of 15 July 2006 (BGBl. 2006 I, p. 1534), which refers expressly to Directives 2003/30 and 2003/96, introduced the Law on the Taxation of Energy (Energiesteuergesetz). The latter law, which entered into force on 1 August 2006 and repealed as from that date the Mineral Oil Tax Law, made biofuels subject to tax as 'energy products'.

15 Paragraph 50(1) and (2) of the Law on the Taxation of Energy, entitled 'Exemption for biofuels intended as motor fuels or heating fuels', provides:

'1. A taxable person may apply for an exemption for energy products which have been shown to be taxed and which are composed of biofuels intended as motor fuels or heating fuels. … Without prejudice to the provisions of the third sentence of subparagraph 2, the exemption shall apply until 31 December 2009.

2. The exemption shall be equal to the tax corresponding to that part of the blend composed of biofuel intended as motor fuel or heating fuel. By derogation from the first sentence, energy products … which contain methyl-esters of fatty acids or vegetable oil as biofuels shall be granted only a partial exemption for the part of the blend comprising methyl-esters of fatty acids or vegetable oil. The exemption shall be equal to:

…

2. per 1 000 litres of vegetable oil

Until 31 December 2007	EUR 470.40
From 1 January 2008 to 31 December 2008	EUR 370.40
From 1 January 2009 to 31 December 2009	EUR 290.40
From 1 January 2010 to 31 December 2010	EUR 210.40
From 1 January 2011 to 31 December 2011	EUR 140.40
From 1 January 2012	EUR 20.40

…’

16 Like the earlier provisions of the Mineral Oil Tax Law, Paragraph 50(4) of the Law on the Taxation of Energy provides that the exemption must not lead to overcompensation for the additional costs connected with the production of biofuels.

17 Paragraph 50 of the Law on the Taxation of Energy was amended from 1 January 2007 by the Law introducing a Biofuel Quota by amendment of the Federal Law on Protection against Emissions and amendment of the Provisions on the Taxation of Energy and Electricity (Gesetz zur Einführung einer Biokraftstoffquote durch Änderung des Bundesimmissionsschutzgesetzes und zur Änderung energie- und stromsteuerrechtlicher Vorschriften) of 18 December 2006 (BGBl. 2006 I, p. 3180, 'Biofuel Quota Law'). Referring expressly to Directives 2003/30 and 2003/96, that law is intended, to a great extent, to replace the tax advantage accorded to biofuels with an obligation to include in the blend, or to market, a minimum quantity of biofuels.

18 Paragraph 50(1)(1) of the Law on the Taxation of Energy, as amended by the Biofuel Quota Law, now limits the exemption to pure biofuels, that is to say, those which have not been blended with other energy products, with the exception, provided for in points 2 and 3, of biofuels which are 'particularly worthy of promotion'. The latter, which are listed in Paragraph 50(5), include, in particular, synthetic hydrocarbons or blends thereof, produced by thermoclinical transformation of biomass, known as 'BtL', and energy products containing 70 to 90% bioethanol, known as 'E85'.

The Federal Law on Emissions

19 The Biofuel Quota Law also amended, from 1 January 2007, the Federal Law on Emissions (Bundes-Immissionsschutzgesetz) of 26 September 2002 (BGBl. 2002 I, p. 3830), specifying, in Paragraph 37a(3) of the latter, the minimum quantity of biofuel

which must be contained in the total quantity of fuel marketed. According to Paragraph 37a(4), that minimum content may be obtained by blending with petrol or gas oil, or by marketing pure biofuel.

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

20 The applicant in the main proceedings has marketed in Germany, since 2005, a fuel called 'Plantanol-Diesel' obtained by blending, in a tank mounted on a lorry and adapted for the purpose of the blend, natural vegetable oil, in this case, refined colza oil (60% in summer and 50% in winter), fossil gas oil (37% in summer and 47% in winter) and specific additives (3%). This product is intended for various fleets of municipal vehicles and a company providing public transport in Frankfurt-am-Main.

21 According to the order for reference, Plantanol-Diesel, which meets the requirements of the DIN V 51605 standard, may be used both in the older type of diesel engines or in modern direct injection engines without there being any need to install new equipment or carry out technical modifications to the engines of the vehicles concerned. In addition, studies have highlighted the advantages of this product compared to fossil fuels from the point of view of soot particle emissions, CO_2 balance, fuel consumption and carcinogenic effect.

22 Following the entry into force of Paragraph 50(1)(1) of the Law on the Taxation of Energy, as amended by the Biofuel Quota Law, the Hauptzollamt Darmstadt claimed from the applicant in the main proceedings payment of the tax on energy products for the period from 1 January 2007 to 31 May 2007 in respect of the vegetable oil content of Plantanol Diesel.

23 Interim measures were sought before the Hessisches Finanzgericht (Finance Court, Hesse) (Germany) which, by order of 2 October 2007, suspended the tax notice for the months of May and June 2007 on the ground that it had serious doubts as to the compatibility of Paragraph 50(1)(1) with Directive 2003/30. By order of 14 April 2008, the Bundesfinanzhof (Federal Finance Court) (Germany) annulled that interim order.

24 On 10 October 2007, the Hauptzollamt Darmstadt rejected the application for review lodged by the applicant in the main proceedings against the tax notice for May 2007.

25 The applicant in the main proceedings appealed against that decision to the Hessisches Finanzgericht.

26 In its order for reference, the latter court considers that Paragraph 50(1)(1) of the Law on the Taxation of Energy, as amended by the Biofuel Quota Law, is contrary to Community law.

27 In the first place, that court considers that the provision is contrary to Directive 2003/30 inasmuch as it no longer exempts that part of a biofuel composed of natural vegetable oil in a fuel blend. By treating the parts of fuel blends composed of biofuels equally with the parts composed of fossil fuels, the Federal Republic of Germany is no longer in a position to achieve the objective of a reduction in greenhouse gas emissions in transport. In addition, the withdrawal of the exemption has not been the subject of any assessment concerning its effect on the criteria for sustainable development. Moreover, the national legislature was wrong to consider that that withdrawal is necessary to avoid overcompensation.

28 Secondly, the national court considers that the provision in question is contrary to certain general principles of Community law. It is contrary to the principles of legal certainty and the protection of legitimate expectations since economic operators could not foresee the adoption of the provision, inasmuch as the Community rules not had been amended in the meantime, and inasmuch as no transitional measures had been laid down. Directive 2003/30 is based on the premiss that all biofuels, whether used in pure form or as a blend, make it possible to achieve the desired objectives. The provision in question is also contrary to the principle of proportionality since it is not necessary in order to avoid an effective loss of tax revenue. On the one hand, no assessment of that loss has been carried out and, on the other, a new exemption was introduced at the same time for biofuels which were 'particularly worthy of promotion', which are also blended biofuels.

29 In those circumstances, the Hessisches Finanzgericht decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is a national provision such as Paragraph 50(1)(1) of the Law on the Taxation of Energy …, as amended by the Biofuel Quota Law …, which does not accord an advantage to that part of a fuel blend consisting of a biofuel composed of vegetable oil meeting the DIN V 51605 standard (as it stood in July 2006) contrary to Article 3 of Directive 2003/30 …, particularly in the light of recitals 10, 12, 14, 19, 22 and 27 thereto?

2. Do the Community law principles of legal certainty and protection of legitimate expectations require that it should be permissible only in wholly exceptional circumstances for a Member State which adopts rules for the implementation of [Directive 2003/30] and, in doing so, has established a promotion scheme consisting of tax advantages spread over several years, to amend that scheme, during the period laid down, to the disadvantage of an undertaking which previously enjoyed an advantage?'

30 The referring court considered that the above questions called for an urgent answer from the Court in view of the fact that, on the one hand, the economic survival of the applicant in the main proceedings, which temporarily suspended its activities on 15 July 2007, depends on the outcome of those proceedings and, on the other, those proceedings have a considerable economic impact beyond the present case, since the national rules at issue could render worthless investments made with the help of the tax advantages intended to promote the development of biofuels and it therefore asked the Court to apply the accelerated procedure to the reference for a preliminary ruling in accordance with the first paragraph of Article 104a of the Rules of Procedure.

31 The President of the Court rejected that request by order of 3 July 2008 on the ground that the conditions laid down in the first paragraph of Article 104a of the Rules of Procedure had not been met.

The questions referred

The first question

32 By this question, the national court is asking, essentially, whether Article 3 of Directive 2003/30 must be interpreted as meaning that it precludes national rules such as those at issue in the main proceedings which exclude, from the tax exemption scheme provided for in those rules for biofuels, a product such as the one at issue in the main proceedings, which is composed of a blend of vegetable oil, fossil gas oil and specific additives.

33 It must be pointed out at the start that, although, according to Article 1 thereof, Directive 2003/30 aims at promoting the use of biofuels to replace diesel or petrol for

transport purposes in each Member State, it does not impose any binding objective on the Member States with regard to the placing on the market of a minimum proportion of biofuels.

34 As is clear from the wording of Article 3(1)(a) thereof, the directive merely provides, in its own terms, that the Member States 'should' attain such a minimum proportion by setting national 'indicative' targets, that proportion, calculated on the basis of energy content, being fixed by Article 3(1)(b) at 2% of all petrol and diesel for transport purposes placed on their markets by 31 December 2005 and at 5.75% by 31 December 2010.

35 It must be pointed out that Directive 2003/30 also does not impose any requirements on the Member States in regard to the method of attaining those indicative targets, but leaves them freedom of choice in this regard as to the type of measures to be adopted, thus leaving them a wide discretion to take account, in particular, of the availability of resources and raw materials and of national policies to promote biofuels, as can be seen from recital 20 to the directive.

36 It follows that the provisions of Directive 2003/30 do not require the Member States to introduce, or maintain in force, a tax exemption scheme for biofuels. It is clear in that regard from recital 19 to the directive that, although a tax exemption scheme is one of the means available to the Member States for attaining the objectives laid down in the directive, other means may also be envisaged, such as financial assistance for the processing industry and the establishment of a compulsory rate of biofuels for oil companies.

37 Moreover, it is apparent from Article 3(4) of Directive 2003/30 that the Member States also enjoy a wide discretion with regard to the products which they wish to promote in order to attain the objectives laid down in the directive, since they may choose to give priority to the promotion of certain types of fuels by taking account of their overall cost-

effective climate and environmental balance, while also taking into account competitiveness and security of supply.

38 In those circumstances, it must be decided that no right to a tax exemption can be deduced from the provisions of the directive, particularly in regard to a specific product.

39 Quite the contrary, it is clear from Article 1 of Directive 2003/96 that the Member States are, in principle, required to tax a product such as the one at issue in the main proceedings, since that product, which is composed of a blend of fossil gas oil falling within CN heading 2710, and of vegetable oil, in this case colza oil, falling within CN heading 1514, and of additives, which are intended to be used as heating fuel or motor fuel, constitutes, by virtue of Article 2(1)(a) and (b) and the second subparagraph of Article 2(3) of the abovementioned directive, an 'energy product' within the meaning of Article 1 (see, to that effect, Case C-517/07 *Afton Chemical* [2008] ECR I-10427, paragraph 40).

40 However, Article 16(1) of Directive 2003/96 provides that the Member States may apply an exemption or a reduced rate of taxation on such energy products (see, to that effect, Joined Cases C-145/06 and C-146/06 *Fendt Italiana* [2007] ECR I-5869, paragraph 36).

41 Consequently, the answer to the first question is that Article 3 of Directive 2003/30 must be interpreted as meaning that it does not preclude national rules such as those at issue in the main proceedings which exclude, from the tax exemption scheme provided for in those rules for biofuels, a product, such as the one at issue in the main proceedings, which is composed of a blend of vegetable oil, fossil gas oil and specific additives.

The second question

42 By its second question, the national court asks, essentially, whether the general principles of legal certainty and the protection of legitimate expectations preclude a Member State, with regard to a product such as the one at issue in the main proceedings, from withdrawing, before the expiry date initially laid down in the national rules, a tax exemption scheme which applied to such products. In particular, the court wishes to know whether such a withdrawal requires that exceptional circumstances must exist.

43 It must be recalled that the principles of legal certainty and protection of legitimate expectations form part of the Community legal order. On that basis, these principles must be respected by the Community institutions, but also by Member States in the exercise of the powers conferred on them by Community directives (see, to that effect, Case C-381/97 *Belgocodex* [1998] ECR I-8153, paragraph 26; Case C-376/02 '*Goed Wonen*' [2005] ECR I-3445, paragraph 32; and Case C-271/06 *Netto Supermarkt* [2008] ECR I-771, paragraph 18).

44 It follows that national rules such as those at issue in the main proceedings, which are intended to transpose the provisions of Directives 2003/30 and 2003/96 into the domestic legal order, must respect those general principles of Community law.

45 According to settled case-law, it is for the referring court alone to determine whether such rules comply with those principles (see, inter alia, Case C-384/04 *Federation of Technological Industries and Others* [2006] ECR I-4191, paragraph 34; Joined Cases C-181/04 to C-183/04 *Elmeka* [2006] ECR I-8167, paragraphs 35 and 36, and Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraph 72), the Court, in a reference for a preliminary ruling under Article 234 EC, being solely competent to provide the national

court with all the criteria for the interpretation of Community law which may enable it to determine the issue of compatibility (see, inter alia, Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96 *Molenheide and Others* [1997] ECR I-7281, paragraph 49).

46 It should be recalled in that regard that, according to the case-law, the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them (see, inter alia, Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20; Case C-107/97 *Rombi and Arkopharma* [2000] ECR I-3367, paragraph 66; and Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 80). That requirement must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which those rules impose on them (Case C-17/01 *Sudholz* [2004] ECR I-4243, paragraph 34).

47 With regard to the requirement of clarity and precision, it must be held that, in the present case, the national rules which withdrew the tax exemption at issue in the main proceedings appear to comply with that requirement.

48 With regard to whether the withdrawal of the tax exemption scheme at issue was foreseeable, it must be pointed out that although the withdrawal was only for the future and did not therefore undermine the exemption obtained by the applicant in the main proceedings in respect of 2005 and 2006, both the Mineral Oil Tax Law, in the version which entered into force on 1 January 2004, and the Law on the Taxation of Energy, in the version which entered into force on 1 August 2006, provided for the application of the tax exemption scheme until 31 December 2009. With regard to biofuels such as the product at issue in the main proceedings, however, the rules adopted subsequent to 18 December 2006 withdrew the tax exemption scheme, with effect from 1 January 2007, that is to say, before the date previously announced.

49 It must, however, be recalled that, as the Court has already ruled, the principle of legal certainty does not require that there be no legislative amendment, requiring as it does,

rather, that the legislature take account of the particular situations of traders and provide, where appropriate, adaptations to the application of the new legal rules (see *VEMW and Others*, paragraph 81).

50 In the present case, it appears clear from the file submitted to the Court, and it is for the national court to verify this matter, that although products such as the one at issue in the main proceedings are no longer exempt from the tax on energy products, they may none the less take advantage of the scheme, introduced at the same time by the rules in question, requiring suppliers of fuels to ensure that fuels contain a minimum biofuel content.

51 With regard, more specifically, to the principle of the protection of legitimate expectations, it must however be pointed out that, in the main proceedings, the national legislature withdrew, before the date previously announced, a tax exemption scheme as regards which it had indicated on two occasions, by way of express legal provisions, that it would be maintained in force until a later date which had been clearly announced.

52 It must be accepted that a trader, such as the applicant in the main proceedings, who commenced his activities under the tax exemption scheme in favour of biofuels at issue in the main proceedings, and who, to that end, made costly investments, could see his interests considerably affected by the withdrawal of that scheme before the date announced, all the more so if that withdrawal takes place suddenly and unforeseeably, without leaving him enough time to adapt to the new legal situation.

53 It is clear from the Court's settled case-law that any economic operator on whose part the national authorities have promoted reasonable expectations may rely on the principle of the protection of legitimate expectations. However, where a prudent and circumspect economic operator could have foreseen that the adoption of a measure is likely to affect his interests, he cannot plead that principle if the measure is adopted. Furthermore, economic operators are not justified in having a legitimate expectation

that an existing situation which is capable of being altered by the national authorities in the exercise of their discretionary power will be maintained (see, to that effect, in particular, Joined Cases C-37/02 and C-38/02 *Di Lenardo and Dilexport* [2004] ECR I-6911, paragraph 70 and the case-law cited, and Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 81).

54 As regards the expectation which a taxable person might have as to the application of a tax advantage, the Court has already held that when a directive on fiscal matters gives wide powers to the Member States, a legislative amendment adopted under the directive cannot be considered to be unforeseeable (Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-5337, paragraph 66).

55 As is clear from paragraphs 33 to 37 of the present judgment, the Member States also enjoy a wide discretion in regard to the method of attaining the objectives laid down in Article 3(1)(b) of Directive 2003/30 and, in particular, they can, for that purpose, establish a compulsory rate of biofuels for oil companies.

56 Consequently, since the purpose of the national rules withdrawing the tax exemption scheme at issue was to require a minimum quantity of biofuel in fuels, it cannot be required, contrary to what the national court suggests, that the withdrawal be justified by exceptional circumstances.

57 However, it is for the national court to determine whether a prudent and circumspect economic operator could have foreseen the possibility of such a withdrawal in a context such as that of the main proceedings. As the case concerns a scheme laid down under 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 national court makes an overall and specific assessment of the

question whether the legitimate expectations of the economic operators covered by those rules were duly respected in the specific case (see, to that effect, '*Goed Wonen*', paragraph 45).

58 Both in its written observations and at the hearing, the applicant in the main proceedings stated, without being challenged on this point by the Hauptzollamt Darmstadt, that the latter, which it had contacted during January 2007, was unaware of the content of the amendments made to the Law on the Taxation of Energy by the Biofuel Quota Law and that the new tax declaration forms required as a result of those amendments were, moreover, unavailable until the middle of March 2007, with the result that the applicant continued to make its declarations between 1 January 2007 and 31 March 2007 on the old forms. The applicant in the main proceedings also argued that since the withdrawal of the tax advantage contained in the Law on the Taxation of Energy was carried out by a separate law, it found itself faced with the application of two legislative measures, one of which provided for a tax exemption whereas the other withdrew it.

59 The possibility cannot be ruled out that those circumstances, or some of them, were such as to indicate, and this is a matter for the national court to consider in the framework of the main proceedings, that the national rules which withdrew the tax exemption at issue and which entered into force in a very short period of time, did not receive, at that time, a sufficient degree of publicity among interested parties — a point, however, denied by the Hauptzollamt Darmstadt at the hearing —, thereby making access to the applicable rules of national law more difficult for the persons subject to those rules.

60 However, to determine whether a prudent and circumspect economic operator could have foreseen the possibility of the abovementioned withdrawal in a case such as that in the main proceedings, the national court must also take account of the different circumstances which preceded that entry into force. In order to provide a useful answer to the national court in that regard, the following matters, which are apparent from the file submitted to the Court and which concern the regulatory framework at both national and Community level must, in particular, be noted.

61 With regard, first, to the national regulatory framework, which, for small and medium-sized undertakings like the applicant in the main proceedings, is the most accessible legal framework, it must be pointed out that, from 2004, the national rules which introduced the tax exemption at issue provided, in accordance, in particular, with Article 16(3) of Directive 2003/96, that the national authorities were required to reconsider the exemptions and reductions in taxation applied to biofuels in the light of changes in raw material prices in order to avoid those tax advantages over-compensating for the extra costs involved in the manufacture of biofuels.

62 In the present case, the possibility cannot be ruled out, and it is for the national court to determine whether such is the case, that the reason for the withdrawal of the tax exemption for blended products such as the one in the main proceedings was, in part, the need to end such an over-compensation. However, a regulatory provision of this kind was in any event capable of indicating at the outset to prudent and circumspect economic operators that the tax exemption scheme applicable to biofuels was liable to be adjusted or even withdrawn by the national authorities in order to take account of changes in certain external circumstances and that, consequently, no certainty that such a scheme would be maintained for a given period could be based on those rules.

63 Moreover, it must be noted that, according to the order for reference and the written observations lodged by the Commission, the withdrawal of the tax exemption scheme for biofuels such as the one at issue in the main proceedings was announced in the coalition agreement concluded on 11 November 2005 by the new government majority, in which the latter stated its intention to replace the various tax advantages for biofuels with a blend quota for such fuels. It is also apparent from the observations of the Hauptzollamt Darmstadt that that measure was announced by a draft law dated 6 April 2006. Moreover, the Hauptzollamt stated at the hearing that significant discussions had taken place in that regard with interested parties during 2006.

64 However, account must also be taken of the fact that, five months before the withdrawal of the tax exemption scheme for biofuels such as the product at issue in the main proceedings, the national legislature, by the Law on the Taxation of Energy, in the version which entered into force on 1 August 2006, confirmed 31 December 2009 as the date at which the scheme would end, although providing at the same time that the withdrawal in respect of products which, like the one at issue, were composed of vegetable oils would be gradual, with the rate of exemption being reduced in stages between 1 January 2008 and the end of 2012.

65 It is for the national court to assess the extent to which such a circumstance, which reflected the wish of the national legislature, in the middle of 2006, to maintain the tax exemption system at issue in force, could constitute an indication, for a prudent and circumspect operator, that the scheme in question would continue to apply at least until the expiry date initially laid down, namely 31 December 2009, or even, in part, until 2012. In that regard, it is for the national court to consider, in particular, the extent to which the belief of such an operator that that would be the case could be reinforced by the fact that the decision to maintain the scheme in force was adopted after the various communications, mentioned in paragraph 63 of the present judgment, indicating that the scheme would be withdrawn.

66 With regard, secondly, to the Community regulatory framework, it must be pointed out that no change was made to the Community rules during the period at issue. It is, however, for the national court to assess to what extent such a circumstance could have suggested to a prudent and circumspect operator that the national legislation intended to transpose the Community rules would also remain unchanged, notwithstanding the fact that, as was stated in paragraph 35 of the present judgment, Directive 2003/30 confers on the Member States a wide discretion with regard to the method of attaining the objectives laid down therein.

67 It must therefore be concluded that it is by taking account of all the foregoing factors, and all other circumstances relevant to the case before it, that the national court must consider, in the context of an overall assessment in the specific case, whether the applicant in the main proceedings, as a prudent and circumspect operator, had

sufficient information to permit it to expect that the tax exemption scheme at issue in the main proceedings could be withdrawn before the date initially laid down for its expiry.

68 Consequently, the answer to the second question is that the general principles of legal certainty and the protection of legitimate expectations do not in principle preclude a Member State, with regard to a product such as the one at issue in the main proceedings, from withdrawing, before the expiry date initially laid down in the national rules, a tax exemption scheme which applied to such products. In any event, such a withdrawal does not require the presence of exceptional circumstances. However, it is for the national court to consider, in the context of an overall assessment in the specific case, whether those principles have been respected in the main proceedings by taking account of all relevant circumstances relating to the case.

Costs

69 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 (Third Chamber) hereby rules:

1. **Article 3 of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport must be interpreted as meaning that it does not preclude national rules such as those at issue in the main proceedings which**

exclude, from the tax exemption scheme provided for in those rules for biofuels, a product, such as the one at issue in the main proceedings, which is composed of a blend of vegetable oil, fossil gas oil and specific additives.

2. The general principles of legal certainty and the protection of legitimate expectations do not in principle preclude a Member State, with regard to a product such as the one at issue in the main proceedings, from withdrawing, before the expiry date initially laid down in the national rules, a tax exemption scheme which applied to such products. In any event, such a withdrawal does not require the presence of exceptional circumstances. However, it is for the national court to consider, in the context of an overall assessment in the specific case, whether those principles have been respected in the main proceedings by taking account of all relevant circumstances relating to the case.

[Signatures]