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 EUROOPAN UNIONIN TUOMIOISTUIN
 EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Fourth Chamber)

8 July 2010 *

(Reference for a preliminary ruling – Validity – Directive 2009/30/EC – Article 1(8) – Directive 98/70/EC – Article 8a – Atmospheric pollution – Fuels – Use of metallic additives in fuels – Limit for methylcyclopentadienyl manganese tricarbonyl (MMT) content – Labelling – Impact assessment – Manifest error of assessment – Precautionary principle – Proportionality – Equal treatment – Legal certainty – Admissibility)

In Case C-343/09,

REFERENCE for a preliminary ruling under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), made by decision of 2 July 2009, received at the Court on 26 August 2009, in the proceedings

Afton Chemical Limited

v

Secretary of State for Transport,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, K. Schiemann, P. Kūris (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 April 2010,

* Language of the case: English.

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

after considering the observations submitted on behalf of:

- Afton Chemical Limited, by J. Stratford and R. Blakeley, barristers, and by J. Flynn QC, instructed by M. Lohn, solicitor,
- the German Government, by M. Lumma and J. Möller, acting as Agents,
- the Council of the European Union, by M. Moore and M. Simm, acting as Agents,
- the European Parliament, by I. Anagnostopoulou and R. Kaškina, acting as Agents,
- the European Commission, by A. Alcover San Pedro, E. White and D. Kukovec, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2010,

gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the validity of Article 1(8) of Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ 2009 L 140, p. 88), to the extent that it inserted a new Article 8a(2) and 8a(4) to (6) in 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).
- 2 This reference was made in the context of a claim made on 2 July 2009 by Afton Chemical Limited ('Afton') for permission to make an application for judicial review of the legality of the intention and/or obligation of the Government of the United Kingdom of Great Britain and Northern Ireland to implement Directive 2009/30.

Legal context

- 3 Recital 35 of the preamble to Directive 2009/30 states:

'The use of specific metallic additives, and in particular the use of methylcyclopentadienyl manganese tricarbonyl ("MMT"), might raise the risk of

AFTON CHEMICAL

damage to human health and might cause damage to vehicle engines and emission control equipment. Many vehicle manufacturers advise against the use of fuel containing metallic additives and the use of such fuel may invalidate vehicle warranties. It is therefore appropriate to keep under constant review the effects of the use of MMT in fuel in consultation with all relevant stakeholders. Pending further review it is necessary to take steps to limit the severity of any damage that may be caused. It is therefore appropriate to set an upper limit for the use of MMT in fuel, based upon currently available scientific knowledge. This limit should be revised upwards only if the use of higher dosage rates can be demonstrated not to cause adverse effects. To avoid consumers unknowingly invalidating their vehicles' warranties, it is also necessary to require the labelling of any fuel that contains metallic additives.'

- 4 Article 1(8) of Directive 2009/30 inserts in Directive 98/70 an Article 8a worded as follows:

'Metallic additives

1. The Commission shall conduct an assessment of the risks for health and the environment from the use of metallic additives in fuel and, for this purpose, develop a test methodology. It shall report its conclusions to the European Parliament and to the Council by 31 December 2012.
2. Pending the development of the test methodology referred to in paragraph 1, the presence of the metallic additive methylcyclopentadienyl manganese tricarbonyl (MMT) in fuel shall be limited to 6 mg of manganese per litre from 1 January 2011. The limit shall be 2 mg of manganese per litre from 1 January 2014.
3. The limit for the MMT content of fuel specified in paragraph 2 shall be revised on the basis of the results of the assessment carried out using the test methodology referred to in paragraph 1. It may be reduced to zero where justified by the risk assessment. It cannot be increased unless justified by the risk assessment. Such a measure, designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(4).
4. Member States shall ensure that a label concerning the metallic additive content of fuel is displayed at any point where a fuel with metallic additives is made available to consumers.
5. The label shall contain the following text: "Contains metallic additives".
6. The label shall be attached to the place where information indicating the type of fuel is displayed, in a clearly visible position. The label shall be of a size and font that is clearly visible and easily legible.'

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

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

- 5 Afton is based in the United Kingdom and forms part of the Afton Chemical group, which manufactures and sells MMT for use worldwide.
- 6 According to the information provided by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), MMT is a metallic fuel additive based on manganese, which is used to raise the octane level in unleaded fuel and/or to protect against valve damage in vehicles running on lead replacement petrol.
- 7 According to Afton, the insertion by Directive 2009/30 of Article 8a(2) and Article 8a(4) to (6) in Directive 98/70 is unlawful. Prior to the adoption of Directive 2009/30, there was no limit or restriction of any kind on the use of MMT and there was no labelling requirement in respect of metallic additives and MMT in particular.
- 8 Afton brought before the referring court a claim for permission to make an application for judicial review of the legality of the intention and/or obligation of the United Kingdom Government to implement Directive 2009/30.
- 9 The High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) granted the permission requested and decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

'In relation to the provisions relating to metallic additives in Directive 2009/30 ...:

1. With reference to that part of Article 1(8) which inserts a new Article 8a(2) into Directive 98/70 limiting the use of [MMT] in fuel to 6 mg Mn per litre from 1 January 2011 and to 2 mg from 1 January 2014, is the imposition of such limits:
 - (a) Unlawful as being based on a manifest error of assessment?
 - (b) Unlawful as being in violation of the requirements of the precautionary principle?
 - (c) Unlawful as lacking in proportionality?
 - (d) Unlawful as being contrary to the principle of equal treatment?
 - (e) Unlawful as being contrary to the principle of legal certainty?
2. With reference to that part of Article 1(8) which inserts a new Article 8a(4), Article 8a(5) and 8a(6) into Directive 98/70 requiring the labelling of all

AFTON CHEMICAL

fuels which contain metallic additives with the phrase “contains metallic additives”, is the imposition of such a labelling requirement:

- (a) Unlawful as being based on a manifest error of assessment?
- (b) Unlawful as lacking in proportionality?’

Whether the reference for a preliminary ruling is admissible

- 10 The Parliament and the Commission submit that the reference for a preliminary ruling is inadmissible.
- 11 According to them the reference is inadmissible because, first, there is no dispute between the parties, since the Secretary of State for Transport has declared himself neutral as to the merits of the claim, and, second, that the sole purpose of the proceedings before the referring court is to obtain the annulment of Article 1(8) of Directive 2009/30.
- 12 The Commission contends that Afton is probably entitled to bring a direct action under Article 230 EC before the Community court.
- 13 First, it is to be remembered that when a question on the validity of a measure adopted by the European Union institutions is raised before a national court, it is for that court to decide whether a decision on the matter is necessary to enable it to give judgment and consequently whether it should request the Court to rule on that question. Accordingly, where the national court’s questions relate to the validity of a provision of Community law, the Court is obliged in principle to give a ruling (Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 34, and Case C-308/06 *Intertanko and Others* [2008] ECR I-4057, paragraph 31).
- 14 It is possible for the Court to refuse to give a preliminary ruling on a question submitted by a national court only where, inter alia, it is quite obvious that the ruling sought by that court on the interpretation or validity of Community law bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical (*British American Tobacco (Investments) and Imperial Tobacco*, paragraph 35, and *Intertanko and Others*, paragraph 32).
- 15 In the case in the main proceedings, it is clear from the order for reference that Afton brought before the High Court an action for judicial review of the legality of the ‘intention and/or obligation’ of the United Kingdom Government to implement Directive 2009/30 even though, when that action was brought, the prescribed period for the transposition of that directive had not yet expired and no national measure transposing that directive had been adopted. Moreover, the mere fact that the Secretary of State for Transport has declared his intention to implement Directive 2009/30 justifies the view being taken that there is some

JUDGMENT OF 8. 7. 2010 - CASE C-343/09

- disagreement between Afton and the Secretary of State (see, to that effect, *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 36).
- 16 Nor is it disputed before the Court of Justice that the questions submitted are relevant to the outcome of the main proceedings, as the adoption of national measures designed to transpose a directive into domestic law in the United Kingdom may be subject to the condition that the directive be valid (*Intertanko and Others*, paragraph 34).
- 17 Accordingly, it is not obvious that the ruling sought by the referring court on the validity of Directive 2009/30 bears no relation to the actual facts of the main action or its purpose or is concerned with a hypothetical problem.
- 18 As regards, secondly, the question of whether accepting the admissibility of an order for reference seeking a decision on validity in a situation such as that in the main proceedings could be tantamount to circumventing the requirements of Article 230 EC, it must be stated that, in the complete system of legal remedies and procedures established by the EC Treaty with a view to ensuring judicial review of the legality of acts of the institutions, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of that article, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community judicature under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity (see *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 39).
- 19 The question therefore arises whether an action for annulment by Afton, under the fourth paragraph of Article 230 EC, challenging the contested provisions, would undoubtedly have been admissible on the ground that those provisions were of direct and individual concern to it (see, to that effect, Case C-241/95 *Accrington Beef and Others* [1996] ECR I-6699, paragraph 15, and Case C-343/07 *Bavaria and Bavaria Italia* [2009] ECR I-0000, paragraph 40).
- 20 In that regard, it must be observed that Afton cannot be regarded, for the purpose of the fourth paragraph of Article 230 EC, as undoubtedly 'directly and individually concerned' by the contested provisions (*Bavaria and Bavaria Italia*, paragraph 41).
- 21 According to settled case-law, in order for traders to be regarded as being individually concerned by the measure they seek to have annulled, their legal position must be affected by reason of circumstances which differentiate them from all other persons and distinguish them individually just as in the case of the person addressed (see Case 25/62 *Plaumann v Commission* [1963] ECR 95, 107, and Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 20).

AFTON CHEMICAL

- 22 In the case in the main proceedings, it is clear that the provisions of Directive 2009/30 which the applicant seeks to annul concern all producers of MMT.
- 23 Article 1(8) of Directive 2009/30 does not specifically refer to Afton and is of concern to it only in its objective capacity as a producer of MMT in the same way as any other trader which is currently or potentially in the same situation.
- 24 Moreover, it must also be borne in mind that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them, as long as it is established that, as in the present case, that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, *inter alia*, Case C-451/98 *Antillean Rice Mills v Council* [2001] ECR I-8949, paragraph 52, and order of 8 April 2008 in Case C-503/07 P *Saint-Gobain Glass Deutschland v Commission* [2008] ECR I-2217, paragraph 70).
- 25 The court must therefore find that Afton did not undoubtedly have standing to bring an action for annulment against the contested provisions on the basis of Article 230 EC. Consequently, Afton is entitled, in an action brought in accordance with national law, to plead the invalidity of those provisions even though it did not bring an action for their annulment before the Community judicature within the period laid down in Article 230 EC (see, to that effect, *Bavaria and Bavaria Italia*, paragraph 46).
- 26 It follows from all of the foregoing that the questions referred by the referring court are admissible.

The questions referred for a preliminary ruling*The first question*

- 27 By its first question, the referring court seeks, in essence, to ascertain whether Article 1(8) of Directive 2009/30, which inserts Article 8a(2) in Directive 98/70, is invalid inasmuch as it limits the use of MMT in fuel after 1 January 2011.

Whether there was a manifest error of assessment

- 28 First, the point must be made that, in an area of evolving and complex technology such as that in the case in the main proceedings, the European Union legislature has a broad discretion, in particular as to the assessment of highly complex scientific and technical facts in order to determine the nature and scope of the measures which it adopts, whereas review by the Community judicature has to be limited to verifying whether the exercise of such powers has been vitiated by a manifest error of appraisal or a misuse of powers, or whether the legislature has manifestly exceeded the limits of its discretion. In such a context, the Community

JUDGMENT OF 8. 7. 2010 - CASE C-343/09

judicature cannot substitute its assessment of scientific and technical facts for that of the legislature on which the Treaty has placed that task (see to that effect Case C-425/08 *Enviro Tech (Europe)* [2009] ECR I-0000, paragraph 47 and case-law there cited).

- 29 Afton claims that the imposition of limits for MMT content are the result of a manifest error of assessment of the facts by the Council and the Parliament. In support of that claim, Afton comments that there is no support for the imposition of those limits in the Commission's conclusion as recorded in the impact assessment annexed to the proposal for a directive, and that those limits are unworkable and arbitrary.
- 30 In that regard, it should first be observed that the impact assessment carried out by the Commission, which was annexed to its proposal for a directive and which envisaged neither the prohibition of metallic additives nor setting a figure on the limit for the MMT content of fuel, was not binding on either the Council or the Parliament, who, under the co-decision legislative procedure laid down by Article 251 EC, were entitled to make amendments to that proposal.
- 31 Secondly, under Article 95(3) EC, the Commission is to take as a base a high level of protection taking account in particular of any new development based on scientific facts. Within their respective powers, the Parliament and the Council are also to seek to achieve that objective.
- 32 Moreover, Article 174(1) EC provides that the European Union policy on the environment is to contribute to a number of objectives, one of which is the protection of human health. Article 174(3) EC provides that in preparing its policy on the environment, the European Union is obliged to take account of available scientific and technical data. That obligation applies, particularly, to the procedure under Article 95(3) EC, for which it is necessary that new data be taken into account (see, to that effect, Case C-405/07 P *Netherlands v Commission* [2008] ECR I-8301, paragraph 61).
- 33 Nevertheless, it must be stated that the European Union legislature's broad discretion, which implies limited judicial review of its exercise, applies not only to the nature and scope of the measures to be taken but also, to some extent, to the finding of the basic facts (see, inter alia, Case C-120/99 *Italy v Council* [2001] ECR I-7997, paragraph 44, and Case C-310/04 *Spain v Council* [2006] ECR I-7285, paragraph 121).
- 34 However, even though such judicial review is of limited scope, it requires that the Community institutions which have adopted the act in question must be able to show before the Court that in adopting the act they actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate (*Spain v Council*, paragraph 122).

AFTON CHEMICAL

- 35 In the case in the main proceedings, it is clear from a reading of the draft report of the Parliament's Committee on Environment, Public Health and Food Safety dated 19 July 2007 that that Committee recommended banning the use of MMT in fuel from 1 January 2010 on the ground that the use of that additive and other metallic additives is very damaging to the environment, without stating the scientific basis for that opinion.
- 36 However, in the proceedings before the Court, the Parliament stated that the abovementioned Committee organised not only general workshops on the revision of Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels (OJ 2003 L 76, p. 10), but also a specific workshop on MMT on 3 April 2008, in the course of which Afton was one of the parties heard. The Parliamentary Committee also took into consideration various studies challenging the safety of MMT, among them the Sierra research report of 29 August 2008, carried out in Canada by the Canadian Vehicle Manufacturers' Association and the Association of International Automobile Manufacturers of Canada, which, in any event, could not be taken into account by the Commission when it published the impact assessment because the study was released subsequently.
- 37 The Council maintains that it took into account, during the legislative procedure, studies carried out in 2004 by the International Council on Clean Transportation (ICCT) which demonstrated that the use of MMT is damaging to human health and to the proper functioning of emissions control systems and the Declaration of Brescia on the prevention of the neurotoxicity of metals of 17 and 18 June 2006 which recommends, inter alia, that the addition of organic manganese compounds to fuels should be halted.
- 38 It is true that on 29 December 2008 Afton sent to the Council, the Parliament and the Commission, on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) a request that it should be sent the scientific documents and evidence which were taken into consideration when the decision setting the limit for the MMT content of fuel was made and that none of the documents sent to it contained scientific information relating to risks associated with the use of MMT.
- 39 It must however be observed that, besides the fact that the Council is not necessarily in possession of scientific documents used by the Member States at meetings, all of the abovementioned documents are in the public domain and therefore accessible to any individual or undertaking who has an interest in the matter.
- 40 Consequently, it cannot be maintained that those scientific documents were not taken into account during the legislative procedure.

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

- 41 It follows from the foregoing that, during the legislative process, the Parliament, the Council and the Commission took into account the available scientific data, including that which emerged in the course of that procedure, in order to exercise their discretion properly.
- 42 In the light of the scientific documents which relate both to the effects of MMT on human health and the environment and its impact on vehicles, the Parliament and the Council did not make a manifest error of assessment in deciding to set a limit for the MMT content of fuel. Consequently, Article 1(8) of Directive 2009/30, in so far as it inserts an Article 8a(2) in Directive 98/70, is not invalid.
- The failure to comply with the principle of proportionality and the precautionary principle
- 43 Afton claims that the adoption of limits for the MMT content of fuel infringed the principle of proportionality on the ground that there is nothing to justify a limitation on the use of MMT which is so stringent that it amounts to a *de facto* ban on MMT in unleaded petrol from 2014 and in lead replacement petrol from 2011.
- 44 Further, Afton attempts to demonstrate that there is no evidence to justify the adoption of a piece of legislation which is intended to be based on the precautionary principle as regards MMT since no examination of the effects of MMT on health and no scientific risk assessment in relation to the negative impact of MMT on pollution abatement technologies and on the environment were carried out. In addition, it was an error to rely on the precautionary principle as justification.
- 45 According to settled case-law, it must be recalled that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81; Case C-558/07 *S.P.C.M. and Others* [2009] ECR I-0000, paragraph 41; and Joined Cases C-379/08 and C-380/08 *ERG and Others* [2010] ECR I-0000, paragraph 86 and case-law there cited).
- 46 With regard to judicial review of the conditions referred to in the previous paragraph, the European Union legislature must be allowed a broad discretion in an area which entails political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. The legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institutions are seeking to pursue (*S.P.C.M. and Others*, paragraph 42 and case-law there cited).

AFTON CHEMICAL

- 47 In the present case, it is necessary to consider whether the setting of limits for manganese content, as provided for by Article 8a(2) of Directive 98/70, constitutes a proportionate means of achieving the objectives of that directive.
- 48 According to recital 35 of Directive 2009/30, the objectives of setting limits for MMT are based on the fact that the use of that substance might entail risks for human health and might cause damage to vehicle engines and emission control equipment. It provides for the labelling of all fuels and accordingly states that there is a requirement to inform consumers.
- 49 ~~The objectives of protection of health, environmental protection and consumer protection are referred to both in Article 95(3) EC, under which the legislature is to take as a base a high level of protection, taking account, in particular, of any new development based on scientific facts, and in Article 174(1) and (2) EC, which provides that the Community policy on the environment is to be based on, inter alia, the precautionary principle.~~
- 50 The setting of a limit for the presence of MMT in fuel which makes it possible thereby to reduce the quantities of that substance which might potentially damage health is not manifestly inappropriate for attaining the objectives of protection of health and environmental protection pursued by the European Union legislature. It remains however to be verified that the legislature has not gone beyond what is necessary to attain those objectives.
- 51 In the present case, whilst the Commission's proposal for a directive did not make any provision for either banning or limiting MMT in fuel, the Parliament's Committee on Environment, Public Health and Food Safety wanted MMT to be banned completely. In that regard, as regards Directive 2003/17, it is clear that, when Directive 2009/30 was adopted, the state of scientific knowledge meant that the development of test methodologies was difficult or impossible.
- 52 Moreover, Article 8a(1) of Directive 98/70 provides for the development of test methodologies and the presentation of conclusions before the Parliament and the Council by 31 December 2012.
- 53 The limit for the MMT content of fuel was accordingly set pending the development of such test methodologies. It is therefore temporary and is capable of amendment according to the results of developments which may be observed.
- 54 The contested provision must, lastly, be seen in the wider framework of Directive 2009/30, which is intended to define minimum specifications for fuels in the interest of health protection and environmental protection in the context of reducing greenhouse gas emissions.
- 55 Consequently, having regard to the health risks and the risks of damage to vehicle engines and to the difficulties in developing test methodologies, a restrictive

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

measure such as a limitation on the presence of MMT in fuels does not go beyond what is necessary to meet the objectives of Directive 2009/30.

- 56 Moreover, it is necessary to ascertain whether, in exercising its discretion, the European Union legislature attempted to achieve a degree of balance between, on the one hand, the protection of health, environmental protection and consumer protection and, on the other hand, the economic interests of traders, while pursuing the objective assigned to it by the Treaty to ensure a high level of protection of health and environmental protection.
-
- 57 First, it must be borne in mind that the Commission's impact assessment was not binding on either the Parliament or the Council.
- 58 In that regard, it is clear from the scientific documents and from the debate between the parties that, when Directive 2009/30 was adopted, no public body or independent entity had undertaken a scientific assessment of the effects of MMT on health. As regards the studies provided by professionals in the sector, it is clear that the widely disparate conclusions reached on that subject are dependent on whether the study relied on was carried out by the motor car industry or by the producers of MMT.
- 59 It follows that the European Union legislature was faced with serious doubts, in the absence of adequate and reliable scientific data, as to whether MMT was harmless for health and the environment.
- 60 A correct application of the precautionary principle presupposes, first, identification of the potentially negative consequences for health of the proposed use of MMT, and, secondly, a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research (see Case C-333/08 *Commission v France* [2010] ECR I-0000, paragraph 92 and case-law there cited).
- 61 Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures, provided they are non-discriminatory and objective (see *Commission v France*, paragraph 93 and case-law there cited).
- 62 In those circumstances, it must be acknowledged that the European Union legislature may, under the precautionary principle, take protective measures without having to wait for the reality and the seriousness of those risks to be fully demonstrated (see *Commission v France*, paragraph 91).
- 63 In a case such as that in the main proceedings, the limit for the MMT content of fuel is not discriminatory, since it applies to the whole of the European Union and to all producers and importers of MMT.

AFTON CHEMICAL

- 64 Moreover, the European Union legislature could justifiably take the view that the appropriate manner of reconciling the high level of health and environmental protection and the economic interests of producers of MMT was to limit the content of MMT in fuel on a declining scale while providing for the possibility, in Article 8a(3) of Directive 98/70, of revising those limits on the basis of the results of assessment.
- 65 Lastly, Afton challenges the level of the limits on the basis that there is no scientific basis for it, that it entails a number of disadvantages in relation to older vehicles and that the European Union legislature carried out no examination of those disadvantages. Afton adds that the limits amount to a *de facto* ban of MMT.
- 66 However, since the nature of the harm which might be caused by MMT is uncertain, there cannot be more precise information which makes it possible to define the level of the MMT fuel content limit which would be capable of ensuring that that harm was adequately prevented.
- 67 Moreover, Afton marketed less than 0.5% of the total worldwide sales of MMT in 2008, to just a few countries in the European Union. At the same time, other Member States such as the Federal Republic of Germany have banned the presence of MMT in fuel.
- 68 Further, having regard to the uncertainty in relation to both the damage caused by the use of MMT and the risks created for users of MMT, the setting of limits for the MMT content of fuel does not appear manifestly disproportionate in relation to the economic interests of producers of MMT, in order to ensure a high level of protection of health and the environment.
- 69 It follows from the foregoing that Article 1(8) of Directive 2009/30, in so far as it inserts an Article 8a(2) in Directive 98/70, is not invalid by reason of the infringement of the precautionary principle and the principle of proportionality.

Failure to comply with the principle of equal treatment

- 70 Afton claims that there is no justification for setting limits on MMT when no restrictions are imposed on the use of other metallic additives, including those containing manganese.
- 71 According to Afton, MMT performs a function which is comparable to that of other metallic additives and does not entail any additional risks to health and the environment. Afton cites, as an example, cyclopentadienyl manganese tricarbonyl (CMT), the use of which is not subject to any limit under the legislation at issue.
- 72 The institutions which have intervened before the Court contend, in essence, that other manganese-based additives are not used or imported in the European Union.

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

- 73 The Parliament states that MMT has long been the subject of studies and risk analyses and that its use as a metallic additive in fuel is of long standing, whereas no studies exist on other additives.
- 74 According to settled case-law, the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see *S.P.C.M. and Others*, paragraph 74 and case-law there cited).
- 75 In that regard, it is sufficient to find that Afton has not disproved the assertion that other metallic additives, such as CMT, have not been used or imported in the European Union.
- 76 It follows that MMT is not in a situation which is comparable to that of other manganese-based metallic additives and the European Union legislature was therefore not required to set limits for those other additives.
- 77 Consequently, since the Court finds that the principle of equal treatment has not been infringed, Article 1(8) of Directive 2009/30, in so far as it inserts an Article 8a(2) in Directive 98/70, is not invalid by reason of the infringement of that principle.
- Failure to comply with the principle of legal certainty
- 78 Afton claims that the new Article 8a(2) of Directive 98/70 is insufficiently precise as regards the link which should exist between the limit for the MMT content of fuel and development of a test methodology.
- 79 According to settled case-law, the general principle of legal certainty, which is a fundamental principle of Community law, requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see Case C-110/03 *Belgium v Commission* [2005] ECR I-2801, paragraph 30; Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 68; and *Intertanko and Others*, paragraph 69).
- 80 Contrary to what is claimed by Afton, an assessment of the link between the limit for the MMT content of fuel and the development of a test methodology cannot be based solely on Article 8a(2) of Directive 98/70.
- 81 The first sentence of Article 8a(3) of Directive 98/70 expressly provides that '[t]he limit for the MMT content of fuel specified in paragraph 2 shall be revised on the basis of the results of the assessment carried out using the test methodology referred to in paragraph 1'.

AFTON CHEMICAL

- 82 It follows that there is no ambiguity in the wording of Article 8a(2) of Directive 98/70 in relation to the link between the limit for the MMT content of fuel and the development of a test methodology.
- 83 Accordingly, the Court cannot hold that the principle of legal certainty has been infringed and, consequently, Article 1(8) of Directive 2009/30, in so far as it inserts an Article 8a(2) in Directive 98/70, is not invalid by reason of infringement of that principle.
- 84 It follows from all of the foregoing that consideration of the first question has disclosed nothing capable of affecting the validity of Article 1(8) of Directive 2009/30 in so far as it inserts an Article 8a(2) in Directive 98/70.

The second question

- 85 By its second question, the referring court seeks, in essence, to ascertain whether Article 1(8) of Directive 2009/30, which inserts Article 8a(4) to (6) in Directive 98/70, is invalid inasmuch as it creates a labelling requirement for fuels containing metallic additives.
- 86 Afton claims that the labelling requirement was imposed as a result of a manifest error of assessment and that it is disproportionate because it amounts to a *de facto* ban on the use of MMT and other metallic additives.
- 87 According to recital 35 of Directive 2009/30, the use of metallic additives, and in particular MMT, might raise the risk of damage to human health and might cause damage to vehicle engines and emission control equipment. After mentioning the warnings of motor vehicle manufacturers, the European Union legislature was, in the last sentence of that recital, concerned to ensure that consumers did not, unknowingly, invalidate their vehicle warranties.
- 88 Further, as the Advocate General stated in point 123 of her Opinion, the labelling requirement is intended to ensure consumer protection which, under Article 153 EC, is an objective of the European Union. That objective is to be achieved by the promotion of the consumer's right to information.
- 89 The attachment of a label, clearly visible, containing a text reading 'Contains metallic additives' is an appropriate means of pursuing that objective.
- 90 Contrary to Afton's submissions, the brevity of that message and the absence of any reference to manufacturers' warranties meet the abovementioned objective.
- 91 If the consumer is to be able to prevent risk of damage to his health and to his vehicle, he must be informed of the presence of such additives in fuel.
- 92 Moreover, the objective of consumer protection cannot be attained solely by setting the limits provided for by Article 8a(2) of Directive 98/70, which are

JUDGMENT OF 8. 7. 2010 – CASE C-343/09

designed to meet the high level of protection of health and environmental protection required by the Treaty and which relate only to MMT.

- 93 Further, Afton claims that the labelling requirement amounts in practice to a ban on metallic additives in fuel.
- 94 In that regard, the Court must observe that, in any event, first, labelling is required only for the sale of fuel containing metallic additives and not for the sale of MMT as an additive and, secondly, it is not likely to impose a significantly greater burden on producers and distributors of fuel given how little fuel, that is to say, less than 0.1% of all fuel sold in the European Union, contains such additives.
- 95 It follows that the European Union legislature did not make any manifest error of assessment in adopting the labelling requirement provided for in Article 8a(4) to (6) of Directive 98/70, a requirement which is not manifestly inappropriate for attaining the objective of consumer protection provided for by Directive 2009/30.
- 96 It follows from the foregoing that consideration of the second question has disclosed nothing capable of affecting the validity of Article 1(8) of Directive 2009/30, which inserts Article 8a(4) to (6) in Directive 98/70.
- 97 It follows from all of the foregoing that consideration of the questions referred has disclosed nothing capable of affecting the validity of Article 1(8) of Directive 2009/30 in so far as it inserts a new Article 8a(2) and 8a(4) to (6) in Directive 98/70.

Costs

- 98 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 (Fourth Chamber) hereby rules:

Consideration of the questions referred has disclosed nothing capable of affecting the validity of Article 1(8) of Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC, in so far as it inserts a new Article 8a(2) and 8a(4) to (6) in 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.

AFTON CHEMICAL

[Signatures]