(2) Must Article 1(4) of Council Directive 84/5/EEC of 30 December 1983 ([2]) (in force at the date of the accident) be interpreted as meaning that the Fundo de Garantia Automóvel — which because there was no civil liability insurance contract, paid the relevant compensation to the third parties injured by the traffic accident caused by the motor vehicle which, without the owner's knowledge or authorisation, was removed from the private land where it was immobilised — has the right of subrogation against the vehicle's owner regardless of whether that owner was liable for the accident?

or,

Does the subrogation by the Fundo de Garantia Automóvel in relation to the owner depend on the requirements for civil liability having been met, in particular that, when the accident occurred, the owner had effective control of the vehicle?

([1]) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English special edition 1972(II) p. 360).

([2]) Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 21 February 2017 — Turbogás — Produtora Energética, SA v Autoridade Tributária e Aduaneira

(Case C-90/17)

(2017/C 144/40)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Turbogás — Produtora Energética, SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Pursuant to and for the purposes of the third paragraph of Article 21(5) of Directive 2003/96/EC, ([1]) must entities which produce electricity for their own use be small producers in order for them to be … regarded as distributors, and [thus] subject to tax in accordance with the first paragraph of Article 21(5) of that directive, so that other entities (those which are not small producers) which produce electricity for their own use are excluded from that classification as distributors, or must all entities which produce electricity for their own use (regardless of their respective size and of whether they do so as their main or secondary economic activity), and are not exempt as small producers under the second sentence of the third paragraph of Article 21(5) of that directive, be regarded as distributors, and [thus] subject to tax in accordance with the first paragraph of Article 21(5) of that directive?

2. In particular, may an entity, such as the one at issue in these proceedings, which is a large electricity producer, producing around 9 % of the national energy for sale to the national grid, be regarded as 'an entity producing electricity for its own use', as referred to in Article 21(5) of Directive 2003/96/EC, when only a small part of the electricity which it produces is consumed in its own production of new electricity as an integral part of its production process?

([1]) 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.