5. Is a tax on the production of spent nuclear fuel and radioactive waste from nuclear power generation imposed on the nuclear generation industry alone and not applicable to any other sector that may generate such waste, which means that other firms that could use nuclear material or nuclear sources in their activities are not taxed, even though they affect the environment that is to be protected, contrary to the 'polluter pays' principle in Article 191(2) of the Treaty on the Functioning of the European Union?

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

([2]) Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (OJ 2006 L 33, p. 22).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2018 — Iberdrola Generación Nuclear, S.A.U. v Administración General del Estado

(Case C-83/18)

(2018/C 182/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Iberdrola Generación Nuclear, S.A.U.

Respondents: Administración General del Estado

Questions referred

1. Does the 'polluter pays' principle, affirmed in Article 191(2) of the Treaty on the Functioning of the European Union, together with Articles 20 and 21 of the Charter of Fundamental Rights, which establish the basic principles of equality and non-discrimination, when applied to the provisions in Article 3(1) and (2) of Directive 2009/72/EC, ([1]) insofar as it is intended, among other aims, to achieve a competitive and non-discriminatory market in electricity that may be altered only on grounds of general economic interest, including the protection of the environment, preclude the introduction of taxes that apply solely to electricity generation companies that use nuclear energy, when the main purpose of those taxes is not environmental but to increase the volume of the electric power financial system in such a way that these companies contribute more to funding the tariff deficit than other companies that carry on the same activity?

2. In a competitive and non-discriminatory electricity market, does EU legislation permit the levying of environmental taxes on grounds of the pollution caused by nuclear activities, although this is not specified in the legislation (the grounds are referred to in the Preamble to the Law), with the result that, as regards the tax on the production of spent nuclear fuel and radioactive waste, the statutory provisions having legislative force fail to reflect the internalisation of the costs to be covered, and there is also a lack of specificity as regards the storage of radioactive waste, given that the management and storage costs are already covered by other levies, and there is also a failure to establish clearly what the revenue raised is to be used for, and the companies in question are required to assume civil liabilities of up to 1 200 million in this regard?

3. Is Article 3(2) of the abovementioned Directive, which requires any obligations imposed on grounds of general economic interest, including environmental protection, to be clearly defined, transparent, non-discriminatory and verifiable, satisfied if the environmental objective and the essential characteristics that define environmental taxes are not specified in the statutory provision having legislative force?

4. Do the 'polluter pays' principle in Article 191(2) of the Treaty on the Functioning of the European Union, the principles of equality and non-discrimination in Articles 20 and 21 of the European Charter of Fundamental Rights, and Articles 3 and 5 of Directive 2005/89/EC, [2] insofar as they seek to ensure 'the proper functioning of the internal market for electricity' and call on Member States to ensure 'that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors', preclude a provision in national legislation that requires all electricity companies (other than generators of hydroelectricity, which is classified as renewable energy) to fund the tariff deficit, but which imposes a particularly heavy tax burden on nuclear generators, which are required to contribute more than other actors in the energy market, some of which are more polluting, but that do not have to pay these charges, the reasons given being grounds of environmental protection in view of the risks and uncertainties inherent in nuclear activities, without specifying the costs involved or stipulating that the revenue raised is to be used for environmental protection purposes (and given that waste management and storage are already covered by other levies, and nuclear generation companies assume civil liability), and that distorts the free competition required by the liberalised internal market by favouring other electricity generators that do not have to pay environmental taxes even when their sources of production are more highly polluting?

5. Is a tax on the production of spent nuclear fuel and radioactive waste from nuclear power generation imposed on the nuclear generation industry alone and not applicable to any other sector that may generate such waste, which means that other firms that could use nuclear material or nuclear sources in their activities are not taxed, even though they affect the environment that is to be protected, contrary to the 'polluter pays' principle in Article 191(2) of the Treaty on the Functioning of the European Union?

[1] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).
[2] Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (OJ 2006 L 33, p. 22).

Request for a preliminary ruling from the Rechtbank Noord-Nederland (Netherlands) lodged on 12 February 2018 — Openbaar Ministerie v ET

(Case C-97/18)

(2018/C 182/06)

Language of the case: Dutch

Referring court

Rechtbank Noord-Nederland, sitting in Leeuwarden

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: ET

Questions referred

1. Can Article 12(1) of Framework Decision 2006/783/JHA [1] be interpreted as meaning that, when a confiscation order transferred by an issuing State is executed in the Netherlands, a term of imprisonment pending payment as referred to in Article 577c of the Netherlands Code of Criminal Procedure may be applied, having regard to, inter alia, the decision of the Hoge Raad of 20 December 2011 [2] to the effect that a term of imprisonment pending payment must be deemed to be a penalty within the meaning of Article 7(1) of the ECHR?