

Parties to the main proceedings

Applicant: Asociación Española de la Industria Eléctrica (UNESA)

Defendant: Administración General del Estado

Questions referred

1. Must the ‘the polluter pays’ environmental principle, provided for in Article 191(2) TFEU, and Article 9(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, ⁽¹⁾ which lays down the principle of the recovery of costs for water services and also the appropriate economic balancing of water uses, be interpreted as precluding the introduction of a tax on the use of inland waters to produce energy, such as the tax at issue in the proceedings, which does not incentivise the efficient use of water, nor establish mechanisms for the preservation and protection of public water resources, the quantification of that tax being totally unconnected to the capacity to cause damage to the public water resources, as it is focused solely and exclusively on the income-generating capacity of producers?
2. Is a tax such as the hydraulic tax the subject of the proceedings, which exclusively affects hydroelectricity generators operating in river basins encompassing more than one autonomous community, but not concession-holding producers in river basins encompassing a single autonomous community, and also producers using hydroelectric technology, but not energy producers using other technologies, compatible with the principle of non-discrimination between operators provided for in Article 3(1) of Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity? ⁽²⁾
3. Must Article 107(1) TFEU be interpreted as meaning that the levying of a hydraulic tax such as that at issue to the detriment of hydroelectricity producers operating within river basins encompassing more than one autonomous community constitutes prohibited State aid, in that it introduces an asymmetrical system of taxation within the same area of technology, depending on the plant’s location, and the tax is not levied on producers of energy from other sources?

⁽¹⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

⁽²⁾ 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).

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 February 2018 —
Energía de Galicia (Engasa), S.A. v Administración General del Estado**

(Case C-106/18)

(2018/C 161/29)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Energía de Galicia (Engasa), S.A.

Defendant: Administración General del Estado

Questions referred

1. Must the 'the polluter pays' environmental principle, provided for in Article 191(2) TFEU, and Article 9(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, ⁽¹⁾ which lays down the principle of the recovery of costs for water services and also the appropriate economic balancing of water uses, be interpreted as precluding the introduction of a tax on the use of inland waters to produce energy, such as the tax at issue in the proceedings, which does not incentivise the efficient use of water, nor establish mechanisms for the preservation and protection of public water resources, the quantification of that tax being totally unconnected to the capacity to cause damage to the public water resources, as it is focused solely and exclusively on the income-generating capacity of producers?
2. Is a tax such as the hydraulic tax the subject of the proceedings, which exclusively affects hydroelectricity generators operating in river basins encompassing more than one autonomous community, but not concession-holding producers in river basins encompassing a single autonomous community, and also producers using hydroelectric technology, but not energy producers using other technologies, compatible with the principle of non-discrimination between operators provided for in Article 3(1) of Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity? ⁽²⁾
3. Must Article 107(1) TFEU be interpreted as meaning that the levying of a hydraulic tax such as that at issue to the detriment of hydroelectricity producers operating within river basins encompassing more than one autonomous community constitutes prohibited State aid, in that it introduces an asymmetrical system of taxation within the same area of technology, depending on the plant's location, and the tax is not levied on producers of energy from other sources?

⁽¹⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

⁽²⁾ 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).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 February 2018 — Duerocanto, S.L. v Administración General del Estado

(Case C-107/18)

(2018/C 161/30)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Duerocanto, S.L.

Defendant: Administración General del Estado

Questions referred

1. Must the 'the polluter pays' environmental principle, provided for in Article 191(2) TFEU, and Article 9(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, ⁽¹⁾ which lays down the principle of the recovery of costs for water services and also the appropriate economic balancing of water uses, be interpreted as precluding the introduction of a tax on the use of inland waters to produce energy, such as the tax at issue in the proceedings, which does not incentivise the efficient use of water, nor establish mechanisms for the preservation and protection of public water resources, the quantification of that tax being totally unconnected to the capacity to cause damage to the public water resources, as it is focused solely and exclusively on the income-generating capacity of producers?