



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

18 April 2024\*

(Reference for a preliminary ruling – Taxation of energy products and electricity – Directive 2003/96/EC – Fifth indent of Article 2(4)(b) – Concept of ‘mineralogical processes’ – Electricity used to power machines used to process limestone extracted from quarries)

In Case C-133/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 27 February 2023, received at the Court on 6 March 2023, in the proceedings

**Omya CZ s. r. o.**

v

**Generální ředitelství cel,**

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, N. Wahl and M.L. Arastey Sahún (Rapporteur),  
Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Czech Government, by L. Halajová, M. Smolek and J. Vlácil, acting as Agents,
- the European Commission, by A. Armenia and J. Hradil, acting as Agents,

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

\* Language of the case: Czech.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the fifth indent of Article 2(4)(b) 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).
- 2 The request has been made in proceedings between Omya CZ s. r. o. ('Omya') and the Generální ředitelství cel (General Customs Directorate, Czech Republic) concerning the taxation of electricity used by Omya for the processing of quarried limestone.

### Legal context

#### *European Union law*

##### *Directive 2003/96*

- 3 Article 2(4) of Directive 2003/96 provides that:

'This Directive shall not apply to:

...

(b) the following uses of energy products and electricity:

...

– mineralogical processes

"Mineralogical processes" shall mean the processes classified in the NACE classification under code DI 26 "manufacture of other non-metallic mineral products" in Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community [(OJ 1990 L 293, p. 1)].

...'

##### *Regulation (EC) No 1893/2006*

- 4 Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ 2006 L 393, p. 1), which, under the second indent of Article 21, is applicable from 1 January 2008, provides, in its Article 1:

'1. This Regulation establishes a common statistical classification of economic activities in the European Community, hereinafter referred to as "NACE Rev. 2". This classification ensures that Community classifications are relevant to the economic reality and enhances the comparability of

national, Community and international classifications and, hence, of national, Community and international statistics.

2. This Regulation shall apply only to the use of the classification for statistical purposes.’

5 Article 5 of Regulation No 1893/2006 provides:

‘The Commission [of the European Communities], in cooperation with the Member States, shall ensure the dissemination, maintenance and promotion of NACE Rev. 2, in particular by:

- (a) drafting, updating and publishing explanatory notes for NACE Rev. 2;
- (b) drawing up and publishing guidelines for classifying statistical units in accordance with NACE Rev. 2;
- (c) publishing correspondence tables between NACE Rev. 1.1 and NACE Rev. 2 and between NACE Rev. 2 and NACE Rev. 1.1; and
- (d) working to improve consistency with other social and economic classifications.’

6 Division 08, entitled ‘Other mining and quarrying’, appearing in section B, entitled ‘Mining and quarrying’, of the NACE Rev. 2 classification includes a group 08.1, entitled ‘Quarrying of stone, sand and clay’, to which class 08.11, entitled ‘Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate’, belongs.

7 Division 23, entitled ‘Manufacture of other non-metallic mineral products’, of section C, entitled ‘Manufacturing’, of the NACE Rev. 2 classification corresponds to code DI 26 referred to in Regulation No 3037/90 and includes, in particular, group 23.7, entitled ‘Cutting, shaping and finishing of stone’, to which class 23.70, bearing the same title, belongs.

#### *Regulation (EC) No 451/2008*

8 Article 1(1) of Regulation (EC) No 451/2008 of the European Parliament and of the Council of 23 April 2008 establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93 (OJ 2008 L 145, p. 65) provides:

‘This Regulation establishes a new common [statistical classification of products by activity (CPA)] within the Community in order to ensure relevance with respect to the economic reality and comparability between national, Community and international classifications and hence national, Community and international statistics.’

9 The annex to Regulation No 451/2008 contains the CPA.

#### *Regulation (EU) No 1209/2014*

10 Article 1 of Commission Regulation (EU) No 1209/2014 of 29 October 2014 amending Regulation No 451/2008 (OJ 2014 L 336, p. 1) provides:

‘The Annex to [Regulation No 451/2008] is replaced by the text in the Annex to this Regulation.’

- 11 The annex to Regulation No 1209/2014 includes in particular section C, entitled ‘Manufactured products’, which includes division 23, entitled ‘Other non-metallic mineral products’, which includes group 23.7, entitled ‘Cut, shaped and finished stone’, including class 23.70, entitled ‘Cut, shaped and finished stone’, in which appears category 23.70.1, entitled ‘Cut, shaped and finished stone’, which includes subcategory 23.70.11, entitled ‘Marble, travertine, alabaster, worked, and articles thereof (except setts, curbstones, flagstones, tiles, cubes and similar articles); artificially coloured granules, chippings and powder of marble, travertine and alabaster’.

*The explanatory notes*

- 12 Part I of NACE Rev. 2 Statistical classification of economic activities in the European Community, published by Eurostat in its Methodologies and Working papers collection (‘the explanatory notes’), includes, in particular, the following introductory guidelines:

‘...

48. A unit may perform one or more economic activities described in one or more categories of NACE.

49. The principal activity of a statistical unit is the activity which contributes most to the total value added of that unit. The principal activity is identified according to the top-down method ... and does not necessarily account for 50% or more of the unit’s total value added.’

...

58. One NACE code is assigned to each unit recorded in statistical business registers, according to its principal economic activity. The principal activity is the activity which contributes most to the value added of the unit. ...’

- 13 Part IV of the explanatory notes states, in particular, with regard to sections B and C, that it includes:

‘Section B – Mining and Quarrying

Mining and quarrying include the extraction of minerals occurring naturally as solids (coal and ores), liquids (petroleum) or gases (natural gas). ...

This section includes supplementary activities aimed at preparing the crude materials for marketing, for example, crushing, grinding, cleaning, drying, sorting, concentrating ores, liquefaction of natural gas and agglomeration of solid fuels. These operations are often accomplished by the units that extracted the resource and/or others located nearby.

...

This section excludes:

– processing of the extracted materials, see section C (Manufacturing)

...

– crushing, grinding or otherwise treating certain earths, rocks and minerals not carried on in conjunction with mining and quarrying, see 23.9.

...

#### 08 Other mining and quarrying

This division includes extraction from a mine or quarry, but also dredging of alluvial deposits, rock crushing and the use of salt marshes. The products are used most notably in construction (e.g. sands, stones etc.), manufacture of materials (e.g. clay, gypsum, calcium etc.), manufacture of chemicals etc.

This division does not include processing (except crushing, grinding, cutting, cleaning, drying, sorting and mixing) of the minerals extracted.

...

#### Section C – Manufacturing

This section includes the physical or chemical transformation of materials, substances, or components into new products, although this cannot be used as the single universal criterion for defining manufacturing (see remark on processing of waste below). The materials, substances, or components transformed are raw materials that are products of agriculture, forestry, fishing, mining or quarrying as well as products of other manufacturing activities. Substantial alteration, renovation or reconstruction of goods is generally considered to be manufacturing.

The output of a manufacturing process may be finished in the sense that it is ready for utilisation or consumption, or it may be semi-finished in the sense that it is to become an input for further manufacturing. ...

...

Remark: ... As a general rule, the activities in the manufacturing section involve the transformation of materials into new products. Their output is a new product. ...

...

... there are activities that, although sometimes involving transformation processes, are classified in other sections of NACE; in other words, they are not classified as manufacturing. ...

...

#### 23 Manufacture of other non-metallic mineral products

This division includes manufacturing activities related to a single substance of mineral origin. ... The manufacture of shaped and finished stone and other mineral products is also included in this division.

...'

### ***Czech legislation***

- 14 Under Paragraph 8(2)(f) of section 47 of the Zákon č. 261/2007 Sb., o stabilizaci veřejných rozpočtů (Law 261/2007 on the Stabilisation of Public Finances; ‘Law 261/2007’), electricity intended for use or used for mineralogical processes is exempt from tax.
- 15 Under Paragraph 2(1)(g) of section 47 of Law 261/2007, ‘mineralogical processes’ are procedures specified in the NACE classification under code C 23, entitled ‘Manufacture of other non-metallic mineral products’.
- 16 Under Paragraph 2(1)(e) of section 47 of Law 261/2007, the ‘NACE classification’ is the classification of economic activities specified in Regulation No 1893/2006.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 17 Omya is a commercial company under Czech law, engaged in the extraction and processing of limestone, in particular marble. In that regard, it is in charge of the opening, preparation, and extraction of a deposit composed exclusively of limestone located in a quarry, in which it is engaged in the primary crushing and sorting of the quarried limestone. That material is then carried by lorries to the applicant’s processing facilities, which it operates near that quarry, in which the quarried limestone is processed in order to obtain a specific grain size. In particular, that material undergoes primary washing, separation into fine and coarse fractions, and subsequent drying. Thereafter, the limestone is crushed or processed by dry grinding in order to obtain limestone grit or, more precisely, fine and coarse limestone fillers or fine limestone fillers with a treated surface. To obtain the latter fillers, Omya uses an electric heating device that ‘warms hot air’, in which the fine limestone filler is mixed with stearin.
- 18 On 11 July 2019, Omya submitted, on the basis of Article 8(2)(f) of section 47 of Law No 261/2007, an application for the issuance of a permit for the acquisition of tax-exempt electricity, provided for by Czech regulations, for its use in mineralogical processes. In that regard, it stated that both primary crushing and sorting carried out at the quarry and the processing operations carried out in the processing facilities consisted in mineralogical processes.
- 19 The Celní úřad pro Olomoucký kraj (Customs Authority for the Olomouc Region, Czech Republic) rejected that application on the ground that the activities for which Omya had applied for an exemption from electricity tax did not fall under section C, entitled ‘Manufacturing’, division 23, entitled ‘Manufacture of other non-metallic mineral products’ of the NACE Rev. 2 classification, but rather in section B, entitled ‘Mining and quarrying’, more specifically division 08, entitled ‘Quarrying of stone, sand and clay’, class 08.11, entitled ‘Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate’ of that classification.
- 20 Hearing an appeal lodged by Omya against the decision of the Customs Authority for the Olomouc Region, the General Customs Directorate upheld that decision, while recognising that the situation at issue was a borderline case. It stated that crushing and grinding stones, when they are supplementary activities to their extraction, for instance, for sorting, improving the quality, or facilitating the transport of the latter, fall within section B of the NACE Rev. 2 classification. By contrast, when they do not constitute such supplementary activities and they are part of the manufacturing process of another finished product, such as, in particular, cement or plaster, they fall within section C of that classification. In the General Customs Directorate’s

view, the drying, grinding and crushing carried out by Omya are directly linked to the extraction of limestone. The extracted raw material is not subject to a substantial transformation likely to result in the manufacture of a new product.

- 21 Omya challenged the decision of the General Customs Directorate before the Krajský soud v Ostravě – pobočka v Olomouci (Regional Court of Ostrava – Olomouc Section, Czech Republic), which annulled that decision considering that the activity at issue constituted a mineralogical process. In that regard, that court, based on the Czech version of the explanatory notes, considered that the activity consisting of manufacturing fillers and marble chips falls within section C, entitled ‘Manufacturing’, division 23, entitled ‘Manufacture of other non-metallic mineral products’, class 23.70, entitled ‘Cutting, shaping, and finishing of stone’, of the NACE Rev. 2 classification, since such an activity is not a mere supplementary activity carried out in direct relation to the quarrying of limestone itself.
- 22 According to the Krajský soud v Ostravě – pobočka v Olomouci (Regional Court of Ostrava – Olomouc Section, Czech Republic), that assessment is corroborated by the Czech statistical classification called CZ-CPA, based on Regulation No 1209/2014, which is linked to the Czech version of the NACE Rev. 2 classification. The products resulting from the activities carried out by Omya, namely marble powder (fillers) and marble chips (crushed marble), are classified in the Czech statistical classification called CZ-CPA, in section C, entitled ‘Manufactured products’, division 23, entitled ‘Other non-metallic mineral products, including auxiliary services and works’, class 23.70, entitled ‘Cut, shaped and finished stone, including subcontracted operations’, as products of the activity falling within point 23.70.11, entitled ‘Marble, travertine, alabaster, worked, and articles thereof (except setts, curbstones, flagstones, tiles, cubes and similar articles); artificially coloured granules, chippings and powder of marble, travertine’.
- 23 The General Customs Directorate appealed against the judgment of the Krajský soud v Ostravě – pobočka v Olomouci (Regional Court of Ostrava – Olomouc Section, Czech Republic) before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), the referring court, within the framework of which it maintains its position and its initial findings. In its view, those findings are consistent with the methodology followed by the NACE Rev. 2 classification, namely the so-called ‘top-down’ method. The crushing, grinding, washing and drying of stones are essentially always supplementary activities and never appear in that classification as activities that are entirely distinct from such quarrying. The CPA classification cannot change that interpretation in any way. Lastly, the General Customs Directorate stresses that, in the present case, electricity is not directly part of the mineralogical process but is merely used to power equipment necessary for the mechanical processing of the quarried limestone without its further transformation. Consequently, the activity performed by Omya should not result in a tax relief on the electricity used by that company.
- 24 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should the fifth indent of Article 2(4)(b) of Council Directive 2003/96 be interpreted to the effect that electricity used to power machines used in the processing of quarried limestone, in the form of multi-stage grinding and crushing down to specific grain size, both in the quarry where the quarrying takes place, and in nearby processing facilities, constitutes electricity used for mineralogical processes?’

## Consideration of the question referred

- 25 By its question, the referring court asks, in essence, whether the fifth indent of Article 2(4)(b) of Directive 2003/96 must be interpreted as meaning that the use of electricity for the operation of machines used for the processing of limestone extracted from a quarry consisting of several stages of grinding and crushing thereof until obtaining fine and coarse limestone fillers or fine limestone fillers with a treated surface constitutes a use of electricity for mineralogical processes.
- 26 In that regard, it should be borne in mind that Article 2(4)(b) of Directive 2003/96 excludes from the scope of that directive a series of energy and electricity products used for the purposes referred to therein. Thus, energy and electricity products falling within that provision are not subject to taxation in accordance with that directive (judgment of 7 September 2017, *Hüttenwerke Krupp Mannesmann*, C-465/15, EU:C:2017:640, paragraph 19), which means that Member States are competent to tax them in compliance with EU law (see, to that effect, judgment of 2 October 2014, *X*, C-426/12, EU:C:2014:2247, paragraph 30 and the case-law cited).
- 27 Under the fifth indent of Article 2(4)(b) of Directive 2003/96, the use of electricity for mineralogical processes is excluded from the scope of that directive.
- 28 Thus, for the use of electricity to be excluded, pursuant to that provision, from the scope of that directive, it must, first, take place within the framework of a ‘mineralogical process’ within the meaning of that provision, and, secondly, have a sufficient connection with that process for the purposes of applying the same provision.
- 29 It is therefore appropriate to examine those two conditions in order to provide the elements of interpretation of EU law which will enable the referring court to ascertain whether those conditions are met with regard to the electricity used for the operation of the machines used to carry out the crushing and grinding operations at issue in the main proceedings.

### ***The condition relating to the existence of a ‘mineralogical process’, within the meaning of the fifth indent of Article 2(4)(b) of Directive 2003/96***

- 30 In the first place, the fifth indent of Article 2(4)(b) of Directive 2003/96 defines ‘mineralogical processes’ as being processes classified in the statistical classification of economic activities in the European Community (NACE) under code DI 26 ‘Manufacture of other non-metallic mineral products’ appearing in Regulation No 3037/90.
- 31 Following the updating of that classification by Regulation No 1893/2006, and in view of the date of the facts in the main proceedings, it is appropriate to refer to the concept of ‘mineralogical processes’ appearing in the fifth indent of Article 2(4)(b) of Directive 2003/96, which must be understood as relating to processes classified in section C, entitled ‘Manufacturing’, division 23, entitled ‘Manufacture of other non-metallic mineral products’ of the NACE Rev. 2 classification established by that regulation.
- 32 It is thus apparent from the very terms of the fifth indent of Article 2(4)(b) of Directive 2003/96 that the classification of a process as a ‘mineralogical process’ within the meaning of that provision, depends exclusively on the classification of the economic activity in which the process is used in division 23 of section C of the NACE Rev. 2 classification.



- 33 It follows that only that classification is relevant for the purposes of such a qualification, since no other nomenclature or classification, therefore, such as, in particular, the CPA classification, has any relevance for those purposes.
- 34 In the second place, in order to check whether an activity falls under division 23 of section C of the NACE Rev. 2 classification, the explanatory notes should be taken into consideration.
- 35 It is important to note that the NACE Rev. 2 classification is an element of EU legislation which requires the use of that classification in all Member States. In that context, in order to facilitate such use, Article 5 of Regulation No 1893/2006 requires the Commission to ensure the dissemination, management and promotion of that classification, in particular, by the publication of explanatory notes.
- 36 While it is true that explanatory notes such as those relating to the NACE Rev. 2 classification do not produce, as such, binding effects, the fact remains that they provide useful elements for the interpretation of that classification, in particular where they cast light on the interpretation of the provisions of that classification or where they are designed to supplement binding EU provisions (see, by analogy, judgment of 7 July 2022, *PH (Regional ban on the cultivation of GMOs)*, C-24/21, EU:C:2022:526, paragraph 51 and the case-law cited).
- 37 In the third place, with regard to the classification of crushing and grinding operations in the NACE Rev. 2 classification, it is apparent from the order for reference that those two operations are essential in the processing of rock in order to produce fillers of finer grain size. They aim at fragmenting the extracted rock to reduce its size and obtain elements or particles of a smaller size and a specific grain size, which can be marketed as is or, taking into account their particle size, with a view to their possible further processing.
- 38 It is apparent from the information relating to section C, entitled ‘Manufacturing’, appearing in the explanatory notes that a manufacturing activity is distinct from other activities falling under the other headings of that classification by the fact that it involves physical or chemical transformation of materials into new products, which can be both finished products, namely products which are ready to be used or consumed, and semi-finished products, such as products which are used in the composition of another product. Furthermore, division 23 of that section, entitled ‘Manufacture of other non-metallic mineral products’, includes, according to the explanatory notes, the manufacture of stone and other mineral products.
- 39 Taking into account the fact that crushing and grinding lead to the physical transformation of the extracted material, so that, ultimately, that material is broken into small pieces, any process of crushing or grinding stones or other mineral products could be considered as falling under division 23 of section C of the NACE Rev. 2 classification.
- 40 However, according to the information relating to section B, entitled ‘Mining and quarrying’, appearing in the explanatory notes, supplementary activities aimed at preparing the crude materials for their marketing, such as, inter alia, crushing, grinding, cleaning, drying, sorting, fall under that section, which does not, however, include, in particular, crushing, grinding and other operations for the preparation of certain earths, rocks and minerals not carried on in conjunction with extraction works. Furthermore, the explanatory notes specify that division 08 of that section B does not include processing (except crushing, grinding, cutting, cleaning, drying, sorting and mixing) of the minerals extracted.

- 41 It follows that, while it is true, as is apparent, moreover, from the wording of the explanatory notes, that the crushing and grinding operations involve the processing of the materials extracted, those operations nevertheless do not fall within section C of that classification, but section B, when they are aimed at preparing those materials for their marketing, such that they constitute operations linked to extraction work.
- 42 Thus, in the light of the information relating to those sections B and C appearing in the explanatory notes, it must be stated that crushing and grinding operations which do not involve a substantial transformation of the extracted material, namely a physical or chemical alteration which goes beyond the fractionation of that material to reduce its size, must be considered as operations linked to extraction work in order to prepare the raw material with a view to marketing it and, therefore, as falling within section B of the NACE Rev. 2 classification. By contrast, crushing and grinding operations involving a substantial physical or chemical alteration of the extracted material, within the meaning stated, must be considered as operations transforming that material into a new product and, therefore, as falling under section C of that classification.
- 43 The fact that the crushing and grinding operations of the extracted material are carried out in the quarry or in another place is not in itself decisive for the purposes of the classification of those operations in section B or in section C of the NACE Rev. 2 classification, since only the nature of those operations has to be taken into consideration for those purposes, as is apparent from the information relating to those sections appearing in the explanatory notes.
- 44 In the present case, Omya applied for the issuance of an electricity purchase permit exempt from electricity tax in respect of all of its activities relating to the processing of quarried limestone, namely, first, the primary crushing and grinding operations of the quarried limestone carried out in the quarry itself and, secondly, crushing and dry grinding operations intended to obtain a specific particle size, namely fine and coarse limestone fillers or fine limestone fillers with a treated surface, carried out in the processing units it operates.
- 45 First, since all of the primary crushing and grinding operations carried out in the quarry and the crushing and dry grinding operations carried out in the processing units in order to obtain fine and coarse limestone fillers have the effect only of fractionation of the quarried limestone, subject to the referring court's assessment, those operations do not involve the substantial transformation of that limestone, within the meaning stated in paragraph 42 above, with the result that they must be regarded as operations linked to extraction works and thus as falling under section B of the NACE Rev. 2 classification.
- 46 As regards, secondly, the crushing and grinding operations aimed at obtaining fine limestone fillers whose surface is treated, it is apparent from the order for reference that such fillers are obtained in particular by mixing fine limestone fillers and stearin. It is thus apparent that those operations are not limited to a mere fragmentation of the quarried limestone into small pieces but involve a substantial alteration of that limestone leading to the manufacture, from fine limestone fillers, of a new product. Consequently, subject to the referring court's assessment, those operations must be considered as falling within section C of the NACE Rev. 2 classification and as classifiable under division 23 of that section.
- 47 In the fourth and last place, in so far as, as is apparent from the request for a preliminary ruling in the context of the dispute in the main proceedings, the General Customs Directorate alleged, in essence, that the classification of the crushing and grinding operations at issue in the main

proceedings in section C of the NACE Rev. 2 classification would not be consistent with the methodology of that classification, that is to say the ‘top down’ method, it should be clarified that, as the Commission has noted, the application of that method is not relevant for the purposes of qualifying a process as a ‘mineralogical process’, within the meaning of the fifth indent of Article 2(4)(b) of Directive 2003/96.

- 48 As is apparent from the introductory guidelines contained in Part I of the explanatory notes, each unit whose name appears in a statistical business register is associated with a code from the NACE Rev. 2 classification which corresponds to its principal activity, namely that which contributes the most to the added value of the unit. In this context, the so-called ‘top-down’ method makes it possible to determine for the purposes of Regulation No 1893/2006, namely, under Article 1(2) thereof, for statistical purposes, the classification of a unit carrying out several activities corresponding to more than two different headings of that classification, when none of those headings represents more than 50% of the added value.
- 49 The purpose of Article 2(4) of Directive 2003/96 is to delimit the scope of the latter, by excluding from that scope the uses of energy products and electricity referred to in point (b) of that provision.
- 50 In that regard, nothing in that directive allows it to be considered that, where the EU legislature, in the fifth indent of Article 2(4)(b) of that directive, excluded from the scope of the latter the electricity used in mineralogical processes, namely processes classified in division 23 of section C of the NACE Rev. 2 classification, it intended to limit that exclusion only to cases where the processes to which the use of electricity is linked constitute the sole activity of a company or, in the case of a company carrying out several activities, the principal activity of the latter, as determined for the purposes of Regulation No 1893/2006.
- 51 Such a limitation would, moreover, be contrary to the objective pursued by Directive 2003/96, namely, as the Court has already noted, to promote the proper functioning of the internal market in the energy sector by avoiding, in particular, distortions of competition (judgment of 22 June 2023, *Endesa Generación*, C-833/21, EU:C:2023:516, paragraph 30 and the case-law cited).
- 52 If the scope of Directive 2003/96 were to be limited by reference to the principal activity of an undertaking, as determined for the purposes of Regulation No 1893/2006, undertakings carrying out several activities corresponding to different headings of the NACE Rev. 2 classification, some of which fall under division 23 of section C of that classification, would be taxed, due to the electricity used in the context of those latter activities, in a manner which would depend on the structure and composition of their activities.
- 53 Accordingly, the use, by the same undertaking, of electricity to carry out one or more activities falling within division 23 of section C of the NACE Rev. 2 classification may be excluded from the scope of Directive 2003/96, regardless of whether those activities constitute the principal activity or a secondary activity of that undertaking for the purposes of Regulation No 1893/2006.
- 54 It follows from the above that crushing and grinding operations aimed at obtaining fine and coarse limestone fillers do not constitute ‘mineralogical processes’ within the meaning of the fifth indent of Article 2(4)(b) of Directive 2003/96, so that electricity used in the context of those operations is not excluded from the scope of that directive. By contrast, crushing or grinding operations aimed

at obtaining fine limestone fillers whose surface is treated constitute such processes, so that the electricity used in the context of those latter operations is likely to be excluded from the scope of application of that directive.

***The condition relating to the existence of a sufficient connection between the electricity used and the mineralogical process for the purposes of applying the fifth indent of Article 2(4)(b) of Directive 2003/96***

- 55 As noted in paragraph 28 of this judgment, the use of electricity can be excluded, under the fifth indent of Article 2(4)(b) of Directive 2003/96, from the scope of that directive, only if there is a sufficient connection between such use and the mineralogical processes in question justifying the application of that provision.
- 56 A remote connection between a use of electricity and the ‘mineralogical process’ for the purposes of the fifth indent of Article 2(4)(b) of Directive 2003/96 is insufficient to make that use fall within the scope of that provision, just as the use of electricity which is not required to complete that mineralogical process is insufficient for that purpose (see, by analogy, judgment of 7 September 2017, *Hüttenwerke Krupp Mannesmann*, C-465/15, EU:C:2017:640, paragraph 21).
- 57 In the present case, it is apparent from the order for reference that the process of manufacturing fine limestone fillers with a treated surface, which, as noted in paragraph 54 of this judgment, constitutes a ‘mineralogical process’ within the meaning of the fifth indent of Article 2(4)(b) of Directive 2003/96, consists of mixing fine limestone fillers and stearin in hot air.
- 58 Accordingly, there is a direct and close connection between the electricity used to power the electric heating device used to warm the air and that process.
- 59 Consequently, the electricity used to power that device constitutes a use of electricity for the purposes of a mineralogical process, within the meaning of the fifth indent of Article 2(4)(b) of Directive 2003/96, so that the use of such electricity is not subject to taxation under that directive.
- 60 In the light of the foregoing considerations, it is appropriate to answer the question referred that the fifth indent of Article 2(4)(b) of Directive 2003/96 must be interpreted as meaning that the use of electricity for the operation of machines used for the processing of limestone extracted from a quarry consisting of several stages of grinding and crushing thereof until obtaining fine and coarse limestone fillers does not constitute a use of electricity for mineralogical processes. By contrast, the use of electricity for the operation of machines used to obtain fine limestone fillers whose surface is treated constitutes a use of electricity for the purposes of such processes.

**Costs**

- 61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

**The fifth indent of Article 2(4)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity,**

**must be interpreted as meaning that the use of electricity for the operation of machines used for the processing of limestone extracted from a quarry consisting of several stages of grinding and crushing thereof until obtaining fine and coarse limestone fillers does not constitute a use of electricity for mineralogical processes. By contrast, the use of electricity for the operation of machines used to obtain fine limestone fillers whose surface is treated constitutes a use of electricity for the purposes of such processes.**

[Signatures]