Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

22 June 2023 *

(Reference for a preliminary ruling – Taxation of energy products and electricity – Directive 2003/96/EC – Article 14(1)(a) – Exemption of energy products used to produce electricity – Derogation – Taxation of energy products for 'reasons of environmental policy' – Scope)

In Case C-833/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Nacional (National High Court, Spain), made by decision of 14 December 2021, received at the Court on 31 December 2021, in the proceedings

Endesa Generación SAU

v

Tribunal Económico Administrativo Central,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Endesa Generación SAU, by M. García Arana, procurador, and P. González-Gaggero, abogado,

– the Spanish Government, by A. Ballesteros Panizo and A. Gavela Llopis, acting as Agents,

– the European Commission, by A. Armenia and I. Galindo Martín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 February 2023,

gives the following

* Language of the case: Spanish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14(1)(a) 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 involving Endesa Generación SAU ('Endesa') and the Tribunal Económico Administrativo Central (Central Tax Tribunal, Spain) ('the TEAC') concerning a decision by that body relating to the taxation of coal consumed by a thermal power station owned by that company in order to produce electricity.

Legal context

European Union law

Directive 2003/96

3 Recitals 3 to 7, 11 and 12 of Directive 2003/96 are worded as follows:

'(3) The proper functioning of the internal market and the achievement of the objectives of other Community policies require minimum levels of taxation to be laid down at Community level for most energy products, including electricity, natural gas and coal.

(4) Appreciable differences in the national levels of energy taxation applied by Member States could prove detrimental to the proper functioning of the internal market.

(5) The establishment of appropriate Community minimum levels of taxation may enable existing differences in the national levels of taxation to be reduced.

(6) In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of other [European] Community policies.

(7) As a party to the United Nations Framework Convention on Climate Change, the Community has ratified the Kyoto Protocol. The taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the Kyoto Protocol objectives.

…

(11) Fiscal arrangements made in connection with the implementation of this Community framework for the taxation of energy products and electricity are a matter for each Member State to decide. In this regard, Member States might decide not to increase the overall tax burden if they consider that the implementation of such a principle of tax neutrality could contribute to the restructuring and the modernisation of their tax systems by encouraging behaviour conducive to greater protection of the environment and increased labour use.

(12) Energy prices are key elements of Community energy, transport and environment policies.'

4 Article 1 of Directive 2003/96 provides:

‘Member States shall impose taxation on energy products and electricity in accordance with this Directive.’

5 Article 10 of that directive is worded as follows:

‘1. As from 1 January 2004, the minimum levels of taxation applicable to electricity shall be fixed as set out in Annex I Table C.

2. Above the minimum levels of taxation referred to in paragraph 1, Member States will have the option of determining the applicable tax base provided that they respect [Council] Directive 92/12/EEC [of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1)].’

6 Under Article 14(1)(a) of Directive 2003/96:

‘In addition to the general provisions set out in Directive [92/12] on exempt uses of taxable products, and without prejudice to other Community provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

(a) energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity. However, Member States may, for reasons of environmental policy, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of these products shall not be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10’.

7 Table C of Annex I to Directive 2003/96, entitled ‘Minimum levels of taxation applicable to heating fuels and electricity’, refers, inter alia, to coal and coke.

Directive 2008/118/EC

8 Article 1 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12) provided:

‘1. This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods (hereinafter “excise goods”):

(a) energy products and electricity covered by Directive [2003/96];

…

2. Member States may levy other indirect taxes on excise goods for specific purposes, provided that those taxes comply with the Community tax rules applicable for excise duty or value added tax as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned, but not including the provisions on exemptions.

…’

Spanish law

9 Ley 38/1992 de Impuestos Especiales (Law 38/1992 on excise duty) of 28 December 1992 (BOE No 312 of 29 December 1992, p. 44305), as amended by Ley 15/2012 de medidas fiscales para la sostenibilidad energética (Law 15/2012 on fiscal measures for sustainable energy) of 27 December 2012 (BOE No 312 of 28 December 2012, p. 88081), includes Title III, entitled ‘Coal levies’, comprising Articles 75 to 88 thereof.

10 Article 77 of Law 38/1992, as amended by Law 15/2012, provides:

‘1. The release for consumption of coal within its territorial scope is subject to the tax.

2. For the purposes of the preceding paragraph, the following transactions shall be regarded as “release for consumption”:

(a) The first sale or supply of coal within the territory after production or extraction, import or intra-Community acquisition of coal. Further sales or supplies made by undertakings intending to resell the coal and to whom the exemption provided for in Article 79(1) of this Law was applicable at the time when they acquired it shall also be considered to be a first sale or supply.

(b) Self-consumption of coal. For the purposes of this provision, the use or consumption of coal by producers or extractors, importers, intra-Community purchasers or undertakings as referred to in the preceding paragraph shall be regarded as self-consumption.

3. Coal shall be presumed to have been released for consumption where taxable persons do not provide proof of use of the coal produced, imported or acquired.’

11 Article 83(1) of Law 38/1992, as amended by Law 15/2012, provides:

‘The tax base for excise duty shall be the energy efficiency of coal which is the subject of taxable transactions, expressed as gigajoules.’

12 Article 84 of Law 38/1992, as amended by Law 15/2012, is worded as follows:

‘The rate of excise duty shall be EUR 0.65 per gigajoule.’

13 In the version prior to Law 15/2012, Law 38/1992 included an Article 79(3)(a), which exempted transactions constituting a release for consumption of coal used in the production of electricity and cogeneration of electricity and heat. That provision was repealed by Law 15/2012.

14 Law 15/2012 also introduced three new taxes on the value of electricity generation, the production of nuclear fuel and waste and waste storage, introduced a tax on the use of inland waters for the production of electricity and changed the rate of tax on natural gas.

15 In the preamble to that law, it is stated that 'the objective of this Law is to adapt our tax system to more efficient and environmentally friendly use and sustainable development, values that inspire this tax reform, that system thus forming part of the basic principles that govern the fiscal, energy and, of course, environmental policy of the European Union.'

16 Under the second additional provision of that law:

'In the laws on the general State budget of each year, an amount equivalent to the sum of the following shall be allocated to the financing of the electricity system costs …:

(a) The estimate of annual revenue from taxes and duties included in this Law.

(b) The estimated revenue from the auctioning of greenhouse gas emission allowances, with a maximum of EUR 500 million.'

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

17 Endesa is an undertaking whose activity consists of producing electricity by consuming, in particular, coal which it acquires through an affiliated company. The latter company declared that it was exempt, for tax purposes, from the tax on coal for the consignments of coal purchased and intended for resale, the consumption constituting the chargeable event for that tax.

18 Following a tax inspection in respect of the 2013 financial year concerning the Litoral thermal power plant in Almería (Spain), which belongs to Endesa, the tax inspectorate, taking the view that the coal purchased by Endesa should be taxed on the ground that it was intended for consumption for the production of electricity, issued a tax assessment notice in respect of that company charging a higher amount of tax plus default interest on the outstanding amounts.

19 That authority took the view, first, that the tax base for the tax on coal had to be determined on the basis of the gross calorific value of the coal, irrespective of the energy actually used for the production of electricity. Second, it took the view that consignments of coal which had been declared to be intended for resale had been consumed in order to produce electricity, that consumption constituting the chargeable event giving rise to the tax and making it chargeable.

20 On 7 April 2016, Endesa lodged an administrative complaint with the TEAC against that notice, challenging, first, the determination of the amount of the tax on coal on the basis of the gross calorific value of coal; second, the taxation of 268 717.98 tonnes of coal which its supplier had declared to be exempt on the ground that they were intended for resale and were subsequently used by Endesa for the production of electricity; third, the determination of the recorded stocks intended for self-consumption on 31 December 2012; and, fourth, the compatibility of that tax with EU law as regards consumption intended for electricity production.

21 By decision of 28 March 2019, the TEAC confirmed that the gross calorific value of coal should be used to determine the tax base for the tax on coal. It took the view that taxing consignments of coal which had previously been declared exempt from the tax on coal on the ground that they were intended for resale did not constitute double taxation, since the purchaser intended them for self-consumption for the production of electricity, which constituted the chargeable event for that tax. The TEAC also held that the alleged error in the declaration of coal stocks had not been

demonstrated. The TEAC did not, however, rule on the compatibility with EU law of Law 15/2012, which abolished the exemption from the tax on coal for the consumption of coal intended for electricity generation.

22 Endesa brought an administrative action before the Audiencia Nacional (National High Court, Spain), the referring court, against that decision, putting forward pleas identical to those on which it had relied before the TEAC and requesting that a reference be made to the Court of Justice for a preliminary ruling on the question of the compatibility of Law 15/2012 with EU law.

23 The referring court states that the tax base for the tax on coal may be determined in two ways, either on the basis of the gross calorific value, understood as the heat actually produced, or on the basis of the net calorific value, understood as the heat actually used. Whilst the former depends on a fixed value, the latter depends on several factors such as the use of coal or the technology used by the consumer.

24 That court considers that the tax base for the tax on coal must be determined having regard to the gross calorific value, since the Spanish legislation establishes a fixed rate of tax, and the chargeable event for that tax actually occurred when the coal was acquired for the production of electricity. It thus considers that Endesa's claims can be satisfied only by challenging the compatibility with EU law of the taxation of coal consumption for electricity production under Spanish law.

25 That court is concerned, in particular, with the question whether the tax on coal pursues an environmental policy within the meaning of the second sentence of Article 14(1)(a) of Directive 2003/96. It expresses doubts in that regard as to the compatibility with that directive of the tax on the consumption of coal used to produce electricity, by reason of, first, the fact that the tax on coal pursues a budgetary purpose deriving from the second additional provision of Law 15/2012, and, second, the fact that the structure of that tax does not reflect the environmental objective set out in the preamble to Law 15/2012, given that the revenues from that tax are not intended to reduce the environmental impact of the use of coal in electricity production.

26 In those circumstances, the Audiencia Nacional (National High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the Spanish legislation which provides for a tax on coal used for electricity generation compatible with Article 14(1)(a) of Directive 2003/96/EC, when, despite stating that its aim is to protect the environment, that aim is not reflected in the structure of the tax and the tax levied is used to finance the costs of the electricity system?

(2) Is it possible to consider that the environmental aim is given concrete expression in the structure of the tax on the ground that the tax rates are set in relation to the calorific value of coal used for electricity generation?

(3) Is the environmental aim achieved simply by reason of the fact that taxes have been imposed on certain non-renewable energy products and that no tax is levied on the use of such products where they are considered to be less harmful to the environment?'

Consideration of the questions referred

27 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the second sentence of Article 14(1)(a) of Directive 2003/96 must be interpreted as meaning that national legislation providing for the taxation of coal used for the production of electricity meets the condition, set out in that provision, that the tax must be introduced 'for reasons of environmental policy', where, although that purpose has been relied on by the national legislature, it is not integrated into the structure of the tax the revenue from which is used to finance the costs of the national electricity system, the rate of the tax is fixed on the basis of the calorific value of the coal used, and the use of other energy products considered less harmful to the environment is not taxed.

28 Under the first sentence of Article 14(1)(a) of Directive 2003/96, Member States are to exempt energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse. However, under the second sentence of that provision, Member States may, for reasons of environmental policy, subject those products to taxation without having to respect the minimum levels of taxation laid down in that directive. In that case, in accordance with the third sentence of that provision, the taxation of those products is not to be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10 of that directive.

29 As is apparent from recitals 3 to 5 and Article 1 thereof, the objective of Directive 2003/96 is to create a system of harmonised taxation for energy products and electricity, within the framework of which taxation is the rule, in accordance with the conditions set out in that directive (judgment of 9 March 2023, *RWE Power*, C-571/21, EU:C:2023:186, paragraph 24 and the case-law cited).

30 By making provision for a system of harmonised taxation of energy products and electricity, that directive seeks to promote the proper functioning of the internal market in the energy sector by avoiding, in particular, distortions of competition (judgment of 9 March 2023, *RWE Power*, C-571/21, EU:C:2023:186, paragraph 35 and the case-law cited).

31 To that end, with regard to the production of electricity, the EU legislature made the choice, as is apparent from, in particular, page 5 of the Explanatory Memorandum to the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products (OJ 1997 C 139, p. 14), to require Member States, in accordance with Article 1 of Directive 2003/96, to tax the electricity produced; the energy products used to produce that electricity must, as a corollary, be exempted from taxation in order to avoid the double taxation of electricity (judgment of 9 March 2023, *RWE Power*, C-571/21, EU:C:2023:186, paragraph 36 and the case-law cited).

32 It is true that Directive 2003/96 does not exclude all risk of double taxation, since a Member State, in accordance with the second sentence of Article 14(1)(a) of that directive, may, for reasons of environmental policy, subject energy products used to produce electricity to taxation (see, to that effect, judgment of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 51). By that provision, the EU legislature thus expressly intended to allow Member States to derogate from the regime of mandatory exemption introduced by Directive 2003/96 (see, to that effect, judgment of 16 October 2019, *UPM France*, C-270/18, EU:C:2019:862, paragraph 52 and the case-law cited).

33 It should be noted in that regard that that directive also aims, as is apparent from recitals 6, 7, 11 and 12 thereof, to promote environmental policy objectives (judgment of 30 January 2020, *Autoservizi Giordano*, C-513/18, EU:C:2020:59, paragraph 32 and the case-law cited).

34 However, the purpose of Directive 2003/96 is not to introduce general exemptions. Thus, since Article 14(1) of that directive sets out an exhaustive list of the exemptions which Member States must apply in connection with the taxation of energy products and electricity, its provisions cannot be interpreted broadly without depriving the harmonised taxation established by that directive of all practical effect (judgment of 9 March 2023, *RWE Power*, C-571/21, EU:C:2023:186, paragraph 30 and the case-law cited).

35 As observed by the Advocate General in point 37 of his Opinion, that interpretation applies particularly with regard to the power conferred on Member States by the second sentence of Article 14(1)(a) of Directive 2003/96 to derogate from the mandatory exemption from taxation of energy products used for the production of electricity. As observed in paragraphs 29 and 31 of the present judgment, Directive 2003/96 seeks to establish a harmonised system of taxation of energy and electricity products in the context of which taxation is the rule, it being understood that that taxation takes place only once with the aim of avoiding the double taxation of electricity. The power to tax energy products used for the production of electricity for reasons of environmental policy accordingly constitutes a derogation from the principle of single taxation of electricity.

36 Taking the view that the Court has not yet ruled on the question of under which conditions a tax on energy products used to produce electricity may be regarded as being levied 'for reasons of environmental policy' within the meaning of the second sentence of Article 14(1)(a) of Directive 2003/96, the referring court questions whether it may avail itself of the criteria developed by the Court in its case-law on the concept of 'specific purposes' within the meaning of Article 1(2) of Directive 2008/118 for the application of the second sentence of Article 14(1)(a) of Directive 2003/96 as well.

37 Under Article 1(2) of Directive 2008/118, Member States may levy other indirect taxes on excise goods under two conditions. First, such taxes must be levied for specific purposes and, second, those taxes must comply with the EU tax rules applicable for excise duty or value added tax as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned.

38 Only the first of those conditions is referred to in the order for reference. In that regard, it is apparent from the case-law of the Court that a specific purpose within the meaning of that provision is a purpose other than a purely budgetary purpose (judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 37, and order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 23).

39 However, since every tax necessarily pursues a budgetary purpose, the mere fact that a tax is intended to achieve a budgetary objective cannot, in itself, suffice – if Article 1(2) of Directive 2008/118 is not to be rendered meaningless – to preclude that tax from being regarded as having, in addition, a specific purpose within the meaning of that provision (see, to that effect, judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 38, and order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 24).

40 Furthermore, while the predetermined allocation of the proceeds of a tax to the financing of the exercise, by the authorities of a Member State, of powers transferred to them can constitute a factor to be taken into account for the purpose of establishing the existence of a specific purpose, such an allocation, which is merely a matter of internal organisation of the budget of a Member State, cannot, in itself, constitute a sufficient condition, since any Member State may decide to lay down, irrespective of the purpose pursued, that the proceeds of a tax are to be allocated to financing particular expenditure. Otherwise, any purpose could be considered to be specific within the meaning of Article 1(2) of Directive 2008/118, which would deprive the harmonised excise duty established by that directive of all practical effect and be contrary to the principle that a derogating provision such as Article 1(2) must be interpreted strictly (judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 39, and order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 26).

41 Thus, in order to be regarded as pursuing a specific purpose within the meaning of Article 1(2) of Directive 2008/118, a tax the revenue from which is used in a predetermined allocation must itself be intended to achieve the specific purpose stated, so that there is a direct link between the use of the revenue and the purpose of the tax in question (see, to that effect, judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 41, and order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 25).

42 In the absence of such a mechanism for the predetermined allocation of revenue, a tax on excise goods can be regarded as pursuing a specific purpose within the meaning of Article 1(2) of Directive 2008/118 only if it is designed, so far as its structure is concerned, and particularly the taxable item or the rate of tax, in such a way as to guide the behaviour of taxpayers in a direction which facilitates the achievement of the stated specific purpose, for example by taxing the goods in question heavily in order to discourage their consumption (judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 42, and order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 27).

43 Whilst Endesa submits that that case-law on Article 1(2) of Directive 2008/118 can be transposed to the second sentence of Article 14(1)(a) of Directive 2003/96, the Spanish Government contends that the two taxation regimes established by those provisions are not sufficiently comparable. The European Commission, for its part, considers that there is no need to ascertain, in the context of the application of the second sentence of Article 14(1)(a), whether there is a direct link between the use of the revenue and the purpose of the taxation in question, within the meaning of the case-law relating to Article 1(2) of Directive 2008/118, in order to determine whether a Member State has derogated from the mandatory exemption of energy products 'for reasons of environmental policy'. That being so, it takes the view that that criterion, adopted in that case-law, concerning the structure of the tax is a relevant factor in the context of that examination, in so far as that structure is indeed such as to encourage the use of energy products which are less harmful to the environment.

44 In that regard, it should be noted that the taxation regimes resulting, first, from the second sentence of Article 14(1)(a) of Directive 2003/96 and, secondly, from Article 1(2) of Directive 2008/118, are admittedly different, in particular in that the first of those regimes constitutes a derogation from a mandatory exemption, whereas the second concerns additional taxation in relation to that to which the products subject to excise duty are already subject.

45 That said, 'reasons of environmental policy' within the meaning of the second sentence of Article 14(1)(a) of Directive 2003/96 may fall within the category of 'specific purposes' within the meaning of Article 1(2) of Directive 2008/118 in that a tax levied for such reasons pursues precisely the specific purpose of contributing to the protection of the environment.

46 In those circumstances, it must be held that a tax is levied for 'reasons of environmental policy' within the meaning of the second sentence of Article 14(1)(a) of Directive 2003/96 where there is a direct link between the use of the revenue and the purpose of the tax in question or where that tax, without pursuing a purely budgetary purpose, in terms of its structure, including in particular the taxable item or the tax rate, is designed in such a way that it influences the behaviour of taxpayers in a manner that facilitates ensuring better protection of the environment, for example by taxing heavily the products concerned in order to discourage their consumption or by encouraging the use of other products whose effects are, in principle, less harmful to the environment.

47 When the Court is requested to give a preliminary ruling in order to determine whether a tax introduced by a Member State is levied 'for reasons of environmental policy' within the meaning of the second sentence of Article 14(1)(a) of Directive 2003/96, its task is to provide the national court with guidance on the criteria which will enable the latter to determine whether that tax is in fact levied for such reasons, rather than to carry out that assessment itself, *a fortiori* since the Court does not necessarily have available to it all the information necessary in that regard (see, by analogy, order of 7 February 2022, *Vapo Atlantic*, C-460/21, EU:C:2022:83, paragraph 28 and the case-law cited).

48 In the present case, it should be noted, first of all, that the referring court questions whether the Spanish legislature, by derogating from the mandatory exemption from taxation of coal used for the production of electricity, did in fact seek to protect the environment, having regard to the fact that, in its view, that purpose is not integrated into the structure of the tax, the revenue from which is used to finance the costs of the national electricity system.

49 In that regard, whilst it is true that it is apparent from the preamble to Law 15/2012 that that legislature intended, by adopting that amending law, to harmonise the '[Spanish] tax system with a more efficient and environmentally sound use [of energy]', it is also necessary, in order for that statement of reasons not to be merely apparent, for it to be confirmed by the effects that that tax may have in reality.

50 As regards the doubts expressed by the referring court as to the allocation of revenue from the tax to the financing of the costs of the national electricity system, it should be noted, first, that the application of the second sentence of Article 14(1)(a) of Directive 2003/96 does not necessarily require, as is apparent from paragraphs 42 and 45 of the present judgment, a direct link between the use of the revenue and the purpose of the tax in question. Second, when assessing the structure of the tax concerned, the referring court may have to take account of a range of factors, including the characteristics and detailed rules governing the implementation of the tax, as well as the way in which that tax influences or is supposed to influence taxpayer behaviour. Since the revenue from that tax is used for the purpose of upgrading that scheme in order to achieve the environmental objectives the European Union has fixed for itself, including the reduction of greenhouse gas emissions and climate neutrality, such factors are capable of confirming that the tax does in fact pursue an objective relating to environmental protection.

51 Furthermore, as observed by the Commission, in view of the likely reduction in the use of coal in electricity generation, the long-term budgetary consequences of the taxation of coal used for the production of electricity must be seen in the light of the effects of that taxation on the environment. In its submission, the derogation from the mandatory exemption can be compared with other measures having a 'two-fold result', namely both contributing to the budget and influencing behaviour. Such measures are likely to provide, upon their introduction, substantial budgetary revenue which, in the long term and when they achieve their objective of protecting the environment, is reduced as taxpayers adapt their behaviour.

52 Next, the referring court asks whether it is possible to consider that the structure of the tax reflects the environmental objective set out in the preamble to Law 15/2012 in that the rates of excise duty are set on the basis of the calorific value of the coal used for the production of electricity.

53 In that regard, it is apparent from Article 10(1) of Directive 2003/96 that, as from 1 January 2004, the minimum levels of taxation applicable to electricity are to be established in accordance with Table C of Annex I to that directive for business and non-business use. As observed by the Advocate General in point 55 of his Opinion, as regards coal and coke, several language versions of Table C, entitled 'Minimum levels of taxation applicable to heating fuels and electricity', expressly refer to the 'gross calorific value' of coal and coke. Therefore, even though the Spanish language version of Table C does not refer to that calorific value, the fact that the Spanish legislature took it as its reference for the taxation of the use of coal does not lead to the conclusion that the tax on coal was not adopted for reasons of environmental policy.

54 Lastly, the referring court questions whether the environmental aim is achieved simply because taxes are levied on certain non-renewable energy products and not on those considered to be less harmful to the environment.

55 In that regard, it must be pointed out that the examination of a tax must, in principle, be carried out on a case-by-case basis, having regard to the particular features and specific characteristics of the tax concerned. If a tax discourages the consumption of a product harmful to the environment, it should be considered as contributing to the protection of the environment.

56 Therefore, the mere fact that, as Endesa contends, the Spanish Government reintroduced an exemption from taxation for hydrocarbons used for the production of electricity, whereas coal used for that same purpose is taxed, does not in itself demonstrate the absence of any real environmental objective of the derogation from the mandatory exemption from the taxation of coal used for the production of electricity.

57 In the light of all the foregoing considerations, the answer to the questions referred is that the second sentence of Article 14(1)(a) of Directive 2003/96 must be interpreted as meaning that national legislation providing for the taxation of coal used for the production of electricity meets the condition, set out in that provision, that the tax must be introduced 'for reasons of environmental policy', where there is a direct link between the use of the revenue and the purpose of the tax in question or where that tax, without pursuing a purely budgetary purpose, in terms of its structure, including in particular the taxable item or the tax rate, is designed in such a way that it influences the behaviour of taxpayers in a manner that facilitates ensuring better protection of the environment.

Costs

58 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 (Fifth Chamber) hereby rules:

The second sentence of Article 14(1)(a) 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 national legislation providing for the taxation of coal used for the production of electricity meets the condition, set out in that provision, that the tax must be introduced 'for reasons of environmental policy', where there is a direct link between the use of the revenue and the purpose of the tax in question or where that tax, without pursuing a purely budgetary purpose, in terms of its structure, including in particular the taxable item or the tax rate, is designed in such a way that it influences the behaviour of taxpayers in a manner that facilitates ensuring better protection of the environment.

[Signatures]