Case C-261/24

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

12 April 2024

Referring court:

Curtea de Apel București (Romania)

Date of the decision to refer:

28 February 2024

Appellant:

Alizeu Eolian SA

Respondents:

Agenția Națională de Administrare Fiscală

DGRFP București – Administrația Fiscală pentru Contribuabili Mijlocii București

DGRFP București – Administrația Sector 4 a Finanțelor Publice

Ministerul Finanțelor – Direcția Generală de Soluționare a Contestațiilor

Subject matter of the main proceedings

Administrative appeal by Alizeu Eolian SA (‘the appellant’) seeking (i) the annulment of an order of the President of the Agenția Națională de Administrare Fiscală (National Agency for Fiscal Administration, ‘ANAF’) concerning the model and content of the form used for the tax on additional revenue declaration by electricity producers, (ii) the annulment of the tax declarations submitted by the appellant, on the basis of that order, for the period from April to August 2022, (iii) the annulment of the decisions of the tax authorities rejecting the complaints submitted by the appellant against the above-mentioned order and tax declarations

and (iv) the repayment, with interest, of the amount paid in respect of the tax on additional revenue for the period from April to August 2022.

Subject matter and legal basis of the request

Pursuant to Article 267 TFEU, the interpretation is sought of Articles 49, 56, 63, 107, 108 and 191(2) TFEU, Article 17 of the Charter of Fundamental Rights of the European Union, and certain provisions of Directive 2019/944, Regulation 2019/943, Regulation 2021/1119, Directive 2018/2001 and Directive 2006/112.

Questions referred for a preliminary ruling

(1) Must the provisions of Articles 107 and 108 TFEU be interpreted as meaning that national legislation which imposes a tax only on certain producers of electricity, such as renewable [energy producers], [and] not all electricity producers, constitutes State aid granted to exempt persons and subject to the notification requirement?

(2) Must the provisions of Articles 3(1) and (4), 9(2) and 58(b) to (d) of Directive 2019/944 and Article 3(f), (g), (i) and (n) of Regulation 2019/943, under which the Member States must guarantee a level playing field and non-discriminatory conditions to electricity producers, be interpreted as precluding national legislation that imposes an additional tax only on certain electricity producers, including renewable [energy producers], exempting certain categories of producers from paying tax, even though all electricity producers are in a comparable situation, having regard, inter alia, to the comparable income obtained from the sale of electricity?

(3) Must Articles 49, 56 and 63 TFEU and Article 17 of the Charter of Fundamental Rights of the European Union be interpreted as precluding national legislation which imposes a discriminatory and excessive tax only on certain producers of electricity (including renewable [energy producers]), to the exclusion of other categories of producer?

(4) Prior to Regulation 2022/1854, must Directive 2019/944 and Regulation 2019/943 be interpreted as precluding national legislation that results in the fixing of selling prices or a restriction on the freedom to set selling prices?

(5) Must the precautionary principle, the principle that preventive action should be taken, the principle that pollution should be rectified at source and the ‘polluter pays’ principle, and [Articles 2(1) and (2)] and 4 of Regulation 2021/1119, read in conjunction with Article 191(2) TFEU and Article 3(1), (3) and (4) of Directive 2018/2001, which regulates the objectives of climate neutrality at EU level, be interpreted [as] precluding national legislation that undermines the European objectives relating to the achievement of climate neutrality and the EU’s policy on

energy taxation? If so, what are the criteria to be met when determining that tax in order to comply with the principles set out above?

(6) Must Article 401 of Directive 2006/112/EC be interpreted as precluding national legislation such as that introduced by [Emergency Order No 27/2022], which imposes a turnover tax on revenue from the sale of electricity?

Provisions of European Union law relied on

Treaty on the Functioning of the European Union: Articles 49, 56, 63, 107, 108 and 191(2)

Charter of Fundamental Rights of the European Union: Article 17

Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU: Articles 3(1) and (4), 9(1) to (3) and 58(b) to (d)

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity: Article 3(b), (f), (g), (j) and (n)

Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'): Articles 2 and 4

Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources: Article 3

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax: recitals 4 and 7 and Article 401

European Union case-law relied on

Judgments of 6 October 1982, *CILFIT* v *Ministero della Sanità* (283/81, EU:C:1982:335); of 21 November 1991, *Fédération nationale du commerce extérieur des produits alimentaires and Others* v *France* (C-354/90, EU:C:1991:440, paragraphs 10 and 14); of 12 April 1994, *Halliburton Services* v *Staatssecretaris van Financiën* (C-1/93, EU:C:1994:127, paragraph 15); of 14 December 1995, *Sanz de Lera and Others* (C-163/94, C-165/94 and C-250/94,

EU:C:1995:451); of 3 May 2001, *Commission* v *France* (C-481/98, EU:C:2001:237, paragraph 21); of 15 July 2004, *Pearle and Others* (C-345/02, EU:C:2004:448, paragraphs 30 to 32); of 15 December 2005, *Unicredito Italiano* (C-148/04, EU:C:2005:774, paragraph 42); of 7 September 2006, *Marrosu and Sardino* (C-53/04, EU:C:2006:517, paragraph 54); of 5 October 2006, *Transalpine Ölleitung in Österreich* (C-368/04, EU:C:2006:644, paragraph 39); of 10 April 2008, *Marks & Spencer* (C-309/06, EU:C:2008:211, paragraph 49); of 20 April 2010, *Federutility and Others* (C-265/08, EU:C:2010:205); of 16 February 2012, *Eon Aset Menidjmunt* (C-118/11, EU:C:2012:97, paragraph 76); of 27 January 2022, *Fondul Proprietatea* (C-179/20, EU:C:2022:58, paragraphs 84 and 85); of 7 April 2022, *Autonome Provinz Bozen* (C-102/21 and C-103/21, EU:C:2022:272, paragraphs 58 and 59); and Opinion of Advocate General Mayras in *van Binsbergen*, 33/74, EU:C:1974:121, point 89

Provisions of national law relied on

Ordonanța de urgență a Guvernului nr. 27/2022 privind măsurile aplicabile clienților finali din piața de energie electrică și gaze naturale în perioada 1 aprilie 2022-31 martie 2023, precum și pentru modificarea și completarea unor acte normative, cu modificările și completările ulterioare (Government Emergency Order No 27/2022 laying down measures applicable to final customers of the electricity and natural gas market in the period from 1 April 2022 to 31 March 2023, and amending and supplementing certain legislation, as amended) (‘OUG No 27/2022’): Article 15 provides as follows:

– a windfall tax of 80% is hereby introduced, calculated according to a specific methodology, applied to the additional revenues generated by producers of electricity and natural gas (‘the tax on additional revenue’);

– the tax shall not apply to additional revenues from generation capacity that entered into service after the date of entry into force of the emergency order;

– the tax on additional revenue shall be calculated on the basis of the methodology set out in Annex 6 and shall be declared and paid by electricity producers on a monthly basis, by the 25th day of the month following the month for which it is due;

– the model and content of the tax on additional revenue declaration shall be approved by decree of the President of ANAF;

– quantities of electricity sold by electricity producers (which are in the Romanian State’s portfolio and which are holders of oil agreements) shall not be taken into account for the purposes of calculating the additional revenue if the latter make partial or total offers for sale within a maximum of five working days from requests by the transmission system operator and concessionaire distribution system operators to purchase electricity, either individually or in aggregate, directly or through dedicated platforms on the regulated market.

Law No 206/2022 approves OUG No 27/2022, with amendments, and is applicable from 14 July 2022. It provides, inter alia, that, apart from the fact that it does not apply to generation capacities that entered into service after the date of entry into force of the emergency order, the tax also does not apply to the additional revenue generated by companies providing public heating services that produce electricity from cogeneration.

Annex 6 to OUG No 27/2022 governs the method for calculating the additional revenue earned by electricity producers, resulting from the difference between the average monthly unit revenue from the sale of electricity negotiated and the price of 450 lei per MWh, that is to say, a price approximately half as much as the price of EUR 180 per MWh fixed by Regulation 2022/1854 (adopted on 7 October 2022).

Ordinul președintelui Agenției Naționale de Administrare Fiscală nr. 856/2022 privind modificarea Ordinului președintelui Agenției Naționale de Administrare Fiscală nr. 587/2016 pentru aprobarea modelului și conținutului formularelor utilizate pentru declararea impozitelor și taxelor cu regim de stabilire prin autoimpunere sau reținere la sursă (Order of the President of ANAF No 856/2022 amending Order of the President of ANAF No 587/2016 approving the model and content of the forms used for the declaration concerning tax and payments subject to the self-assessment or withholding tax system (‘Order No 856/2022’): pursuant to Article 15 of OUG No 27/2022, the model and content of the tax on additional revenue declaration are approved.

Succinct presentation of the facts and procedures in the main proceedings

1 The appellant is one of the subsidiaries of the ENGIE Group in Romania and, as such, produces wind power from the wind farm in the Brăila district.

2 The electricity produced by the appellant is sold through (i) bilateral contracts concluded in advance with different purchasers on the basis of the EFET (European Federation of Energy Traders) standard form of general contract for the purchase and sale of electricity, which is based on the trading of quantities of electricity in advance, with a significant time lag before actual delivery, and (ii) on the short-term electricity market/exchange (day-ahead market) for the excess electricity produced compared to the amount of electricity that the appellant sells under the bilateral contracts concluded.

3 Given the significant volatility of the resource used by the appellant to produce electricity (wind) and the future long-term bilateral commitments for the supply of certain quantities of electricity, the appellant often has to purchase and resell certain quantities of electricity in order to fulfil its obligations under bilateral contracts for the sale and supply of electricity. The sale and supply of electricity is agreed on an hourly basis, for each day, so estimating and forecasting electricity production from wind power is particularly difficult.

4 In addition, the appellant participates in the balancing market, which essentially serves to regulate consumption and production at national level, by supporting the costs of purchasing electricity on the day-ahead market (which is resold to meet the obligations arising from bilateral electricity contracts not covered by generation) and balancing costs.

5 On 1 April 2022, the provisions of Article 15 of OUG No 27/2022 became applicable, with the result that the applicant submitted the tax on additional revenue declarations for the months April to August 2022 in accordance with those provisions and on the basis of the form approved by Order No 856/2022.

6 On 27 July 2022, the appellant lodged a prior complaint against Order No 856/2022 and, subsequently, tax claims against the above-mentioned tax declarations. The tax authorities rejected both the prior complaint against Order No 856/2022 and the complaints relating to the tax declarations for May and June 2022.

7 By its action brought on 1 February 2023, the appellant requests the Curtea de Apel București (Court of Appeal, Bucharest, Romania), the referring court in the present case, against the respondents ANAF, DGRFP București – Administrația Fiscală pentru Contribuabili Mijlocii București (Regional Directorate-General of Public Finances of Bucharest – Bucharest Tax Authority for Medium-sized Taxpayers), DGRFP București – Administrația Sector 4 a Finanțelor Publice (Public Finance Administration, Sector 4, Romania) and the Ministerul Finanțelor – (Ministry of Finance, Romania), Direcția Generală de Soluționare a Contestațiilor (Directorate-General for the Settlement of Complaints):

– to annul Order No 856/2022;

– to annul the tax declarations submitted by the applicant in respect of the additional revenue tax for the months of April to August 2022;

– to annul the decision rejecting the prior complaint against Order No 856/2022;

– to annul the decisions rejecting the complaints regarding the notices of assessment for the months of May and June 2022;

– to order the respondents to repay to the appellant the total amount of RON 28 974 651 which it paid by way of tax on additional revenue for the period April to August 2022, together with interest on that amount.

8 In support of its action, the appellant put forward a number of grounds of appeal alleging that the acts at issue are unlawful, in the light of both EU law and national law.

9 In their responses, the respondents raised several objections and, as to the substance, contended that the action should be dismissed as unfounded.

10 In the course of the proceedings, the appellant asked the referring court to refer questions to the Court of Justice for a preliminary ruling.

The essential arguments of the parties in the main proceedings

11 In support of its request to the Court of Justice for a preliminary ruling, the appellant has raised a number of questions of law in respect of which the interpretation of EU law is useful for the resolution of the dispute.

12 In the first place, it is necessary to examine whether the provisions of OUG No 27/2022, which impose the tax on additional revenue only on certain categories of electricity producer, including renewable electricity producers, are compatible with Article 107 TFEU.

13 In the second place, it is necessary to examine whether the different treatment applied to renewable electricity producers and producers of electricity not subject to the payment of the tax on additional revenue is compatible with the general principle of non-discrimination. According to the appellant, there is no justification for the legislature to have set membership of a 'specific professional group' as a criterion for determining who is a taxable person, rather than the criterion of financial benefit; the tax at issue was imposed only on certain producers of electricity, including those renewable electricity producers.

14 In the third place, it is necessary to examine whether the introduction of an excessively high tax on additional revenue is compatible with freedom of establishment, freedom to provide services and the free movement of capital, provided for in Articles 49, 56 and 63 TFEU, and with the protection of the fundamental right to property, provided for in Article 17 of the Charter. According to the appellant, the discriminatory application of the tax to a single category of undertakings risks discouraging electricity producers (including renewable electricity producers), who are subject to the tax, from continuing to operate in the Romanian electricity market.

15 In the fourth place, it is necessary to examine whether national legislation that results in the fixing of the selling price of electricity or a limitation of the freedom to determine the selling price is compatible with Directive 2019/944. According to the appellant, the tax on the additional revenue earned by electricity producers, resulting from the difference between the average monthly electricity selling price and the price of RON 450 per MWh, which could be regarded as a price ceiling, affects the free formation of prices in that sector.

16 In the fifth place, it is necessary to examine whether the national legislation establishing the tax on additional revenue is compatible with the precautionary principle, the principle that preventive action should be taken and the principle that pollution should be rectified at source, the 'polluter pays' principle, the obligations put in place at EU level to achieve the objectives of climate neutrality and the EU's policy on energy taxation. If the fifth question is answered in the

affirmative, criteria should be determined that are to be satisfied for the introduction of the tax, since the appellant submits that the application of that tax solely to certain electricity producers, including renewable electricity producers, is contrary to EU environmental policy.

17 In the sixth place, it is necessary to examine whether national legislation that takes the form of the introduction of a turnover tax on revenue from the sale of electricity is compatible with Article 401 of Directive 2006/112, since neither acquisitions made by producers in order to fulfil contractual obligations nor the costs relating to their activity are taken into account for the purposes of determining the tax.

18 *The respondents ANAF, Regional Directorate-General of Public Finances of Bucharest – Bucharest Tax Authority for Medium-sized Taxpayers and the Regional Directorate-General of Public Finances of Bucharest, through Public Finance Administration, Sector 4*, seek a declaration that the request for a preliminary ruling addressed to the Court of Justice is inadmissible, arguing that the questions referred for a preliminary ruling by the appellant concern only the provisions of OUG No 27/2022 and not Order No 856/2022, which is the subject of the application for annulment in the present case. They argue that the appellant is in fact seeking to obtain from the Court of Justice a ruling giving guidance to the referring court on the outcome of the case and that the questions formulated by the referring court relate exclusively to particular aspects of the case pending before it, and that therefore the conditions for admissibility laid down in Article 267 TFEU are not met.

Succinct presentation of the reasoning in the request for a preliminary ruling

19 The referring court states that the order for a reference is necessary for the outcome of the case in the light of the appellant's arguments concerning the unlawfulness of the tax on additional revenue, the effects of the provisions of EU law on State aid, the compatibility of the tax with fundamental freedoms, general principles of EU law, policies on renewable energy taxation and climate neutrality commitments.

20 In the light of the case-law of the Court of Justice (*Marrosu and Sardino*, paragraph 54, and *Eon Aset Menidjmunt*, paragraph 76) and the fact that, in the present case, the interpretation is sought of the compatibility of certain national provisions and of the practice of a national authority with the provisions and general principles of EU law, the referring court states that there is an undisputed link with EU law. It also notes that the questions referred have not yet been the subject of a preliminary ruling in a similar case and that they have not been analysed by the Court of Justice, so that, according to the criteria identified by the Court in *CILFIT* v *Ministry of Health*, the correct application of EU law is not so obvious as to leave no scope for any reasonable doubt as to how to resolve them.

(a) The first question referred for a preliminary ruling

21 The referring court considers that the first question is necessary in order to determine to what extent the tax on additional revenue constitutes State aid granted to electricity producers that are exempted from paying such a tax – a State aid measure that must, under Article 108(3) TFEU, be notified to the European Commission.

22 The referring court observes that, although the assessment of the compatibility of State aid with the internal market falls, in accordance with Article 108(2) TFEU, within the exclusive competence of the Commission (judgment in *Fédération nationale du commerce extérieur des produits alimentaires and Others* v *France*, paragraph 14, and *Unicredito Italiano*, paragraph 42), the fact remains that national courts must ensure that the rights of individuals are safeguarded where the obligation to give prior notification of State aid to the Commission has been infringed (judgment in *Autonome Provinz Bozen*, paragraph 59), and national courts have jurisdiction to interpret the concept of State aid and to determine whether a measure adopted by a Member State does or does not constitute State aid (judgments in *Fédération nationale du commerce extérieur des produits alimentaires and Others* v *France*, paragraph 10, and in *Transalpine Ölleitung in Österreich*, paragraph 39).

23 In the light of the Court of Justice's case-law, the referring court also notes that, in the field of State aid, the Court may give the national court guidance on interpretation in order to enable it to determine whether a national measure may be classified as State aid under EU law (judgment in *Fondul Proprietatea*, paragraph 84). Moreover, the obligation not to put an aid measure into effect before it has been notified to the Commission and before the Commission has conducted its preliminary examination pursuant to Article 108(3) TFEU has direct effect (*Pearle and Others*, paragraphs 30 to 32).

24 The referring court finds that such an obligation is also applicable in the present case, in so far as the appellant submits that the measure introducing the tax on additional revenue constitutes State aid in respect of which that notification obligation has not been complied with. In those circumstances, although the national court cannot rule on the compatibility of the aid with the internal market, it is nevertheless required to find that the aid is unlawful if it has not been notified in accordance with Article 108(3) TFEU, since the direct effect of that provision requires that the rights of the party concerned be thus protected.

25 The referring court therefore considers it necessary for the Court of Justice to interpret the criteria for assessing potential State aid, in particular the selective advantage criterion introduced by the measure at issue, given that certain categories of electricity producer were exempted from paying the tax on additional revenue.

(b) The second question referred for a preliminary ruling

26 According to the referring court, the Court of Justice's interpretation is necessary in order to determine the extent to which the tax on additional revenue levied only on certain electricity producers is compatible with the general principles of equality and non-discrimination and with the obligation of Member States to ensure a level playing field with non-discriminatory rules for participants in the electricity market. The principle of equality implies that there should be no discrimination and that persons in identical and comparable situations should be treated equally.

27 In the specific area of the energy sector, the provisions of EU law relied on govern the obligation of Member States to ensure a level playing field with non-discriminatory rules for electricity producers (Article 3 of Directive 2019/944) and not to distort competition by creating a competitive disadvantage to the detriment of certain market participants.

28 In addition, the principle of fiscal neutrality, which requires Member States not to create unjustified discrimination between taxpayers, has developed at EU level in application of that principle; the referring court referred to the relevant case-law of the Court of Justice in that regard (see judgments in *Commission* v *France*, paragraphs 21 and 22, and in *Marks & Spencer*, paragraph 49).

29 The measures provided for by OUG No 27/2022 are, in the referring court's view, such as to infringe the principle of equality and the principle of non-discrimination in that they establish a different tax regime for renewable electricity producers and for the other categories of producers in comparable situations, without the necessity or expediency of such differentiation or discrimination being justified. In a context where all electricity producers operate on the same markets at EU and/or national level and are therefore in competition with each other and are in a comparable situation, producers that are not subject to the tax at issue obtain a competitive advantage over producers subject to the tax. Such a difference in treatment applied to certain operators in comparable situations contributes to the establishment of a selective and discriminatory system, thus restricting competition.

30 Consequently, having regard in particular to paragraph 15 of the judgment in *Halliburton Services v Staatssecretaris van Financiën*, the referring court considers it necessary to refer the matter to the Court of Justice in order to determine whether the acts of EU law governing the principles of equality and non-discrimination and the obligation on Member States to ensure a level playing field with non-discriminatory rules for participants in the electricity market preclude the introduction of the tax on additional revenue governed by OUG No 27/2022.

(c) The third question referred for a preliminary ruling

31 According to the referring court, the question concerns the effects of the tax measure on freedom of establishment, the free movement of services and the free movement of capital, in that it could discourage the ENGIE Group, which also includes the appellant, from continuing to produce electricity from renewable sources in Romania. The Court of Justice's interpretation is necessary for the resolution of the dispute in the main proceedings, since the question arises as to whether the tax is disproportionate or unjustified in that it is imposed, in a discriminatory manner, on a single category of electricity producer.

32 Thus, any renewable electricity producer wishing to enter or maintain its activity on the Romanian electricity market would be subject to excessive taxation, reducing the appeal of those markets for the production of 'clean' energy and restricting the freedom of establishment, even though Romania is a country with high potential in that sector. In addition, the excessively high tax also amounts to the confiscation of a share of the profits, which, in the referring court's view, is contrary to Article 17 of the Charter.

(d) The fourth question referred for a preliminary ruling

33 According to the referring court, the question arises in the present case as to whether the tax on additional revenue is a measure equivalent to the fixing of the selling price or to a limitation of the freedom to determine the selling price, contrary to the provisions of Directive 2019/944 and of Regulations Nos 2019/943 and 2022/1854. It argues that such a public intervention measure concerning the selling prices of electricity, by its very nature, constitutes an obstacle to the attainment of a well-functioning internal electricity market and therefore a restriction on trade between Member States.

34 The referring court refers to the Commission Communication of 13 October 2021 entitled 'Tackling rising energy prices: a toolbox for action and support' and states that the introduction of the tax at issue violates the limits on supply price intervention. Such a measure imposes price caps on the wholesale market and not on the retail market, which manifestly includes not only the category of household consumers, indirectly setting price caps for non-household consumers, outside the limits permitted by Directive 2019/944. According to that directive, price setting for the supply of energy constitutes a measure that substantially distorts competition. Although OUG No 27/2022 does not directly introduce a price cap, the measure introducing the tax on additional revenue has, in the referring court's view, a significant effect on market behaviour and impacts free price formation.

35 Furthermore, Article 9 of Directive 2019/944 lays down the conditions that must be satisfied in order to justify the imposition of public service obligations. In the light, moreover, of the relevant case-law of the Court of Justice (judgment of 20 April 2010, *Federutility and Others*), the measure must be justified by a general economic interest and must be limited to vulnerable consumers or those

experiencing fuel poverty, must comply with the principle of proportionality, must be clearly defined, transparent, non-discriminatory and easily verifiable and must guarantee equal access for EU electricity undertakings to national consumers.

36 The measure introducing tax on additional revenue is not clearly defined, transparent or non-discriminatory, since neither the price level nor the level of taxation enables them to be verified or predicted easily. The tax was calculated in the absence of a study specifying how to calculate the rate of 80% or the amount of RON 450 per MWh (amount intended to cover production and investment costs) or the impact that such a new tax obligation will have on renewable energy producers.

37 The referring court therefore takes the view that, by introducing the tax on additional revenue payable by renewable electricity producers, the Romanian State went beyond what was necessary to protect consumers with an unnecessary and disproportionate measure, since it introduced for that purpose a system of compensation and capping of supply prices to consumers. In addition, the application of the tax on additional revenue leads to double taxation of the revenue of producers, which are also subject to corporation tax under the Codul fiscal (Tax Code).

(e) The fifth question referred for a preliminary ruling

38 In so far as the precautionary principle, the principle that preventive action must be taken and the principle that pollution must be rectified at source, as well as the 'polluter pays' principle set out in Article 191(2) TFEU, were relied on in the main proceedings, the referring court considers that the Court of Justice's interpretation is necessary in order to determine whether those principles have direct effect and whether they are infringed by the determination of a tax on additional revenue that applies to renewable electricity producers and not to producers of electricity from fossil fuels.

39 Similarly, in the light of the EU objectives set by the European Green Deal, which the referring court believes are infringed by the measure at issue applicable in particular to renewable electricity producers, albeit for a limited period, the referring court wishes to know whether the State's obligations concerning the objectives relating to achieving climate neutrality between 2030 and 2050, in accordance with the provisions of Directive 2018/2001 and Regulation 2021/1119, are thereby infringed.

40 Lastly, the referring court considers that it is also necessary to determine whether the introduction of the tax on additional revenue infringes the State's obligations assumed under EU policy on energy taxation, thereby undermining the above-mentioned principles set out in Articles 2(1) and (2) and 4(1) of Regulation 2021/1119, read in conjunction with Article 191(2) TFEU.

(f) The sixth question referred for a preliminary ruling

41 In the main proceedings, the appellant submitted that the introduction of a turnover tax is contrary to Article 401 of Directive 2006/112, in so far as the tax on additional revenue is in fact a turnover tax on revenue from the sale of electricity and does not take account of the costs borne by electricity producers.

42 In that context, the referring court considers that the Court's interpretation is necessary in order to determine whether the provisions of Article 401 of Directive 2006/112 preclude the introduction of such a turnover tax, since neither acquisitions made by electricity producers for the performance of their contractual obligations nor the costs associated with their activity have been taken into account, as the tax is applied to the additional revenue.