



Opinion of the Advocate General at the Court

Athanasios Rantos

in Cases C-153/25 | Acea Produzione and Others, C-358/24 | Varo Energy Belgium and Others and C-533/24 | Vermilion Energy Ireland and Others

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Advocate General Rantos: the temporary solidarity contribution on surplus profits of energy sector companies, introduced in response to the energy crisis caused by the war in Ukraine, is consistent with EU law

In 2022, to address the rise in energy prices caused by the war in Ukraine, the Council of the European Union adopted a regulation introducing a temporary solidarity contribution on windfall profits made in 2022 and 2023 by companies in the petroleum, natural gas, coal and refinery sectors, provided that such profits exceed by 20% the average taxable profits of the four preceding fiscal years. ¹

Member States could adopt equivalent national measures, provided that they ensured comparable revenue. The revenue raised was intended to mitigate the effects of the energy crisis on households, businesses and the economy.

In that context, the Italian and Belgian Constitutional Courts, as well as the High Court (Ireland), referred questions to the Court of Justice for a ruling on the validity of the Regulation and for clarification of certain provisions, in order to enable them to assess the compatibility of the national measures, which were being challenged before them, with EU law.

In particular, the Italian Constitutional Court wishes to know whether the contribution may be extended to operators not expressly covered by the Regulation, such as companies that market or distribute energy, some of which were already subject to a cap on their revenues in 2022.

The Belgian Constitutional Court, for its part, raises the question of the validity of the Regulation in the light of its legal basis, ² as well as the possibility for Member States to extend or amend the scope of companies subject to the contribution. It also raises questions regarding the compatibility with the Treaties of both the EU regulation at issue and the resulting national legislation, in particular with regard to the prohibition of customs duties and charges having equivalent effect, as well as the rules on State aid.

Lastly, the High Court (Ireland) raises the question of the legal basis of the Regulation and its compliance with the principle of proportionality. It also raises questions regarding compliance with the principles of legal certainty and non-retroactivity, as well as the right to property and the freedom to conduct a business, in relation to both the Regulation and the national measures.

In his Opinion delivered today, **Advocate General Athanasios Rantos considers that the EU Regulation, as well as the resulting national measures, remain legitimate on account of their exceptional and temporary nature.**

First, the Advocate General considers that Article 122(1) TFEU constitutes a valid legal basis for the adoption of the regulation at issue. The relevant provisions of that regulation, relating to the temporary solidarity contribution, meet the requirements arising from Article 122 TFEU. The solidarity contribution is an urgent, temporary and proportionate economic measure intended to mitigate the effects of the energy crisis on businesses and consumers, through a coordinated effort by the Member States, in accordance with the principle of solidarity. Since that contribution does not involve tax harmonisation, unanimity in the Council is not required. ³

Second, the Advocate General notes that, although **States have discretion** to define the measures to be treated as equivalent to the temporary solidarity contribution, they are not, however, in principle free to alter the categories of persons required to pay that contribution. That restriction does not, however, prevent Member States, within the scope of their fiscal competences, **from extending the contribution to other entities**, in particular those that have benefited from windfall energy profits due to the specificities of their energy market, provided that the overall burden and objectives of the national measures remain equivalent to those of the EU regulation.

Furthermore, it is possible to restrict the personal scope provided for by the EU rule where the persons concerned do not operate within the framework of the national economic system. Moreover, the fact that some of those entities have already been subject to a revenue cap mechanism does not, in principle, constitute an obstacle to the application of the temporary solidarity contribution.

Third, the **exceptional and temporary nature of the temporary solidarity contribution** provided for by the EU rules, introduced during the 2022 fiscal year, **precludes it from being** classified as a **retroactive** measure **or as contrary to the principles of legal certainty and legitimate expectations**. It does not apply to acts which have already been carried out and does not permanently alter the system of taxation applicable to companies in the energy sector. ⁴ **Moreover, that contribution does not call into question the right to property or the freedom to conduct a business.** ⁵ The restrictions on those rights are legitimate since they have a precise legislative basis, are consistent with objectives of general interest and the principle of proportionality, and are temporary and **concern only exceptional revenues of companies.** ⁶

Fourth, the **temporary solidarity contribution is not covered by the prohibition on customs duties and charges having equivalent effect**, ⁷ which concerns only taxes on the product when it crosses a border. On the contrary, that contribution applies uniformly both to products of domestic origin and to products of foreign origin. Furthermore, a difference in treatment of the various petroleum products, provided for at national level and leading to a differentiation of those liable to pay that contribution, **does not infringe the principle prohibiting discriminatory internal taxation**, ⁸ since it is based on objective criteria.

Fifth, having regard to the objective pursued by the temporary solidarity contribution, namely to establish an exceptional mechanism in the context of the energy crisis and to target companies which have recorded windfall profits, **the restriction to certain operators**, based on objective criteria and targeting the largest companies in terms of market share, **does not constitute a selective difference in treatment**. Consequently, it **does not constitute State aid.** ⁹

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case files.

The full text of the Opinions ([C-358/24](#), [C-533/24](#), [C-153/25](#)) is published on the CURIA website on the day of delivery.

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¹ Article 14 et seq. of Council [Regulation \(EU\) 2022/1854](#) of 6 October 2022 on an emergency intervention to address high energy prices.

² Namely, Article 122(1) TFEU.

³ This would, however, be provided for in the context of Article 115 TFEU, which constitutes the legal basis for the harmonisation of direct taxation.

⁴ As regards the national legislation introduced in 2023, the fact that it is aimed at exceptional revenue precludes any breach of the principle of legitimate expectations, thereby ensuring the legality of a retroactive provision.

⁵ Articles 16 and 17 of the Charter of Fundamental Rights of the European Union.

⁶ Furthermore, as regards the national measures, the tax rate applied to the extraordinary profits does not, in itself, appear to be of a confiscatory nature. Moreover, the prohibition on using tax losses from previous years to reduce the temporary solidarity contribution does not affect the legality of that contribution either, in so far as those losses may be set off against ordinary taxes.

⁷ Article 30 TFEU.

⁸ Article 110 TFEU.

⁹ Article 107(1) and Article 108(3) TFEU.