Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 27 February 2025 [1]

Case C-633/23

Electrabel SA,
Fédération Belge des Entreprises Électriques et Gazières ASBL,
Organisatie voor Duurzame Energie Vlaanderen ASBL,
Wind4wallonia 2 SA,
Luminus SA,
EDF Belgium SA,
ActiVent Wallonie SCRL,
Eol'Wapi SA,
Lumiwind SC,
Luminus Wind Together SC
v
Commission de Régulation de l'Electricité et du Gaz (CREG),
intervener
État belge

(Request for a preliminary ruling from the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium))

(Reference for a preliminary ruling – Internal market for electricity – Regulation (EU) 2022/1854 – Emergency intervention to address high energy prices – Article 2(5) and (9) – Articles 6 to 8 – Cap on market revenues from electricity – Determination of 'market revenues' – National legislation providing for recourse to irrebuttable or partly rebuttable presumptions which do not allow the revenues actually realised to be taken into account – Direct effect – Principle of proportionality – Article 22(2)(c) – Period of application of Articles 6 to 8 of that regulation – Cap on revenues applied on a date earlier than that provided for by the regulation – Principles of primacy, effectiveness and sincere cooperation)

[1] Original language: French.

I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Articles 6 to 8 and 22 of Regulation (EU) 2022/1854,[2] read in conjunction with Article 2(5) and (9) thereof, Article 288 TFEU, Article 6 TEU and the principles of proportionality, primacy, the effectiveness of EU law and sincere cooperation.

2. The request has been made in the context of three actions for annulment brought, respectively, by, first, Electrabel SA, second, Fédération Belge des Entreprises Électriques et Gazières ASBL, Organizatie voor Duurzame Energie Vlaanderen ASBL and Wind4Wallonia 2 SA (together, 'FEBEG and others') and, third, Luminus SA, EDF Belgium SA, ActiVent Wallonie SCRL, Eol'Wapi SA, Lumiwind SC and Luminus Wind Together SC (together, 'Luminus and others') (all together, 'the applicants in the main proceedings') against a decision of the Commission de Régulation de l'Electricité et du Gaz (Commission for Electricity and Gas Regulation, Belgium; 'the CREG') on the model declaration to be submitted by debtors of the levy introduced in connection with the cap on market revenues of electricity producers ('the contested decision').[3]

3. Specifically, the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) asks about the compatibility with the abovementioned provisions of EU law of national legislation establishing, pursuant to Regulation 2022/1854, a system applying a cap on market revenues from electricity based on a series of irrebuttable or rebuttable presumptions, which does not allow the revenues actually realised by electricity producers to be taken into account and which, furthermore, was applied on a date earlier than the date provided for by that regulation.

4. Against that background, the Court is called upon, for the very first time, to clarify the margin of discretion conferred on Member States, if any, where they implement the cap on revenues of certain electricity producers introduced by Regulation 2022/1854 and, if appropriate, to establish the criteria to be taken into account in framing that measure, in particular the method on the basis of which those revenues are determined and the scope *ratione temporis* of such a measure.

II. Legal framework

A. European Union law

5. Recitals 30 and 37 of Regulation 2022/1854 state:

'(30) The cap on market revenues should be set on market revenues rather than on total generation revenues …. Regardless of the contractual form in which the trade of electricity may take place, the cap on market revenues should apply to realised market revenues only. …

…

(37) In order to ensure an effective enforcement of the cap on market revenues, the producers … should provide the necessary data to the competent authorities of Member States and, where appropriate, to the system operators and nominated electricity market operators. In view of the large number of individual transactions for which competent authorities of Member

[2] Council Regulation of 6 October 2022 on an emergency intervention to address high energy prices (OJ 2022 L 261 I, p. 1).

[3] Decision (B)2511 of 28 February 2023.

States have to ensure the enforcement of the cap on market revenues, those authorities should have the possibility to use reasonable estimates for the calculation of the cap on market revenues.'

6. Article 2 of that regulation, entitled 'Definitions', provides, in paragraphs 5 and 9:

'For the purposes of this Regulation, … the following definitions also apply:

…

(5) "market revenue" means realised income a producer receives in exchange for the sale and delivery of electricity in the Union, regardless of the contractual form in which such exchange takes place …;

…

(9) "surplus revenues" means a positive difference between the market revenues of producers per MWh of electricity and the cap on market revenues of 180 EUR per MWh of electricity provided for in Article 6(1);'

7. Article 6 of the regulation, entitled 'Mandatory cap on market revenues', is worded as follows:

'1. Market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped to a maximum of 180 EUR per MWh of electricity produced.

…

3. Member States shall put effective measures in place to prevent a circumvention of the obligations on producers pursuant to paragraph 2. They shall in particular make sure that the cap on market revenues is effectively applied in cases where producers are controlled, or partially owned, by other undertakings, in particular where they are part of a vertically integrated undertaking.

…

5. The Commission shall provide guidance to Member States in the implementation of this Article.'

8. Article 7 of Regulation 2022/1854, entitled 'Application of the cap on market revenues to electricity producers', provides:

'1. The cap on market revenues provided for in Article 6 shall apply to the market revenues obtained from the sale of electricity produced from the following sources:

…

6. Producers … shall provide to competent authorities of Member States and, where relevant, to the system operators and nominated electricity market operators, all necessary data for the application of Article 6, including on the electricity produced and the related market revenues,

regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally, within the same undertaking or in a centralised marketplace.'

9. Under Article 8 of that regulation, entitled 'National crisis measures':

'1. Member States may:

(a) maintain or introduce measures that further limit the market revenues of producers generating electricity from the sources listed in Article 7(1), including the possibility to differentiate between technologies, …;

…

(c) maintain or introduce national measures to limit the market revenues of producers generating electricity from sources not referred to in Article 7(1);

…

2. The measures referred to in paragraph 1 shall, in line with this Regulation:

(a) be proportionate and non-discriminatory;

(b) not jeopardise investment signals;

(c) ensure that the investments and operating costs are covered;

(d) not distort the functioning of electricity wholesale markets, and in particular, not affect the merit order and the price formation on the wholesale market;

(e) be compatible with Union law.'

10. Article 22 of the regulation, entitled 'Entry into force and application', reads as follows:

'1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. … this Regulation shall apply until 31 December 2023, subject to the following:

…

(c) Articles 6, 7, and 8 shall apply from 1 December 2022 to 30 June 2023;

…'

B. Belgian law

1. The Electricity Law

11. Article 22b of the loi relative à l'organisation du marché de l'électricité (Law on the organisation of the electricity market) of 29 April 1999,[4] as amended by the loi relative à l'organisation du marché de l'électricité et introduisant un plafond sur les recettes issues du marché des producteurs d'électricité (Law amending the Law on the organisation of the electricity market and introducing a cap on the market revenues of electricity producers) of 16 December 2022,[5] which is applicable to the dispute in the main proceedings ('the Electricity Law'), introduces, in paragraph 1, a cap on the market revenues of electricity producers by means of a State levy on surplus revenues realised between 1 August 2022 and 30 June 2023.

12. Under the first subparagraph of paragraph 5 of that article, 'market revenues' are defined as the income obtained for each transaction by the electricity producers concerned in exchange for the sale and delivery of electricity during the period referred to in paragraph 1 of that article.

13. The second subparagraph of paragraph 5 introduces a series of presumptions for the purpose of determining those revenues, which differ according to the different types of production facility. Specifically, points 1 and 2 of that subparagraph establish irrebuttable presumptions applying to nuclear power stations. Points 3 to 5 of that subparagraph set out rebuttable presumptions applying, respectively: to facilities not referred to in points 1 and 2 whose production is covered by a power purchase agreement (point 3); to facilities not referred to in points 1, 2 and 3 which do not benefit from a production support scheme or which benefit from such a scheme the amount of which does not depend on changes in electricity prices or the amount of which depends on changes in electricity prices over a period of three years (point 4); and to all other facilities not referred to in points 1, 2, 3 and 4 (point 5). Lastly, point 6 of that subparagraph provides for the possibility for producers covered by the rebuttable presumptions set out in points 3 to 5 to rebut those presumptions by proving that their realised market revenues differ from those determined pursuant to the presumptions, provided that they adduce that proof for all their production facilities. Those same presumptions may be rebutted, however, only through the following presumptions:

'(a) electricity sales and purchases occurring within a vertically integrated undertaking or between undertakings one of which is controlled or partially owned, directly or indirectly, by the other shall be deemed to have been concluded for the purposes of the application of the present article on the basis of a price consistent with the market price on the day of the transaction for the delivery period concerned by the transaction, as published by an energy block exchange platform operating in Belgium;

(b) any volume of electricity produced and sold, but not sold on a forward basis, shall be deemed to be sold at the market reference price;

(c) each sale of electricity on a forward basis constitutes a transaction defined by its transaction date, its price and its volume;

[4] *Moniteur belge* of 11 May 1999, p. 16264.

[5] *Moniteur belge* of 22 December 2022, p. 98819.

(d) the volume of electricity sold on the day-ahead market shall be deemed to have been the subject of a transaction for each delivery period of one hour.'

14. Under the fourth subparagraph of paragraph 6 of that article, the CREG is to determine the model declaration and the format of the documents to be sent by producers subject to the cap for the purpose of establishing the levy due.

2. The contested decision

15. The contested decision, which was adopted by the CREG on 28 February 2023 pursuant to the fourth subparagraph of Article 22b(6) of the Electricity Law, determines the model declaration and the format of the documents to be sent by debtors of the levy introduced by Article 22b(1) of that Law.

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

16. The applicants in the main proceedings are either legal persons governed by private law which are producers and suppliers of electricity produced from energy sources listed in Article 7(1) of Regulation 2022/1854 and which are subject to the levy introduced by Article 22b(1) of the Electricity Law, legal persons governed by private law other than producers or suppliers of electricity which are also subject to that levy, or business federations in the electricity production and supply sector which are acting for their members and whose legal interest in bringing proceedings is established pursuant to the Electricity Law.

17. On 29 March 2023, Electrabel and FEBEG and others and, on 30 March 2023, Luminus and others brought three actions before the Cour d'appel de Bruxelles (Court of Appeal, Brussels), which is the referring court, seeking the annulment of the contested decision. In view of their similarities, that court joined those three actions.

18. In support of their actions, the applicants in the main proceedings raise, first, pleas for annulment relating to the exclusive nature of the presumptions established by the contested decision. Those parties submit, in essence, that the decision infringes Article 2(5) and (9) and Articles 6 to 8 of Regulation 2022/1854 in so far as it requires them to declare revenues which have not actually been realised, even though the regulation requires the declaration of revenues which have actually been obtained. Consequently, the applicants take issue with the CREG for having adopted, in that decision, the system of six presumptions established in points 1 to 6 of the second subparagraph of Article 22b(5) of the Electricity Law. Based exclusively on presumptions which either are irrebuttable or are rebuttable only under certain conditions by having recourse to other presumptions, that system results in fictitious revenues being taken into account, despite the fact that the cap established under Regulation 2022/1854 applies to the revenues actually obtained by electricity producers. Furthermore, that regulation provides that the cap is applicable 'per transaction', when, under all of the presumptions at issue in the main proceedings, electricity is deemed to have been sold on a daily basis at the electricity price on each of those days on an electricity exchange if it is sold on a forward basis and on an hourly basis if it is sold on the day-ahead market. The applicants in the main proceedings argue that that system results in a levy where the cap is exceeded over one day or one hour of the period, even

though the price actually obtained is an average price lower than the cap or a fixed price lower than the cap. The implementation of a system like that at issue in the main proceedings is not justified and has the aim of increasing the tax levied.

19. For their part, the CREG and the Belgian State rely, inter alia, on recital 37 of Regulation 2022/1854, according to which Member States may use reasonable estimates for the calculation of the cap on market revenues. Furthermore, that regulation did not lay down any specific rule for calculating the amount of revenues. They contend that recourse to presumptions does not result in fictitious revenues being taxed, but helps to mitigate the technical difficulties involved in precisely determining the price for each MWh of electricity sold and delivered during the period of application of the levy, while alleviating the administrative burden of debtors and public entities responsible for applying the levy. As regards the irrebuttable nature of the presumptions in points 1 and 2 of the second subparagraph of Article 22b(5) of the Electricity Law, that is justified as the system is based on sales strategies previously adopted in agreement with the operators of the nuclear power stations concerned.

20. As a preliminary point, the referring court notes that the fact that the alleged unlawfulness in the present case stems from the application of points 1 to 6 of the second subparagraph of Article 22b(5) of the Electricity Law does not affect its jurisdiction to determine whether the contested decision is lawful. It states that the presumptions laid down in those provisions and on the basis of which the CREG established, in the contested decision, its model declaration of revenues – which constitutes the stage prior to the setting of the levy due from each debtor – is founded on a set or cascade of presumptions from which the debtor can never completely escape, with the result that it is unable to declare the real revenues that it has actually obtained. The referring court observes that no general technical impossibility in determining the actual revenues has been established in the present case. Thus, although technical difficulties may, to a certain extent, justify recourse to presumptions, they cannot explain the irrebuttable nature of those presumptions.

21. In addition, the referring court points to a possible contradiction in the provisions of Regulation 2022/1854 with regard to the determination of the cap on market revenues. It considers that, a priori, although Article 2(5) and (9) as well as Articles 6 and 7 of that regulation, read in the light of recital 30 thereof, appear to indicate that the surplus revenues are to be calculated on the basis of the revenues actually obtained by producers, recital 37 of the regulation allows Member States to use reasonable estimates to calculate the cap on revenues. The referring court states that it is not persuaded, prima facie, that that possibility of allowing Member States to use estimates entitles them to lay down a system based solely on irrebuttable presumptions or on partly rebuttable presumptions which permits elements theoretically predetermined by the Member State to remain in place, regardless of the revenues actually obtained.

22. Second, as regards the period covered by the contested decision, both Electrabel and FEBEG and others submit, in essence, that in so far as that decision establishes a model declaration for the period from 1 August to 31 December 2022, whereas under Regulation 2022/1854 the cap period starts on 1 December 2022 and Member States are not entitled to impose a levy on surplus revenues retroactively, that decision infringes, in particular, Articles 6 to 8, 20 and 22 of that regulation, Article 288 TFEU, the principles of the primacy and effectiveness of EU law and the principle of sincere cooperation.

23. For their part, the CREG and the Belgian State assert that the Belgian legislature was, on the contrary, able to take such action in respect of the abovementioned period by virtue of its general powers of taxation. The Belgian State refers inter alia to Article 8(1) of Regulation 2022/1854, according to which Member States may 'maintain or introduce measures that further limit … market revenues'.

24. According to the referring court, the Belgian legislature did not explain why it set the date of entry into force of the levy at issue in the main proceedings on a date other than that provided for in Regulation 2022/1854; it simply stated that the system established is not contrary to the principle of non-retroactivity in taxation matters, without clarifying whether that levy constitutes a national measure that is independent of EU law for the period from 1 August to 30 November 2022. The referring court therefore considers that Article 22(2) of that regulation could preclude national measures implementing the system for which it provides from a date earlier than that laid down in that provision, having regard to the principles of the primacy and effectiveness of EU law and sincere cooperation. In that regard, it takes the view that Article 8(1) of Regulation 2022/1854 is not clear as to whether the possibility available to Member States under that provision also includes implementing a system applying a cap before the date of entry into force of that regulation.

25. In those circumstances, the Cour d'appel de Bruxelles (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Articles 6, 7 and 8 of [Regulation 2022/1854], read in conjunction with Article 2(5) and (9) thereof, in the light of its recitals as a whole, and in conjunction with, in particular, Article 288 TFEU and Article 6 TEU, be interpreted as precluding the application of national measures, such as those contained in Article 22b of the Electricity Law, and in particular the second subparagraph of paragraph 5 thereof, which provide that the cap laid down in Article 6 of the regulation is to be reflected in the form of a levy on surplus revenues of electricity producers, where the surplus nature of the revenues in respect of the cap set is established on the basis of market revenues determined, for certain installations, on the basis of irrebuttable presumptions calculating theoretical revenues (see points 1 and 2 of the second subparagraph of Article 22b(5) of the Electricity Law), preventing the debtors of the levy from declaring and being assessed on the basis of their actual revenues?

(2) Must Articles 6, 7 and 8 of [Regulation 2022/1854], read in conjunction with Article 2(5) and (9) thereof, in the light of its recitals as a whole, and in conjunction with, in particular, Article 288 TFEU and Article 6 TEU and with the principle of proportionality, be interpreted as precluding the application of national measures, such as those contained in Article 22b of the Electricity Law, in particular the second subparagraph of paragraph 5 thereof, which provide that the cap laid down in Article 6 of the regulation is to be reflected in the form of a levy on surplus revenues of electricity producers, where the surplus nature of the revenues in respect of the cap set is established on the basis of market revenues determined, for certain installations (see points 3, 4, 5 and 6 of the second subparagraph of Article 22b(5) of the Electricity Law), on the basis of presumptions presented as rebuttable but which can be rebutted only, first, by the provision of evidence of their actual revenues from all their installations, including installations not coming within the scope of the regulation, and, second, by the continued recourse to certain presumptions, thereby preventing debtors of the levy from declaring and being assessed on the basis of their actual revenues?

(3) Must Articles 6, 7, 8 and 22 of [Regulation 2022/1854], read in conjunction with the principles of the primacy and effectiveness of EU law and the principle of sincere cooperation (Article 4(3) TEU), with, in particular, Article 288 TFEU, and in the light of its recitals, be interpreted as precluding the application of national measures taken after the entry into force of that regulation, such as Article 22b(1) of the Electricity Law, inserted by the Law of 16 December 2022, and providing for the implementation of the system applying a cap on electricity producers' market revenues from a date earlier than 1 December 2022, such as the date of 1 August 2022?'

26. Written observations were submitted to the Court by Electrabel, FEBEG and others, Luminus and others, the CREG, the Belgian and Greek Governments and by the European Commission.

IV. Analysis

A. The first and second questions referred for a preliminary ruling

27. By its first and second questions, the referring court asks, in essence, whether Regulation 2022/1854, in particular Articles 6 to 8 thereof, read in conjunction with Article 2(5) and (9) thereof, in the light of its recitals as a whole, and in conjunction with Article 288 TFEU and Article 6 TEU and with the principle of proportionality, precludes a national measure which introduces a system for calculating market revenues, to which the cap (provided for in Article 6(1) of that regulation) applies, on the basis of either irrebuttable presumptions (first question) or partly rebuttable presumptions (second question), thus preventing the debtors of the levy from being assessed on the basis of their actual revenues.

28. In so far as the first two questions relate to the same provisions of EU law and concern the interpretation of the notion of 'market revenues' obtained by electricity producers subject to the cap and, more specifically, the determination of the criteria to be taken into account in calculating those revenues, they should be dealt with together.

29. Before examining those two questions, I consider it appropriate to recall briefly the general framework established by Regulation 2022/1854 and to clarify whether the provisions governing the cap, in particular Article 6(1) of the regulation, have direct effect.

1. Preliminary observations

(a) The general framework established by Regulation 2022/1854

30. As a preliminary point, it should be recalled that Regulation 2022/1854 is an emergency intervention to tackle the increase in electricity prices in the context of the energy crisis following Russia's war of aggression against Ukraine and, consequently, significant disruptions in the energy market connected with the resulting serious supply difficulties. By that intervention, the EU legislature intended to create a harmonised framework for the redistribution of surplus revenues in order to allay concerns about significant distortions between producers which could jeopardise the energy market. Adopted on the basis of Article 122 TFEU, that regulation does not seek to establish permanent measures on the market, but exceptional, targeted and time limited initiatives to address the specific market situation.

31. I also note that Regulation 2022/1854 does not bring about an exhaustive harmonisation, but is an instrument for coordinating the different measures taken by Member States in the context of the energy crisis. Although Member States are thus allowed some latitude in implementing that regulation,[6] it is nevertheless circumscribed by the conditions set out in Article 8(2) thereof, with which Member States are required to comply when they adopt the abovementioned measures.[7]

32. Furthermore, although Regulation 2022/1854 provides general guidance for achieving the objectives pursued by it, the fact remains that none of its provisions establishes a specific, binding methodology which Member States are required to follow in determining the cap and the revenues subject to it. It should be pointed out in that regard that although Article 6(5) of the regulation provides that 'the Commission shall provide guidance to Member States in the implementation' of Article 6, no such guidance has been drawn up.

(b) Direct effect of the provisions of Regulation 2022/1854 concerning the cap on revenues

33. I would observe at the outset that, although the referring court does not expressly ask the Court about the direct effect of the provisions of Regulation 2022/1854 concerning the cap on revenues, and of Article 6(1) thereof in particular, in its first two questions it nevertheless mentions Article 288 TFEU.[8] Against that background, I will briefly examine this issue before going on to consider the substance of the questions asked.

34. It should be borne in mind that, in accordance with Article 288 TFEU, a regulation is, in principle, directly applicable in its entirety, although the Court has recognised that some provisions of a regulation may necessitate, for their implementation, the adoption of national measures of application.[9] Furthermore, while the provisions of a regulation generally have direct effect, it cannot be ruled out that certain provisions do not, if they are not sufficiently clear, precise and unconditional.[10]

35. While in the present case, as was mentioned in points 30 and 31 of this Opinion, it is not disputed that, in the light of the legal basis on which Regulation 2022/1854 was adopted, namely Article 122 TFEU, that regulation does not bring about an exhaustive harmonisation in taxation matters, but coordinates the different measures taken at national level and that, to that end, Member States have a certain discretion in implementing the regulation, that fact alone cannot deprive the regulation of direct effect, contrary to the claim made by the Belgian Government and the CREG. Even though, when applying that regulation, Member States are accorded a certain discretion as to the specific measures which they can introduce, that discretion may be

6 Which is shown by the heterogeneous nature of the measures taken by the Member States to implement Regulation 2022/1854, as mentioned in the report from the Commission to the European Parliament and the Council on the review of emergency interventions to address high energy prices in accordance with [Regulation 2022/1854] (COM(2023) 302 final) ('the Commission report').

7 If the view were taken that Member States were entitled to determine the amount of the cap and the revenues to be collected as they saw fit, and enjoyed a discretionary power enabling them to so do, the coordination desired and pursued by Regulation 2022/1854 would be redundant.

8 The Belgian Government asserts in that regard that it is necessary for the Court to rule on the direct effect of the provisions concerned since, if the Court were to consider that Regulation 2022/1854 precludes the use of presumptions like those at issue in the main proceedings, the question would then arise whether the referring court must disregard the contested national provisions. That government mentions in particular the guidance provided by the judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 68), according to which a national court is not required, solely on the basis of EU law, to disapply a provision of its national law which is contrary to a provision of EU law if the latter provision does not have direct effect.

9 See, inter alia, judgments of 11 January 2001, *Monte Arcosu* (C-403/98, EU:C:2001:6, paragraphs 26 and 28); of 12 April 2018, *Commission* v *Denmark* (C-541/16, EU:C:2018:251, paragraph 27 and the case-law cited); and of 30 May 2024, *Expedia* (C-663/22, EU:C:2024:433, paragraph 40 and the case-law cited).

10 See, in legal literature, Lenaerts, K., and Van Nuffel, P., *EU Constitutional Law*, Oxford University Press, Oxford, 2021, No 18.013, p. 721 to 723.

exercised only within the limits of EU law. Accordingly, the exercise of that discretion does not allow them to adopt acts which could alter the scope of Regulation 2022/1854 and cannot lead to the adoption of a measure which is contrary to EU law.

36. That said, it is necessary to examine whether Article 6(1) of Regulation 2022/1854 satisfies the conditions laid down by the Court's case-law, as set out in point 34 of this Opinion, in order for that provision to be considered to have direct effect, namely that it is sufficiently clear, precise and unconditional. That is patently the case here since the provision introduces an unconditional obligation to apply a cap on market revenues,[11] identifying precisely and unambiguously, first, a specific category of persons subject to the cap by referring to Article 7(1) of the regulation, which contains a detailed list of energy sources subject to the cap, and, second, the maximum amount of the cap in question.[12]

2. Substance

37. It should be recalled that, by its first two questions, the referring court asks the Court about the compatibility with Regulation 2022/1854 of national legislation which, with a view to determining the revenues to be taken into account for the calculation of the cap set by that legislation, introduces presumptions that are, according to that court, either irrebuttable or difficult to rebut.

38. I must begin by noting that, even though there is no specific methodology for calculating the amount of the *surplus revenues* subject to the cap, it is clear from the actual wording of Regulation 2022/1854 that the cap introduced by Member States under that regulation may not, in principle, be applied to theoretical revenues which do not correspond to the reality of the market, but must reflect the reality of the profits made by the producers concerned.

39. That is clear from Articles 6 to 8 of that regulation, under which the mandatory cap applies to *market revenues*, which are defined in Article 2(5) thereof as the 'realised income a producer receives in exchange for the sale and delivery of electricity in the Union'. Paragraph 9 of that article adds that *surplus revenues* are the positive difference between the *market revenues of producers* and the cap provided for in Article 6(1) of the regulation. In addition, recital 30 of that regulation states that the cap should be set *on market revenues rather than on total generation revenues* and that the cap on market revenues should apply to *realised market revenues only*.

40. It is nevertheless clear that, although the abovementioned provisions seem to indicate that the calculation of surplus revenues must be based on the revenues actually obtained by producers, recital 37 of Regulation 2022/1854 gives Member States the possibility to use *reasonable estimates* for the calculation of the amount of the cap, without, however, defining or clarifying the meaning of 'reasonable estimates'.

[11] The notion of 'market revenue' is, moreover, also clearly defined in Article 2(5) of Regulation 2022/1854.

[12] It should be noted in that regard that the fact that Regulation 2022/1854 does not establish a specific, binding methodology for calculating the cap and that some of its provisions allow Member States discretion in setting that cap – including, first, the possibility under Article 8(1) of that regulation to introduce measures that further limit market revenues and the possibility to differentiate between technologies used by electricity producers and, second, the possibility, on the basis of Article 7(3) to (5) thereof, to provide for additional derogations in the light of the specificities of their national energy market – cannot deprive Article 6(1) of the regulation of direct effect in so far as that discretion is circumscribed by Article 8(2) thereof. The same holds for paragraphs 3 and 4 of Article 6 of Regulation 2022/1854, which allow Member States to put effective measures in place to prevent a circumvention of the obligations on electricity producers.

41. It must therefore be examined, as a first step, whether recourse to presumptions to estimate the amount of *market* revenues can be justified in the light of the objectives pursued by Regulation 2022/1854.

42. I note, first, the specific context of the obligation to apply a cap on revenues that was introduced, the objective of the regulation being an emergency intervention to mitigate the effects of high energy prices, which called for the cap to be implemented quickly so that the extraordinary profits made by certain producers could be redistributed to consumers affected by the energy crisis. It must be acknowledged that in this context the use of reasonable estimates, including in the form of presumptions, to implement short-term measures immediately may constitute an effective and, in many cases, necessary means of applying urgent measures and thus of ensuring the effectiveness of the cap.

43. I observe, second, that, as was mentioned in point 30 of this Opinion, although Member States are required to respect the content and the objectives pursued by Regulation 2022/1854, they are accorded a certain discretion, in particular as to how market revenues are determined. Member States should therefore be able to choose the methods which they deem technically and administratively necessary and suitable for the specific characteristics of their respective national market in order to implement the exceptional urgent measures as effectively and appropriately as possible. Furthermore, the national classification of the estimates in question is immaterial and should not therefore prevent them taking the form of presumptions, provided that the national legislation satisfies the conditions laid down in Article 8(2) of that regulation.

44. I note, third, that the effective implementation of Regulation 2022/1854 is, in practice, based on data to be provided by producers to the competent authorities so that they are able to set the cap and the amounts to be collected. It is precisely because of practical considerations connected with the potentially high number of transactions subject to the cap and the possible difficulty in evaluating the precise amount of the actual revenues[13] that recital 37 of that regulation recognises that the authorities of the Member States should have the possibility to use reasonable estimates for the calculation of the cap on market revenues.

45. I would point out, fourth, that Member States are required, under Article 6(2) and (3) of Regulation 2022/1854, to put effective measures in place to ensure the effective enforcement of the cap and to prevent a circumvention of the cap on market revenues established by paragraph 1 of that article. Furthermore, paragraph 3 of that article provides that States 'shall in particular make sure that the cap on market revenues is effectively applied in cases where producers are controlled, or partially owned, by other undertakings, in particular where they are part of a vertically integrated undertaking'.

46. It must be stated in that regard that, as is apparent from the written observations of the Belgian Government and the CREG, recourse to certain rebuttable presumptions forms part of an 'anti-abuse' strategy, the objective of which is to limit the risk of circumvention of the cap and thus to ensure an effective enforcement of the national measures taken pursuant to Regulation 2022/1854. Consequently, in view of the technical difficulties involved in, or even the impossibility of, distinguishing between volumes of electricity according to their method of production and isolating the specific revenues of different facilities belonging to a single producer, the presumptions at issue were necessary to prevent electricity producers with multiple production

[13] According to the Commission report, several Member States have reported difficulties relating to data collection and calculation of revenues.

facilities from being able to allocate revenues in excess of the cap to their marginal facilities (which are not subject to the cap) or possibly from having recourse to intra-group transactions [14] in order to evade the application of the cap. [15]

47. Although, on the basis of the foregoing, it is clear that recourse to presumptions to establish the amount of revenues subject to the cap may be justified in the light of the objectives pursued by Regulation 2022/1854, it must still be examined, as a second step, whether the system of presumptions introduced by the Belgian legislation satisfies the conditions set out in Article 8(2) of that regulation and does not go beyond what is necessary to achieve the objectives pursued by the regulation.

48. I think it is important to state in that connection that the assessment of the compatibility of the system of presumptions established by the Belgian legislation with the principles stemming from Regulation 2022/1854 calls for an in-depth analysis of a set of factual and technical information available only to the referring court and requires an examination of the specific effects of that legislation which the referring court alone has jurisdiction to conduct. The Court may nevertheless provide it with guidance in that regard. In my view, the following criteria are relevant for the analysis which the referring court will have to carry out.

49. In the first place, I note that, as is clear from points 42 and 46 of this Opinion, according to recital 37 of Regulation 2022/1854, it is open to Member States to use presumptions to establish the revenues to which the cap must be applied, but it is still necessary to ascertain whether those presumptions make it possible to arrive at a *reasonable estimate* of the revenues actually realised by those producers. Since the notion of 'reasonable estimate' was not defined in that regulation, it is appropriate to provide some guidance as to its interpretation.

50. In order for the system of presumptions to be consistent with that notion, the presumptions established by the Belgian legislation must be based on objective information, such as market data capable of reflecting the actual revenues of the producers concerned as accurately as possible. It should be stated, however, that an *estimate* is, by definition, an approximation of a given value and therefore does not always represent an accurate value. It follows that possible differences between actual revenues and imputed revenues may be permitted, without that automatically rendering the presumptions at issue incompatible with Regulation 2022/1854. However, those differences, which could be either to the benefit or to the detriment of the producers concerned in the present case, must be *reasonable*, that is to say, moderate, and must not result in a significant overvaluation of the revenues realised by the producers in question.

51. It follows that it is only if it is ascertained that the criteria used to establish the presumptions in question are unreasonable, in so far as the data on which those presumptions were based are fundamentally incorrect, incomplete and result in fictitious revenues completely disconnected from the reality of the market or de facto in a significant difference between the estimated

[14] Point 6 of the second subparagraph of Article 22b(5) of the Electricity Law provided for two conditions in order for the presumptions established in paragraphs 3 to 5 to be rebutted. Under the first condition, the producer concerned had to prove its revenues for all its production facilities. That condition would thus enable the Belgian authorities to monitor how producers allocated their revenues to their different production facilities and, in doing so, to prevent the highest revenues being attributed to facilities not covered by the cap and the lowest revenues to facilities covered by the cap. Under the second condition, in the event of an intra-group sale, electricity was deemed to be sold at a price consistent with the market price. That condition sought to prevent electricity sales at artificially low prices within the same group resulting in producers (which would sell electricity at a price lower than the cap) being exempt and surplus revenues being collected by third parties (within the same group) to which the levy does not apply.

[15] It should be noted in that regard that, although the applicants maintain that the risk of fraud mentioned by the Belgian authorities is hypothetical and, in any event, irrelevant in justifying the presumptions at issue, the referring court does not seem to take a firm position on the anti-abuse objective pursued by the relevant provisions of the national legislation.

revenues and those actually realised, that a system of presumptions, which does not permit the producers concerned to be assessed on the basis of their revenues actually realised or to be able to rectify any significant errors in those estimates, should be considered incompatible with Regulation 2022/1854. While it is for the referring court to carry out that assessment, it should be noted, by way of example, that, having regard to the conditions laid down in Article 8(2) of that regulation, in order to be classified as 'reasonable estimates', the presumptions established should not result in the taxation of volumes of electricity which have not been produced or in situations where electricity is sold below cost.

52. In the present case, it must be stated that, although the referring court seems to share the view of the applicants in the main proceedings, which maintain that the irrebuttable or partly rebuttable presumptions established by the Belgian legislation do not ensure that the cap is applied to revenues actually realised, thereby giving rise to a risk of an assessment of revenues that is significantly different from the actual revenues, the fact remains that the risk identified is presented in abstract terms. [16]

53. In the second place, I note that although the objective of alleviating the administrative burden and the objective of preventing circumvention of the cap do, a priori, justify recourse to presumptions, as was established in points 44 to 46 of this Opinion, in particular in order to ensure effective enforcement of that cap, it is clear from the Court's case-law that anti-abuse provisions must not, in principle, go beyond what is necessary to achieve the objectives pursued and establish a general presumption of fraud and abuse. [17] With regard to irrebuttable presumptions in taxation matters more specifically, the Court has held that, as opposed to a rebuttable presumption, a provision which presumes the existence of abuse or fraudulent conduct solely on the ground that the conditions that it lays down are satisfied, without allowing the economic operator concerned to rebut that presumption and prove actual use of the product concerned, goes beyond what is necessary to achieve the objective of combating tax evasion and avoidance. [18]

54. It cannot be ruled out, however, that in view of the both urgent and temporary nature of the exceptional measure at issue and the discretion conferred on Member States in the precise determination of the revenues to which the cap applies, recourse to such presumptions could be justified. That is all the more so where, as seems to be the case here, the object is a limited and particular category of producers whose revenues, on account of circumstances specific to them, [19] have been previously fixed by agreement with the public authorities and are framed by national legislation with the result that the producers in question cannot easily depart from it. [20]

55. In the light of the foregoing, I propose that the following answer be given to the first and second questions: Articles 6 to 8 of Regulation 2022/1854, read in conjunction with Article 2(5) and (9) thereof, in the light of its recitals as a whole, and, in particular, with Article 288 TFEU and Article 6 TEU and with the principle of proportionality, do not preclude national legislation which

[16] The referring court does not take a position on whether the criteria used to establish the irrebuttable presumptions are based on reasonable estimates of revenues, taking the view that it will be able to examine that point only once the question of the actual lawfulness of the exclusive system of presumptions has been resolved.

[17] See judgment of 7 September 2017, *Eqiom and Enka* (C-6/16, EU:C:2017:641, paragraph 31 and the case-law cited).

[18] See judgment of 27 January 2022, *Commission* v *Spain (Obligation to provide tax information)* (C-788/19, EU:C:2022:55, paragraph 28 and the case-law cited).

[19] In the present case, this refers to the extension of the operation of certain nuclear power plants.

[20] It must also be stated that Article 8(1)(a) of Regulation 2022/1854 permits Member States, in essence, to differentiate between technologies. That regulation cannot, therefore, in any event, prevent the revenues subject to the cap from being determined on the basis of different methodologies depending on the electricity production technology at issue.

is based on presumptions in order to calculate the revenues of electricity producers subject to the cap, provided that such a system of presumptions ensures that the conditions set out in Article 8(2) of that regulation are complied with.

B. The third question referred for a preliminary ruling

56. By its third question, the referring court asks, in essence, whether Regulation 2022/1854, in particular Articles 6 to 8 and Article 22(2)(c) thereof, read in conjunction with its recitals, Article 288 TFEU and the principles of primacy, effectiveness and sincere cooperation, precludes national legislation which was adopted after the entry into force of that regulation, in implementation of it, and which extends the scope *ratione temporis* of the cap introduced in Article 6 of the regulation to a date earlier than that set by the regulation.

57. That question arises in the present case because the scope *ratione temporis* of the Belgian legislation is not the same as that provided for in Regulation 2022/1854, which that legislation is intended to implement. Specifically, the doubts expressed by the referring court as to the compatibility of that legislation with EU law stem from the fact that the legislation was adopted on 16 December 2022, after the adoption of Regulation 2022/1854, but the Belgian legislature nevertheless decided to apply the cap provided for in Article 6 thereof as from 1 August 2022, even though Article 22(2)(c) of that regulation provided that Articles 6 to 8 thereof, which concern the cap on revenues, were to apply from 1 December 2022 to 30 June 2023.

58. While there is no doubt that during the period covered by Regulation 2022/1854, Member States are required to comply with the conditions set out therein, it cannot be claimed, in my view, that outside the scope *ratione temporis* expressly provided for by that regulation, it can impose any obligations on those States, which, outside that period, remain free to regulate legal situations in accordance with their national law. Consequently, any application of the cap in question before that period would fall outside the scope *ratione temporis* of the regulation and would not therefore be covered by EU law.

59. While it is true that Regulation 2022/1854 does not expressly provide that the cap on surplus revenues may be applied in the manner that it was by the Belgian Government,[21] none of the provisions of that regulation indicates that the regulation should apply to a cap on revenues introduced by national legislation in relation to a period prior to the entry into force of the regulation and a fortiori that such legislation should comply with the conditions laid down by the regulation. Indeed, the date of entry into force of the cap on market revenues envisaged by the EU legislature could not have the effect of prohibiting Member States, in exercising their powers of taxation and subject to compliance with any provisions of EU law that may apply, from adopting measures which are identical to those set out in Regulation 2022/1854, but whose scope *ratione temporis* is not the same as that of the regulation.

[21] I note in that regard, as is apparent from the *travaux préparatoires* for Regulation 2022/1854, that the Commission's proposal for a regulation provided that the cap under Article 6 of that proposal would apply as of 1 December 2022, while stating that 'this shall be without prejudice to an earlier voluntary application by Member States'. That option available to Member States to apply the regulation retroactively was not, however, retained in the final version of the regulation.

60. Furthermore, in my view, the above considerations are not called into question by the fact that the national measure at issue was adopted pursuant to Regulation 2022/1854 and after its entry into force, as observed by the referring court.[22] The same holds for the fact highlighted by that court that the explanatory memorandum for the Electricity Law does not indicate that the cap at issue in the main proceedings is hybrid in nature: on the one hand, a measure implementing Regulation 2022/1854 for the period from 1 December 2022 and, on the other, a measure reflecting the exercise by the Kingdom of Belgium of its own competence for the period from 1 August to 30 November 2022. If the Belgian Government were to be regarded as having adopted, on a single legal basis, not one but two measures, each covering a different period, the problem raised by the referring court would not arise or, at the very least, it could be addressed differently such that the possibility of applying the cap in question to a period prior to the entry into force of Regulation 2022/1854 would therefore be left to the choice of the national legislature, which would, in my view, undoubtedly result in excessive formalism.

61. Even assuming that the application of a cap on realised revenues, before 1 December 2022, falls within the scope *ratione temporis* of Regulation 2022/1854, about which I am not convinced, as explained in points 59 to 60 of this Opinion, my position remains unchanged as regards the possibility available to Member States, after the entry into force of that regulation, to adopt national measures implementing the cap from a date earlier than that provided for in the regulation.

62. I recall in that regard that Regulation 2022/1854 does not bring about an exhaustive harmonisation but is an instrument for coordinating the different measures taken by Member States in the context of the energy crisis, thus allowing Member States a certain discretion when they implement it. It should be noted, moreover, that Article 8 of that regulation provides, in paragraph 1(a), that Member States may 'maintain or introduce measures that further limit the market revenues of producers generating electricity' from the sources listed in Article 7(1) thereof, provided that the conditions set out in Article 8(2) are complied with.

63. It would appear that, by using the word 'maintain', the EU legislature intended to refer to measures which were already in place before the entry into force of Regulation 2022/1854, that is to say, measures which had been adopted by Member States before 1 December 2022, and that those States were expressly given the option to maintain those measures. However, it is not clear from the wording of that regulation whether, by permitting the *introduction* of measures that further limit revenues, Article 8 of the regulation also permits a different temporal application of the cap, in this case earlier than that laid down by Regulation 2022/1854.

64. For the following reasons, I nevertheless consider that that interpretation is consistent with the objectives pursued by Regulation 2022/1854.

65. First, I believe that taking a different approach would result in a paradoxical situation whereby the validity of the measures adopted by other Member States during the period preceding the entry into force of Regulation 2022/1854 would not be called into question on the basis of Article 8(1)(a) thereof, which expressly permits the maintenance of such measures, whereas the measures put in place by the Belgian Government would, merely because their date of adoption was after that of the regulation, even though those measures are similar to those adopted by the

[22] In so far as the national legislation implements Regulation 2022/1854 for the period expressly provided for in Article 22 thereof and the Kingdom of Belgium thus complies with its obligation under EU law, the fact that a Member State opts to implement that cap on a different date, which is earlier than that explicitly provided for by the regulation, falls within its national powers of taxation.

other Member States, relate to the same time period (namely, the period preceding the entry into force of that regulation) and pursue the same objective of redistribution of surplus revenues to consumers affected by the energy crisis. [23]

66. Second, such an approach would raise questions in terms of equal treatment between producers subject to the cap, [24] since Belgian electricity producers or suppliers (particularly infra-marginal producers) would be able to retain surplus profits generated before the entry into force of Regulation 2022/1854, whereas those operating in other Member States would have their revenues taxed on the basis of the caps introduced by their respective Member States. [25]

67. Third, it seems difficult to envisage how the application of a cap on market revenues realised before the period covered by Regulation 2022/1854 could impede the application of the cap provided for in that regulation and the other objectives pursued by it and thus undermine the principles of the effectiveness of EU law and sincere cooperation about which the referring court asks. Given that, in that regulation, the EU legislature itself recognises that, at least from February 2022, price increases could not be justified by the normal functioning of the market, but represented an exceptional situation in which the Member States could take extraordinary measures, [26] the Belgian Government could not be criticised for having taken measures seeking specifically to remedy a market failure identified by Regulation 2022/1854. Furthermore, the fact that the Belgian Government decided to apply the same system applying a cap both for the period covered by that regulation and for the preceding period does not undermine the objectives pursued by the EU legislature but, quite the opposite, contributes to achieving them. [27]

68. In addition, if the national legislation at issue fell within the scope *ratione temporis* of Regulation 2022/1854, an examination of that legislation from the perspective of the principles of legal certainty and protection of legitimate expectations of market participants, to which the applicants in the main proceedings refer, would not, in all likelihood, call for a different response.

69. With regard to the principle of the protection of legitimate expectations, I note that, according to the Court's settled case-law, in order for an economic operator to be able to rely on that principle, a national authority must first have caused it to entertain reasonable expectations. [28] However, where a prudent and circumspect economic operator could have foreseen the adoption of a measure likely to affect its interests, that operator cannot plead that principle if the measure is adopted. [29]

[23] It should be noted in that regard that, according to the Commission report, seven Member States, including the Kingdom of Belgium, applied the cap retroactively.

[24] Notwithstanding the different approaches taken at national level in relation to the arrangements for applying levies to surplus revenues before the entry into force of Regulation 2022/1854.

[25] The same would apply to consumers since, if the Kingdom of Belgium were deprived of the option to apply the cap on market revenues prior to the entry into force of Regulation 2022/1854, and in the absence of equivalent measures financed by the national budget capable of compensating for the amounts levied on the producers concerned, Belgian consumers would be deprived of the economic support received, compared with consumers residing in Member States where the cap was applied before the entry into force of the regulation.

[26] See recital 28 of Regulation 2022/1854 and the Communication from the Commission of 8 March 2022 (COM(2022) 108 final, in particular p. 4), in which the Commission stated that Member States could consider temporary tax measures on windfall profits to finance such emergency measures.

[27] All the more so since the main objectives pursued by Regulation 2022/1854 include the EU legislature's desire to coordinate at EU level the measures taken by the different Member States, given that the introduction of uncoordinated caps on market revenues from electricity may lead to significant distortions between generators competing Union-wide.

[28] See, to that effect, order of 1 March 2022, *Milis Energy and Others* (C-306/19, C-512/19, C-595/19 and C-608/20 to C-611/20, EU:C:2022:164, paragraph 44 and the case-law cited). According to that case-law, economic operators cannot justifiably claim a legitimate expectation that an existing situation which may be altered by national authorities in the exercise of their discretionary power will be maintained.

[29] See also my Opinion in *Secab* (C-423/23, EU:C:2025:63, points 52 and 53).

70. In the present case, a prudent and circumspect economic operator should expect that the national authorities would intervene to remedy the market failure by adopting urgent, temporary measures to tackle the unpredictable increase in electricity prices on the market, with the result that, in that extraordinary context, the national authorities could not have caused the producers concerned to entertain any expectation as regards the retention of exceptional and unexpected revenues. [30]

71. With regard to the principle of legal certainty, I note that that principle must be observed all the more strictly in the case of rules liable to entail financial consequences and that it precludes an EU measure from taking effect from a point in time before its publication. [31] It may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected and, in so far as it follows clearly from the terms, objectives or general scheme of the rules concerned, that such effect must be given to them. [32]

72. Even if it were accepted that the Belgian Government applied the cap on revenues provided for by Regulation 2022/1854 retroactively, such an approach would, in my view, be justified in the circumstances of this case in the light of the public interest objective pursued by that measure, namely the protection of consumers through a short-term emergency intervention adopted to address the energy crisis. [33]

73. In the light of the foregoing, I propose that the following answer be given to the third question: Articles 6 to 8 and Article 22(2)(c) of Regulation 2022/1854, read in conjunction with its recitals, Article 288 TFEU and the principles of primacy, effectiveness and sincere cooperation, do not preclude national legislation which provides for the application of a system applying a cap on electricity producers' market revenues to a period prior to the entry into force of that regulation.

V. Conclusion

74. In the light of the foregoing considerations, I propose that the Court of Justice answer the questions referred for a preliminary ruling by the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) as follows:

(1) Articles 6, 7 and 8 of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, read in conjunction with Article 2(5) and (9) thereof, in the light of its recitals as a whole, and with, in particular, Article 288 TFEU and Article 6 TEU and with the principle of proportionality, must be interpreted as not precluding national legislation which is based on presumptions in order to calculate the

[30] Although this is a matter of national law which cannot be assessed by the Court and the merits of which the referring court alone has jurisdiction to examine, the argument put forward by the Belgian Government and the CREG that the national legislation at issue relates only to revenue generated during a tax year which has not yet ended when it enters into force, with the result that the situation at issue in the main proceedings was not a definitive situation from a taxation point of view, also appears to be relevant. It would thus seem that a tax measure may be adopted until the end of the taxable period, which generally corresponds to the calendar year, in respect of revenues obtained during that taxable period, with the result that it is possible that a tax measure which was adopted in December 2022 relates to revenues realised before that date, without that measure being classified under Belgian law as retroactive. Consequently, producers could not reasonably believe that revenues in excess of the expected level obtained during 2022 could be considered to be definitive and that they would no longer be subject to a tax measure, at least until the end of 2022.

[31] See judgment of 13 February 2019, *Human Operator* (C-434/17, EU:C:2019:112, paragraphs 35 and 36 and the case-law cited).

[32] See, by way of example, judgment of 4 May 2023, *Kapniki A. Michailidis* (C-99/22, EU:C:2023:382, paragraph 23 and the case-law cited).

[33] See, to that effect, judgments of 18 July 2013, *Citroën Belux* (C-265/12, EU:C:2013:498, paragraph 38 and the case-law cited), and of 23 January 2019, *Walbusch Walter Busch* (C-430/17, EU:C:2019:47, paragraph 42).

revenues of electricity producers subject to the cap, provided that such a system of presumptions ensures that the conditions set out in Article 8(2) of that regulation are complied with.

(2) Articles 6 to 8 and Article 22(2)(c) of Regulation 2022/1854, read in conjunction with the recitals of that regulation, Article 288 TFEU and the principles of primacy, effectiveness and sincere cooperation, must be interpreted as not precluding national legislation which provides for the application of a system applying a cap on electricity producers' market revenues to a period prior to the entry into force of that regulation.