Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

20 September 2017 *

(References for a preliminary ruling — Environment — Electricity generated by wind power — Directive 2009/28/EC — Promotion of the use of energy from renewable sources — Subparagraph (k) of the second subparagraph of Article 2 — Aid scheme — Subparagraph (e) of the second subparagraph of Article 13(1) — Administrative charges — Directive 2008/118/EC — General arrangements for excise duty — Article 1(2) — Other indirect taxes for specific purposes — Directive 2003/96/EC — Taxation of energy products and electricity — Article 4 — Minimum rate of taxation on energy — Levy imposed on turbines designed to produce electricity)

In Joined Cases C-215/16, C-216/16, C-220/16 and C-221/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha, Spain), made by decisions of 12 April 2016 (C-215/16 and C-216/16), of 8 April 2016 (C-220/16) and of 11 April 2016 (C-221/16), received at the Court on 18 April 2016 (C-215/16 and C-216/16) and on 20 April 2016 (C-220/16 and C-221/16), in the proceedings

Elecdey Carcelen SA (C-215/16),

Energías Eólicas de Cuenca SA (C-216/16),

Iberenova Promociones SAU (C-220/16),

Iberdrola Renovables Castilla La Mancha SA (C-221/16)

v

Comunidad Autónoma de Castilla-La Mancha,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan (Rapporteur), J.-C. Bonichot, C.G. Fernlund and S. Rodin, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 29 March 2017,

* Language of the cases: Spanish.

after considering the observations submitted on behalf of:

– Elecdey Carcelen SA, by R. Fiestas Hummler, abogado,

– Energías Eólicas de Cuenca SA, by J. Ruiz Calzado, L.M. Cazorla Prieto and J. Domínguez Pérez, abogados,

– Iberenova Promociones SAU and Iberdrola Renovables Castilla La Mancha SA, by J.M. Rodríguez Cárcamo and C. Jiménez Jiménez, abogados,

– the Comunidad Autónoma de Castilla-La Mancha, by A. Quereda Tapia, acting as Agent,

– the Spanish Government, by V. Ester Casas, acting as Agent,

– the European Commission, by K. Talabér-Ritz and F. Tomat and by P. Arenas Naon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 June 2017,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 4 of **Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51), of Article 1(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12), of subparagraph (k) of the second subparagraph of Article 2 and subparagraph (e) of the second subparagraph of Article 13(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16)**.

2 The requests have been made in proceedings between, on the one hand, Elecdey Carcelen SA, Energías Eólicas de Cuenca SA, Iberenova Promociones SAU and Iberdrola Renovables Castilla La Mancha SA, and, on the other, the Comunidad Autónoma de Castilla-La Mancha (Autonomous Community of Castilla-La-Mancha, Spain) concerning a levy imposed on wind power plants designed to produce electricity.

Legal context

EU law

Directive 2003/96

3 Article 1 of Directive 2003/96 provides:

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

4 Article 2(1) of that directive lists the products covered by the concept of 'energy products' within the meaning of that directive.

5 Article 2(2) of that directive states that it also applies to electricity falling within CN code 2716.

6 Under Article 4 of Directive 2003/96:

'1. The levels of taxation which Member States shall apply to the energy products and electricity listed in Article 2 may not be less than the minimum levels of taxation prescribed by this Directive.

2. For the purpose of this Directive "level of taxation" is the total charge levied in respect of all indirect taxes (except [value added tax] VAT) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.'

Directive 2008/118

7 Article 1 of Directive 2008/118 provides:

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

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

…

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

…'

Directive 2009/28

8 Article 1 of Directive 2009/28, entitled 'Subject matter and scope', provides:

'This Directive establishes a common framework for the promotion of energy from renewable sources. It sets mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport.'

9 Headed, 'Definitions', subparagraph (k) of the second subparagraph of Article 2 states:

'…

(k) "support scheme" means any instrument, scheme or mechanism applied by a Member State or a group of Member States, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments'.

10 Article 3 of Directive 2009/28, entitled ‘Mandatory national overall targets and measures for the use of energy from renewable sources’, provides:

‘1. Each Member State shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in the third column of the table in part A of Annex I. Such mandatory national overall targets are consistent with a target of at least a 20% share of energy from renewable sources in the Community’s gross final consumption of energy in 2020. In order to achieve the targets laid down in this Article more easily, each Member State shall promote and encourage energy efficiency and energy saving.

…

2. Member States shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I.

3. In order to reach the targets set in paragraphs 1 and 2 of this Article Member States may, inter alia, apply the following measures:

(a) support schemes;

…’

11 Under the heading ‘Administrative procedures, regulations and codes’, Article 13 of that directive provides:

‘1. Member States shall ensure that any national rules concerning the authorisation, certification and licensing procedures that are applied to plants and associated transmission and distribution network infrastructures for the production of electricity, heating or cooling from renewable energy sources, and to the process of transformation of biomass into biofuels or other energy products, are proportionate and necessary.

Member States shall, in particular, take the appropriate steps to ensure that:

…

(e) administrative charges paid by consumers, planners, architects, builders and equipment and system installers and suppliers are transparent and cost-related; …

…’

12 Annex I to Directive 2009/28, entitled ‘National overall targets for the share of energy from renewable sources in gross final consumption of energy in 2020’, sets out, in part A, the national overall targets, including that of the Kingdom of Spain, which is set at 20% for that year. Part B of that annex relates to the indicative trajectory referred to in Article 3(2) of that directive.

Spanish law

13 Article 4 of ley 9/2011, por la que se crean el canon eólico y el fondo para el desarrollo tecnológico de las energías renovables y el uso racional de la energía en Castilla-La Mancha (Law 9/2011, creating the levy on wind power and the Fund for the technological development of renewable energy and rational use of energy in Castilla-La Mancha), of 21 March 2011 (BOE No 105 of 3 May 2011), provides:

'1. The chargeable event for the purposes of the levy on wind power is constituted by the generation of harmful conditions and effects on the environment and on the territory, as a consequence of the installation on wind farms of turbines used for producing electricity.

…

3. The chargeable event will be deemed to have occurred even if the wind turbines are not owned by the holder of the administrative permit to install a wind farm.'

14 Article 6 of Law 9/2011, entitled 'Taxable persons', provides:

'1. The persons subject to taxation by the levy are those natural or legal persons or entities … which, in any capacity, operate a windfarm or wind generation installations even though they do not hold an administrative permit to install them.

It will be assumed, unless there is evidence to the contrary, that a windfarm is operated by the person or entity which appears as holder of the corresponding administrative permit to install it.

…'

15 Article 7 of Law 9/2011, entitled 'Tax base', states:

'1. The tax base is constituted by the total number of wind turbine units on a windfarm on the territory of the Autonomous Community of Castilla-La-Mancha.

…'

16 Article 8 of Law 9/2011, entitled 'Tax rate and tax liability', provides:

'1. The tax liability is determined by applying the following quarterly tax rates to the tax base:

– On wind farms with up to 2 wind turbines: EUR 0 for each wind turbine unit

– On wind farms with 3 to 7 wind turbines: EUR 489 for each wind turbine unit;

– On wind farms with 8 to 15 wind turbines: EUR 871 for each wind turbine unit;

– On wind farms with more than 15 wind turbines:
  (a) where the number of wind turbines is equal to or lower than the installed power of the farm measured in megawatts: EUR 1 233 for each wind turbine unit;
  (b) where the number of wind turbines is greater than the installed power of the farm measured in megawatts: EUR 1 275 for each wind turbine unit.

…'

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

17 The applicants in the cases in the main proceedings operate wind turbines designed to produce electricity in the territory of the Autonomous Community of Castile-La Mancha.

18 Having paid, in the tax year relating to 2011 and 2012, the levy established by Law 9/2011, but taking the view that that levy is unconstitutional and incompatible with EU law, those applicants requested the competent authorities to rectify the self-assessments submitted to that effect and to refund the amounts paid.

19 As those applications were rejected, those applicants each brought an action before the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha, Spain).

20 First of all, that court asks whether a levy, such as that provided for by Law 9/2011, is consistent with the objective pursued by Directive 2009/28, since that directive seeks to promote and to develop the consumption of renewable energies, enabling Member States to make use of the 'support schemes' set out in subparagraph (k) of the second subparagraph of Article 2 of that directive. In particular, such a levy, in addition to the other general and one-off taxes levied on the activity of the production of energy are likely to undermine the mandatory national overall targets referred to in Article 3(1) to (3) of that directive, read in conjunction with Annex I thereto, as regards the share of energy produced from renewable sources for the year 2020, which, in the case of the Kingdom of Spain, was set at 20%. That court also is uncertain as to the extent to which such a levy constitutes a levy compatible with subparagraph (e) of the second subparagraph of Article 13(1) of that directive, since that provision strictly limits possibility of Member States levying 'administrative charges'.

21 Next, the referring court has doubts as to whether that levy complies with Article 1(2) of Directive 2008/118, as interpreted in the light of the judgment of 27 February 2014, *Transportes Jordi Besora* (C-82/12, EU:C:2014:108), since that tax does not have a specific purpose but is intended to generate additional budgetary revenue for the public authorities.

22 Finally, that court wonders whether the levy at issue is compatible with Article 4(1) of Directive 2003/96, in that, by increasing the tax burden resulting from all the indirect taxes payable in Spain, the result may be a level of taxation in that Member State which exceeds the minimum level laid down in that provision and, therefore, leads to distortions of competition between Member States.

23 In those circumstances the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) As the "support systems" defined in Article 2(k) of Directive [2009/28], including fiscal stimuli consisting of tax reductions, exemptions and refunds, are envisaged as a means of attaining the renewable energy consumption objectives provided for in the aforementioned Directive 2009/28, are those stimuli or measures to be regarded as mandatory and binding on the Member States, having direct effect in so far as they may be invoked and relied on by the individuals concerned in all kinds of public, judicial and administrative proceedings?

(2) Since the list of "support systems" mentioned in the previous question includes fiscal stimulus measures consisting of, "but … not restricted to", tax reductions, exemptions and refunds, are those stimuli to be regarded as specifically including non-taxation, that is to say, the prohibition of any kind of specific and one-off levy, in addition to the general taxes levied on the economic activity and production of electricity, imposed on energy from renewable sources? Similarly, the following question is also asked in this paragraph: Is the general prohibition stated above also

considered to include the prohibition of concurrence, double taxation or overlapping of multiple general or one-off taxes charged at different stages of the activity of generating renewable energy, affecting the same chargeable event taxed by the levy on wind power under consideration?

(3) If the answer to the previous question is in the negative and it is acknowledged that energy from renewable sources is taxable, for the purposes of the provisions of Article 1(2) of Directive [2008/118], is the term "specific purposes" to be interpreted as meaning that its objective must be exclusive and, furthermore, that the tax on renewable energy must, as regards its structure, be genuinely non-fiscal, and not merely budgetary or revenue-collecting in nature?

(4) In accordance with the provisions of Article 4 of Directive [2003/96], which, when referring to the levels of taxation which Member States are to apply to the energy products and electricity takes as its reference the minimum levels prescribed by [that] directive, which are understood to be the total of all direct and indirect taxes applied to those products at the time of release for consumption, should that total be understood as excluding from the level of taxation required by [that] directive those national taxes which, as regards their structure and specific purposes, are not genuinely non-fiscal, as interpreted according to the reply to the previous question?

(5) Is the term "charge" used in Article 13(1)(e) of Directive [2009/28] an autonomous concept of European law which is to be interpreted more broadly, as comprehensive and also synonymous with the concept of tax in general?

(6) If the answer to the previous question is in the affirmative, the question we raise is the following: May the charges, referred to in the aforementioned Article 13(1)(e) of Directive [2009/28], payable by consumers, include only those levies or taxes which are designed to compensate, where appropriate, for the damage caused by the impact of energy from [renewable sources] on the environment and seek to make good, using the revenue generated, the damage linked to that adverse impact or effect, but not those taxes or benefits which, applying to non-polluting energy, fulfil a primarily budgetary or tax-collecting purpose?'

24 By a decision of 6 June 2016, the President of the Court decided to join Cases C-215/16, C-216/16, C-220/16 and C-221/16 for the purposes of the written and oral procedures and the judgment.

Consideration of the questions referred

Interpretation of Directive 2009/28

25 By its first, second, fifth and sixth questions, the referring court asks, in essence, whether Directive 2009/28, in particular subparagraph (k) of the second subparagraph of Article 2 and subparagraph (e) of the second subparagraph of Article 13(1) thereof, must be interpreted as precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity.

26 In that regard, it should be borne in mind that the purpose of Directive 2009/28, as set out in Article 1 thereof, is to lay down a common framework for the promotion of energy from renewable sources by setting mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy.

27 Accordingly, under Article 3(1) of Directive 2009/28, Member States have an obligation to ensure that the share of energy from renewable sources in gross final consumption of energy in 2020 is at least its national overall target, such as set out in in part A of Annex I to that directive, which must be consistent with the target of reaching a share of energy from renewable sources of at least 20%.

28 Moreover, in accordance with Article 3(2) of that directive, Member States are required to introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I to that directive.

29 In order to reach those targets, Member States may, according to Article 3(3) of Directive 2009/28, apply the 'support schemes' within the meaning of subparagraph (k) of the second subparagraph of Article 2 thereof, and therefore, inter alia, investment aid, tax exemptions or reductions, tax refunds or even impose renewable energy obligation support schemes.

30 However, it must be held that none of those provisions precludes Member States from imposing a levy, such as that at issue in the cases in the main proceedings, on wind turbines designed to produce electricity.

31 As is apparent from the very wording of Article 3(3) of Directive 2009/28, and in particular the word 'may', Member States are not obliged, in order to promote the use of energy from renewable sources, the adoption of support schemes or, a fortiori, if they choose to adopt such schemes, to design such schemes in the form of tax exemptions or reductions.

32 Accordingly, Member States have discretion as to the measures they consider appropriate to achieve the mandatory overall national targets set out in Article 3(1) and (2) of Directive 2009/28, read in combination with Annex I to that directive.

33 Accordingly, the possibility for Member States, as provided for in Article 3(3) of Directive 2009/28, to adopt support schemes to promote the use of energy produced from renewable sources, where appropriate, in the form of tax exemptions or reductions, in no way implies that they would be prevented from taxing undertakings developing such energy sources, in particular wind turbines for the production of electricity.

34 Nor does subparagraph (e) of the second subparagraph of Article 13(1) of Directive 2009/28, also referred to by the referring court, preclude the imposition of a levy such as that at issue in the cases in the main proceedings.

35 In that regard, it is sufficient to note that that provision merely provides, in order to ensure that the proportionate and necessary nature of the authorisation, certification and licensing procedures apply, in particular, to plants for the production of electricity from renewable energy sources, that 'administrative charges' paid by 'consumers, planners, architects, builders and equipment and system installers and suppliers are transparent and cost-related'.

36 It is thus clear from the very wording of that provision that it is intended solely to control the passing on, to the users concerned, of the costs relating to the supply of services provided in the context of certain administrative procedures and that it therefore is not aimed at prohibiting Member States from introducing taxes such as the levy at issue in the cases in the main proceedings.

37 It follows that neither Article 3(1) to (3) of Directive 2009/28, read in conjunction with subparagraph (k) of the second subparagraph of Article 2 and Annex I to that directive, nor subparagraph (e) of the second subparagraph of Article 13(1) thereof prohibit Member States from imposing a levy, such as that at issue in the cases in the main proceedings, on wind turbines designed to produce electricity.

38 It is true that the increase in the use of renewable energy sources for the production of electricity constitutes one of the important components of the package of measures needed in order to reduce greenhouse gas emissions, which are amongst the main causes of climate change that the European Union and its Member States have pledged to combat, and to comply, in particular, with the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Such an increase is also

designed to protect the health and life of humans, animals and plants, which are among the public interest grounds listed in Article 36 TFEU. Moreover, it is also clear from Article 194(1)(c) TFEU that the development of renewable energy is one of the objectives that must guide EU energy policy (judgment of 1 July 2014, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraphs 78 to 81).

39 Nevertheless, it cannot be ruled out that a levy, such as that at issue in the cases in the main proceedings, may make the production and use of wind power less attractive as well as jeopardise its development.

40 However, even assuming that it were accepted that that levy, notwithstanding its regional scope and the fact that it relates to a single renewable energy source, is capable of meaning that the Member State concerned does not comply with the mandatory national overall target set out in part A of Annex I to Directive 2009/28, the result would be, at most, an infringement, by that Member State, of its obligations under that directive, without, thereby, the imposition of such a levy being regarded in itself as contrary to that directive, since the Member States have, as pointed out in paragraph 32 above, discretion to attain that objective, provided that they observe the fundamental freedoms guaranteed by the TFEU.

41 In the light of the foregoing considerations, the answer to the first, second, fifth and sixth questions is that Directive 2009/28, in particular subparagraph (k) of the second subparagraph of Article 2 and subparagraph (e) of the second subparagraph of Article 13(1) thereof, must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity.

Interpretation of Directive 2003/96

42 By its fourth question, the referring court asks, in essence, whether Article 4 of Directive 2003/96 is to be interpreted as precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity.

43 That question is accordingly based on the premiss that Directive 2003/96, Article 4(1) of which provides that Member States are not to apply to the energy products and electricity listed in Article 2 thereof levels of taxation less than the minimum levels of taxation prescribed by that directive, applies ratione materiae to the disputes in the cases in the main proceedings.

44 In accordance with Article 1 of Directive 2003/96, its scope is restricted to the taxation of ‘energy products’ and ‘electricity’, as defined in Article 2(1) and (2) of that directive (see judgment of 1 October 2015, *OKG*, C-606/13, EU:C:2015:636, paragraph 24).

45 In those circumstances, it must first be ascertained whether a levy, such as that at issue in the cases in the main proceedings, taxes ‘energy products’ or ‘electricity’ within the meaning of those provisions, and, therefore, falls within the scope of Directive 2003/96.

46 In that regard, it is appropriate to begin by recalling that Article 2(1) of Directive 2003/96 defines ‘energy products’ for the purposes of that directive by drawing up an exhaustive list of the products covered by that definition by reference to the codes of the combined nomenclature (judgments of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 47, and of 1 October 2015, *OKG*, C-606/13, EU:C:2015:636, paragraph 26).

47 It is common ground that the wind turbines at issue in the cases in the main proceedings do not use, for the production of the energy which they generate, any of the energy products included in that list.

48 In contrast, it is not disputed that those wind turbines produce 'electricity' within the meaning of Article 2(2) of Directive 2003/96.

49 That being so, it is apparent from the orders for reference that the levy at issue in the cases in the main proceedings, which applies to those wind turbines, is not calculated, as the Advocate General stated in points 59 and 60 of her Opinion, by reference to the electricity generated by the turbines or based on their theoretical capacity, but consists of a quarterly fixed rate amount which varies according to the size of the wind farm in which the turbine belongs and, for wind farms with more than 15 turbines, also according to the power of the turbines, the amount of the levy being, moreover, higher if the wind turbine is less powerful. In addition, that levy is payable solely based on the ownership of a turbine or holding of an administrative authorisation, even in the absence of operating it and irrespective of the sale of electricity generated by wind power.

50 Moreover, since the levy at issue in the cases in the main proceedings is not collected from consumers of electricity, it is in no way dependent on the consumption of electricity. Moreover, and in any event, although it cannot be ruled out that the amount of that levy should be included in the price of electricity sold to consumers, it does not appear possible, account being taken of the specific nature of that product, to determine its origin, and, consequently, to identify the part of it which has been produced by the wind turbines subject to that levy, so that it is impossible to charge the consumer for that in the form of a transparent surcharge.

51 Consequently, there is no connection between, on the one, hand, the operative event for the levy at issue in the cases in the main proceedings and, on the other, the actual production of electricity by wind turbines, and even less the consumption of electricity generated by them (see, by analogy, judgments of 10 June 1999, *Braathens*, C-346/97, EU:C:1999:291, paragraphs 22 and 23; of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraphs 61 to 65; and of 1 October 2015, *OKG*, C-606/13, EU:C:2015:636, paragraphs 31 to 35).

52 It follows that a levy, such as that at issue in the cases in the main proceedings, does not tax electricity within the meaning of Directive 2003/96.

53 Accordingly, a levy, such as that at issue in the main proceedings, which applies to wind turbines designed to produce electricity, does not fall within the scope of that directive, such as it is as defined in Article 1 and Article 2(1) and (2) thereof.

54 In the light of the foregoing considerations, the answer to the fourth question is that Article 4 of Directive 2003/96 must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity, since that levy does not tax energy products or electricity, within the meaning of Article 1 and Article 2(1) and (2) of that directive, and, therefore, does not fall within its scope.

Interpretation of Directive 2008/118

55 By its third question, the referring court asks whether Article 1(2) of Directive 2008/118 is to be interpreted as precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines for the production of electricity.

56 It should be borne in mind that under Article 1(1), Directive 2008/118 lays down the general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the products listed in that provision, in particular Article 1(1)(a) 'energy products and electricity covered by Directive 2003/96'.

57 Moreover, according to Article 1(2) of that directive, goods which are subject to that excise duty may also be subjected to indirect taxes other than that excise duty, but only if, first, such a tax is levied for one or more specific purposes and, second, it complies with the EU tax rules applicable to excise duty and VAT as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned, not including the provisions on exemptions (see, to that effect, judgment of 5 March 2015, *Statoil Fuel & Retail*, C-553/13, EU:C:2015:149, paragraph 35).

58 As the Court has already held, that provision, which seeks to take due account of the Member States' different fiscal traditions in this regard and the frequent recourse to indirect taxation for the implementation of non-budgetary policies, allows Member States to introduce, in addition to minimum excise duty, other indirect taxes having a specific purpose (judgment of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 58).

59 In the present case, the applicants in the cases in the main proceedings claim that the levy at issue is an indirect tax which does not have such a specific purpose, since that levy, far from being aimed at protecting the environment, on the contrary, adversely affects it, by deterring investment in wind-powered electricity generation facilities and, therefore, constitutes an obstacle to the development of renewable energy sources. In any event, the proceeds of that tax would not necessarily be used to offset the costs of the alleged negative environmental effects of wind farms. The sole purpose of that tax is therefore to provide the competent authorities with additional budgetary revenue.

60 In contrast, the Spanish Government and the Autonomous Community of Castilla-La Mancha consider that that levy, apart from not being an indirect tax, since it directly affects the economic capacity of producers of electricity generated by wind power, has a specific environmental purpose, since it is intended to internalise the costs of environmental damage caused by the development of wind farms, in order to promote technological innovation by reducing the number of those farms or their size.

61 It should, however, be borne in mind that Article 1(2) of Directive 2008/118 refers, as is clear from paragraph 57 of the present judgment, only to indirect taxes, other than 'excise duty', which are levied directly or indirectly on the consumption of 'excise goods', such as those listed in Article 1(1) of that directive (judgment of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 59).

62 Although the latter provision refers to 'energy products and electricity covered by Directive 2003/96', it indeed follows from paragraphs 46 to 52 of the present judgment that a levy, such as that at issue in the cases in the main proceedings, which applies to wind turbines designed to produce electricity, does not tax the consumption of energy products or electricity, within the meaning of that directive.

63 Therefore, such a levy, since it is not imposed on the consumption of energy products or electricity, does not fall within of Directive 2008/118.

64 It follows that the question of whether that levy has environmental protection as its objective is a matter for national law alone.

65 Having regard to the foregoing considerations, the answer to the third question is that Article 1(2) of Directive 2008/118 is to be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity, since that levy does not constitute a tax imposed on the consumption of energy products or electricity, and, therefore, does not fall within the scope of that directive.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, in particular, subparagraph (k) of the second subparagraph of Article 2** and subparagraph (e) of the second subparagraph of Article 13(1) thereof, must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity.

2. **Article 4 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity, since that levy does not tax energy products or electricity, within the meaning of Article 1 and Article 2(1) and (2) of that directive, and, therefore, does not fall within its scope.**

3. **Article 1(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity, since that levy does not constitute a tax imposed on the consumption of energy products or electricity, and, therefore, does not fall within the scope of that directive.**

[Signatures]