

# ECJ Advocate General Opines on Environmental Nature of Spanish Tax on Coal: Endesa Generación (Case C-833/21) (Excise)

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On 2 February 2023, Advocate General Athanasios Rantos of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *Endesa Generación, S.A. v. Tribunal Económico Administrativo Central* (Case C-833/21) on whether article 14(1)(a) of the [Energy Taxation Directive \(2003/96\)](#) is to be interpreted as meaning that national legislation providing for taxation of coal used to produce electricity fulfils the requirement that the tax must be imposed "for reasons of environmental protection", when (i) an environmental purpose is not included in the structure of the said tax; (ii) the product of this same tax is used to finance the costs of the national electricity system; and (iii) the use of some other energy products is not taxed.

In this case, the Advocate General proposed that the ECJ answer the questions referred to as follows:

"Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 on the taxation of energy products and electricity [[Energy Taxation Directive \(2003/96\)](#)] must be interpreted as meaning that national legislation providing for the taxation of coal used to produce electricity fulfils the requirement that the tax must be imposed 'on grounds of environmental protection policy' where, in a situation where the national legislator invoked the objective of environmental protection for adopting this tax, an environmental purpose is not included in the structure of said tax when its percentage is fixed according to the calorific value of coal, its collection is intended to finance the costs of the national electricity system and the use of other energy products considered less harmful to the environment is not taxed."

(Unofficial translation)

A more substantial report containing details of the Advocate General's reasoning will be published in due course.