

ECJ Preliminary Ruling Request (Excise): *Hera Comm* (Case C-645/23) – Corte d'appello di Bologna Submits Referral on Excise Duty on Electricity

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On 5 February 2023, a preliminary ruling request, lodged on 26 October 2023, was published in the Official Journal of the European Union. In the request, the Corte d'appello di Bologna (Court of Appeal, Bologna, Italy) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Hera Comm SpA v. Falconeri Srl* (Case C-645/23) on the interpretation of article 1(2) of [Council Directive 2008/118/EC](#) in order to determine whether a national additional tax to the excise duty on electricity usage may be classified as "[an]other indirect tax" within the meaning of that article or should it be considered as an increase of the excise duty rate.

The Corte d'appello di Bologna requested the ECJ to answer the following question:

"Does an additional tax on electricity excise duty, levied by the Member State as a fraction or multiple of the excise duty to which the product is already subject, fall within the concept of 'other indirect taxes' referred to in 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, or must it be understood as a mere increase in the rate of the excise duty, with the result that the Member State is at liberty not to use it for the 'specific purposes' required by Article 1(2) of Directive 2008/118/EC?

If the additional tax on electricity excise duty falls within the concept of 'other indirect taxes', must Article 1(2) of Council Directive 2008/118/EC of 16 December 2008 be interpreted as meaning that it meets the conditions for being relied on by a private individual before a national court for the purposes of:

challenging the seller of the product subject to the additional excise duty, to which the private individual has paid the indirect tax, on the ground that the Member State's tax charge to the vendor is unlawful because it is based on a national provision contrary to the Directive; and

as a result, recovering from the vendor the undue payment that it claimed from him?"

