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By PwC Deutschland | 21. November 2025

Stay of execution of EU energy crisis contribution

In a recently published interim decision, the Supreme Tax Court expressed considerable doubts as to the legitimacy of the German Energy Crisis Contribution Act which was in force for years 2022 and 2023.

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Que Sera Sera, the future's not ours to see: What has become of the erstwhile German Energy Crisis Contribution Act

Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices had established an emergency intervention to mitigate the effects of high energy prices through exceptional, targeted and time-limited measures. The principles of Regulation (EU) 2022/1854 were implemented by Germany in the Energy Crisis Contribution Act which was to be applied for 2022 and 2023. It has been a temporary windfall tax on companies in the oil, gas, coal, and refining sectors, implemented as part of an EU-wide measure and the Regulation (EU) 2022/1854 to address the energy crisis.

What has become of the “windfall tax” as implemented in the EU countries? Quite a number of disputes are presently pending before the European Court of Justice (ECJ) and the General Court. For this reason, the Supreme Tax Court is reluctant to deny a taxpayer interim relief in the form of suspension from execution.

Background

The applicant, a company in the fossil fuel industry, had reported an EU energy crisis contribution for 2022 in accordance with Regulation (EU) 2022/1854 which was paid directly to the Federal Central Tax Office (FCTO). The FCTO rejected the appeal against the following tax assessment as unfounded. The company then filed an application for suspension from execution (AdV) and brought the matter before the tax court of Cologne who granted the request for interim relief.

The FCTO then brought an appeal against the suspension of enforcement granted by the lower tax court. It believes that there is no doubt as to the legitimacy of the EU regulation in question by maintaining that the regulation is binding for Germany pursuant to Article 288(2) sentence 2 of the Treaty on the Functioning of the European Union (TFEU). The solidarity contribution as provided in Chapter III of the EU regulation (EU) 2022/1854 was permissibly based on Article 122(1) TFEU.

Decision of the Supreme Tax Court

The Supreme Tax Court held the application for interim relief to be justified and dismissed the appeal of the FCTO as unfounded. There are indeed serious doubts about the legitimacy of the EU energy crisis contribution, especially with regard to a possible violation of EU law.

The contested tax declaration in dispute is based on Section 7 (1) of the Energy Crisis Contribution Act. Such self-assessed tax return is equal to a tax assessment subject to later review (Section 168 Fiscal Code).

There are several questions under EU law that have not (yet) been clarified and are the subject of various proceedings still **pending before the ECJ and the General Court**. In this context the Supreme Tax Court believes that a request for a preliminary ruling to the ECJ would also be necessary in the case at hand to clarify whether Regulation (EU) 2022/1854 on which the German EU Energy Crisis Contribution Act is based was formally adopted in accordance with EU law and, if so, whether the individual provisions of the

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Act are consistent with EU law. All of this gives rise to serious doubts within the meaning of Section 69 (2) sentence 2 of the Code of Procedure of Fiscal Courts (*Finanzgerichtsordnung - FGO*).

The Supreme Tax Court refers to the ECJ decision of 21 February 1991 (joint cases **C-143/88 und C-92/89** *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, para. 23), according to which interim measures suspending enforcement of a contested measure may be adopted if the factual and legal circumstances relied on by the applicants are such as to persuade the national court that serious doubts exist as to the validity of the Community regulation on which the contested administrative measure is based. Only the possibility of a finding of invalidity, a matter which is reserved to the Court, can justify the granting of suspensory measures.

A request for a preliminary ruling is currently pending before the ECJ in Case **C-358/24** - *Varo Energy Belgium and others*. The subject of which is whether Regulation (EU) 2022/1854 is compatible with EU law. This concerns not only the question of compatibility with Article 122(1) TFEU but also whether Regulation (EU) 2022/1854 violates the principle of equality and non-discrimination because the Regulation and the national (Belgian) law implementing it only apply to certain market participants in the energy sector. Further questions referred concern, among others, the prohibition of retroactive effect and the question of the effects of a possible infringement of Regulation (EU) 2022/1854 on the national implementing law.

One other proceeding of interest currently pending before the ECJ is case **C-251/24** *Axpo Energy Romania*. A request for a preliminary ruling from the High Court (Ireland) of 1 August 2024 before the ECJ in case number **C-533/24** *Vermilion Energy Ireland et al* is also of interest.

A number of proceedings are **pending before the General Court of the EU** in cases T-759/22, T-775/22, T-802/22, and T-803/22. These are actions brought by companies in the energy sector against the Council of the European Union.

Source:

Supreme Tax Court interim decision dated 27 October 2025 case II B 5/25 (AdV) published on 13 November 2025.

Schlagwörter

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