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ECJ: Temporary solidarity contribution on surplus profits of energy sector companies

In his Opinion, Advocate General Rantos proposes that the temporary solidarity contribution on surplus profits of energy sector companies, introduced in response to the energy crisis caused by the war in Ukraine, is consistent with EU law.

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The Italian and Belgian Constitutional Courts, as well as the High Court (Ireland), referred **questions** to the European Court of Justice (ECJ) **for a preliminary ruling** on the validity of the Regulation and for clarification of certain provisions, in order to enable them to assess the compatibility of the national measures, which were being challenged before them, with EU law.

In his Opinion delivered on 22 October 2026, Advocate General Athanasios Rantos considers that the EU Regulation, as well as the resulting national measures, remain legitimate on account of their exceptional and temporary nature.

1. Article 122(1) TFEU constitutes a valid legal basis for the adoption of the regulation at issue. The solidarity contribution is an urgent, temporary and proportionate economic measure intended to mitigate the effects of the energy crisis on businesses and consumers, through a coordinated effort by the Member States, in accordance with the principle of solidarity.

2. Member States may, within the scope of their fiscal competences, extend the temporary solidarity contribution to other entities, in particular those that have benefited from windfall energy profits due to the specificities of their energy market, provided that the overall burden and objectives of the national measures remain equivalent to those of the EU regulation.

3. The exceptional and temporary nature of the temporary solidarity contribution provided for by the EU rules, introduced in 2022

(i) precludes it from being classified as a retroactive measure or as contrary to the principles of legal certainty and legitimate expectations, and

(ii) is not covered by the prohibition on customs duties and charges having equivalent effect, 7 which concerns only taxes on the product when it crosses a border.

4. The restriction on certain operators, based on objective criteria and targeting the largest companies in terms of market share, does not constitute a selective difference in treatment. Consequently, it does not constitute State aid.

ECJ, case reference C-153/25 *Acea Produzione and Others*, C-358/24 *Varo Energy Belgium and Others* and C-533/24 *Vermilion Energy Ireland and Others* - Opinion delivered on 22 October 2026. – **Press release No. 153/26**.

Keywords

energy tax, solidarity surcharge, surplus income