

2. If those provisions are to be interpreted as requiring a rolling reference period, may the possibility afforded by Article 17 to derogate from Article 16(b) relate not only to the duration of the reference period but also to the requirement for a rolling period?

⁽¹⁾ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

**Request for a preliminary ruling from the Conseil d'État (France) lodged on 19 April 2018 — UPM
France v Premier ministre, Ministre de l'Action et des Comptes publics**

(Case C-270/18)

(2018/C 211/22)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: UPM France

Respondent: Premier ministre, Ministre de l'Action et des Comptes publics

Questions referred

1. Must [...] Article 21[(5), third subparagraph] of Directive [2003/96] ⁽¹⁾ be interpreted as meaning that the tax exemption which that provision allows Member States to grant to small producers of electricity, provided that they tax the energy products used for the production of that electricity, may apply in circumstances such as those described in paragraph 7 of the present decision for the period prior to 1 January 2011 during which France, as was permitted by the directive, had not yet introduced domestic tax on final consumption of electricity or, accordingly, the exemption of small producers from that tax?
2. If the answer to the first question is in the affirmative, how must [...] Article 14[(1)(a)] and [...] Article 21[(5), third subparagraph] of Directive 2003/96 be combined as regards small producers which consume the electricity that they produce for the purposes of their business? Specifically, do those Articles require that there be a minimal level of taxation resulting from either (i) the electricity produced being taxed and the natural gas used being exempted from tax, or (ii) the production of electricity being exempt from tax and the State then being required to tax the natural gas used?

⁽¹⁾ 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).