

## TEACHING CASE

### REGULATION GAMES: WHO IF BENEFIT?

### JOGOS DE REGULAÇÃO: QUEM SE BENEFICIA?

#### SUMMARY

This case to teaching discuss the regulation windfall tax under the perspective from the Regulation Theory. The dilemma of the case involves the inherent controversies the enactment of Regulation 2022/1854 of the Council of the European Union (CUE, 2022), initially adopted by Portugal for companies in the energy sector. Specifically, the case addresses the perspective of entrepreneurs and investors, affected by the regulation, who seek to do lobbying node purpose of defend your interests together to the block from the European Union. The case for teaching enables undergraduate and postgraduate students in Accounting, Administration, Economics, International Relations and Law discuss the various aspects of Regulatory Theory, such as: public interest, interest groups and capture. In addition, it provides students with the opportunity to discuss the contradictory aspects involving the concept of lobbying .

**Words key:** Theory from the Regulation; Windfall tax ; Lobbying .

#### ABSTRACT

This teaching case discusses windfall tax regulation from the perspective of Regulation Theory. The dilemma of the case involves the controversies inherent to the promulgation of regulation 2022/1854 of the Council of the European Union (CUE, 2022), initially adopted by Portugal for companies in the energy sector. Specifically, the case deals with the perspective of businesspeople and investors, affected by the regulation, who seek to lobby in order to defend their interests with the European Union bloc. The teaching case allows undergraduate and postgraduate students in Accounting, Administration, Economics, International Relations and Law to discuss the various aspects of Regulation Theory, such as: public interest, interest groups and capture. Furthermore, it provides students with the possibility of discussing the contradictory aspects surrounding the concept of lobbying.

**Keywords :** Regulation Theory; Windfall rate; Lobbying.

#### RESUMO

Este caso para ensino discute o regulamento *windfall tax* sob a perspectiva da Teoria da Regulação. O dilema do caso envolve as polêmicas inerentes à promulgação do regulamento 2022/1854 do Conselho da União Europeia (CUE, 2022), adotado inicialmente por Portugal para as empresas do setor energético. Especificamente, o caso trata da perspectiva de empresários e investidores, afetados pelo regulamento, que buscam fazer *lobbying* no intuito de defenderem seus interesses junto ao bloco da União Europeia. O caso para ensino possibilita aos estudantes de graduação e pós-graduação em Ciências Contábeis, Administração, Economia, Relações Internacionais e Direito discutirem as várias vertentes da Teoria da Regulação como, por exemplo: interesse público, grupos de interesse e captura. Além disso, proporciona aos estudantes a possibilidade de discussão dos aspectos contraditórios envolvendo o conceito de *lobbying*.

**Palavras chave:** Teoria da Regulação; *Windfall tax*; *Lobbying*.

#### Clariovaldo Enias Tavares da Silva

Doutorando em Ciências Contábeis pela Universidade Federal de Uberlândia (UFU). Mestre em Ciências Contábeis pela Universidade Federal de Pernambuco (UFPE). Especialista em Contabilidade e Controladoria governamental pela Universidade Federal de Pernambuco (UFPE). Graduado em Ciências Contábeis pela Universidade Federal de Pernambuco (UFPE). E-mail: [enisilvavla@gmail.com](mailto:enisilvavla@gmail.com) ORCID: <https://orcid.org/0000-0002-4952-7095> Lattes: <https://lattes.cnpq.br/9004581220530168>

#### Ana Claudia Santo Lima

Doutoranda em Ciências Contábeis pela Universidade Federal de Uberlândia (UFU). Mestra em Contabilidade Financeira pela Universidade Federal de Goiás (UFG). Graduada em Ciências Contábeis pela Faculdade de Educação São Francisco (FAESF). E-mail: [santolimanaclaudia@gmail.com](mailto:santolimanaclaudia@gmail.com) ORCID: <https://orcid.org/0000-0002-7724-3292> Lattes: <http://lattes.cnpq.br/7047882215503695>

#### Patrícia de Souza Costa

Doutora em Controladoria e Contabilidade pela Faculdade de Administração, Economia e Contabilidade de São Paulo (FEA-USP). Mestre em Controladoria e Contabilidade pelo Programa Multi-institucional e Inter-regional de Pós-graduação em Ciências Contábeis UnB/UFPE/UFPB/UFRN. Mestre em Controladoria e Contabilidade pelo Programa Multi-institucional e Inter-regional de Pós-graduação em Ciências Contábeis UnB/UFPE/UFPB/UFRN. Docente no Programa de Pós-Graduação em Ciências Contábeis da Universidade Federal de Uberlândia (PPGCC/UFU). E-mail: [patricia.costa@ufu.br](mailto:patricia.costa@ufu.br) ORCID: <https://orcid.org/0000-0001-5087-1419>. Lattes: <https://lattes.cnpq.br/8022652632072207>

#### Lucimar Antônio Cabral de Ávila

Doutor em Administração de Empresas pela Escola de Administração de Empresas de São Paulo - Fundação Getúlio Vargas – EAESP/FGV. Mestre em Economia pela Universidade Federal de Uberlândia – UFU. Especialista em Contabilidade e Controladoria pela Universidade Federal de Uberlândia – UFU. Graduado em Ciências Contábeis pela Universidade Federal de Uberlândia – UFU. Professor Associado na Faculdade de Ciências Contábeis Universidade Federal de Uberlândia – UFU, Professor Permanente no Programa de Pós-Graduação em Ciências Contábeis da Universidade Federal de Uberlândia. E-mail: [lcavila@ufu.br](mailto:lcavila@ufu.br) ORCID: <https://orcid.org/0000-0002-8244-155X> Lattes: <http://lattes.cnpq.br/2444591575189923>

## 1. CASE FOR TEACHING

### 1.1 The regulation of energy sector in the European Union

In September 2022, the European Union (EU) Energy Ministers reached a political agreement in Brussels to adopt a regulation called the *windfall tax* (WT) on profits from oil and gas extraction in the United Kingdom (Wright, 2022). This tax represents an emergency government intervention, considering that energy operators have made extraordinary unexpected profits in recent months, without operating costs increasing, due to the end of Covid-19 restrictions and the invasion of Ukraine by Russia (Wright, 2022). Specifically, this intervention aims to mitigate high electricity prices, mandatorily reduce electricity consumption, limit the revenues of infra-marginal electricity producers, and encourage a solidarity contribution from producers of fuels fossils and support to the what face difficulties with the high price of energy (CUE, 2022).

Regulation WT 2022/1854 of the Council of the European Union provides for a mandatory 5% reduction in electricity consumption during so-called peak hours, allowing Member States flexibility in setting the schedules in what intend apply this cut (CUE, 2022). Furthermore, this regulation foresees that Member States collect a solidarity contribution by applying a minimum rate of 33% on the profits of electricity operators when these exceed 20% of the average of the last four years (CUE, 2022). The revenues from this contribution will be used to provide support financial support to end electricity customers, such as families, small and medium-sized enterprises and energy-intensive sectors, seeking mitigate you effects of rising electricity prices (CUE, 2022).

In situations where a Member State's dependence on net imports is equal to or greater than 100%, it should celebrate, until 1st of December of 2022, one agreement destined the appropriately share surplus revenues with the exporting Member State (CUE, 2022).

Within this context, several European countries have implemented or announced that they will implement the *windfall tax*, adopting different models and covering different sectors of activity. For example, the United Kingdom has chosen to apply the tax on extraordinary or unexpected profits only to the oil and gas extraction sector, but has anticipated an extension to the energy sector (Ferreira, 2024). Hungary will apply this tax to several sectors of activity (energy, telecommunications, retail trade and airlines), providing different regimes for each sector (Ferreira, 2024). The term of validity of this contribution, in most countries, expires between 2023 and 2025.

It is worth noting that Germany, France, Austria, Ireland and Belgium did not immediately move forward with taxes on extraordinary or unexpected profits (Ferreira, 2024).

### 1.2 The Portuguese context

Portugal has approved the European Commission's proposal to the creation of the *windfall tax* and called it the Temporary Solidarity Contribution (CTS). This contribution will be at least 33% on the unexpected profits of electricity operators and the food retail sector, in line with that decided at European level (Pimenta, 2022; Crisóstomo, 2022). This measure will come into force in 2022 and will last for two years. The Portuguese government expects to collect between 50 and 100 million euros per year with this contribution (Pimenta, 2022; Crisóstomo, 2022). "The new tax aims to redistribute these excess profits in an inflationary context [...], there must be social justice", said Nuno Félix, head of tax affairs at the Portuguese Ministry of Finance to Parliament before the vote (Gonçaves, 2022, p. 1).

The profit of Galp, a Portuguese oil company that explores and produces oil and natural gas, refines and distributes petroleum products, distributes and sells natural gas, generates and commercializes electricity, rose 86% in the first nine months of 2022, but the company said this was essentially due to its production in Brazil and Angola and the rise in the price of crude oil (Galp, 2022; Gonçalves, 2022). Portugal's second-largest retailer, Jerónimo Martins, reported a 29% increase in net profit from January to September of that year (Gonçalves, 2022). Meanwhile, consumer prices in Portugal rose 9.9% in November, slowing slightly from 10.1% the previous month, which was the highest in three decades (Gonçalves, 2022).

Gonçalo Lobo Xavier, general director of the Portuguese Association of Distribution Companies (APED), said it was unfair apply a contribution to the sector what both collaborate to to decrease the impacts of inflation, not specifically due to financial losses, but due to the damage caused to the image of companies (Sapage & Martins, 2022). He also added that some EU member countries discussed the issue and decided not to implement this regulation (for example, Germany and France), on the other hand, this initiative gained strength in Portugal (Sapage & Martins, 2022).

When if discuss the increase of the retail prices, must be reflect that there is an increase in prices in production (agricultural or otherwise), in transportation costs and in other production factors, such as packaging, energy, logistics or in the industry itself (Sapage & Martins, 2022). In this sense, if the entire distribution chain is contaminated by the increase in the price of inputs, it is natural that the final price to the consumer will also increase (Sapage & Martins, 2022). When considering these factors, Gonçalo points out that there will only be truly extraordinary profits if there is an increase in revenue and margin in an extraordinary way (Sapage & Martins, 2022).

The director of APED also highlighted that there was confusion on the part of the Portuguese government when talking about extraordinary profits and extraordinary results (Sapage & Martins, 2022). According to him, you data of

2019 concerning to the margins EBITDA of business retailer, node in the case of hypermarkets, it was between 4% and 5%. These values are much lower in other sectors, as and the case of energetic. Goncalo he did criticism to the Portuguese government for the method of calculating the contribution, since the CTS will be calculated under the average of the last four exercises. Like this being, if the result from 2022 has up to a ceiling of 20% above this average, the contribution will be applied to this amount (Sapage & Martins, 2022).

Goncalo warned what the initiative of government this penalizing one set of companies put one situation what no he was created put they and what, in the true, the government only I wanted find one goat expiatory (Sapage & Martins, 2022). He also added that this is not a positive speech for the country, for the economic environment, to to the companies or to you consumers, then these they are accustomed to seeing companies in the energy sector as their allies (Sapage & Martins, 2022). In view of this, it is worth reflecting on whether there was capture of the regulator when it is observed that some countries implemented the tax only for the energy sector and others for several sectors.

### 1.3 Impacts on the European Union

In December 2022, the company Galp issued a note to the Securities Market Commission (CMVM), informing its shareholders and other users that the new contribution could potentially impact the company's expenses by up to 100 million euros in the 2022 fiscal year (Rodrigues, 2022).

To the companies oil companies Exxon Mobile, in set with other oil and gas sector organizations, accused Brussels of exceeding its legal authority, calling the measure of counter-productive (Wright, 2022). In one of the objections presented to the Court General from the European Union, based in Luxembourg, Exxon stated that the measure it is a repression that would discourage investment. Casey Norton, spokesperson from the Exxon, declared the agency of Reuters news that investments made in Europe depend on how attractive and competitive globally she is (Wright, 2022). In addition from that, in a meeting with investors, the director financial from the Exxon estimated what the tax from the European Union would cost to the group more of 2 billions of dollars (Wright, 2022).

THE Shell communicated, in March of 2022, what plans invest of 20 the 25 billions of pounds over the next 10 years into Britain's energy infrastructure, including oil and gas, energy wind *offshore*, loading of vehicles electric and hydrogen (Bouso, 2022). However, in November of that same year, the president of Shell in the United United, David Bunch, he said in the conference annual from the Confederation from the British Industry in Birmingham, which requires reassessing projects on a case-by-case basis because as there is more taxation, there is less income available to make investments (Bouso, 2022).

French oil company Total Energies announced in December 2022 that it would reduce in 100 millions of pounds your investment planned to 2023 node Sea North Sea windfall tax extension (BBC News, 2022). BP has also said it will examine the impact of the UK oil and gas windfall tax before making any new North Sea investment plans (Mainwaring, 2022).

The UK government, which introduced the windfall profits tax in May 2022, has extended the tax until March 2029 because, according to Chancellor Jeremy Hunt, the continuation of the war in Ukraine would increase windfall profits for energy companies (BBC News, 2024). The government has said that the windfall tax will end if oil and gas prices fall below a certain level for six months (BBC News, 2024).

On the other hand, Portugal announced that the CTS will not be extended until 2024 (Soares, 2023). As a result, Repsol CEO Josu Jon Imaz reported that the oil company plans to move future industrial projects to Portugal in order to avoid paying the tax on excessive profits in force in Spain (Silva, 2023). Repsol has already announced an investment of 657 million euros to build two new factories and expand the Spanish company's industrial complex in the city of Sines in Portugal (Silva, 2023). This project will create more than a thousand jobs and is considered the largest industrial investment made in Portugal in the last 10 years (Silva, 2023).

Doubts remain regarding the effectiveness of the tax on extraordinary profits (Nicolay, 2023). Due to business, economic and political pressures, some countries are evaluating the feasibility of adopting this tax or extending it (Ferreira, 2024). This is even the case in non-EU countries, such as Brazil. The Brazilian government wants to implement a kind of Brazilian *windfall tax*, based on an existing tax, but on a permanent basis, whenever there is an increase in the international price of a barrel of oil (Fafá, 2022).

The dilemma regarding the tax on extraordinary profits involves, above all, the following questions: is this tax constitutional? What is the government's role in regulation? To what extent does the market regulate itself? Do the benefits of this tax outweigh the costs? Were Regulation WT 2022/1854 of the Council of the European Union and the decision to implement this tax by some countries based on the theory of public interest or on the intention of favoring some interest group (theories of competition between interest groups and capture theory)?

## REFERENCES

BBC News (2022, junho 09). *What is the windfall tax on oil and gas companies and how much do they pay?* Recuperado de <https://www.bbc.com/news/business-60295177>

BBC News (2024, março 06). *What is the windfall tax on oil and gas companies and how much do they pay?* Recuperado de <https://www.bbc.com/news/business-60295177>

Bouso, R. (2022, novembro 21). *Shell to 'evaluate' 25 bln pound British investments after windfall tax*. Recuperado de <https://www.reuters.com/business/energy/shell-evaluate-25-blnd-pound-british-investments-after-windfall-tax-2022-11-21/>

Conselho da União Europeia (CUE). (2022, outubro 06). *Conselho adota formalmente medidas de emergência para reduzir os preços da energia*. Recuperado de <https://www.consilium.europa.eu/pt/press/press-releases/2022/10/06/council-formally-adopts-emergency-measures-to-reduce-energy-prices/>

Crisóstomo, P. (2022, dezembro 20). *Contribuições sobre lucros extraordinários darão receita de 50 a 100 milhões*. Recuperado de <https://www.publico.pt/2022/12/20/economia/noticia/contribuicoes-lucros-extraordinarios-darao-receita-50-100-milhoes-2032192>.

Fafá, L. (2022, junho 02). *Windfall tax? Estados propõem elevar carga tributária sobre petroleiras para bancar desoneração de ICMS*. Recuperado de <https://epbr.com.br/carga-tributaria-petroleiras-desoneracao-de-icms-senado-windfall-tax/#:~:text=O%20pa%C3%ADs%20anunciou%20uma%20windfall,tramita%C3%A7%C3%A3o%20do%20projeto%20na%20C%C3%A2mara>

Ferreira, R. F. (2024, março 06). *Sobre as Contribuições de Solidariedade Temporária obrigatórias em Portugal (ou os Windfall Profit Taxes portuguesas)*. Recuperado de <https://www.rflawyers.com/pt/know-how/newsletters/sobre-as-contribuicoes-de-solidariedade-temporaria-obrigatorias-em-portugal-ou-os-windfall-profit/5043/>

Galp. (2022). *Sobre nós: A Galp há mais de 100 anos que traçamos um caminho de inovação*. Recuperado de <https://www.galp.com/corp/pt/sobre-nos>

Gonçalves, S. (2022, dezembro 20). *Portugal approves windfall tax on energy firms, food retailers*. Recuperado de <https://www.reuters.com/markets/europe/portugal-approves-windfall-tax-energy-firms-food-retailers-2022-12-21/>

Mainwaring, J. (2022, maio 27). *BP to review UK investment in light of windfall tax*. Recuperado de <https://www.argusmedia.com/pt/news-and-insights/latest-market-news/2335953-bp-to-review-uk-investment-in-light-of-windfall-tax?backToResults=true>

Nicolay, K., Steinbrenner, D., Woelfing, N., & Spix, J. (2023). *The effectiveness and distributional consequences of excess profit taxes or windfall taxes in light of the Commission's recommendation to Member States*. Recuperado de [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740076/IPOL\\_STU\(2023\)740076\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740076/IPOL_STU(2023)740076_EN.pdf)

Pimenta, P. (2022, outubro 10). *Taxa Sobre Lucros Extraordinários Na Energia Entra Em Vigor Ainda Este Ano*. Recuperado de <https://www.publico.pt/2022/10/10/economia/noticia/taxa-lucros-extraordinarios-energia-entra-vigor-ano-2023517>

Rodrigues, J. V. (2022, dezembro de 23). *Taxa sobre lucros excessivos custa até 100 milhões de euros à Galp em 2022*. Recuperado de <https://www.dinheirovivo.pt/empresas/taxa-sobre-lucros-excessivos-custa-100-milhoes-de-euros-a-galp-em-2022-15537186.html>.

Sapage, S., & Martins, S. M. (2022, dezembro de 22). *Contribuição sobre lucros excessivos provoca "um dano de imagem inaceitável" às empresas*. Recuperado de <https://www.publico.pt/2022/12/22/economia/entrevista/taxa-lucros-excessivos-provoca-dano-imagem-inaceitavel-empresas-2032320>

Silva, B. (2023). *Repsol diz que Portugal é "alternativa" para fugir à windfall tax em Espanha*. Recuperado de <https://www.jornalde-negocios.pt/empresas/energia/detalhe/repsol-diz-que-portugal-e-alternativa-para-fugir-a-windfall-tax-em-espanha>

Soares, R. (2023). *Contribuições extraordinárias mantêm-se, mas a "windfall tax" sobre lucros cai*. Recuperado de <https://www.publico.pt/2023/10/10/economia/noticia/contribuicoes-extraordinarias-mantemse-incluindo-adicional-banca-2066209>

Wright, G. (2022, dezembro 29). *Energy giant ExxonMobil sues EU to block energy windfall tax*. Recuperado de <https://www.bbc.com/news/business-64113398>

## 2. NOTES OF TEACHING

### 2.1 Objectives of teaching

- This case to teaching he has put objective:
- help students understand the assumptions of Regulatory Theory, especially those related to interest groups, public interest and capture;
- reflect on the social and economic impacts of a new regulation;
- promote the relationship between theory and business practice;
- assist students in developing critical thinking, judgment and decision making.

### 2.2 Sources and methods of collect

The information for the construction of this teaching case is real and was collected in *websites* (referenced) node text) what spread news on the creation from the *windfall tax*. *It is worth noting that a comparison was made of several published news items with a view to to bring bigger veracity on the creation and regulation of sector energetic in the European Union*.

### 2.3 Disciplines suggested to the use of Case

The case was designed to assist teachers of disciplines that deal with regulatory aspects in undergraduate and postgraduate courses in Accounting, Administration, Economics, International Relations and Law. Using this case, it



is possible to understand the assumptions intrinsic to the Theory of Regulation and visualize them in practice, mainly highlighting the role of the government and interest groups in the face of a new regulation.

## 2.4 Instructions to application of Case

It is suggested to use *Problem-Based Learning* (PBL) or Mock Jury to apply this case for teaching. The case can be applied in the following disciplines: Accounting Theory; Corporate Accounting and other related disciplines.

In the PBL methodology option, in the first meeting, ask students to read the case, identify the dilemma and answer the proposed questions individually. In the second meeting, gather the students into groups and ask them to discuss the activities carried out individually and reach a consensus. Then, the students present the solutions to the proposed questions, justifying their answers and promoting debate.

To use the Mock Jury, in the first meeting, the teacher should also ask the students to read the case, identify the dilemma and answer the proposed questions individually. In the second meeting, the teacher distributes the papers to the students and gives them time to prepare. The teacher can choose one of these groups of papers to apply the Jury methodology:

1st option: one group of students assumes the role of supporters of the regulation and the other of opponents (representing the Chamber of Deputies). In this model of the Chamber of Deputies, it is assumed that the definition of taxes is made by the government, but their approval for implementation is carried out by the deputies or by the assembly of popular representation.

2nd option: some students take on the role of business representatives, others of members of the Portuguese government and others of the Securities Market Commission (CMVM).

After defining the roles, the teacher should encourage the students to defend the interests of the group they are representing. To start the discussion, the representative of the Chamber of Deputies (president) should announce the topic to be discussed. Then, he asks the government representative to present the proposal for the new contribution (rate, calculation methods, validity period, etc.). Then, the business representative presents his arguments on the impact of the new contribution on the business sector. After his intervention, the discussion is opened to the deputies (those who support the regulation and those who oppose it).

The teacher should guide students to direct discussions and their arguments, observing the assumptions that support the Theory of Regulation, such as interest groups, capture, public interest and *lobbying*. After the arguments and counter-arguments of the students representing the deputies, the president of the chamber can open a five-minute break, allowing the representatives of the businessmen to interact with the deputies. This moment aims to verify whether *lobbying* works and whether capture can occur through various forms, such as bribery, donations or other political influences.

After the break, the voting session begins. Three voting options can be established: approve, reject or approve with adjustments (including, for example, reducing the value of the rates and the period of validity of the contribution). The result of the vote is then announced, informing the plenary session's decision on the regulation of the new contribution.

To close the class, the teacher can invite students to comment on what they learned from applying the case and conclude with their considerations.

## 2.5 Questions for discussion

- 1) Assess whether the decision of some countries to implement Regulation 2022/1854 of the Council of the European Union is based on the assumptions of public interest, interest groups and/or capture, aspects of the Theory of Regulation. Observe the choices made by the countries that voluntarily adopted the regulation (incidence, rate, term, etc.). Justify your answer.
- 2) What are the possible costs and benefits of implementing a *windfall tax* in EU member countries? Analyze, in particular, the case of Portugal and identify the costs and benefits for companies, for standard setters and regulators and for society. Justify your answer.
- 3) Consider that the Portuguese Government is rethinking the decision to suspend the CTS for 2024 after verifying a drop in tax revenue. In order to receive suggestions from various interest groups, the Government of that country opened a draft for discussion. Any Portuguese citizen or interest group can make suggestions for improving the rule on the aforementioned tax. Therefore, consider that you are CEO (*Chief Executive Officer*) of a Portuguese company in the energy sector. You and other businesspeople in this sector have met to formulate a proposal to the government with suggestions for the possible return of the CTS. Present this proposal.
- 4) Argue whether the proposal presented in the previous question is based on the theory of public interest or interest groups. And whether it involves aspects of the theory of capture and *lobbying*.

## 2.6 Analysis of the questions

Regulation has been the subject of study by legal theorists, economists and other experts for several decades (Cardoso et al., 2009). Several theories have been formulated to explain and predict the regulation and deregulation

of markets, as well as to describe their origin, development and decline, and they can be descriptive, prescriptive or a combination of both (Cardoso et al., 2009). Among these various theories, Cardoso et al. (2009) highlight five: public interest theory, capture theory, economic theory of regulation (also called theory of competition between interest groups), three-dimensional theory of law and Habermas' theory.

The Public Interest Theory assumes that regulation emerged as a beneficial consequence of the State's need to correct market failures (Baird, 2016). According to Baldwin and Cave (2011), the market, without control, will not produce behaviors or results aligned with the public interest. The authors also add that, in some sectors, there may be an absence of an effective market, such as when families cannot breathe clean air or have peace of mind in their localities.

Capture Theory assumes that regulation is created for the benefit of regulated entities and that, therefore, regulators are somehow captured by the industries they regulate, becoming subservient to the interests of these industries (Carmo et al., 2018). In this context, the driving force behind regulation would not be the public interest, but rather the business interest in gaining gains from state intervention (Baird, 2016). To capture the regulator, stakeholders tend to use lobbying mechanisms to influence the regulatory body in drafting the standard, seeking a regulation that meets their interests from the beginning (Santos & Santos, 2014).

The Theory of Competition between Interest Groups views regulatory developments as products of relationships between different groups and between these groups and the State (Baldwin & Cave, 2011). Regulation, according to this theory, is not guided by the public interest, but by competition for power, used to increase the welfare of the most influential pressure groups (Becker, 1983).

The Three-Dimensional Theory of Law, developed by Reale, seeks to understand the elaboration of legal norms and, based on this, considers regulation as a social construction that arises from the dialectical dynamics between fact, value and norm (Cardoso et al., 2009). In short, it can be said that the norm is produced by a body endowed with normative power that interprets the facts in light of the values shared by society (value intentions), according to what is understood by "public interest" (Cardoso et al., 2009).

Habermas' approach is similar to the theory developed by Reale, with regulation being a social construction and external to accounting, and can be formalized by accounting standards, and by social regulation based on accounting logic (Cardoso et al., 2009).

Baldwin and Cave (2011) emphasize that the reasons for regulating may differ from theoretical justifications. Governments may regulate for various reasons, such as the influence of the economically powerful, the interests of the regulated sector, or the pursuit of reelection, presenting these actions as in the public interest (Baldwin & Cave, 2011). Therefore, several theories in different fields of knowledge seek to explain the regulatory phenomenon, based on the interaction between public and private actors, which can be explored to understand the case in question. It is noteworthy that the issues proposed for discussion in this case involve aspects of three theories: public interest, capture, and competition between interest groups. The three-dimensional theory of law and Habermas are not the subject of discussion in this teaching case.

Another relevant aspect is that the proposed approaches to the issues proposed in this case for teaching are not intended to be complete. In other words, the proposals provide a selection of authors who discuss issues that can foster interesting debates in the classroom, since the issues can be discussed from various theoretical perspectives. In addition, the case presents a selection of real facts. Because of this, the authors encourage those who use this case to enhance the class discussion by adding facts to the context of the case (or changing the facts presented in the case) to extend the discussion, analyzing how these new or changed facts affect the likely conclusions on a given issue. The authors believe that such enriched discussions are likely to further develop students' ability to bridge theory and practice and make judgments about Regulation Theory.

**1) Assess whether the decision of some countries to implement Regulation 2022/1854 of the Council of the European Union is based on the assumptions of public interest, interest groups and/or capture, aspects of the Theory of Regulation. Observe the choices made by the countries that voluntarily adopted the regulation (incidence, rate, term, etc.). Justify your answer.**

The Public Interest Theory suggests that regulation is a response to public demand for correction of market failures (Campos, 2008). It is assumed what the regulator consider, from the better form, you interests from the society (Carmo et al., 2018), seeking to do everything possible to maximize social well-being, this and, to achieve the first better result from the production of information (Scott, 2015). Furthermore, regulation is seen as a trade-off between its costs and benefits (Scott, 2015). It aims to remedy market failures by providing an efficient allocation of resources for the benefit of social well-being, redistribution of wealth and plumbing of resources to the implement of interest public (Birth, 2015).

In turn, Interest Group Theory suggests that individuals form coalitions or groups constituents to protect and promote your interests *lobbying* the regulator for varying amounts and types of regulation (Scott, 2015). In this context, regulation is seen as a good that maximizes the individual interests of specific groups, susceptible to appropriation in a market (Nascimento, 2015).

Lobbying represents the defense of interests before members of the public authorities who *can* make political decisions (Mancuso & Gozetto, 2011). Lodi (1986) says that lobbying is morally neutral and he can serve both to the good

as to the bad, seen what is dismissed of ideology, although it is one powerful driver of interests and ideologies. Leaving this idea, can be to perceive what the good and the bad are characteristics attached to the individuals, no properly the one process or object.

Capture Theory emphasizes that the regulator can be captured by the sector to promote its interests, allowing for a regulator that is totally subservient and intended to passively serve the interests of those being regulated (Carmo et al., 2018). This is because its basic essence was that the coercive power of the State could be used to award significant benefits to specific individuals or groups, maximizing individual interests, with public coercion being the primary object of the economic demand for regulation (Posner, 1974). Consider the scenario presented node case, you ministers from the European Union stated that the purpose of creating the tax was focused on maximizing the interest public (CUE, 2022). Based on this perspective, the student can conclude that the regulation is based on the assumptions of the Public Interest Theory, since the agreement had the purpose of reducing high electricity prices, supporting those who face difficulties with high energy prices.

However, at the same time that the government intends to bring benefits to the population, it creates a regulation at the expense of companies in the electricity sector. If the Public Interest Regulation Theory considers the interests of society, how can a regulation be created that impacts one sector and relieves pressure on another? Why choose to impose a tax only on the electricity sector? When reflecting on these questions, the student may conclude that the creation of the *windfall tax* is being based on the premises of the Interest Group Regulation Theory, since it is not in line with the interests of society as a whole, but only serves a portion of the population and directly impacts a specific sector, in addition to not providing further explanations for not imposing the same tax on other sectors as influential as the electricity sector.

In addition from that, the idea of maximization of interest public of the governments from the The EU may have greater consequences than the collection of taxes, such as a reduction in future investments in the electricity sector, and the exit of companies impacted by the windfall tax from the European bloc or from countries that adopted the measure. The case brings as an example the French oil company Total Energies, which announced at the end of 2022 a reduction of 100 million pounds from its investment for 2023 in the North Sea, as a result of the extension of the unexpected tax (BBC News, 2022).

When it treats from the perspective of the countries members from the European Union, it is also noted that the regulation was discussed in some countries, but the new initiative was not followed up (Sapage & Martins, 2022). Voluntary adoption of the regulation may also lead to a shift in energy investments between your own countries from the EU, already what companies that act in a country that adopted the rate may migrate to a country that has refused to implement the regulation (see the case of Repsol, Silva, 2023).

Another aspect that can be discussed is that each country was free to define the rate, the term of validity of the tax and the sector in which the tax is levied. In addition, the countries that implemented the tax are free to decide on the extension of the validity of this tax. Examples (Ferreira, 2024):

- Italy: set a 25% rate on extraordinary profits of companies in the sectors of production, sale and resale of electricity, methane gas, natural gas and petroleum products, in force until April 2022. After this period, this country increased the rate to 35% and extended the validity until July 2023.
- Hungary: the tax applies to extraordinary profits from various sectors of activity, including oil and energy, but also to telecommunications, banking, retail and airlines, with different regimes for each sector. The banking sector would pay a rate of 10% in 2022 and 8% in 2023. The telecommunications and retail sectors would be subject to special progressive rates of up to 7% and 4.1%, respectively. Airlines would also have to pay a tax for each passenger.
- Romania: applied the tax only to the energy sector, consisting of an 80% rate applicable to profits considered excessive, also by reference to the price per MWh. This tax is expected to remain in force until 31 March 2023.
- United Kingdom: has chosen to apply the tax on extraordinary profits only to the oil and gas extraction sector, but is considering extending it to the energy sector. It has already extended the validity of this tax until the end of 2028 and has considered increasing the tax rate from 25% to 35%.
- Germany, France, Austria, Ireland and Belgium: decided not to immediately implement the tax on extraordinary profits.
- Portugal: establishes a 33% tax on extraordinary profits of companies in the energy and food retail sectors, effective in 2022 and 2023. For 2024, some extraordinary contributions remain in place, such as those on the energy, pharmaceutical and banking sectors. However, the *windfall tax* was not extended to 2024.

Considering the context of each country, students can reflect on the influence of *lobbying* on each country's choices for the incidence and percentage of the tax. Was the *lobbying* carried out with the interests of certain sectors or business groups in mind? Or could the *lobbying* have been carried out with the public interest in mind? Were the governments that decided not to extend the validity of the tax captured by certain interest groups or did they do so with the public interest in mind? These are useful reflections that students can make. It is important to note that there is no single answer, since the full context of the decisions made by governments (and their intentions) is not public knowledge. Therefore, students need to analyze these questions by making assumptions, which favors their judgment skills.

Regulation, by nature, implies a redistribution of income, then generates costs to some groups and benefits to others (Fields, 2008). Campos (2008, p. 295) also points out that "the loss of social well-being caused by regulatory measures

is a limitation to inefficient regulatory policies". For end, Baldwin and Cave (1999) clarify that it is very difficult to identify the public interest, since regulation generally takes place in the midst of a conflict between different conceptions about the public interest.

**2) What are the possible costs and benefits of implementing a windfall tax in EU member countries? Analyze, in particular, the case of Portugal and identify the costs and benefits for companies, for standard setters and regulators and for society. Justify your answer.**

THE creation and validity of any regulation involves costs and benefits to companies, society and the standardizer. The Portuguese government and other countries interested in implementing regulation WT 2022/1854 need to consider all the costs and benefits for different agents, since the development of a regulatory policy, based on the assumptions of the Public Interest Theory, is of interest to both those who operate in the market and the end consumer. If these aspects are ignored, the standard may seem useful for decision-making, but society would be in a worse situation because the costs of producing information were not taken into account (Scott, 2015).

In this context, regulated companies face costs that go beyond the costs taxes by standard, as costs of systems and of trainings, of production and also of disclosure of new information mandatory (Scott, 2015). Furthermore, if you regulated have interest in influencing the regulator, they will have to face negotiation costs, *lobbying* organization costs and political donations (Scott, 2015).

Regulated companies certainly know their production costs better, levels of effort to reduce your costs and the operation of market in which they operate when compared to the regulator's knowledge. This is one of the first aspects that must be considered by the Portuguese government, in the implementation of new regulation. As seen node case, can be infer two specific moments that indicate costs that Portuguese companies will incur when implementing the *windfall tax*, as indicated below:

- Gonçalo criticized the Portuguese government for the way the contribution will be calculated, since the CTS rate will be calculated based on the average of the last four financial years. Therefore, if the 2022 result has up to a ceiling of 20% above this average, the contribution will be applied to this amount.
- In December 2022, the company Galp issued a note to the Securities Market Commission (CMVM), informing its shareholders and others users what the new contribution may potentially impact the company's expenses by up to 100 million euros in fiscal year 2022.

You benefits arising from of regulation from the *windfall to* to the companies are publishing more information that will bring security to investors and costs of capital more low, seen what the enterprise what will pay more rate also is the one that maintains a higher average profit.

Regarding the benefits to society resulting from the new regulation, there is greater regulation of rates and price limits (Scott, 2015) for electricity. However, regulation WT 2022/1854 may also influence the price of fuel, which would consequently have a direct impact on several sectors that depend on this product. As a result, the entire distribution chain is contaminated by the increase in the price of inputs; it is natural that the final price to the consumer will also increase, since society is the one who absorbs the cost.

The costs for regulators occur due to information asymmetry and the difficulties of empirically verifying the success of these policies, the regulator or standardizer face big cost of creation of organs of definition of standards, information collection and monitoring (Nascimento 2015). Furthermore, the standard setter, that is, the Portuguese government, faces costs when seeking consensus so that investors, managers and interested parties, even if they do not like the regulation, can legitimize it.

You benefits to the regulators from the *windfall tax in addition* of to bring more information for the market, reducing the asymmetry informational between companies and Investors also take part in the state's return both in maintaining its operating structure and in offering the population improvements in various aspects, for example, in health, education, leisure, culture, among others.

**3) Consider that the Portuguese government is rethinking the decision to suspend the CTS for 2024 after noticing a drop in tax revenue. In order to receive suggestions from various interest groups, the government of that country opened a draft for discussion. Any Portuguese citizen or interest group can make suggestions for improving the regulation on the aforementioned tax. Therefore, consider that you are the CEO ( Chief Executive Officer ) of a Portuguese company in the energy sector. You and the other businesspeople in this sector met to formulate a proposal to the government with suggestions for the possible return of the CTS. Present this proposal.**

Entrepreneurs can analyze the effectiveness of the CTS in the period of validity from 2022 to 2023 (see, for example, Ferreira, 2024, Soares, 2023) to prepare the proposal that may involve several aspects, such as:

- **Reduction in the rate percentage:** from this perspective, shareholders may argue that a 33% contribution rate would lead the electricity sector to a generalized collapse, since companies did not expect an emergency contribution of this content and yet more with one percentage high. You liabilities of



companies could be significantly impacted, especially in the short term. In this sense, companies could resort to reducing investments and also laying off employees in order to cut costs. To the to present the commitment of the companies in function from the new rate, *lobbying* could be directed towards reducing the *windfall percentage*.

- **Change in the validity of the rate:** as presented in the case, the rate entered in force node year of 2022, valid until 2023. THE group of interest he can argue that companies were not prepared to comply with the new regulation, given what the agreement of the ministers from the EU he was done in September of 2022. They can also emphasize that the time granted by the government was insufficient for companies to adapt to the new regulation, both in terms of preparation from the information us demonstratives as the insertion of this new rate us systems of information of the companies. Like this being, to the entities could reinforce the need to give companies a new deadline for the return of the CTS in view of the difficulties inherent in the adjustments that companies will have to undergo again with the rate. In addition, companies can request the validity only for a specific period or until they reach a certain amount of tax collection by the government.
- **Changes in the form of calculation:** the way the rate was calculated involved going back four years tax authorities, although it came into force in 2022. Thus, a percentage of 33% was charged on you profits what surpassed 20% from the average of the last four years. When collecting fees taking into account previous years, the interest group can justify that in the last two years companies have experienced difficult times, in view of the Covid-19 pandemic that has had consequences negatives to the economic worldwide and he brought losses the all sectors, including the electricity sector. Given this fact, companies can pressure for a change in the way the calculation is performed and also in the percentage that exceeds the average profits.
- **Repeal of the regulation:** finally, the proposal may also bring about the repeal complete of all the regulation, that is, businesspeople can position themselves against the return of the CTS (see, for example, Fernandes, 2022). To that, the group of interests can pressure the regulator to reduce investments in energy companies and the possibility of these companies leaving for other countries. In addition, the economy of country what adopted the *windfall tax* he can will suffer considerably, since companies in the electricity sector will have to increase to the your rates outside of time of peak to compensate the reduction of 5% during peak hours. Therefore, companies that depend on electricity continuously to produce their products will have an increase in their expenses, consequently, there will be an increase in the final product for the consumer.

Please note that there are several possible directions for the proposal. Thus, there is no “correct” answer. The teacher can encourage students to seek information on the effectiveness of the windfall tax *in* Portugal and in other countries that have implemented it, as well as research justifications from countries that have not adopted this tax.

**4) Argue whether the proposal presented in the previous question is based on the theory of public interest or interest groups. And whether it involves aspects of the theory of capture and lobbying.**

Capture theory emphasizes that the regulator can be captured by the sector to promote its interests, allowing for a regulator that is totally subservient and intended to passively serve the interests of those being regulated (Carmo et al., 2018). This is because its basic essence was that the coercive power of the State could be used to award significant benefits to specific individuals or groups, maximizing individual interests, with public coercion being the primary object of the economic demand for regulation (Posner, 1974).

Lodi (1986) says that the *lobbying* is morally neutral and he can serve both to the good as to the bad, seen what is dismissed of ideology, although it is one powerful driver of interests and ideologies. Leaving this idea, can be to perceive what the good and the bad are characteristics attached to the individuals, no properly the one process or object. Thus, *lobbying* can occur when a group pressures the legislator with proposals based on the public interest or when they focus only on individual interests. When the legislator decides on a rule that is aligned with the *lobbying* done by an interest group, but the *lobbying* of this group is based on the public interest, the legislator has not been captured by this interest group. In this case, the legislator is also deciding according to the assumptions of the Public Interest Theory (even if *lobbying* by interest groups occurs). On the other hand, when the legislator implements a rule in response to the pressure (*lobbying*) of interest groups focused only on individual objectives, capture is characterized.

So if the group of businessmen you are interested only us personal and individual benefits arising from of the changes in the *windfall tax* regulation, *the lobby* will be aligned with the Theory from the Agency, given what predomina one conception of human being individualistic and maximizer of usefulness (Jensen & Meckling, 1976). Consequently, you managers, investors, businessmen, perform *lobbying* to try to influence the organ standardizer (Saints & Saints, 2014) in the attempt of get advantages together to regulators.

Case the capture of regulator not occur, there is possibility of what the group of businessmen is aligned with the Theory of Public Interest. Businessmen can make a proposal that considers both the interests of companies in the energy

sector and the economic and social interests of the country, aiming at the collective good. It is noted that by acting in this way, the interest group is under the conception of the *Stewardship Theory* what advocates one model of to be human collectivist what understand greater utility in the collective good than in the individual good (Donaldson & Davis, 1991)

The teacher can encourage students to analyze the grounds they used to formulate the proposal in the previous question. Again, there is no single answer or even a “correct” answer to the question. The purpose of this question is for students to reflect on ethical issues in the establishment of public and private policies.

## REFERENCES

- Baird, M. F. (2016). Interesses e instituições nas teorias da regulação: uma difícil síntese. *BIB - Revista Brasileira De Informação Bibliográfica Em Ciências Sociais*, (81), 66–83. Recuperado de <https://bibanpocs.emnuvens.com.br/revista/article/view/415>
- Baldwin, R., & Cave, M. (1999). *Understanding regulation. Theory, strategy, and practice*. Oxford: Oxford University Press.
- BBC News (2022, junho 09). *What is the windfall tax on oil and gas companies and how much do they pay?* Recuperado de <https://www.bbc.com/news/business-60295177>
- Becker, Gary S. (1983). A theory of competition among pressure groups for political influence. *The Quarterly Journal of Economics*, 98(3), 371-400. DOI: <https://doi.org/10.2307/1886017>
- Campos, H. A. de (2008). Falhas de mercado e falhas de governo: uma revisão da literatura sobre regulação econômica. *Braz. J. Int'l L.*, 5, 281. <https://doi.org/10.5102/prismas.v5i2.702>
- Cardoso, R. L., Saravia, E., Tenório, F. G., & Silva, M. A. (2009). Regulação da contabilidade: teorias e análise da convergência dos padrões contábeis brasileiros aos IFRS. *Revista de Administração Pública*, 43, 773-799. <https://doi.org/10.1590/S0034-76122009000400003>
- Carmo, C. H. S. do, Ribeiro, A. M., & Carvalho, L. N. G. de. (2018). Regulação Contábil Internacional: Interesse Público ou Grupos de Interesse? *Contabilidade Gestão E Governança*, 21(1), 1–20. Recuperado de <https://revistacgg.org/index.php/contabil/article/view/1138>.
- Conselho da União Europeia (CUE). (2022, outubro 06). *Conselho adota formalmente medidas de emergência para reduzir os preços da energia*. Recuperado de <https://www.consilium.europa.eu/pt/press/press-releases/2022/10/06/council-formally-adopts-emergency-measures-to-reduce-energy-prices/>.
- Donaldson, L. & Davis, J. H. (1991). Stewardship theory or agency theory: CEO governance and shareholder returns. *Australian Journal of management*, v. 16, n. 1, p. 49-64. <https://doi.org/10.1177/031289629101600103>.
- Fernandes, F. V. (2022, abril 29). *4 argumentos contra os “windfall profit taxes” (impostos sobre lucros caídos do céu) – em especial, a aplicação ao setor energético*. Recuperado de <https://eco.sapo.pt/opiniao/4-argumentos-contra-os-windfall-profit-taxes-impostos-sobre-lucros-caidos-do-ceu-em-especial-a-aplicacao-ao-setor-energetico/>
- Ferreira, R. F. (2024, março 06). *Sobre as Contribuições de Solidariedade Temporária obrigatórias em Portugal (ou os Windfall Profit Taxes portuguesas)*. Recuperado de <https://www.rfflawyers.com/pt/know-how/newsletters/sobre-as-contribuicoes-de-solidariedade-temporaria-obrigatorias-em-portugal-ou-os-windfall-profit/5043/>
- Jensen, M. C. & Meckling, H. (1976) Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of financial economics*, v. 3, n. 4, p. 305-360, 1976. [https://doi.org/10.1016/0304-405X\(76\)90026-X](https://doi.org/10.1016/0304-405X(76)90026-X).
- Lodi, J.B. (1986). *Lobby: os grupos de pressão*. São Paulo: Livraria Pioneira Editora.
- Mancuso, W. P., & Gozetto, A. C. O. (2011). Lobby: instrumento democrático de representação de interesses?. *Organicom*, 8(14), 118-128.
- Nascimento, C. B. L. (2015). Dificuldades de regulação econômica: uma leitura das teorias de regulação. *RJLB*, Ano 1, nº 4.
- Posner, R. A. (1974). Theories of Economic Regulation, in: *The Bell Journal of Economics and Management Science*, Vol. 5, No. 2 (Autumn), pp. 335-358. <https://doi.org/10.2307/3003113>
- Santos, O. M. dos, & Santos, A. dos. (2014). Lobbying na Regulação Contábil: Evidências do Setor Petrolífero. *Revista Contabilidade & Finanças*, 25(65), 124-144. <https://doi.org/10.1590/S1519-70772014000200004>
- Sapage, S., & Martins, S. M. (2022, dezembro de 22). *Contribuição sobre lucros excessivos provoca “um dano de imagem inaceitável” às empresas*. Recuperado de <https://www.publico.pt/2022/12/22/economia/entrevista/taxa-lucros-excessivos- provoca-dano- imagem-inaceitavel-empresas-2032320>.
- Scott, W. R. (2015). *Financial Accounting Theory*. 7 ed. Toronto: Pearson.
- Silva, B. (2023). *Repsol diz que Portugal é “alternativa” para fugir à windfall tax em Espanha*. Recuperado de <https://www.jornalde-negocios.pt/empresas/energia/detalhe/repsol-diz-que-portugal-e-alternativa-para-fugir-a-windfall-tax-em-espanha>
- Soares, R. (2023). *Contribuições extraordinárias mantêm-se, mas a “windfall tax” sobre lucros cai*. Recuperado de <https://www.publico.pt/2023/10/10/economia/noticia/contribuicoes-extraordinarias-mantem-se-incluindo-adicional-banca-2066209>