

Provisional text

JUDGMENT OF THE COURT (First Chamber)

25 February 2021 (*)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 2(1)(a) – Article 9(1) – Article 13(1) – Article 14(1) and (2)(a) – Concept of ‘supply of goods’ – Transformation of the right of perpetual usufruct into full immovable property ownership rights by operation of law – Municipality collecting fees for the transformation – Concept of ‘compensation’ – Concept of ‘taxable person acting as such’ – Exception – Bodies governed by public law which engage in activities or transactions as public authorities)

In Case C-604/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław, Poland), made by decision of 19 June 2019, received at the Court on 9 August 2019, in the proceedings

Gmina Wrocław

v

Dyrektor Krajowej Informacji Skarbowej,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Gmina Wrocław, by E. Mroczko and T. Straszewicz, radcowie prawni,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by J. Jokubauskaitė and M. Siekierzyńska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(a), Article 9(1), Article 13(1) and Article 14(1) and (2)(a) of Council Directive 2006/112/EC of 28 November

2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between the Gmina Wrocław (Municipality of Wrocław, Poland; ‘the Municipality of Wrocław’) and the Dyrektor Krajowej Informacji Skarbowej (Director of the National Tax Information Bureau, Poland; ‘the tax authority’) concerning the tax ruling addressed to that municipality in relation to the levying of value added tax (VAT) on fees which have been paid to it on account of the transformation of the right of perpetual usufruct into full immovable property ownership rights.

Legal context

EU law

3 Under Article 2(1)(a) of the VAT Directive, the supply of goods for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

4 Article 9(1) of that directive provides:

“Taxable person” shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.’

5 Article 13(1) of that directive is worded as follows:

‘States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

...’

6 Article 14 of the VAT Directive provides:

‘1. “Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.

2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:

(a) the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;

...’

Polish law

The Civil Code

7 Article 232 § 1 of the Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Law of 23 April 1964 establishing the Civil Code) (Dziennik Ustaw (Journal of Laws) of 1964, No 16, item 93), in the version applicable to the dispute in the main proceedings ('the Civil Code'), provides:

'Land belonging to the State and within the administrative limits of the cities, land belonging to the State outside those limits but incorporated into a city's spatial development plan and used to achieve its economic objectives, as well as land belonging to a local authority or an association of local authorities, may be leased in perpetual usufruct to natural and legal persons.'

8 Article 233 of the Civil Code is worded as follows:

'Within the limits laid down by the laws and rules of social conduct and by a contract leasing land belonging to the State or land belonging to a local authority or an association of local authorities in perpetual usufruct, the usufructuary may use the land to the exclusion of any other person. Within the same limits, the perpetual usufructuary may dispose of its right.'

9 Article 234 of that code states:

'The provisions relating to the transfer of ownership of immovable property shall apply *mutatis mutandis* to the leasing in perpetual usufruct of land belonging to the State, to a local authority or to an association of local authorities.'

10 Under Article 236 §1 of that code:

'Land belonging to the State, to a local authority or to an association of local authorities shall be leased in perpetual usufruct for a period of 99 years. In exceptional cases, where the economic objective of perpetual usufruct does not require the land to be leased for a period of 99 years, the period may be shorter but must be at least 40 years.'

11 Article 238 of the Civil Code provides:

'The perpetual usufructuary shall pay an annual fee for the duration of its right.'

The Law on immovable property management

12 Article 12a(1) of the ustawa o gospodarce nieruchomościami (Law on immovable property management) of 21 August 1997 (Dziennik Ustaw (Journal of Laws) of 2018, item 2204), in the version applicable to the dispute in the main proceedings ('the Law on immovable property management'), provides:

'Amounts payable in respect of the management of immovable property which are governed by private law and are collected by the State, represented by the mayor in the performance of his or her public administrative tasks or by the Minister responsible for Construction, Planning, Spatial Development and Housing, may be wholly or partly redeemed, or may be deferred or paid in instalments.'

13 Article 27 of the Law on immovable property management is worded as follows:

'The sale of immovable property, or the leasing of land in perpetual usufruct, must be the subject of a contract concluded in the form of a notarial act. The leasing of land in perpetual usufruct and the transfer of that right by contract must be entered in the land register.'

14 Article 32(1) and (2) of that law states:

'1. Land leased in perpetual usufruct may be sold only to a perpetual usufructuary ...

2. Previously established rights of perpetual usufruct shall expire by operation of law on the day that a contract for the sale of the property is concluded. ...'

15 Article 69 of that law provides:

'An amount equivalent to the value of the right of perpetual usufruct of the land, determined on the day of its sale, shall be included in the price of the land being sold to its perpetual usufructuary.'

16 Article 71(1) of that law is worded as follows:

'An initial fee and an annual fee shall be payable for the leasing of land in perpetual usufruct.'

17 Under Article 72(1) of the Law on immovable property management, fees for perpetual usufruct are to be calculated as a percentage of the price of the land, which price is, in turn, to be determined under Article 67(1) of that law, on the basis of the value of the land. Article 72(3)(4) of that law states that, in the case of immovable property leased for residential purposes, the rate of the annual fee for perpetual usufruct is to be 1% of the price of the land.

The Law on VAT

18 Article 5(1)(1) of the ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (Dziennik Ustaw (Journal of Laws) of 2004, No 54, item 535; 'the Law on VAT'), provides:

'The following shall be subject to the tax on goods and services ...: the supply of goods or services for consideration within the territory of the country.'

19 Article 7(1) of the Law on VAT is worded as follows:

'The supply of goods referred to in Article 5(1)(1) shall mean the transfer of the right to dispose of goods as owner, including:

(1) a transfer by order made by a public authority or by a person acting in the name of that public authority or a transfer in pursuance of the law of the ownership of goods against payment of compensation;

...

(6) the leasing of land in perpetual usufruct.'

The Law on transformation

20 Article 1(1) of the ustawa o przekształceniu prawa użytkowania wieczystego gruntów zabudowanych na cele mieszkaniowe w prawo własności tych gruntów (Law on the transformation of the right of perpetual usufruct of land developed for residential purposes into ownership rights over that land) of 20 July 2018 (Dziennik Ustaw (Journal of Laws) of 2018, item

1716; 'the Law on transformation'), provides:

'On 1 January 2019, the right of perpetual usufruct of land developed for residential purposes shall be transformed into ownership rights over that land.'

21 Article 4(1)(3) of the Law on transformation is worded as follows:

'The certificate confirming the transformation ("the certificate") issued by ... the competent mayor (town or city mayor, Lord Mayor), district council or regional council – where the land belongs to a local authority – forms the basis for the entry of the right of ownership in the land register.'

22 Paragraph 2(1) of that article states that the bodies referred to in paragraph 1 of that article must issue the certificate of their own motion within a period not exceeding 12 months from the day of transformation. Under paragraph 4 of that article, the certificate is to confirm the transformation and mention the obligation to pay an annual transformation fee, the amount of that fee and the time at which it is payable.

23 Article 5(1) of that law states:

'The court shall register of its own motion ownership of land and the right to payment in the land registers.'

24 Article 6(1) of that law provides that the new owner may challenge the information included in the certificate referred to in Article 4 of that law. An application submitted using this procedure results in the amount and deadline for payment of the transformation fee being set by way of an administrative decision.

25 Article 7 of the Law on transformation provides:

'1. The new owner of the land shall pay a fee to the current owner of the land for the transformation.

2. The amount of the fee shall be equivalent to the annual fee for perpetual usufruct in force on the day of the transformation.

...

6. The fee shall be payable for a period of 20 years from the day of transformation.

7. The owner of the land may, at any time during the period in which it is required to pay the fee, inform the competent body in writing of its intention to make a lump sum payment (one-off fee). The amount of the one-off fee shall correspond to the fee for the year in which the intention to pay a one-off fee is expressed, multiplied by the number of years remaining until expiry of the [20-year] period.'

26 Under Article 12(2) of that law:

'The provisions of Article 12a of the Law on immovable property management shall apply *mutatis mutandis* to fees and to one-off fees.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

27 The Municipality of Wrocław is a local authority registered as a taxable person for the purposes of VAT which owned immovable property subject to a perpetual usufruct as provided for in Polish law.

28 Under the provisions of the Civil Code, perpetual usufruct consists in surrendering the use of land, the owner of which is the State, a local authority or an association of local authorities, to a user, the perpetual usufructuary, who may use the land and dispose of its right to the exclusion of any other person. Perpetual usufructuaries may be natural persons or legal persons. In the context of perpetual usufruct, the land is in principle leased to the usufructuary for a period of 99 years which, in exceptional cases, may be reduced, but may not be less than 40 years. The perpetual usufructuary pays the owner of the land an annual fee as consideration for the perpetual usufruct for its duration.

29 In accordance with Article 72(1) of the Law on immovable property management, fees for perpetual usufruct are to be calculated as a percentage of the price of the land concerned, which is to be determined, under Article 67(1) of that law, on the basis of the value of that land. Article 72(3)(4) of that law provides that, in the case of immovable property leased for residential purposes, the rate of the annual fee for perpetual usufruct is to be 1% of the price of the land in question.

30 Under Article 5(1)(1) and Article 7(1)(6) of the Law on VAT, the leasing of land in perpetual usufruct constitutes a supply of goods and, therefore, the annual fees paid by the usufructuary had to be subject to VAT.

31 Under the Law on transformation, on 1 January 2019, the right of perpetual usufruct of land developed for residential purposes was transformed into full ownership rights over that land.

32 In accordance with Article 7 of the Law on transformation, perpetual usufructuaries who have become owners must pay the public authority which was the owner of the land in question a transformation fee. That fee is payable on 31 March of each year for a period of 20 years from the day of transformation of the right of perpetual usufruct into full immovable property ownership rights. That article states that the amount of that fee is to be equivalent to the amount of the annual fee for perpetual usufruct in force on the day of that transformation. Moreover, the new owner may, at any time during the period in which it is required to pay the transformation fee, inform the competent body in writing of its intention to make a lump sum payment (one-off fee).

33 Furthermore, Article 6(1) of the Law on transformation states that the new owner of the land may challenge the amount of the transformation fee and the duration of the period during which that fee is payable, by submitting an application to the competent body. An application submitted using that procedure results in the amount and deadline for payment of the transformation fee being set by way of an administrative decision.

34 On 5 January 2019, the Municipality of Wrocław requested the tax authority to issue a tax ruling concerning the application of VAT to the fees payable to it under the Law on transformation.

35 That municipality submits that the fees paid by the new owners of the land under that law are not subject to VAT.

36 On the contrary, the tax authority stated, in its tax ruling of 15 January 2019, that the fees payable to the Municipality of Wrocław under the Law on transformation are subject to VAT as they represent the balance of the amount due in respect of the creation of rights of perpetual usufruct over the land in question and on the ground that, when it collects those fees, that

municipality acts as a taxable person for VAT purposes and not as a public authority.

37 The Municipality of Wrocław brought an action against that tax ruling before the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław, Poland).

38 The referring court questions, in the first place, whether the transformation of the right of perpetual usufruct into full immovable property ownership rights which took place by operation of the Law on transformation without the parties having expressed an intention to carry out that transformation should be regarded as a transaction referred to in Article 14(2)(a) of the VAT Directive, namely as a transfer of the ownership of property against payment of compensation in pursuance of the law. That court questions, more specifically, whether, in view of its characteristics, the transformation fee may be regarded as 'compensation' for the purposes of that provision. The referring court is of the opinion that this is the situation in the case pending before it and that, therefore, the transformation of the right of perpetual usufruct into full immovable property ownership rights constitutes a supply of goods within the meaning of Article 14(2)(a) of the VAT Directive.

39 In the second place, that court states that if, nevertheless, it were not possible to consider that there was a supply of goods within the meaning of that provision, it would then be necessary to question the classification of the legal transaction in the main proceedings as a supply of goods within the meaning of Article 14(1) of the VAT Directive.

40 In the third place, the referring court wishes to ascertain whether, in the present case, the Municipality of Wrocław acts as a taxable person for VAT purposes, as is asserted by the tax authority, or, as the case may be, whether the exemption from VAT provided for in the first subparagraph of Article 13(1) of the VAT Directive applies to that municipality. That court is of the opinion that, in the circumstances of the present case, that municipality pursues an activity as a public body and, in accordance with the provisions of the Law on transformation, carries out, in essence, only tasks of an administrative nature. The referring court emphasises that the transformation of the right of perpetual usufruct into full immovable property ownership rights itself, on the other hand, takes place solely by operation of law, without the possibility of negotiating the conditions for implementing that transformation or the conditions for paying the fees for that transformation, and that the Municipality of Wrocław cannot take any action which could have an impact on the personal, material or economic scope of that transformation.

41 In those circumstances, the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law ... constitute a supply of goods within the meaning of Article 14(2)(a) of [the VAT Directive], read in conjunction with Article 2(1)(a) [of that directive]?

2. If the answer to Question 1 is in the negative, does the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law constitute a supply of goods within the meaning of Article 14(1) of [the VAT Directive], read in conjunction with Article 2(1)(a) [of that directive]?

3. Does a municipality that charges fees for the transformation of the right of perpetual usufruct into immovable property ownership rights by operation of law ... act as a taxable person within the meaning of Article 9(1) of [the VAT Directive], read in conjunction with Article 2(1)(a) of that directive, or as a public authority within the meaning of Article 13 of that directive?’

The expedited procedure

42 In its request for a preliminary ruling, the referring court requested that the present case be determined under the expedited procedure laid down in Article 105(1) of the Rules of Procedure of the Court of Justice. In support of its request, that court stated that the lack of legal certainty concerning the tax arrangements in respect of fees for the transformation of the right of perpetual usufruct into full immovable property ownership rights constitutes an interference with budgetary certainty and is likely to be detrimental to the many Polish citizens concerned.

43 It follows from Article 105(1) of the Rules of Procedure that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

44 In the present case, on 10 October 2019, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to reject the referring court’s request referred to in paragraph 42 above.

45 That decision was based on the fact that the reasons relied on by the referring court were not such as to demonstrate that the conditions laid down in Article 105(1) of the Rules of Procedure were satisfied in the present case (see, by analogy, judgment of 16 July 2020, *Addis*, C?517/17, EU:C:2020:579, paragraph 42).

46 It is settled case-law that neither mere economic interests, however important and legitimate they may be (order of the President of the Court of 2 September 2015, *Leonmobili and Leone*, C?353/15, not published, EU:C:2015:552, paragraph 8), nor the risk of economic loss or the economic sensitivity of the case in the main proceedings (order of the President of the Court of 29 January 2014, *E.*, C?436/13, not published, EU:C:2014:95, paragraph 27), are such as to establish the existence of urgency within the meaning of Article 105(1) of the Rules of Procedure.

47 In addition, the large number of cases whose proceedings have been suspended pending the Court’s decision on the present reference for a preliminary ruling is not capable, as such, of constituting an exceptional circumstance that could justify the application of an expedited procedure (see, to that effect, orders of the President of the Court of 8 March 2012, *P*, C?6/12, not published, EU:C:2012:135, paragraph 8; of 31 March 2014, *Ind?li? ir investicij? draudimas and Nemani?nas*, C?671/13, not published, EU:C:2014:225, paragraph 10; and of 28 November 2017, *Di Girolamo*, C?472/17, not published, EU:C:2017:932, paragraph 15).

Consideration of the questions referred

The first and second questions

48 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 14 of the VAT Directive must be interpreted as meaning that the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation against payment of a fee constitutes a supply of goods

within the meaning of paragraph 2(a) of that article or, alternatively, within the meaning of paragraph 1 of that article.

49 It should be noted at the outset that the VAT Directive establishes a common system of VAT based on, inter alia, a uniform definition of taxable transactions (judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 30 and the case-law cited).

50 Thus, in accordance with Article 2(1)(a) of that directive, the supply of goods for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

51 Article 14(1) of the VAT Directive defines the concept of 'supply of goods' as being the transfer of the right to dispose of tangible property as owner.

52 In that regard, according to settled case-law, the concept of 'supply of goods' referred to in Article 14(1) of the VAT Directive does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law, but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner (judgment of 15 May 2019, *Vega International Car Transport and Logistic*, C-235/18, EU:C:2019:412, paragraph 27 and the case-law cited).

53 Moreover, Article 14(2)(a) of that directive provides that, in addition to the transaction referred to in paragraph 1 of that article, the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation is to be regarded as a supply of goods.

54 Therefore, while Article 14(1) of the VAT Directive defines generally the concept of 'supply of goods', it can be concluded from a literal interpretation of paragraph 2 of that article, in particular the expression 'in addition to the transaction referred to in paragraph 1', that paragraph 2 refers to other transactions which, while being classified as 'supplies of goods', have characteristics different from those referred to in Article 14(1) of that directive. In particular, the definition of the transactions that are the subject of Article 14(2)(a) of that directive does not make any reference to the 'right to dispose of tangible property as owner', as referred to in Article 14(1) of the same directive (see, to that effect, judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 35). On the other hand, Article 14(2)(a) of the VAT Directive refers explicitly to the transfer of ownership of that property (see, to that effect, judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 40).

55 It therefore follows from the wording and structure of Article 14 of the VAT Directive that, as against the general definition set out in paragraph 1 thereof, paragraph 2 of that article constitutes a *lex specialis*, the conditions for the application of which are independent of those in paragraph 1 thereof (see, to that effect, judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 36).

56 Thus, in order to qualify as a 'supply of goods' within the meaning of Article 14(2)(a) of the VAT Directive, three cumulative conditions must be satisfied. First, there has to be a transfer of a right to ownership. Second, that transfer has to be by order made by, or in the name of, a public authority or in pursuance of the law. Third, there has to be payment of compensation (judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 37).

57 In the present case, as regards the first two conditions referred to in the preceding paragraph of this judgment, it is apparent from the information provided by the referring court that it is not disputed that the transformation of the right of perpetual usufruct into full immovable

property ownership rights, which led to the Municipality of Wrocław's ownership rights being transferred to the former perpetual usufructuaries, must be classified as a transfer of the right to ownership for the purposes of Article 14(2)(a) of the VAT Directive. Furthermore, it is common ground that that transformation took place in pursuance of the law.

58 As regards the question whether the transformation of the right of perpetual usufruct into full immovable property ownership rights took place against payment of compensation for the purposes of Article 14(2)(a) of the VAT Directive, it must be noted, in the first place, that the expression 'payment of compensation', under that provision, must, in the absence of any reference to the national law of the Member States, be given an autonomous and uniform definition, specific to EU law, which takes account, in particular, of the *lex specialis* nature of that provision, as is clear from paragraph 55 of this judgment. Thus, the meaning of that expression cannot depend on its meaning and scope in the national laws of the Member States.

59 In that regard, it is clear from the Court's case-law that, in order for there to be a 'payment of compensation' for the purposes of Article 14(2)(a) of the VAT Directive, it is irrelevant, having regard to the *lex specialis* nature of that provision, that such a payment has all the constitutive elements of the concept of supply of goods for 'consideration' referred to in Article 2(1)(a) of that directive (see, to that effect, judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 44).

60 In the second place, it should be emphasised that the wording of Article 14(2)(a) of the VAT Directive refers to the 'payment' of compensation, without laying down conditions concerning the nature or the amount of that compensation.

61 In the third place, it is clear from the case-law of the Court that, in order to determine whether the condition relating to the payment of compensation is satisfied, it is necessary only to establish that the compensation at issue is directly linked to the transfer of ownership and that its payment has become effective, which it is for the national court to determine (see, to that effect, judgment of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 45).

62 In the present case, it is apparent from the documents before the Court that the obligation to pay the transformation fee arises from the wording of the law on the day on which the transformation of the right of perpetual usufruct into full immovable property ownership rights takes place and that the amount of that fee is to be equivalent to the amount of the annual fee for perpetual usufruct on the day of that transformation, that fee being payable for a period of 20 years. According to the information provided by the referring court, the annual fees for perpetual usufruct are, in turn, to be calculated as a percentage of the price of the land. The transformation fees at issue in the main proceedings, the effective payment of which is to be verified by the referring court, are therefore directly linked to the transfer of ownership.

63 In the light of the foregoing considerations, the answer to the first and second questions is that Article 14(2)(a) of the VAT Directive must be interpreted as meaning that the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation against payment of a fee constitutes a supply of goods within the meaning of that provision.

The third question

64 By its third question, the referring court asks, in essence, whether the VAT Directive must be interpreted as meaning that, where the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation takes place against payment of a fee, a municipality acts as a taxable person within the meaning of Article 9(1) of that

directive, or as a public authority for the purposes of Article 13(1) of that directive.

65 In order to answer that question, it is necessary to assess, as a preliminary point, whether the transformation of the right of perpetual usufruct into full immovable property ownership rights against payment of a fee constitutes an economic activity within the meaning of Article 9(1) of the VAT Directive.

66 The application of Article 13(1) of the VAT Directive requires a prior finding that the activity in question is economic in nature. If the existence of an economic activity within the meaning of the second subparagraph of Article 9(1) of that directive is established, then the applicability of the exception concerning bodies governed by public law provided for in the first subparagraph of Article 13(1) of that directive must be examined (see, by analogy, judgments of 29 September 2015, *Gmina Wrocław*, C-276/14, EU:C:2015:635, paragraph 30; of 29 October 2015, *Saudaçor*, C-174/14, EU:C:2015:733, paragraph 31; and of 13 June 2018, *Gmina Wrocław*, C-665/16, EU:C:2018:431, paragraph 47).

Economic nature of the activity

67 The concept of ‘economic activity’ is defined in the second subparagraph of Article 9(1) of the VAT Directive as covering any activity of producers, traders or persons supplying services and, more particularly, transactions involving ‘the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis’.

68 As regards the concept of ‘exploitation’ for the purposes of the second subparagraph of Article 9(1) of the VAT Directive, it is clear from the case-law of the Court that, in accordance with the requirements of the principle of neutrality of the common system of value added tax, that concept refers to all transactions, whatever may be their legal form, by which it is sought to obtain income from the goods in question on a continuing basis (judgments of 6 October 2009, *SPÖ Landesorganisation Kärnten*, C-267/08, EU:C:2009:619, paragraph 20 and the case-law cited, and of 2 June 2016, *Lajvér*, C-263/15, EU:C:2016:392, paragraph 24 and the case-law cited).

69 Whilst demonstrating that the scope of the concept of ‘economic activity’ is very wide, the analysis of the wording of Article 9(1) of the VAT Directive also clarifies the objective character of that concept, in the sense that the activity is considered per se and without regard to its purpose or results (see, to that effect, judgment of 13 June 2019, *IO (VAT – Activities of a member of a supervisory board)*, C-420/18, EU:C:2019:490, paragraph 31 and the case-law cited).

70 In the present case, account must be taken, in particular, of the fact that the Municipality of Wrocław collects a fee, as consideration for the transformation of the right of perpetual usufruct into full immovable property ownership rights, from the former perpetual usufructuaries which is payable, in principle, for a period of 20 years from the day of that transformation. Similarly, if that fee is paid in the form of a one-off fee, that one-off fee is to correspond to the fee payable for the year in which the intention to make a lump sum payment has been expressed multiplied by the number of years remaining until expiry of the 20-year period, calculated from the day of that transformation.

71 Those factors, which it is for the referring court to verify, support the finding that the transformation of the right of perpetual usufruct into full immovable property ownership rights enables the Municipality of Wrocław to obtain income therefrom on a continuing basis and that, consequently, that transaction constitutes an economic activity within the meaning of Article 9(1) of the VAT Directive.

72 In that regard, it is irrelevant that such a transformation takes place in pursuance of the law and that the amount of the transformation fee was established by that same law having regard to the necessary compliance with the effectiveness of Article 14(2)(a) of the VAT Directive.

73 Similarly, the fact that the Municipality of Wrocław took no active steps for the purpose of transforming the right of perpetual usufruct into full immovable property ownership rights, since that transaction took place by operation of law, cannot, in itself, lead to the finding that that transformation does not fall within the scope of the exploitation of tangible property for the purpose of obtaining income therefrom on a continuing basis for the purposes of the second subparagraph of Article 9(1) of the VAT Directive.

74 It cannot be inferred from the Court's case-law that the fact of taking active steps to market property is a necessary condition for an activity relating to property asset management to be regarded as being carried out for the purpose of obtaining income therefrom on a continuing basis and therefore to be classified as 'economic' (see, to that effect, judgment of 13 June 2019, *IO (VAT – Activities of a member of a supervisory board)*, C-420/18, EU:C:2019:490, paragraph 29 and the case-law cited).

75 It should be added that such a condition would also be incompatible with the necessary compliance with the effectiveness of Article 14(2)(a) of the VAT Directive, which, by definition, refers to the transfer of the ownership of property which takes place following an order made by or in the name of a public authority or in pursuance of the law.

Exercise of the activity as a public authority

76 With regard to the question whether, in a case such as that in the main proceedings, the Municipality of Wrocław is to be regarded as a taxable person acting as such within the meaning of Article 9(1) of the VAT Directive, or as a public authority for the purposes of the first subparagraph of Article 13(1) of that directive, it should be borne in mind, as a preliminary point, that, in derogation from the general rule on treatment as taxable persons laid down in Article 9(1) of that directive, Article 13(1) of that directive excludes local government authorities from the capacity as a taxable person in respect of activities or economic transactions in which they engage as a public authority, unless their treatment as non-taxable persons leads to significant distortions of competition (judgment of 29 September 2015, *Gmina Wrocław*, C-276/14, EU:C:2015:635, paragraph 29 and the case-law cited).

77 As a derogation from the general rule that any activity of an economic nature is subject to VAT, that provision must be interpreted strictly (order of 20 March 2014, *Gmina Wrocław*, C-72/13, not published, EU:C:2014:197, paragraph 19 and the case-law cited).

78 According to settled case-law, it follows from the very wording of that provision that, in order for the rule of treatment as a non-taxable person to apply, two cumulative conditions must be satisfied, that is to say, the activities in question must, first, be carried out by a body governed by public law and, second, that body must act as a public authority. As regards the latter condition, it is the manner in which the activities at issue are carried out that determines the scope of the treatment of public bodies as non-taxable persons. Thus, activities carried out as public authorities for the purposes of the first subparagraph of Article 13(1) of the VAT Directive are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders (order of 20 March 2014, *Gmina Wrocław*, C-72/13, not published, EU:C:2014:197, paragraph 19 and the case-law cited).

79 The Court has also made it clear that the subject matter or purpose of the activity in question is in that regard irrelevant and that the fact that the pursuit of that activity involves the use of powers conferred by public law shows that that activity is subject to a public law regime (judgment of 29 October 2015, *Saudaço*, C-174/14, EU:C:2015:733, paragraph 70 and the case-law cited).

80 As regards specifically the first of the two conditions laid down in Article 13(1) of the VAT Directive, for the rule of treatment as a non-taxable person to apply, there is no question that the Municipality of Wrocław is a body governed by public law.

81 However, the second condition laid down by that provision must also be satisfied, that is to say, that only activities engaged in by a body governed by public law acting as a public authority are exempt from VAT.

82 In the present case, subject to verification by the referring court, several factors seem to indicate that, in connection with the transformation of the right of perpetual usufruct into full immovable property ownership rights, the Municipality of Wrocław does not exercise powers conferred by public law.

83 In addition, it appears that the Municipality of Wrocław, in implementing measures adopted by the national legislature, has no decision-making power as regards the personal scope of such a transformation and the detailed rules of application of that transformation.

84 It is apparent that, in accordance with the provisions of the Law on transformation, the role of the Municipality of Wrocław consists, in essence, in verifying the facts, issuing a certificate confirming the transformation of the right of perpetual usufruct into full immovable property ownership rights and informing the new owner of the obligation to pay a transformation fee. As the Advocate General observed in point 61 of her Opinion, the fee payable by the former perpetual usufructuaries is not fixed by the Municipality of Wrocław in an administrative procedure as a public authority under a special public law regime applicable to it.

85 It follows from the foregoing that, subject to the verifications which it is for the referring court to carry out, the activities engaged in by the Municipality of Wrocław in the context of the transformation of the right of perpetual usufruct into full immovable property ownership rights, while being economic in nature, cannot be regarded as involving the exercise of powers conferred by public law.

86 In the light of the foregoing, the answer to the third question is that the VAT Directive must be interpreted as meaning that, where the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation takes place against payment of a fee to the municipality which owns the property, enabling it to obtain income therefrom on a continuing basis, that municipality, subject to the verifications to be made by the referring court, acts as a taxable person within the meaning of Article 9(1) of that directive, and not as a public authority for the purposes of Article 13(1) of that directive.

Costs

87 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 14(2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation against payment of a fee constitutes a supply of goods within the meaning of that provision.**
2. **Directive 2006/112 must be interpreted as meaning that, where the transformation of the right of perpetual usufruct into full immovable property ownership rights provided for by national legislation takes place against payment of a fee to the municipality which owns the property, enabling it to obtain income therefrom on a continuing basis, that municipality, subject to the verifications to be made by the referring court, acts as a taxable person within the meaning of Article 9(1) of that directive, and not as a public authority for the purposes of Article 13(1) of that directive.**

[Signatures]

* Language of the case: Polish.