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Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 11 November 2021 — Fluvius Antwerpen v MX

(Case C-677/21)

(2022/C 84/31)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Fluvius Antwerpen

Defendant: MX

Questions referred

Must Article 2(1)(a), read in conjunction with Article 14(1) of Directive 2006/112/EC, (1) be interpreted as meaning that the unlawful usage of energy is a supply of goods, being the transfer of the right to dispose of tangible property as owner?

If not, must Article 14(2)(a) of Directive 2006/112/EC be interpreted as meaning that the unlawful usage of energy is a supply of goods, being a 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?

Must Article 9(1) of Directive 2006/112/EC be interpreted as meaning that, if Fluvius Antwerpen is entitled to compensation for unlawfully used energy, it is to be regarded as a taxable person since the unlawful usage is the result of an 'economic activity' of Fluvius Antwerpen, namely the exploitation of tangible property for the purposes of obtaining income therefrom on a continuing basis?

If Article 9(1) of Directive 2006/112/EC must be interpreted as meaning that the unlawful usage of energy constitutes an economic activity, must the first paragraph of Article 13(1) of Directive 2006/112/EC then be interpreted as meaning that Fluvius Antwerpen is a public authority and, if so, must the third paragraph of Article 13(1) then be interpreted as meaning that the unlawful usage of energy is the result of an activity of Fluvius Antwerpen that is not carried out on such a small scale as to be negligible?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).