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Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

20 April 2023 (\*)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Articles 14, 15 and 24 – Recharging points for electric vehicles – Provision of devices for recharging electric vehicles, supply of the necessary electricity, and provision of technical support and IT services – Classification as a ‘supply of goods’ or a ‘supply of services’)

In Case C-282/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 23 February 2022, received at the Court on 26 April 2022, in the proceedings

**Dyrektor Krajowej Informacji Skarbowej**

v

**P. in W.,**

interested party:

**Rzecznik Małych i Średnich Przedsiębiorców,**

THE COURT (Tenth Chamber),

composed of D. Gratsias (Rapporteur), President of the Chamber, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: T. Šapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Dyrektor Krajowej Informacji Skarbowej, by B. Kołodziej, D. Pach and T. Wojciechowski,
- the Rzecznik Małych i Średnich Przedsiębiorców, by P. Chrupek, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Czech Government, by O. Serdula, M. Smolek and J. Vlášil, acting as Agents,
- the European Commission, by A. Armenia and U. Mažecka, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 14(1) and Article 24(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2009/162/EU of 22 December 2009 (OJ 2010 L 10, p. 14).

2 The request has been made in proceedings between the Dyrektor Krajowej Informacji Skarbowej (Director of National Tax Information, Poland) ('the tax authority') and P. in W. concerning an application for annulment of a tax ruling dated 16 May 2017 ('the tax ruling').

## **Legal context**

### ***European Union law***

#### *Directive 2006/112*

3 Under Article 2(1) of Directive 2006/112:

'The following transactions shall be subject to [value added tax (VAT)]:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

...

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

...'

4 Article 14(1) of that directive provides:

'"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.'

5 Under Article 15(1) of Directive 2006/112:

'Electricity, gas, heat or cooling energy and the like shall be treated as tangible property.'

6 Article 24(1) of that directive provides:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods.'

#### *Directive 2014/94/EU*

7 Under Article 4(8) of Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ 2014 L 307, p. 1):

'Member States shall ensure that operators of recharging points accessible to the public are free to purchase electricity from any Union electricity supplier, subject to the supplier's agreement. The operators of recharging points shall be allowed to provide electric vehicle recharging services to customers on a contractual basis, including in the name and on behalf of other service providers.'

### **Polish law**

8 Article 7(1) of the ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (Dziennik Ustaw No 54, item 535), in the version applicable to the dispute in the main proceedings ('the VAT Law'), provides:

'The supply of goods referred to in Article 5(1)(1) shall be understood as the transfer of the right to dispose of goods as owner ...'

9 Article 8(1) of the VAT Law provides:

'The supply of services referred to in Article 5(1)(1) shall be understood as any supply to a natural person, legal person or organisational unit without legal personality which does not constitute a supply of goods within the meaning of Article 7 ...'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

10 P. in W. plans to carry on activities consisting of the installation and operation of electric vehicle recharging stations which are accessible to the public. Those stations would be equipped with 'multi-standard' chargers, which would have both direct current quick-charge connectors and alternating current slow-charge connectors. The standard time for recharging an electric vehicle to 80% battery capacity using quick-charge connectors would be around 20 to 30 minutes. The time for recharging a vehicle using slow-charge connectors would, for its part, be around four to six hours.

11 The price billed to users would depend in particular on the duration of the recharging session, expressed in hours for slow-charge connectors or in minutes for quick-charge connectors, as well as on the standard of connector chosen by the user concerned. Payments could be made after each recharging session or at the end of an agreed billing period, without excluding the possibility of implementing a system enabling users to purchase credits, accumulated in an e-wallet, which could be used to recharge the electric vehicle concerned.

12 The supply provided during each recharging session could, in principle, include, depending on the needs of the user concerned, transactions consisting of:

- access to recharging devices, including integration of the charger with the vehicle operating system;
- the supply of electricity, within duly adjusted parameters, to the batteries of the vehicle; and
- the necessary technical support.

13 P. in W. also plans to create a special platform, a website or an IT application which would enable the user concerned to reserve a particular connector and to view his or her transaction and payment history.

14 For all of those supplies, P. in W. would bill a single price.

15 P. in W. asked the tax authority to issue a tax ruling confirming that the planned activities consisted of a 'supply of services' within the meaning of Article 8 of the VAT Law.

16 In the tax ruling, the tax authority considered that the supply of the electricity necessary to recharge an electric vehicle had to be regarded as the principal supply, while the other services offered by P. in W. had to be regarded as ancillary. In its view, it followed that the provision, by P. in W., of devices enabling electric vehicles to be recharged quickly was not to be regarded as the predominant element of the transaction concerned and that the recharging of the vehicle was not of secondary importance.

17 Following an action brought by P. in W., the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland) annulled the tax ruling by judgment of 6 June 2018. According to that court, the primary intention of users of recharging stations is to use devices enabling them to recharge their vehicle quickly and efficiently. Thus, from the point of view of the user concerned, the principal supply consists of access to a recharging station and of the necessary integration of the charger with the vehicle operating system. The objective of such a transaction is not to offer electricity, but rather to provide the users concerned with the technologically advanced recharging devices with which those recharging stations are equipped.

18 According to that court, first, if the users concerned sought only to purchase electricity for their electric vehicles, they would use their home network or that of their workplace instead of using public recharging stations. They would choose to use those stations only because of the different standards of their connectors enabling the batteries of electric vehicles to be recharged more quickly and more efficiently. Second, the price is not calculated on the basis of the energy consumed. In those circumstances, the attractiveness of what electric vehicle recharging stations offer is reflected principally in the recharging time and not in the access to electricity as such.

19 According to that court, the supply provided by P. in W. would be distinct from that provided by service stations offering traditional fuels, because it would focus not on the type or the quality of the fuels, which would be identical for every supplier, but on the speed and efficiency of the recharging session, which would depend on the characteristics of the devices provided to the users concerned.

20 The tax authority has brought an appeal in cassation before the referring court against the judgment of the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw) referred to in paragraph 17 of the present judgment. In support of that appeal, the tax authority argues that, as regards the provision, for consideration, of electric vehicle recharging stations, the principal supply consists of a supply of goods, namely electricity.

21 According to the referring court, the three transactions described in paragraph 12 of the present judgment are so closely linked that they constitute a single complex transaction. By contrast, the implementation of a special platform, a website or an IT application which would enable the user concerned to reserve a particular connector and to view his or her transaction and payment history would constitute an ancillary supply forming part of that single complex transaction and intended to make it easier for consumers to recharge their vehicles.

22 In view of the fact that the access, offered to customers, to recharging devices in order to ensure the supply of electricity, within duly adjusted parameters, to the vehicle's batteries is not an element which is ancillary to the supply of electricity, the referring court considers that it is necessary to determine the predominant element of the single supply described in paragraphs 12 and 21 of the present judgment. In that context, the referring court specifies that, according to P. in W., the decision to use the services of a particular recharging station may be driven by the desire

to reduce the time needed to recharge the vehicle, in order to be able to resume a journey quickly. Thus, from the point of view of the user concerned, it is not so much the price of the energy that is decisive as the access offered to a special infrastructure which guarantees a shorter stop at the recharging station.

23 In that regard, the referring court observes that the use of recharging stations does not constitute an end in itself, but is intended to enable the batteries of an electric vehicle to be recharged. Thus, the users of those stations have the choice between quick-charge recharging points and slow-charge recharging points, which they will select not only on the basis of the duration of the recharging session, but also taking into account the characteristics of the vehicle's batteries. Access to recharging devices thus constitutes the means by which a user may better enjoy the supply of electricity, which is the principal supply.

24 However, the fact that the recharging price also includes a fee for parking the vehicle, as well as the reference in Article 4(8) of Directive 2014/94 to the 'electric vehicle recharging services' provided by operators of recharging points, give rise to doubts on the part of the referring court as regards the classification of the single supply at issue in the main proceedings as a 'supply of goods' or a 'supply of services' within the meaning of Directive 2006/112.

25 In those circumstances, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does a complex supply made to electric vehicle users at recharging points which encompasses:

- (a) the provision of recharging devices (including integration of the charger with the vehicle operating system),
- (b) the supply of electricity, within duly adjusted parameters, to the batteries of the electric vehicle,
- (c) the necessary technical support for vehicle users, and
- (d) the provision of a special platform, website or application whereby users may reserve a particular connector and view their transaction and payment history, and of the option to use an "e-wallet" to pay the balance due for individual recharging sessions

constitute a supply of goods within the meaning of Article 14(1) of [Directive 2006/112] or a supply of services within the meaning of Article 24(1) thereof?'

### **Consideration of the question referred**

26 By its question, the referring court asks, in essence, whether Directive 2006/112 is to be interpreted as meaning that a single complex supply consisting of:

- access to recharging devices for electric vehicles (including integration of the charger with the vehicle operating system);
- the supply of electricity, within duly adjusted parameters, to the batteries of that vehicle;
- the necessary technical support for the users concerned; and
- the provision of IT applications enabling the user concerned to reserve a connector, view his or her transaction history, and purchase credits which are then accumulated in an e-wallet and

used to pay for recharging sessions

constitutes a 'supply of goods' within the meaning of Article 14(1) of that directive, or a 'supply of services' within the meaning of Article 24(1) thereof.

27 It should be noted that, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which that transaction takes place in order to determine, first, whether the transaction gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply and, second, whether, in the latter case, that single supply is to be regarded as a 'supply of goods' or a 'supply of services' (judgments of 10 March 2011, *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, EU:C:2011:135, paragraph 52, and of 25 March 2021, *Q-GmbH (Special risk insurance)*, C-907/19, EU:C:2021:237, paragraph 19 and the case-law cited).

28 In particular, while it follows from the second subparagraph of Article 1(2) of Directive 2006/112 that each transaction must normally be regarded as distinct and independent, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. In that regard, it must be held that there is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see, to that effect, judgments of 10 March 2011, *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, EU:C:2011:135, paragraph 53, and of 25 March 2021, *Q-GmbH (Special risk insurance)*, C-907/19, EU:C:2021:237, paragraph 20 and the case-law cited).

29 Moreover, in certain circumstances, several formally distinct supplies, which could be provided separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent (judgment of 2 December 2010, *Everything Everywhere*, C-276/09, EU:C:2010:730, paragraph 23).

30 That is the case where, inter alia, one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal supply (see, to that effect, judgments of 10 March 2011, *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, EU:C:2011:135, paragraph 54, and of 4 March 2021, *Frenetikexito*, C-581/19, EU:C:2021:167, paragraph 41).

31 In the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether, in the circumstances of the particular case, the supply concerned constitutes a single supply and to make all definitive findings of fact in that regard (see, to that effect, judgments of 10 March 2011, *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, EU:C:2011:135, paragraph 55, and of 25 March 2021, *Q-GmbH (Special risk insurance)*, C-907/19, EU:C:2021:237, paragraphs 25 and 26 and the case-law cited).

32 The case in the main proceedings concerns a combination of transactions consisting of the supply of electricity for the purpose of recharging electric vehicles and the provision of various services, such as providing access to recharging points and facilitating the use thereof, providing the necessary technical support, and providing IT applications facilitating the reservation of a connector as well as the monitoring of, and payment for, transactions. The referring court considers that the supply and provision in question form a single transaction for the purposes of VAT. In view of the information available to the Court, it does not appear that that classification disregards any of the criteria set out in paragraphs 27 to 30 of the present judgment.

33 As regards the concept of ‘supply of goods’ within the meaning of Directive 2006/112, Article 14(1) of that directive provides that such a supply means the transfer of the right to dispose of tangible property as owner. That concept covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he or she were its owner (see, to that effect, judgments of 10 March 2011, *Bog and Others*, C?497/09, C?499/09, C?501/09 and C?502/09, EU:C:2011:135, paragraph 59, and of 23 April 2020, *Herst*, C?401/18, EU:C:2020:295, paragraph 36 and the case-law cited). In addition, under Article 15(1) of that directive, electricity is to be treated as tangible property.

34 As regards the concept of ‘supply of services’ within the meaning of Directive 2006/112, it is apparent from Article 24(1) of that directive that that concept covers any transaction which does not constitute a ‘supply of goods’ within the meaning of Article 14 thereof.

35 In order to determine whether a single complex supply, such as that at issue in the main proceedings, falls to be classified as a ‘supply of goods’ or a ‘supply of services’ within the meaning of that directive, all the circumstances in which the transaction concerned takes place must be taken into account in order to ascertain its characteristic elements and to identify its predominant elements. The elements in question must be determined from the point of view of the typical consumer of recharging points and having regard, in an overall assessment, to the qualitative and not merely quantitative importance of the elements of supply of services in relation to the elements of supply of goods (see, to that effect, judgment of 10 March 2011, *Bog and Others*, C?497/09, C?499/09, C?501/09 and C?502/09, EU:C:2011:135, paragraphs 61 and 62 and the case-law cited).

36 Thus, the reference, in Article 4(8) of Directive 2014/94, to ‘electric vehicle recharging services’ does not predetermine the classification of the transaction at issue in the main proceedings as a ‘supply of goods’ or a ‘supply of services’ within the meaning of Directive 2006/112. Indeed, according to Article 1 of Directive 2014/94, the purpose of that directive is to set out minimum requirements for the building-up of alternative fuels infrastructure, including recharging points for electric vehicles. Therefore, the purpose of that directive is not to lay down any rules regarding the treatment, from the point of view of VAT, of the supply of alternative fuels.

37 In addition, given that the marketing of goods is always accompanied by a minimal supply of services, only services other than those which necessarily accompany the marketing of those goods may be taken into account for the purpose of assessing the part played by the supply of services within the whole of a complex supply which also involves the supply of the goods (see, to that effect, judgments of 10 March 2011, *Bog and Others*, C?497/09, C?499/09, C?501/09 and C?502/09, EU:C:2011:135, paragraph 63, and of 22 April 2021, *Dyrektor Izby Administracji Skarbowej w Katowicach*, C?703/19, EU:C:2021:314, paragraph 50).

38 In that regard, first, the transaction consisting of the supply of electricity to the batteries of an electric vehicle constitutes a supply of goods, in so far as that transaction enables the user of the recharging station to consume, in order to propel his or her vehicle, the electricity transferred,

which, under Article 15(1) of Directive 2006/112, is to be treated as tangible property.

39 Secondly, such a supply of electricity to the batteries of an electric vehicle requires the use of suitable recharging devices, which may include a charger which is to be integrated with the vehicle operating system. Consequently, granting access to those devices constitutes a minimal supply of services which necessarily accompanies the supply of electricity and may not, accordingly, be taken into account for the purpose of assessing the part played by the supply of services within the whole of a complex transaction which also involves that supply of electricity.

40 Thirdly, the technical support which may be necessary for the users concerned constitutes, for its part, not an end in itself, but a means of better enjoying the supply of the electricity necessary to propel the electric vehicle. It thus constitutes a supply which is ancillary to that supply of electricity.

41 That is also the case for the provision of IT applications enabling the user concerned to reserve a connector, to view his or her transaction history and to purchase credits for the purpose of paying for recharging sessions. Such supplies offer that user certain additional practical facilities whose sole purpose is, on the one hand, to improve the transfer of the electricity necessary to recharge his or her vehicle and, on the other, to provide an overview of previous transactions.

42 It follows that, in principle, the transfer of electricity constitutes the characteristic and predominant element of the single complex supply in respect of which the referring court is questioning the Court of Justice.

43 That finding is not called in question by the fact, referred to by that court, that, in order to calculate the amount due for the recharging of an electric vehicle, account may be taken not only of the quantity of electricity transferred, but also of a fee for the standing time during that recharging. In particular, this simply means that the unit price of the goods supplied – namely electricity – comprises not only the cost of those goods as such, but also the time during which the devices provided to the users concerned are in use.

44 Nor is the finding set out in paragraph 42 of the present judgment undermined where the operator concerned calculates the price solely on the basis of the duration of the recharging session. Indeed, in view of the fact that the quantity of electricity supplied is dependent on the power transferred during that time, such a calculation is also a reflection of the unit price of that electricity.

45 Similarly, the mere fact that the unit price of a fast direct current recharging session is marginally higher than that of a slow alternating current recharging session is not sufficient to establish, from the point of view of the user concerned, the speed and efficiency of that recharging session as a characteristic and predominant element of the transaction concerned.

46 In the light of the foregoing considerations, the answer to the question referred is that Directive 2006/112 must be interpreted as meaning that a single complex supply which encompasses:

- access to recharging devices for electric vehicles (including integration of the charger with the vehicle operating system);
- the supply of electricity, within duly adjusted parameters, to the batteries of that vehicle;
- the necessary technical support for the users concerned; and
- the provision of IT applications enabling the user concerned to reserve a connector, view his

or her transaction history, and purchase credits which are then accumulated in an e-wallet and used to pay for recharging sessions

constitutes a 'supply of goods' within the meaning of Article 14(1) of that directive.

### **Costs**

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

**Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/162/EU of 22 December 2009,**

**must be interpreted as meaning that a single complex supply which encompasses:**

- **access to recharging devices for electric vehicles (including integration of the charger with the vehicle operating system);**
- **the supply of electricity, within duly adjusted parameters, to the batteries of that vehicle;**
- **the necessary technical support for the users concerned; and**
- **the provision of IT applications enabling the user concerned to reserve a connector, view his or her transaction history, and purchase credits which are then accumulated in an e-wallet and used to pay for recharging sessions**

**constitutes a 'supply of goods' within the meaning of Article 14(1) of Directive 2006/112, as amended.**

[Signatures]

\* Language of the case: Polish.