

ECJ Decides on Whether Unlawful Usage of Energy Constitutes a Supply of Goods for Consideration Subject to VAT: *Fluvius Antwerpen* (Case C-677/21) (VAT)

27 April 2023

Report from IBFD Knowledge Centre

On 27 April 2023, the Court of Justice of the European Union (ECJ) gave its decision in *Fluvius Antwerpen v. MX* ([Case C-677/21](#)) based on a number of grounds.

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

1. Article 2(1)(a) of [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, read in conjunction with Article 14(1) of that directive,

must be interpreted as meaning that the supply of electricity by a distribution network operator, even if involuntary and the result of unlawful conduct on the part of a third party, constitutes a supply of goods for consideration entailing the transfer of the right to dispose of tangible property.

2. Article 9(1) of Directive 2006/112, as amended by Directive 2009/162,

must be interpreted as meaning that the supply of electricity by a distribution network operator, even if involuntary and the result of unlawful conduct on the part of a third party, constitutes an economic activity of that operator inasmuch as it gives rise to a risk inherent in its activity as an electricity distribution network operator. Where that economic activity is carried out by a body governed by public law acting as a public authority, such an activity, referred to in Annex I to that directive, can be regarded as being carried out on such a small scale as to be negligible within the meaning of the third subparagraph of Article 13(1) of that directive only if it is of such minimal scale in space or time and, consequently, of such a slight economic impact that the distortions of competition likely to result are liable to be, if not nil, at the very least insignificant."

For a previous TNS regarding the case, see [Belgium-1, News 21 February 2022](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

European Union; Belgium - ECJ Decides on Whether Unlawful Usage of Energy Constitutes a Supply of Goods for Consideration Subject to VAT: Fluvius Antwerpen (Case C-677/21) (VAT) (27 Apr. 2023), News IBFD.

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