



## **The activity of protecting adults lacking legal capacity carried out by a lawyer constitutes, as a rule, an economic activity**

*That activity may be exempted from VAT if the supply of services concerned is closely linked to welfare and social security work, and if that lawyer benefits, for the business he or she operates for that purpose, from recognition as a body devoted to social wellbeing*

Luxembourg law protects adults lacking legal capacity through curatorship and guardianship measures making it possible to advise, supervise and even represent those persons in civil matters, by conferring powers of management and of representation to third persons. In practice, curators, guardianship managers, special representatives and ad hoc representatives are generally family member as well as lawyers.

EQ, a lawyer admitted to the Bar in 1994, has been carrying out since 2004 an activity under powers of representation in the context of schemes for the protection of adults lacking legal capacity. In 2018, the Luxembourg tax authority sought from him payment of the VAT for the activities of representation of adults lacking legal capacity carried out in 2014 and 2015. EQ takes the view that those activities do not constitute economic activities subject to VAT and, in any event, that they fulfil a social function and should be exempted on that basis in accordance with the national legislation transposing the VAT Directive.<sup>1</sup> By contrast, the Luxembourg tax authority is of the opinion that supplies performed in the context of the professional activity of a lawyer constitute an economic activity, and that they cannot be exempted from VAT: in its view, EQ does not meet the requirement of being a body devoted to social wellbeing allowing him to rely on the exemption.

The tribunal d'arrondissement (District Court, Luxembourg), before which that dispute was brought, is seeking clarification as to whether the activity of protecting adults lacking legal capacity may benefit from a VAT exemption and asks the Court of Justice, inter alia, whether those activities are covered by the concept of economic activity within the meaning of the VAT Directive, whether those activities are exempted as 'the supply of services ... closely linked to welfare and social security work' and whether the lawyer carried out such activities may be considered to be a 'bod[y] recognised by the Member State concerned as being devoted to social wellbeing'.

In the judgment delivered today, the Court holds that the supply of services for the benefit of adults lacking legal capacity and intended to protect them in civil matters constitutes an **economic activity**. Under EU law, only activities of an economic nature are subject to VAT, and specifically the supply of services for consideration within the territory of a Member State by a taxable person acting as such. While it is for the referring court to ascertain whether the supply of services for the benefit of adults lacking legal capacity was for consideration, the Court refers to points of interpretation to determine whether there is a direct link between that supply and the sums received by EQ in the context of his powers of management, even if the consideration for that service was not obtained directly from the recipient but from a third party, or the remuneration for those services was determined on the basis of an assessment linked to the financial situation of the person lacking legal capacity or even in the form of a lump sum. As to the economic nature of the supply, the Court notes that EQ obtains income therefrom on a continuing basis and that the level of income obtained from his activity is insufficient in relation to his operating costs.

<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 234, p.1).

The Court turns next to the conditions for the application of an exemption by stating that the supply of services for the benefit of adults lacking legal capacity and intended to protect them in civil matters falls within the concept of **‘the supply of services closely linked to welfare and social security work’** within the meaning of the VAT Directive. By contrast, more general activities providing assistance or legal, financial or other advice, such as those which may be linked to the specific skills of a lawyer, a financial adviser or an estate agent, even if they are provided by a service provider in the context of the protection that person provides to a person lacking legal capacity, do not fall within that exemption. The Court clarifies moreover that it is for each Member State to lay down the rules linked to the recognition of bodies **other than those governed by public law** as being **devoted to social wellbeing**. In that regard, the Court observes that the concept of ‘bodies recognised ... as being devoted to social wellbeing’ is in principle sufficiently broad to include **natural persons** operating their business for profit. In the present case, the services in question were supplied by a lawyer, member of the Bar, and even if the professional category of lawyers cannot be characterised, as a whole, as being devoted to social wellbeing, the Court does not exclude that a lawyer providing services closely linked to welfare and social security work may show a stable social engagement, which EQ has been able to demonstrate during 2014 and 2015, which is a matter for the referring court to verify while observing the discretion which that Member State enjoys in that regard.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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