Comments received from VEG members on documents:
VEG No 079 - VAT "quick fixes" legislative package - Call-off stock
VEG No 080 - VAT "quick fixes" legislative package - Chain transactions - Exemption of an intra-Community supply of goods: conditions and proof
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Quick fixes

Following the last meeting in the VEG, we have asked our members to contribute with issues and points, where they believe further clarification is needed. The paper should not be seen as a formal position paper.

Starting point

It is important to remember the starting point for the quick fixes. The objectives of the quick fixes are

- short term measures to simplify the current system,
- less burden for business,
- consistent application of the rules,
- etc).

Do the newly adopted regulations by the Council achieve these objectives?

When looking in more detail at what the Council adopted it rather feels that the quick fixes are far from being a simplification but rather create major complexities and a considerable increase in processes and formalities. Some see it even as a "step backwards" for business. We would hope that existing and more beneficial simplification regimes should be maintained as much as possible.

To ensure that the quick fixes are a real simplification in practice it is highly important that the Commission is clarifying and communicating the unclear points addressed by the business community in explanatory notes, to support legal certainty and an uniform application of the new provisions across EU 28.

Art. 17a – call off stock:

General:

Definition "call-off stock" is in the preamble, so far we have different meanings of the terms "call-off stock" and consignment stock across the EU.

Is our understanding correct, **what matters for the new rules is**, the intended acquirer needs to be known to the supplier when the transport takes place as well as his VAT ID-No of the country of the destination of the goods?

Is our understanding correct, **that it does not matter**, if the goods are stored at the premises of the intended acquirer, at a 3rd party warehouse where the stock is managed by the 3rd party warehouse owner (open space – no specific room/space where only the intended acquirer has access to) or at a 3rd party warehouse but where the stock is managed by the intended acquirer (specific room/space where only the 3rd party acquirer has access to)?

We are asking since so far, to apply the simplification, in some MS it does not matter if the intended acquirer is known when the transfer of the goods to the stock happens? Currently the national simplifications still apply – this will be a big change.

Some MS currently operate boarder simplifications (eg, no time limit, call-off/consignment stock reliefs) – will the existing national simplifications co-exist with the newly harmonized simplification, or will the currently available national practices be discontinued?

Our understanding is that the Commission´s view is that the existing regimes will discontinue, is our understanding correct?

Our request from business is that there should be an option for business to either choose the newly adopted EU rules or further apply the already existing national simplifications. Only those MS's who do not have a simplification yet in their national law should be obliged to apply the newly adopted EU rules.

We would appreciate the Commission´s view on this?

Our understanding is that there can be call-off stock arrangements for different intended acquirers in the same MS as long as the relevant conditions to apply the simplifications are fulfilled by the parties? Can this be confirmed by the Commission?

Conditions (Art. 17a (2)):

The wording in (a) suggests that the supplier has to transport or arrange for the transport of the goods into the call-off stock? Does this mean if the intended acquirer transports or arranges for the transport into the call-off stock that the simplification does not apply? Is this intended and if so, why? If yes, is it because the goods are legally owned by the supplier when transported to the call-off stock?

Under the current EU VAT rules, where no simplification is possible, both the supplier or the intended acquirer can transport or arrange for transport of the goods to call-off stock.

This is also the case for simplifications on call-off stock regimes that current MS's do apply since years.

Can the supplier choose not to apply the simplification by not fulfilling one of the conditions? For example customer transports the goods, or supplier does not record the transfer into the register, or the supplier does not have a contract with the customer, etc.?

Last para in box on page 3, is this directed to the intended acquirer and if he does not fulfill his conditions? In this case the simplification can still apply but the national penalties might occur?

In general, we assume that if the parties choose not to apply the Art. 17a simplification, a registration for intra-Community transfers in the MS of destination of the goods is required (normal process).

Identity of the intended acquirer - how must the identity be known by the supplier? Is a sales contract sufficient?

Does the simplification scheme also apply to intra-Community transfers? For example under a commissionaire arrangement where the principal in MS 1 transfers goods to a commissionaire in MS 2 who sells the goods later to a customer in MS2? See below:

The term "ownership" needs to be clarified. In case the goods are sold to a commissionaire, there is no legal transfer of the ownership, it is only a transfer of ownership from a VAT perspective. So in that case where the principal only has 1 customer being the commissionaire though, the commissionaire has multiple customers, does the sale from principal to the commissionaire qualify as a call-off stock sale and when (when the goods are transferred or when the goods are taken out of the stock)?

To make use of the simplification the supplier cannot be established in MS of destination of the goods. However, can the supplier be VAT-registered there (for other purposes) and still apply the simplification? If the new regime is mandatory and existing national regimes disappear, will the supplier be required to de-register from its VAT registration in the MS where its stocks are located and which it had asked for the purposes of having stocks in that MS? This is an important point for Business (no requirement to de-register).

To make use of the simplification the intended acquirer is either merely registered for VAT in the Member State of destination or established there – is our understanding correct?

12 months time limit applies on the goods transferred and not per intended acquirer. Is our understanding correct? So if the goods are not removed by any intended acquirer within the 12 months period (within 12 months after transfer into the call-off stock) or returned back by the supplier to the MS of dispatch within the 12 months period, the simplification ceases and the supplier has to register.

How should the products be tracked? When we deal with individual identifiable goods (serial #) the timing could be tracked. How would this need to be managed with non-individual identifiable goods? We would assume the FIFO method should be used or must it be aligned with the agreement. Further losses or variances are quite common especially when dealing with bulk-products, would this render the simplification obsolete? It should be noted, that the customs authorities work with acceptable variances when dealing with bulk products.

Reporting – general

-> Transfer to stock:

- Entry in stock register of supplier and intended acquirer (Art.243(3) and Art. 54a)
- ESL reporting by supplier with only acquirer VAT ID-No – no value of the goods (Art. 262(2))

-> Removal from stock:

- VAT return declaration by supplier and acquirer as intra-community transaction
- ESL reporting by supplier with acquirer VAT ID-No and value of the goods
- Relevant changes in the stock register of the supplier and acquirer

Reporting - when intended acquirer is substituted:

- Relevant changes to the stock register by supplier and intended acquirer
- ESL reporting by supplier with new intended acquirer VAT ID-No and value of the goods

Reporting - when goods are sold from the call-off stock to another party then the intended acquirer:

- Relevant changes to the stock register by supplier and intended acquirer

- VAT registration of supplier is required in destination of goods MS
- Declaration of intra-community transfer by supplier in VAT return (home and destination MS) and ESL (home MS)
- Declaration of local sale by supplier in destination MS or if simplification exists reverse charge to be applied by the local customer for the domestic supply – which means VAT registration of the supplier in the MS of the destination of the goods is only required to report the transfer.

Reporting - when goods are returned to the MS of the supplier (MS of dispatch):

- Relevant changes to the stock register by supplier and intended acquirer
- ESL in MS of dispatch, supplier puts his on VAT ID-No of the MS of arrival in – is this understanding correct???

Reporting - when goods exceed the time period of 12 months, what happens then:

- Relevant changes to the stock register by supplier and intended acquirer
- VAT registration of supplier is required in destination of goods MS
- Declaration of intra-community transfer by supplier in VAT return (home and destination MS) and ESL (home MS)

Reporting - what happens when goods are sent to another MS (MS 3):

- Relevant changes to the stock register by supplier and intended acquirer
- VAT registration of supplier is required in destination of goods MS (MS 2)
- Declaration of intra-community transfer by supplier in VAT return (home and destination MS) and ESL (home MS)
- VAT registration of supplier is required in new destination of goods MS (MS 3)
- Declaration of intra-community transfer by supplier in VAT return (destination MS and new destination MS) and ESL (new destination MS)
- If a call-off stock simplification can be applied in the new destination of goods MS (MS 3), then a VAT registration of the supplier in that MS is not required
- Relevant changes to the stock register by supplier and intended acquirer
- ESL reporting by supplier in MS 2 with only intended acquirer VAT ID-No of MS 3 – no value of the goods (Art. 262(2))
- But what when the goods are later sold by the supplier to the intended acquirer in MS 3 – in which MS has the supplier to declare its intra-community supply in the VAT return and in the ESL? Is it in MS 1 or in MS 2?

Reporting - what happens if goods are exported:

- Relevant changes to the stock register by supplier and intended acquirer
- VAT registration of supplier is required in destination of goods MS
- Declaration of intra-community transfer by supplier in VAT return (home and destination MS) and ESL (home MS)
- Declaration of export supply by supplier in destination of goods MS

Reporting - what happens when goods are destroyed or lost:

- Relevant changes to the stock register by supplier and intended acquirer
- VAT registration of supplier is required in destination of goods MS

- Declaration of intra-community transfer by supplier in VAT return (home and destination MS) and ESL (home MS)
- Is our understanding of the reporting requirements correct, can this be confirmed by the Commission?

Further aspects to be addressed / clarified:

Art 243 Directive and Art 54a Implementing Regulation gives a definition of register to be kept by company sending and company receiving the goods with lots of formal requirements, very invasive listing - heavy administrative task, can such formal register be avoided? What if Directive not correctly implemented, then implementing regulation is still to be followed? Has it been considered that the buyer may not have all the data (available in the ERP system) to manage the reporting? We would expect that the key issue is that the information can be generated on demand by the ERP-systems and other accounting material/systems already in place.

What is the legal consequence of the non-fulfillment of the register, or in case of errors? Penalties??? Ceasing of the simplification??? Does it make a difference whether the supplier does not fulfill the conditions or the acquirer does not fulfill the conditions?

What is meant by agreement? Is this always a sales contract?

Are the conditions for the call-off stock arrangement met, if the goods to be delivered to the costumer need to be sorted first by a third party at the warehouse?

Can the register be maintained by a third party (such as warehouse manager) on behalf of the relevant parties?

The criteria to be used to determine the time of the transfer of the right to dispose of the goods as an owner is the removal of the goods from the call-off stock by the intended acquirer – is our understanding correct? Is the time always the removal? Does this also cover self-billing in the automotive industry? The self-bill is normally triggered when goods are removed from the stock, in the case of vendor parts usually only after the installation in the car and after passing the last quality inspection. There are different procedures in practice, which might have impacts on the time of the transfer of the right to dispose as an owner. Is there any specific evidence that has to be provided by the parties?

Can input VAT incurred prior to a registration in the MS of destination be claimed through the registration? Would the VAT refund procedure lapse if input tax amounts can be claimed?

Art. 36a – chain transactions:

General

Start with simple example (3 parties) and increase complexity with other examples.

Only 1 supply in a chain transaction can be the intra-community supply. The other supplies in the chain follow the rules on supplies of goods without transport.

Out of scope of Art. 36a is if the first supplier or the last customer is responsible for the transport, in these cases the transport is assigned to the first supply (first supplier to the intermediary) or to the

last supply (intermediary to last customer) – here the legal uncertainty remains, and we need to still follow the ECJ decisions.

Scope of Art 36a:

Is only relevant to assign based on Art 36a (2) the transport to a transaction in the chain for intermediary operators as defined in Art 36a (3) (not first supplier and not last customer) that are responsible for the transport).

- **general rule**: transport is ascribed to the supply made to the intermediary operator
- **derogation**: in case the intermediary operator communicates to his supplier the VAT ID-No. of the MS of dispatch of the goods, the transport is ascribed to the supply made by the intermediary operator

Intermediary operator definition: "who dispatches or transports the goods, himself or by a third party on his behalf", what does it mean in practice? Conclusion of contract with the shipping agent or only bearing the transportation cost?

Conditions:

Communication of VAT ID-No from intermediary operator to supplier – no special formality

VAT ID-No on the invoice (and local VAT charged on the invoice) should be sufficient – no extra communication and proof required, otherwise we introduce a new formality

What does "VAT amount is included in the VAT registers of the intermediary operator" mean and why do we need this at all, this is a new formality?

If no special formality is intended why do we need to have a communication done prior to the chargeable event takes place? **This is unworkable in practice, let´s follow the commercial process which means follow the documentation and invoicing**.

Further aspects to be addressed / clarified:

Careful analysis still required in ABCD supply chains – registrations and refunds may be required, still the same discussions as today.

Problem if C transports and wants to apply derogation for A to know that he has to charge local VAT.

How about 4-party scenarios and 3rd party (intermediary operator who transports the goods) gives his supplier (2nd party) the VAT ID-No of MS of dispatch, then this number also have to be passed on by the 2nd party to the 1st supplier for him to know to charge local VAT to the 2nd supplier?

"Directly from the first supplier" (Art 36a (1)) - what does it mean? Does it mean from the MS where the first supplier is located, or does the MS not matter at all but only that it is directly shipped from the first supplier?

What about the case of split consignments where a cargo partly discharge in one State and then it continues to a second State? Is this direct dispatch?

What about cases of transshipment where a product is moved from one vessel to another or from one method of transport to another?

What if the intermediary is VAT registered in the country of departure, but provides its VAT number in the country of arrival or another VAT number, IC-rule still applicable (cfr Hans-Bueler case), or by definition first supply is local supply?

Is our understanding correct that the intermediary can choose whether to give his VAT ID-No of MS of dispatch to the supplier or not, it depends whether the intermediary would like to allocate the transport to the first or to the second supply, it is his choice from our perspective – can you clarify?

What in case of long supply chains, the first suppliers and the last customers are dependent on the info provided to them or the invoices received from the supplier. What if you did not yet receive the purchase invoice and you already need to issue your sales invoice?

It seems then the general rule applies (1st supply is the supply to the intermediary operator), can you confirm this?

Point 3.2.3 of the Commission working paper last paragraph – further clarification required

We are trading not only Union goods, but also non-Union goods that are moved under T1 transit regime between 2 Member States. We welcome a clarification that the new rules are applicable to all goods, irrespective of their customs status.

Art. 138 – exemption for intra-community supply of goods

Do MS realise how critical this makes the VIES system – i.e., keeping the information up to date on a real time basis, and ensuring that businesses are more easily able to obtain IC VAT-IDs versus local tax numbers?

Has it been taken into account that the VIES system is unreliable and companies are unable to legally verify the VAT identification numbers used? Moreover, for some Member States, the VIES system allows to check the name of the taxable person and the VAT number while for some other Member States, it is only possible to check the VAT number. The second situation offers of course less comfort to taxable persons.

How to deduct input tax deductions from taxable intra-Community transfers where the trader is not registered in the Member State of destination and this justifies a taxable intra-Community supply or intra-Community transfer?

There is reference made to this in the Commission paper, however, we need to have a legal basis for that which does not seem to be in the Directive at the moment. How can we ensure neutrality going forward?

Unless the supplier is acting in good faith and can justify any shortcoming to the satisfaction of the competent authorities - what does that mean?

Commission paper tries to clarify this with examples but we need further examples. What does unintentional mistake mean? (can it also be a typo in the VAT ID-No?). Failure of the VIES system can also be an evidence for that the supplier was acting in good faith.

Additionally it is very important to stress in the paper that MS should only be picking up on shortcomings in the EC Sales lists in the event of fraud and where the supplier knew or should have known about that fraud is involved, since only then he did not act in good faith, otherwise we will end up with a new source for VAT assessments and penalties by the tax authorities, which will further violate neutrality and will harm the EU VAT system.

What is the legal consequence when submitting a EC Sales List with errors? Is this sufficient to indicate non-compliance and to refuse the exemption under Art. 138?

How can evidence be provided to the satisfaction of the competent authorities?

Suddenly we fall back to formal requirements whereas ECJ refers to substantial rules, we should always keep in mind that neutrality has precedence over formality, see also CJEU cases.

More formal issues - will be an issue if VAT number not granted on time. Issue invoice with VAT, but what if the number is granted afterwards? Credit note and new invoice without VAT should be sufficient even if VAT number not valid / granted at moment of delivery (tax point)? Practical use should be included in explanatory notes. There are for instance a number of MS's where it takes a long time with granting (or activating) VAT ID's and we are concerned that transactions would need to be suspended while this process is taking place – especially when the counterparties are well-known?

What happens if a Recapitulative Statement is submitted but some of the elements are incorrect? Is this sufficient to amount to non-compliance and to deny the exemption under art 138? Or will this develop a jurisprudence on substantial v. formal requirements also for ECSL as we had for invoices (regarding deductibility)?

Can a retrospective registration be retroactive, or will a new invoice be required?

Does this rule also apply to intra-Community transfers?

Art. 45a – evidence for intra-community supplies

Request by business – aspects to be clarified:

Starting point

Normal rules for evidence as currently applied in national laws remain valid and in place

Unless new presumption rule is applied by the supplier – it is his choice and not the choice of the tax authorities if and when he wants to apply the presumption

Rebutability of the presumption by the tax authorities – burden of proof with tax authorities, they should only be able to do this, if fraud was involved and if the supplier knew or should have known about the fraud.

<u>This needs to be clearly clarified and communicated by the Commission</u>

Need confirmation that the new simplification rule only introduces a **presumption rule** that taxpayers may or may not use: taxpayers may choose to use the presumption rule in order to secure the VAT exemption; but they may also be able to prove the intra-EU transport (and secure the VAT

exemption) **by all means**. In our view, Article 45a introduces a presumption system, not a requirement as such. This is an important point to be clarified.

Art 45a (1) (a) and (b) (ii) – proof needed from 2 independent parties (not the vendor and the acquirer), will be challenging (if for instance freight organized by an integrated company belonging to the same MNC group?) Some companies note that it will be very difficult - if not impossible – to provide 2 non-contradictory pieces of evidence if goods are transported only by one means of transportation. For many businesses this is an additional extra burden compared to today's practice. It will probably open much more discussions with VAT inspectors who will interpret this in a strict way (it is council regulation, so direct effect!), like eg Germany, Bulgaria. A pragmatic approach will be necessary given the practical and legal difficulties that taxpayers will face.

Some companies believe that they will, in practice, have to collect more pieces of evidence in order to be certain that they have 2 non-contradictory pieces of evidence: this means multiplying the number of documents to be gathered. Major IT developments may be necessary in order to centralize and secure the VAT exemption, taking into account the volumes of flows some companies have to manage (manual treatment being impossible). Evidence may take many various forms. Different pieces of evidence may be found in different management systems, and sometimes they only exist in paper format. Taxpayers also need to link these pieces of evidence between them and assign them to a single invoice. The rationalization and centralization of these elements can therefore represent a major project for some companies, implying very high costs.

Companies consider that the new provisions will therefore introduce complexity and a considerable increase in processes and formalities (considerable follow-up work, reminders to be sent, obligation to check consistency, asking for corrections, etc.).

Additional business concerns to be addressed and clarified – concerns from the business community

What does 'independent' mean exactly? Is a transport company belonging to the same MNC group independent?

Can items of evidence be issued by the same party independent from the supplier and customer, or do they need to be issued by 2 different independent parties?

Clarity / certainty as to when tax authorities can rebut the presumption is highly required. Should only be done in the event of fraud and where the supplier knew or should have known about that fraud is involved, since only then he did not act in good faith.

Concerns about potentially divergent positions and practices of Member States in the application of these new rules.

The CMR which is currently used widely is a standardized document. The new proposed pieces of evidence are not standardized documents at all. This will create even more complexity for taxpayers.

Risk that suppliers will apply VAT to secure their position. What if VAT is applied, will the client company be entitled to obtain its recovery, or will it be a definitive loss?

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On the documents listed, some members have indicated that the list may not be fully synchronized with DG Transportation and the different means of transportation. We would welcome a confirmation about the alignment from DG Transportation.

Documents listed at 3(a) - are typically all issued by the freight forwarder (or signed by him eg in case of CMR), so it's completely impractical to ask for 2 pieces from this list which are issued by "two different parties that are independent of each other"... This renders the first part of Art 45a 1. (a) ineffective. As noted above, it will be very difficult - if not impossible – to provide 2 non-contradictory pieces of evidence if goods are transported only by one means of transportation.

Where we deliver therefore, we would rely on the second part of Art 45a.1. (a), and in all circumstances, in terms of current documentation we could only rely on proof of payment of the freight invoice as an additional proof of evidence from documents in para 3 (b). We "self-insure", so there is no insurance policy.

We can't rely on a warehouse keeper, as we deliver direct to customers' facilities (who therefore would be excluded from issuing proof under Art 45a 1. (a)). The only alternative proof, would be under 3 (b) ii - "official documents issued by a public authority" and we would otherwise need to engage notaries full time to perform this task.

Where we don't deliver, and our customer picks up, the proposals are even more problematic. Under Art 45 a 1 (b) (ii), again, we can't rely on the first part (as these items are all issued by the freight forwarder), and it appears that we would need to ask our customer to require their bank to issue proof of payment for the freight and reconcile that to the freight invoices (which the customer would also need to provide us) and the underlying shipment. This is a significant burden both for us as supplier and customer, requiring building of databases and information feeds from third parties to automate the process. Again, the only alternative proof, would be under 3 (b) ii - "official documents issued by a public authority" and we or our customers would otherwise need to engage notaries full time to perform this task.

The new obligation, in the case of transportation carried out by the purchaser, to provide the seller with a written statement, raises concerns:

We note that this written statement is very detailed (date of issue, name and address of the purchaser, quantity and nature of the goods, date and place of arrival of the goods, etc.). The 10-day timeframe to provide/obtain the customer statement is generally considered unrealistic.

Written statement from the acquirer :

- in what format will this be accepted, eg just a mail with a confirmation, or a signed original document? Does it need to be per supply, or is one statement sufficient for all supplies done during a month (eg in case of monthly summary invoices are issued)?
- In what detail should the place of arrival be mentioned? Is the country enough, or should the full address be mentioned? Some of our customers who pick up the goods do not want us to know to which country the goods are shipped (can be commercially sensitive information), they are only prepared to confirm that the goods left the country of loading. Is a

confirmation that the goods left the country, without specification to which other country, enough?

A crucial question is what are the consequences if the purchaser does not issue the written statement within 10 days or if he does not issue it at all in case of litigation? Will the VAT exemption be systematically challenged / denied, or can we expect a pragmatic application from the tax administrations?

By limiting the possibilities to generate proof is narrowed down only to what is foreseen in paragraph 3, it seems the freedom of proof has been considerably narrowed down. The mentioning of "such as" in 3a and at the same time creating a 3b with exceptions on "dispatch related documents" adds to the confusion (cf. insuring a shipment is not dispatch related ?).

It is shocking that the "confirmation of receipt" is only accepted as valid when supplied before the 10th of the following month. In practice, this kind of proof (arrival confirmation) is used to repair the failure of transport documents coming back or coming back in poor quality. This is by definition after the 10th of the following month.

Maybe we read it wrongly but 3B seems heavier than 3A, because you still need two other pieces of non-contradictory evidence. The written statement is not one of the pieces explicitly mentioned as possible piece of non-contradictory evidence. This would mean that the written statement is only a worthless piece of paper? See text analysis in enclosure. If our reading is correct, it means the end of the German and Belgian "Gelangbestätigung"-procedure as under that procedure the written statement can be one of the pieces of non-contradictory evidence (and in absence of fraud indication, replace the obligation to show the CMR).

There seems to be a lot of weight to the "independence" of the parties. Should this be interpreted that Ex-works intragroup transactions cannot be exempt anymore in the future, due to lack of independent parties? We believe this would be in breach with the equality principle.

And what if a taxpayer voluntary opts not to go for the proof of IC-delivery, can the tax authorities deny the deduction (by proving/assuming that the goods likely to have left the MS of departure for another MS)?

What if transport documentation is missing but the goods have been transported? What do you do in that case?

There are countries like Germany and Belgium which have introduced resp. Gelangensbestatigung and Destination document. Would this still be possible?

The number of available proofs and the combinations are very little. There should be much more combinations available.

A CMR should not necessarily be signed. So if not signed, would this imply that it cannot be used? Request of signatures (traditional signatures) is not in alignment with a "Digital Europe", which is one of the cornerstones of the Commission.

The 10 day period to get the proof, certainly when it should be coming from another party is unrealistic. This may lead to many adjustments.

Article 45a of the EU Regulation provides a presumption rule and is therefore not intended to have any effect on the German requirement. Nevertheless, the companies expect legal uncertainty and a considerable administrative effort. The requirements do not represent a practicable harmonization of "Gelangensbestätigung" (entry certificates in Europe). It is unclear how the specifications can be put into practice. It is also unclear under what conditions the tax authorities can rebut the presumption. The requirement of two proofs for the intra-Community supply of goods means an additional workload and thus additional costs for the companies and ultimately for the customers. In addition, such increasing regulations affect the competitiveness of European companies due to bureaucratization. A good example of this disproportionality is the possibility of providing proof of intra-Community supplies by means of a notary's confirmation. So far, proof is available with the entry certificate introduced five years ago. However, the entry certificate loses its quality as a sole proof with article 45a. The result is legal uncertainty about the required documents.

In addition, the requirement that a declaration should be made within 10 days considerably limits the existing timeframes and is not feasible in practice. In addition, the requirement contradicts § 17 UStDV and the case law, since the proof (entry certificate) can be given later. With the new detection system, the European Union is far from creating an easy way for all involved to handle the evidence of intra-Community supplies.

In the case of a chain transaction, where the customer transports the goods and apply the self-billing procedure, it is very difficult in practice to hold any duplicate proof. Especially since there is no possibility to treat the delivery as taxable, as credits are created by the customer (which are then usually issued as a tax-free intra-Community delivery), on the other hand, there is no access to the carrier and its' documents if the last customer collects the goods. The supplier will therefore have difficulties in even picking up or creating documents that carries sufficient evidence that the customer is carrying out the transport across the border. The supplier can only prove that the goods have left the factory, if necessary, he can also provide an insurance of the customer. In the pick-up case, the customer alone has the certainty that the goods actually crossed the border and can subsequently provide the supplier with appropriate proof. It is therefore expected that the tax risk for the honest entrepreneur will increase.

How to ensure that the requirement of having only one document for evidence can be maintained?

Can the ATLAS Tools used to prove supplies to the third country continue to be used?

In case of goods under excise suspension and whereby an EAD is issued for the cross-border movement of excise products, and whereby the EAD is accepted and closed by the receiving terminal in the other EU Member State, this should be 100% water proof evidence that the goods have been transported. We do not see a reason why additional documents are needed in this case. We would welcome a clarification in the explanatory notes that deal with these cases.

Is the credit note issued by the taxpayer who has received the goods in the country of destination and accordingly exempts a credit note as an intra-Community supply tax-free, regarded as a proof?

Can evidence be issued by the same party independently of the supplier and the customer, or must it be issued by two separate independent parties?

Are affiliates considered as two independent parties within the meaning of the Regulation?

How to do two mutually irreversible proofs, if e.g. the freight is organized by an integrated company belonging to the same MNC group?

Can the proofs also be summarized in electronic form for several months, analogous to the regulations in Germany for confirmations of arrival?

As a preliminary observation, we note that bank documents and insurance policies do not provide any evidence of the border crossing or the delivery data/goods transported. Therefore, we do not understand why such burdensome conditions are set as regards the pieces of evidence that may be accepted.

As regards insurance policies, two situations may be met:

i. the situation in which the company asks the carriers to provide the goods themselves: companies very much doubt that carriers will easily provide a copy of their insurance policy.
ii. the situation where the company itself transports the goods, then it will depend on the insurer: certain insurers provide for the issuance of a certificate of insurance by transport on an online portal (the company therefore has proof of the transport), but others do not.

As regards "bank documents", what types of document are concerned? Are letters of credit and wire transfer swifts acceptable?

As regards official documents issued by public authorities (e.g. notaries) confirming the arrival of goods in the country of destination: companies point out that the use of a notary implies such costs, deadlines, formalities and necessary documents (eg. requirement to have translations by a translator sworn or validated by the Ministry of Foreign Affairs) that this solution is unrealistic from a day-to-day business perspective. For some companies, this will only be used as a last resort. It should also be noted that this goes against the ambitions of a "Digital Europe"

As regards the receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State: Is the delivery slip accepted? If the company delivers directly to the customer, it does not have a receipt. The delivery voucher signed by the receiver (whether buyer or third person) should be accepted.

Other remarks: why is it not possible to rely on contracts with customers as acceptable evidence?

It is crucial that Member States adopt a pragmatic approach as regards the pieces of evidence that can be used. There should be as many acceptable documents as possible in order to somehow balance the extra burden that the new provisions create for businesses. The approach should support digitalization.

Art. 243 - register

Can the register be managed by a third party?

There are two registers to be kept by the supplier and the acquirer. This means that deviations with respect to the time-related entries are to be expected. Can system-generated documents or logging of postings in an ERP system replace a continuous register?

How should the arrival date in the warehouse be recorded by the recipient? A system-side link between supplier and recipient cannot be established. For this new processes and system logics have to be built up.

Art. 262 – recapitulative statement:

Is the EC Sales List a material condition for the exemption of intra-Community supplies?

How to ensure reliability of VIES database?

How to ensure that database errors are not at the expense of the taxpayer?

How to ensure that a retrospective invalidity of VAT identification numbers is exluded.

At what interval are VAT identification numbers to be checked? Does the check have to be done before each delivery?

How to document that the VAT-ID was checked?

Art. 54a Implementing Regulation:

By analogy with Article 243 of the VAT Directive, the fundamental question here is whether the keeping of the register can in principle be transferred to an appointed third party?

Comments received from VEG members on documents:
VEG No 079 - VAT "quick fixes" legislative package - Call-off stock
VEG No 080 - VAT "quick fixes" legislative package - Chain transactions - Exemption of an intra-Community supply of goods: conditions and proof
taxud.c.1(2019)2631719

Comments regarding the document 079

In all the examples the supplier is supposed to be established in MS1. For my understanding, is it correct that established also means having a fixed establishment from which the supply takes place. If yes, could you please add that to the document.

In case a (non-EU) supplier who has imported the goods into the EU himself and obtained a VAT registration in the MS of importation, has a call-off stock agreement with a business in another MS, will the simplification rules for call-off stock apply (provided the other conditions will be met)? This seems to be a very practical and efficient solution. If yes, could you please add that to the document as well. If not, could you please briefly indicate in the document what the consequences for VAT are. The combination of a seller who imports goods himself and then transfers goods into a call-off stock is quite complicated.

One of the requirements for call-off stock is that the buyer has been identified for VAT before the sale/transport takes place. It may happen that a seller has several customers in the other MS and that he transfers the goods into a call-off stock that is meant for all his customers in that same MS. Please note that all the customers have been identiefied for VAT upfront. The point is that the seller does not exactly know yet which customer will buy which part of the call-off stock. It seems less practical to conclude that in such case, the simpliefied rules do not apply or that the seller should have a separate call-off stock for each customer in that same MS.

If goods in call-off stock will be destroyed, the simplification rules cease to be applicable. This condition is very burdensome for business. There will be many cases whereby the return of the goods to the seller will be very costly, especially if the value of the goods in the call-off stock is relatively low. I would suggest that since the seller must already keeep record of the movement of the goods, he might as well also keep record of the destruction of goods. Otherwise, like with excise duties, the destruction may take place under supervision of the tax authorities.

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Firstly the Commission is to be congratulated on the detailed examples in the Guidelines – these will be invaluable as the legislation is introduced. It of course would be very helpful if they could be adopted by all member states to ensure that there was consistent application across the EU, in particular as the cross border ruling pilot project is still not applied across all EU states (and where it is, not necessarily in an equivalent manner).

1. VEG N° 079

    a. Unless we are mistaken and despite the upfront comment on page 2 re article 194 – whereby member states can apply a reverse charge under that article to non-established suppliers supplying to VAT registered customers in the country in which the supplies are made – the guidelines do not cover this particular case. This article (194) has been introduced we understand in 11 member states, in a non-harmonised manner. The new simplification for call-off stock will create difficulties in those member states which apply article 194 (for VAT registration purposes, intrastat etc as the acquisition (if article 194 applies) is also exempt under article 140(c).
    Would it be possible to have examples in the guidelines of cases where article 194 is applied in the MS of acquisition?

2. VEG N° 080
    a. Chain transactions.
        i. As in relation to VEG N° 079 there are likely to be significant problems with countries that apply article 194 – even above those that exist already. For example in note 2 on page 8 of the document it is stated that '*However, if the exemption in Article 140(c) of the VAT Directive applies (which would be the case if MS 5 applies the optional reverse charge provided for by Article 194 in the subsequent supply between C and D) then C would be obliged to register in MS 5 owing to the intra-Community acquisition made but would not be obliged to account for that intra-Community acquisition since the acquisition would be exempt'.* In this particular case many member states applying article 194 will not allow the non-established company to register if it only makes supplies to a VAT registered customer (who may or may not have to be established).
        ii. As a general comment would it be helpful to provide a reminder as to the meaning of 'organising the dispatch or transport' to be clear as to which cases the transport is ascribed to which supply (which will be important to determine when article 36a applies).
    b. CONDITIONS FOR THE EXEMPTION OF AN INTRA-COMMUNITY SUPPLY OF GOODS
        i. As for the above points there are many cases where – by virtue of the application of article 194 (and article 140 (c)) - the acquirer is not (and cannot) be registered for VAT. If the existence of a VAT number of the acquirer is a condition for the exemption by the supplier under article 138,

this could result in many suppliers in MS 1 not being able to supply non-established customers in MS 2, as they would have to charge the VAT of MS 1 which could be irrecoverable by the customer in MS 2 (or subject to significant delays). Despite the Commission's comments on page 10 and 11 on this subject it would be helpful to get all MS to confirm this interpretation, ie that the guidelines are binding as to the interpretation to be given to article 4 of Directive 2008/9/EC.

ii. A discussion as to how this provision will apply in the case of VAT groups – which VAT number is the one to be shown on the supplier's invoice – that of the VAT group or that of the individual member?

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VEG No. 080

Chain transactions:

- Which criteria are necessary so that the intermediary operator arranged the transport (bearing the cost/the risk of the transport, giving the order etc.)?
- Could the proof of transport be specified?
- Is there a possibility to include the rules for export/import cases and transport by the first or last person in the chain?
- There is a need for a further clarification of the meaning of „clear breaks" in chain transactions as there are different views in the different MS.

Art. 138a

- It should be clarified more how the supplier can justify his shortcoming to the satisfaction of the authorities.
- The supply needs to be in a recapitulative statement ist supposed to be a material condition for the exemption. However it is handed in after the supply took place. How can this be solved? Does the recapitulative statement then retroacts?
- Can a wrong recapitulative statement be changed with retroactive effect (interest problem if authorities deny the exemption first)?

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With effect from Jan. 1, 2020, Art. 138 para. 1a and Art. 262 both as amended by Directive (EU) 2018/1910 will make the valid VAT-ID of the acquirer a material pre-condition for the exemption of intra-Community supplies.

There is a high probability that business will check the VAT-IDs of their acquirers in the VIES shortly before filing the recapitulative statement, i.e. around the last 10 days of a calendar month, which will cause in a heavy workload for the VIES system.

There is guidance needed from the Commission with regard to the following issues in this context:

- How often should business check the validity of the VAT-IDs of their customers in the VIES system? Once per month, according to the filing frequency of the Recapitulative Statements?

- The VIES system needs to be updated to become much more performant and available. Very often servers of Member States related to the VIES system are offline. If a tax payer checks more than 35,000 VAT-IDs of his customers, the tax payer computer's IP address is locked out from using the VIES system.