EU VAT FORUM

Subgroup – “The VAT Quick Fixes”

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1. Mandate of the subgroup

The present report answers the call from the EU VAT Forum to provide feedback and insights on different practical issues and difficulties that have arisen since the implementation of the VAT Quick Fixes in January 2020.

At the plenary meeting held on 28 September 2020, the EU VAT Forum decided to take the above-mentioned work further, analyse and provide feedback on several practical problems identified by businesses when putting into practice the Quick Fixes.

The purpose of the subgroup is to prepare a report where these practical issues are properly identified and to provide, where possible, suggestions, proposals or best practices to be ideally discussed in the relevant fora.

The subgroup was asked to present the final report to the EU VAT Forum at its plenary session in September 2022.

2. Objective of the report

The kick-off meeting of the project on the VAT Quick Fixes was attended also by members of the European Commission (hereafter referred to as Commission) services in charge of VAT policy and legislation.

Some of the topics previously discussed at the EU VAT Forum plenary meeting on 29 June 2021 (agenda point 2.2 on Quick Fixes) had been addressed in the past at the VAT Committee. For this reason, the Commission services took part in the kick-off meeting to better frame the future work of the subgroup and to make sure that the subgroup would respect the boundaries of its mandate and would not intervene in areas beyond its competency.

Considering that the EU VAT Forum is a platform where stakeholders and national tax authorities can informally discuss practical tax administration issues with regard to VAT in a cross-border environment with the purpose to elaborate on possible ways to manage the current VAT system more efficiently, it was agreed that all the work developed in the subgroup must be eminently practical. Therefore, the suggestions and proposals proposed by the subgroup must be approached from a purely practical perspective leaving aside the legal aspects. The latter are outside the scope of the EU VAT Forum.

The work of the subgroup and the objective of the report therefore consists in the following:

- articulating practical problems that businesses have experienced in the implementation of Quick Fixes;
- seeking consensus on whether these problems are such that deserve to be dealt with in the subgroup;
- proposing and recommending potential practical solutions, suggestions and best practices to the practical problems identified;
- abstaining from proposing any solutions or recommendations involving changes, amendments or clarifications to the current legal provisions governing the Quick Fixes.

This report is not binding for Member States even if representatives of the Tax Administrations of the different Member States have participated in its preparation.

3. Background: What are the VAT Quick Fixes and what are they trying to fix?

The new EU VAT rules were developed in accordance with the VAT Action Plan adopted by the Commission in 2016 with the specific aim to make the EU VAT system simpler, more fraud-resistant and more business-friendly. In a word: *"a VAT system that helps European companies to reap all the benefits of the Single Market and to compete in global markets.*"

In light of this, on 2 October 2018 the Ecofin Council discussed and approved the so-called *Quick fixes* consisting of three proposals to amend the European VAT legislation in order to reduce compliance costs, promote legal certainty for businesses and introduce measures to combat VAT fraud in the EU.

To implement the above-mentioned proposals, on 4 December 2018 the Council of the European Union adopted the following legislative acts:

- Council Regulation (EU) 2018/1909 amending Regulation (EU) No 2010/904 (call-off stock arrangements).
- Council Directive (EU) 2018/1910 (simplification of trade between Member States) amending Directive 2006/112/EC.
- Council Implementing Regulation (EU) 2018/1912 (exemptions for intra-Community transactions) amending Implementing Regulation (EU) No 282/2011.

The Quick Fixes reform is an essential part of the system of VAT changes and represents a significative step towards the definitive EU VAT regime.

Although the wording "quick fix" suggest that the said measures are just a short-term solution to the problems affecting the Single Market until the definitive system of taxation at destination is implemented in the EU area, the Quick Fixes proposals provide nevertheless effective and easy solutions to tackle the criticalities that occurred in different areas of EU transactions over the last years.

In particular, the four quick fixes relate to the EU cross-border supplies of goods and pursue a specific mandate:

- Harmonise call-off stock rules across the EU;
- Coordinate EU cross-border chain transaction rules;
- Align the rules for documenting EU cross-border movements of goods;
- Provide a mandatory VAT ID number check for Intra-Community supplies.

The areas addressed are those that have given rise to most uncertainty in the recent past.

4. Legislative background

Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States.

Council Directive (EU) 2018/1910 has amended the Directive 2006/112/EC (hereafter referred to as the "VAT Directive") with the creation of Articles 17a and 36a; the amendment of Articles 138, 243 and 262 and the repeal of Articles 403 and 404 of the Directive.

- Creation of Article 17a

Article 17a establishes that in the case of a transfer of goods by a taxable person from his business under call-off stock arrangements to another Member State, when they occur between two taxable persons, such transactions should be considered under certain conditions as giving rise to an exempt supply in the Member State of departure and an intra-Community acquisition in the Member State of arrival. The supplier will in principle no longer have to identify himself for VAT purposes in the country of arrival of the goods. Article 17a explains the various mandatory conditions. It also provides for certain more complex situations.

- Creation of Article 36a

Article 36a, comes to clarify chain transactions and unify the law following the ruling by the Court of Justice of the European Union (hereafter referred to as "CJEU"), 19 April 2018, Firma Hans Bühler KG, Case C-580/16[1] .

This Article therefore explains that in the case of successive deliveries directly from the first supplier to the last customer in the chain, the shipment or transport is only charged to the delivery made to the intermediate operator. On the other hand, if the latter provides his supplier with the VAT identification number allocated by the Member State from which the goods are dispatched or transported, the dispatch or transport is only charged to the supply made by the intermediary operator. Thus, the intra-Community movement of goods is attributed to only one of the supplies and only that supply should benefit from the exemption.

- Modification of Article 138

Article 138 has been amended and it now provides for two additional conditions in order to benefit from the exemption for intra-Community supplies of goods. The recipient must be identified for VAT in the MS of arrival and indicate the VAT ID number to the supplier and the supplier has to submit a correctly completed recapitulative statement.

- Modification of Article 243

Article 243 has also been amended, and now introduces an obligation to keep a register for taxable persons who transfer goods under the call-off stock arrangements. This obligation also applies to the recipients of those goods under the same regime.

- Modification of Article 262

This Article contains information on the obligation for all taxable persons identified for VAT purposes to submit a recapitulative statement including also the VAT ID number of the taxable

[1] https://curia.europa.eu/juris/liste.jsf?language=en&num=C-580/16

person for whom goods, dispatched or transported under call-off stock arrangements, are intended.

- Suppression of Articles 403 and 404

Finally, two Articles of the VAT Directive have been deleted following the adoption of this 2018 Directive, namely Articles 403 and 404.

Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Council Implementing Regulation (EU) No 282/2011[2] as regards certain exemptions for intra-Community transactions.

The new conditions to benefit from the VAT exemption on intra-Community supplies of goods concern in particular the proof of transport for the purposes of the exemption of intra-EU transactions, chain transactions, the call-off stock arrangements or the role of the VAT identification number in the context of the exemption of intra-Community supplies of goods.

As a result, two new sections have been inserted within the VAT Implementing Regulation. The first section added is Section 2a in Chapter VIII. It deals with exemptions related to intra-Community transactions (Articles 138 to 142 of the VAT Directive).

- Creation of Article 45a

It provides for a presumption mechanism that can justify the transport of goods to another country of the Community and thus the exemption applicable to intra-Community supplies. This mechanism is based on the provision of non-contradictory evidence, depending on the situation.

When the seller dispatches or transports the goods directly or through a third party on his behalf, he must be in possession of:

- two pieces of non-contradictory evidence mentioned in Article 45a(3)(a) of the amended regulation, two "documents relating to the shipment or transport of the goods, such as a signed CMR document or letter, a bill of lading, an air freight invoice or an invoice from the carrier of the goods" issued by two different parties, independent of each other, the seller and the buyer;
- or a piece of evidence mentioned in Article 45a(3)(a) of the amended regulation and one of the documents listed in Article 45a(3)(b) of the amended regulation which are not contradictory, i.e:
- an insurance policy concerning the shipment or transport of the goods or bank documents proving payment for the shipment or transport of the goods;
- official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
- a receipt issued by a warehouse keeper in the Member State of destination attesting to the storage of the goods in that Member State.

In this case, the seller must have two pieces of evidence.

When the buyer dispatches or transports the goods, the seller must be in possession of the following documents.

- Two pieces of non-contradictory evidence, as defined above and

[2] Hereafter referred to as the “VAT Implementing Regulation”

- a written declaration by the buyer that the goods have been shipped or transported by him or by a third party on his behalf and specifying the Member State of destination of the goods. This written declaration shall mention: the date of issue; the name and address of the purchaser; the quantity and nature of the goods; the date and place of arrival of the goods. In case of delivery of means of transport, the identification number of the means of transport; and the identification of the person accepting the goods on behalf of the buyer. This declaration must be provided to the seller no later than the tenth day of the month following delivery.

In this case, the seller must have three pieces of evidence.

During tax audits, the tax authorities may question the exemption of intra-Community deliveries by considering that the proofs of transport provided by the operators are unsatisfactory. Traders making intra-Community deliveries and applying these new principles of proof will benefit from greater legal certainty.

Finally, this regulation inserts a Section 1a into Chapter X of the VAT Implementing Regulation . This section introduces a new Article, Article 54a.

- Creation of Article 54a:

Under the call-off stock arrangements provided for in Article 17a of the VAT Directive, each taxable person to whom goods are supplied under this system must keep a register of these goods. A failure to comply with this obligation by the purchaser cannot call into question the application of the call-off stock arrangements simplification.

Article 54a lists the information to be recorded in these registers.

Council Regulation (EU) 2018/1909 of 4 December 2018 amending Regulation (EU) 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements.

This Regulation amends Article 21 of Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, which grants automated access to the data collected as regards call-of-stock arrangements. The details accessible are now the following:

- The VAT identification numbers of the persons who carried out the supplies of goods and services referred to in Article 21, point (b) of Regulation 904/2010 and the VAT identification numbers of the persons who provided information in accordance with Article 262 (2) of the VAT Directive.
- The 2018 Regulation adds the sentence "and, for each person who has communicated information in accordance with Article 262(2) of Directive 2006/112/EC, his VAT identification number, and the information he has communicated in respect of each person to whom a VAT identification number has been issued by another Member State", thus completing the previous Regulation.

5. Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods ("2020 Quick Fixes")

A. Introduction

The Explanatory Notes on the 2020 Quick Fixes (henceforth "Explanatory Notes") were published in December 2019, to provide a better understanding of the legislation adopted at EU level.

They are to be seen as a guidance tool that can be used to clarify the practical application of the new rules concerning the Quick Fixes.

B. Main Characteristics

i. The Explanatory Notes are a product of a collaborative work: although they are issued by the Commission's Directorate-General for Taxation and Customs Union (hereafter referred to as "DG TAXUD"), they are the result of discussions with both Member States and businesses in, respectively, the Group on the Future of VAT (GFV) and the VAT Expert Group (VEG). Whilst the input provided by the GFV and the VEG has largely been taken into account in the drafting, it should be recalled that the Commission services were ultimately not bound by the views expressed by either Member States or businesses.

ii. The Explanatory Notes are not legally binding. These notes do not express a formal opinion of the Commission; thus the latter is not bound by any of the views expressed therein. The Explanatory Notes do not replace VAT Committee guidelines, which have their own role[3]. Furthermore, their nature is different: the Explanatory Notes reflect the views of DG TAXUD while the VAT Committee guidelines are agreed by the VAT Committee, an advisory committee that consists of representatives of the Member States and of the Commission. However, due to the fact that several guidelines on the "2020 Quick Fixes" were already agreed by the VAT Committee at the time of publication of the Explanatory Notes, the abovementioned guidelines have been included in the final text in order to provide all the information available on the subject.

iii. The Explanatory Notes are not comprehensive: only those issues for which it was considered desirable to provide explanations have been included.

iv. They are a work in progress: these notes are not a final product but reflect the state of play at a specific point in time in accordance with the available knowledge and experience.

[3] The consolidated version of the guidelines, including the most recent updates, can be downloaded from the VAT Committee' site at https://taxation-customs.ec.europa.eu/vat-committee_en

C. Structure of the Explanatory Notes

The Explanatory Notes on Quick Fixes are divided in six chapters.

The first chapter serves as an introduction, setting out the main changes that entered into force in 2020 after the incorporation of the new legislation, while the final chapter collects all the relevant legal provisions. Thus, the main part of the Explanatory Notes lies in the chapters 2 to 5, where each chapter is dedicated to one of the four areas of the Quick Fixes: the call-off stock arrangements (chapter 2), the chain transactions (chapter 3), the exemption for intra-community supplies of goods (chapter 4) and the proof of transport (chapter 5).

Although each chapter differs in both content and scale, one can easily spot some similarities in the structure. The first paragraph of each chapter refers to the relevant provisions that are either amended or related to the change introduced by the Quick Fixes. The subsequent text makes a reference to some background information and to the results of each amendment. A detailed analysis and an outline of the issues raised complete the chapter. To enhance our understanding, different scenarios and examples are provided.

D. Call-Off Stock Arrangements

a. In the respective section of the Explanatory Notes called “The Call-Off Stock Arrangements” one may find several call-off stock situations as well as useful guidance with regard to the call-off stock arrangements.

The call-off stock simplification rules were introduced with the following provisions of the VAT Directive:

- Article 17a: (main provision) contains the simplification rules;
- Article 243(3): lays down the obligation to keep certain registers for call-off stock purposes;
- Article 262(2): lays down the obligation to mention, in the recapitulative statement, the VAT ID number of the intended acquirer for whom goods have been transported under call-off stock arrangements and to inform about any changes that might happen regarding the submitted information.

The respective section of the Explanatory Notes introduces the reader to the notion of “call-off stock arrangements” and explains how a transport of goods put into stock in another Member State is handled when the intended acquirer’s identity and his VAT identification number are known at the time of the transport or dispatch and the conditions that have to be fulfilled in order for the new EU VAT rules on call-off stock arrangements to apply. There are also non-compulsory obligations that could (or could no longer) apply, the non-fulfilment of which does not necessarily mean that the simplification cannot be applied, and the exemption to be granted (Article 54a(2)(b) of the VAT Implementing Regulation).

The main changes that the call-off stock simplification rules introduce are that no intra-Community supply and no intra-Community acquisition take place at the time of dispatch or transport of the goods to the stock located in another Member State and that an exempt intra-Community supply in the Member State of departure and a taxed intra-Community acquisition in the Member State where the stock is situated take place at a later stage when the acquirer takes ownership of the goods.

b. Different scenarios are presented and illustrated for the reader to gain a better understanding and insight of how the transactions are addressed under the new rules on a step-by-step basis. Most importantly, all parties involved in the transaction (supplier/intended acquirer) become aware of their obligations in each Member State. Those scenarios start with presenting a general case where a taxable person A transports goods under a call-off stock arrangement from Member State 1 to Member State 2, which is then further enhanced with the introduction of special situations, i.e.:

- What is the VAT treatment of the call-off stock when the intended customer changes but the goods remain in the same Member State?

In this case the substitution of the initial acquirer does not imply that the call-off stock arrangements no longer apply if this happens within the period of 12 months [Article 17a(4) of the VAT Directive]. On the contrary, should there be a contractual agreement and the supplier mentions the VAT identification number of the new customer in the recapitulative statement and, most importantly, the new contract is concluded before or at the same time as the contract with the previous intended acquirer comes to an end, the call-off stock arrangement is still in force.

If the above requirements are not fulfilled then a deemed intra-Community supply according to Article of the 17 VAT Directive and a deemed intra-Community acquisition according to Article 21 of the VAT Directive, both made by the taxable person who moved the goods from one Member State to another, would take place and a 'substitution' (within the meaning of the call-off stock simplification in Article 17a(6) of the VAT Directive) would not be possible.

- What is the VAT treatment of the call-off stock when part of the goods is returned?

If part of the goods is not requested by the initial acquirer and the return of those goods is recorded in the supplier's register, then the call-off-stock simplification is valid.

- What is the VAT treatment of the call-off stock if the period of 12 months is exceeded?

As per the provisions of Article 17a(4) of the VAT Directive, the day following the expiry of the 12-month period the conditions of the call-off-stock arrangements are <u>not</u> fulfilled and therefore for the remaining goods a transfer according to Article 17 of the VAT Directive is deemed to take place.

- What is the VAT treatment of the call-off stock if the goods are sent to another Member State?

If part of the goods is transported to another Member State, then the call-off-stock arrangements cease to be fulfilled and a transfer is therefore deemed to take place according to Article 17 of the VAT Directive, immediately before the dispatch or the transport to the other Member State.

- What is the VAT treatment of the call-off stock if the goods are exported to a third country?

As per the abovementioned scenario, if part of the goods is exported, then the call-off-stock arrangements cease to be fulfilled and a transfer is therefore deemed to take place according

to Article 17 of the VAT Directive, immediately before the dispatch or the transport to the other Member State.

- What is the VAT treatment of the call-off stock in case of destruction or loss of the goods?

For any part of the goods that are destroyed (e.g. in a fire), the conditions for the call-off-stock arrangements, in respect of those goods, cease to be fulfilled and a transfer is therefore deemed to take place according to Article 17 of the VAT Directive, on the date when the goods were actually destroyed or, if that is not possible to be determined, the date on which the goods were found to be destroyed.

c. The rest of the section refers to specific issues that arise from the call-off stock arrangements that have been the object of discussions within the VAT Committee. Those issues are presented in a FAQ format that enables the reader to see how each provision of Article 17a of the VAT Directive may be applied in different situations. This constitutes important guidance and explanatory material for both taxable persons and tax officers to further elaborate on the call-off-stock arrangements.

Indicatively, we highlight some of those issues that are raised in the call-off-stock section of the Explanatory Notes:

- The 5% tolerance rule on small losses: It has been agreed that small losses of goods which are due to the nature of the goods or other unforeseeable circumstances (such as fire) or from an authorisation or instruction by the competent authorities do not necessarily mean that the call-off stock arrangement does not apply. In this case, the 5% rule has been agreed (at large majority) by the VAT Committee which is applicable to losses that amount to below 5% in terms of value or quantity of the total stock as it stands on the date, after the arrival at the place of storage or the date on which the goods were found to be missing or destroyed.

- Where the supplier has established his business or has a fixed establishment in the Member State of arrival of the goods, the simplification for call-off stock arrangements provided for under Article 17a of the VAT Directive shall not apply.

- What happens when the call-off stock arrangements cease to fulfil the conditions [as defined in Article 17a(2)] to remain under such arrangements? In this case, the supplier will have to be registered for VAT purposes in the Member State where the intra-Community acquisition has taken place even if the intra-Community acquisition is exempt.

- To calculate the 12-month period although no specific rule has been provided to determine the date of the arrival of the goods, it is logical to conclude that as per the provisions of Article 17a(4) of the VAT Directive in combination with Article 54a, paragraphs 1(c) and 2(c) of the VAT Implementing Regulation, the “arrival of the goods in the warehouse” shall be considered as the “date that the arrival of the goods took place” and not the date the goods entered the Member State of destination, which is more difficult to prove. Therefore, in accordance with the general EU rules for

determining periods[4], the first day of the period is the day following the day on which the arrival of the goods took place. For example, if goods entered a Member State under a call-off-stock arrangement on 6 January 2022, the 12-month period starts on 7 January 2022 (00:00) and expires on 7 January 2023 (24:00).

- The sales contract between the supplier and the intended acquirer is sufficient for the purposes of the call-off-stock arrangements as long as the identity of the acquirer and his VAT identification number are known to the supplier, who is obliged to mention this information in his recapitulative statement. Although Article 17a(2)(a) mentions the term "agreement", it is assumed that a contract exists between the parties involved in the transaction.

- It is assumed that goods are transferred to a warehouse for the purposes of the call-off stock arrangements where they remain until they are later on called off by the intended acquirer. However, the existence of a warehouse is not explicitly mentioned in Article 17a(2) of the VAT Directive as a condition for the call-off stock simplification as there may be cases when the goods (especially if very small in size) are directly transferred by the supplier to the acquirer, i.e. via a lorry or in a briefcase. Therefore, a question is raised as to what is and what is not to be seen as a warehouse for the purposes of the call-off-stock arrangements and for special cases such as the aforementioned. In these cases, both parties (supplier/intended acquirer) should be able to prove the place of the goods at any time, and their registers to fully depict any changes effected in real time.

E. Chain Transactions

a. Background

Chain transactions within the meaning of Article 36a of the VAT Directive refer to successive supplies of the same goods (which means that there are two or more consecutive supplies) where the goods supplied are subject to a single intra-Community transport between two Member States.

In these situations, the intra-Community transport of the goods can only be attributed to one of the supplies in the chain, which has the possibility to benefit from the exemption in Article 138 of the VAT Directive for intra-Community supplies. However, the VAT Directive, in its wording prior to 1 January 2020, did not provide any concrete rule for the allocation of the intra-Community transport of the goods.

Therefore, no general rule was applicable to these situations and the assessment on how to ascribe the intra-Community supply of goods to a concrete transaction within the chain had to be done on a case-by-case basis. That situation could lead to different approaches amongst Member States, resulting in situations of double or non-taxation, depriving operators of legal certainty.

[4] Regulation (EEC Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.

The new provision in Article 36a of the VAT Directive addresses this issue, laying down rules in order to attribute the intra-Community transport of the goods to a concrete supply within a chain of transactions.

b. Article 36a of the VAT Directive

Council Directive (EU) 2018/1910 introduced a new Article 36a in the VAT Directive. This Article addresses the issue of determining the supply to which the intra-Community transport or dispatch of the goods is to be ascribed when a chain transaction takes place, that is to say, which supply is the intra-Community supply.

In order for Article 36a of the VAT Directive to apply, the following conditions have to be met:

- The goods must be supplied successively. Therefore, it is necessary that at least three persons are involved in the chain transaction.
- The goods must be dispatched or transported from one Member State to another Member State. As a result, chain transactions involving imports and exports, or involving only supplies within the territory of a Member State, are not covered by the provision.
- The goods must be transported or dispatched directly from the first supplier to the last customer in the chain.

If these conditions are met, Article 36a(1) of the VAT Directive lays down the general rule: the dispatch or transport of the goods is ascribed to the supply made to the intermediary operator.

However, Article 36a(2) of the VAT Directive provides for the possibility to derogate from the general rule. That will be the case when the intermediary operator communicates to his supplier his VAT identification number issued by the Member State from which the goods are dispatched or transported. In this case, the dispatch or transport of the goods is ascribed to the supply made by the intermediary operator.

The notion of “intermediary operator” is defined in Article 36a(3) of the VAT Directive. This is the supplier in the chain, other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf. To prove his status of intermediary operator, he will need to keep evidence that he transported the goods on his own behalf or that he arranged the transport of the goods with a third party acting on his behalf.

c. Different scenarios

Different scenarios are presented and illustrated for the reader to gain a better understanding and insight of how the transactions are addressed under the new rules on a step-by-step basis. Most importantly, all parties involved in the transaction (supplier/intended acquirer) become aware of their obligations in each Member State.

Those scenarios start with presenting a simple case where a taxable person A transports goods from MS1 to the taxable person C, in MS 2, with consecutive supplies of goods from A to B and B to C. In this example, B is the intermediary operator and established in MS1.

A more complex scenario has six participants (A-F) is given. Taking into consideration that the physical flow of goods follows the “path” A -> B -> E -> F the initial conclusion is that we have to exclude from the analysis the transactions A -> B and E -> F, as out of scope for the

purposes of a chain transaction (*i.e., not direct transport between first and last supplier*) and, hence, participants A and F and examine only the scheme between four participants B, C, D and F. On the basis of this new scheme, the analysis starts by focusing on which one of the four participants can be considered as "intermediary operator" in order to ascribe the exempt dispatch/transport of goods made by/to him. From this analysis, it is derived that for the purposes of a chain transaction, B (first supplier) and E (last customer) cannot be the "intermediary operator". Then, several examples are depicted where either B or C is the "intermediary operator" and the exempt intra-community transaction is ascribed to/by them.

Then, a third scenario with several persons involved in the transport of goods is given (*i.e., the intermediary operator has contracted the transport with more than one person*). The fourth illustrated scenario deals with "fractioned" transport and possible "breaks" in the chain. In the fifth scenario, the intermediary operator has multiple VAT identification numbers (in several MS). In the sixth scenario we can observe the interaction between chain transactions and the triangular transaction specification[5], while in the seventh, there are more than three operators in the chain. Finally, in the eighth scenario, the last person in the chain is not a taxable person, but a final consumer.

d. Other issues

Finally, special issues are addressed by the Explanatory Notes, such as the scope of the provision; who can or cannot be considered an intermediary operator; proof for the organisation of the transport; the time and the way that the intermediary operator will communicate his VAT Identification number as far as the means of proof of this communication is concerned; the consequences for the intermediary operator for not communicating his VAT Identification number to the supplier; etc.

F. The exemption of intra-community supplies of goods

This chapter of the Explanatory Notes is dedicated to the amendments made to the provisions of Article 138 of the VAT Directive.

More specifically, paragraph 1 is restructured and a new condition is added (notification of the acquirer's VAT ID number to the supplier), plus a new paragraph 1a is added (concerning the recapitulative statement).

It is clarified that the VAT ID number of the person to whom the supply is made must be attributed by a different Member State, but not necessarily by the Member State where the goods are transported.

The text notes that the way the VAT ID number will be shared is not specified and it is therefore at the discretion of the parties involved to arrange it.

In the main analysis, the text offers a description of the issues that have been raised from the application of the amended provision, with reference to the VAT Committee's guidelines, plus six more points in the form of questions and answers.

[5] Article 141of the VAT Directive

Firstly, the interaction with the Council Directive 2008/9/EC of 12 February 2008 (hereafter referred to as the "VAT Refund Directive") is examined. The relevant guideline confirms that in case the preconditions to exempt intra-community supplies of goods are not met, the supplier must charge VAT.

Afterwards, it is clarified that a specific time span must apply regarding the obligation of the supplier to submit the recapitulative statement. The exemption may only be revoked retroactively if the tax authorities establish non-compliance.

Finally, one guideline refers to the effect of the exemption on the optional reverse charge of Article 194 of the VAT Directive.

The six issues explored in the final section are answers to practical questions, like the case in which the acquirer provides his VAT Identification number at a later stage, either due to negligence or due the fact it was only issued at a later stage. In both cases, the supplier will correct the invoice according to the rules laid down in the relevant national legislation.

Moreover, answers are provided to the questions of how to deal with VAT ID numbers which are valid only for certain domestic transactions and how to deal with the case that the acquirer is part of a VAT group in accordance with Article 11 of the VAT Directive.

Last but not least, the ambiguous term "unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities" mentioned in Article 138(1a) is analysed.

G. The Proof of Transport

This chapter of the Explanatory Notes is dedicated to the provision of Article 45a of the VAT Implementing Regulation, regarding the application of the exemption laid down in Article 138 of the VAT Directive. The exemption refers to the presumption that if the two conditions described in 1(a) and 1(b) are met, an exemption to the intra-community supply of goods is applied.

The text explains that both conditions are necessary in order for the presumption to apply. In case, however, that the two conditions are not met, there is still the possibility to exempt the transaction, provided the supplier can prove that the general conditions for the exemption are met.

In addition, the text refers to the possibility, given by Article 45a(2) of the VAT Implementing Regulation, to rebut the presumption of paragraph 1. This concept is further explained and specific cases are mentioned. Rebutting the presumption means that the exemption will not apply. Moreover, it is clarified that "rebutting the presumption" is different to the situation whereby the tax authority can demonstrate that one of the documents submitted as evidence either contains incorrect information or is even fake (Article 45a(3) of the VAT Implementing Regulation). In the latter, the taxable person may still qualify for the exemption by presenting a different set of documents providing evidence that the conditions of the exemption of Article 138 VAT Directive are satisfied.

Following those introductory comments, the main analysis focuses on specific issues arising from implementing the provision, which comprises the guidelines already agreed by the VAT Committee and seven points presented in the form of questions and answers.

The guidelines resulting from the 113th meeting of the VAT Committee explore the notion of “independent parties” referred to in Article 45a(1), points (a) and (b)(ii). The guidelines had been almost unanimously agreed and specified that two parties shall not be considered as independent, in the case of parties sharing the same legal personality and in the case that “family or other close personal ties, management, ownership, membership, financial or legal ties” exist, as set out in the Article 80 of the VAT Directive.

The remaining analysis deals with issues like the effect of the new Article 45a on pre-existing national legislation; what happens if the conditions for the presumption of transport in Article 45a of the VAT Implementing Regulation are not fulfilled; what happens if documents turn out to be fake or with incorrect information; the case of the acquirer using his own means of transport; the nature of the “written statement” mentioned in Article 45a(1)(b)(i); the format of the documents used as evidence of dispatch or transport mentioned in Article 45a(3); and, finally, what happens if the acquirer does not provide the vendor with the written statement referred to in Article 45a(1)(b)(i) of the VAT Implementing Regulation.

6. The questionnaire circulated to members of the EU VAT Forum and their replies

To obtain information on the vision and impact of the VAT Quick Fixes for the members of the EU VAT Forum who are themselves representatives of both business organisations and Member States' tax administrations, a questionnaire was issued to the EU VAT forum members asking a number of questions. This questionnaire has proven to be a valuable source of information, on which the subgroup was able to work during the months of the project and create a set of statistics.

The questionnaire was divided into the following sections.

- General questions on the VAT Quick Fixes;
- Call-off stock;
- Chain transactions;
- VAT ID number;
- Documental proof of transport.

A total of 21 Member States and 7 business representatives have provided replies to the questionnaire. However, the answers of some business representatives given to the questionnaire refer to three Member States that did not participate individually in the questionnaire, which means that 24 Member States are represented in the project.

The answers received varied. Due to the type of questions asked, in some cases it was not possible to give "yes" or "no" answers, rather, it was necessary to provide more comprehensive and explanatory answers. Although these answers were always considered when working on the questionnaire, it was not always possible to reflect them in the statistics. It has to be borne in mind, therefore, that the statistical graphs are based on those questions where the format of the answers permitted visualisation.

It is important to mention that due to the content of the questions, this is a questionnaire that is perhaps predominantly focused on the views of Member States' tax authorities. To be sure, the answers given by business representatives were collected and considered when preparing

the statistics on the questionnaire. It can be stated that the answers from the business representatives are a useful complement to those given by the Member State authorities. In this way, we consider that a clear picture has been obtained of the impact of VAT Quick Fixes and of the difficulties that some of them pose for both sides. It is worth noting that the difficulties, problems or even discrepancies encountered do not only exist on the side of the business representatives only, as one might a priori believe, but also for the Member States. All this has been verified in the light of the responses received.

(i) General Questions on the VAT Quick Fixes

This first section of the questionnaire is devoted to a series of general questions on the implementation of the VAT Quick Fixes. It is not intended, therefore, to go into detail on each of the four Quick Fixes as this is something that will be done in the following sections of the questionnaire.

The questions posed in this first section are as follows:

- *What is the position of your Member State's authorities on the EU Commission's Explanatory Notes on the VAT Quick Fixes?*
- *Can they be invoked and applied in case of discrepancies?*
- *Are they, at least, a valid guideline in your Member State or, on the contrary, their effect is nil?*
- *Has your Member State created its own Explanatory Notes on Quick Fixes?*
- *Do they differ from the Explanatory Notes provided by the EU Commission?*
- *As a business representative, have you evoked the EU Commission's or your national Explanatory Notes in relations with your tax authorities?*
- *Which one have you evoked and what was the result?*

In relation to the first of the introductory questions, all the answers agree that the Explanatory Notes drawn up by the Commission are not binding for the Member States. In most cases, it was pointed out that they could be used in the event of discrepancies, but only as a guide and "*to a certain extent*" (89% replied in this sense), and that the domestic legislation of each Member State and case law prevail over them. Considering that there is yet no established CJEU case law on the VAT Quick Fixes, we can conclude that in case of discrepancies, it will still be necessary to analyse any such matter on a case-by-case basis.

In view of the answers obtained, it can be said that, overall, the interpretation of the Explanatory Notes has been a matter of certain uniformity throughout the EU. A different case is where certain aspects and practices of businesses are not covered by the Explanatory Notes. This will be addressed in the different sections of the questionnaire.

In relation to the question on whether Member States have created their own guidance by means of any type of internal document such as their own notes or administrative circulars, 55% answered yes, while the remaining 45% answered that no internal document has been created. This might be interpreted that the remaining 45% rely on the Explanatory Notes to interpret the VAT Quick Fixes.

From the respondents who indicated that their Member State has domestic documentation regarding the implementation of Quick Fixes, 80% answered that it does not differ at all from the explanatory notes or that there are no significant differences that could raise a problem.

However, 20% of the answers received indicated that there are relevant differences between the Explanatory Notes and the domestic guidance.

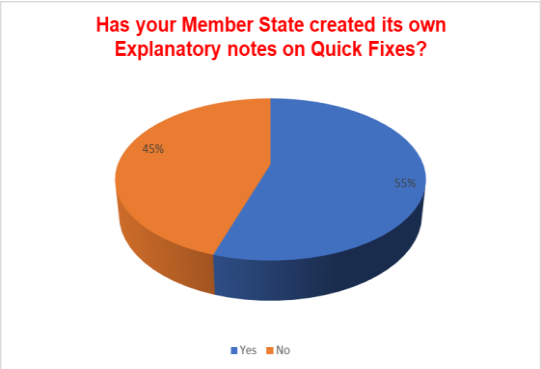
Where there may be interpretative differences, these often relate to specific cases where the matters are dealt with in detail.

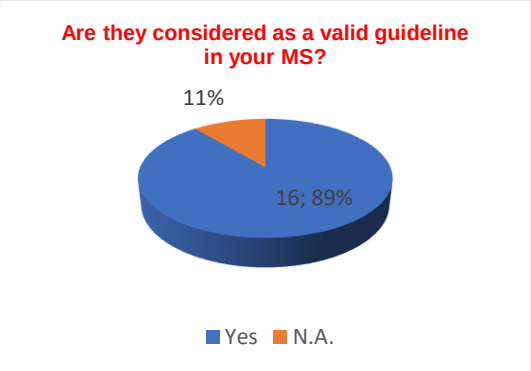
One Member State´s answer to the question about the differences between its domestic guidance and the Explanatory Notes reads as follows: "*No, as a starting point. But they are silent on a number [of] points dealt with in DG Explanatory Notes".* In this case, it seems that the Explanatory Notes are broader than the domestic ones. In principle, this gap could not be filled by the Explanatory Notes, as they are not binding for the Member States. At most, they could be used as a guidance but it seems that in cases like this it will not be possible to avoid the case-by-case analysis.

Something similar happens from the business perspective where a business representative has pointed out that between the Explanatory Notes and the domestic guidance there are "*certain deviations*".

The conclusions that could be drawn from this first general part of the questionnaire are the following:

- Approximately half of the Member States that participated in the questionnaire have said that they have their own guidance on the interpretation of the Quick Fixes.
- In these cases, the domestic guidance does not differ significantly (with certain exceptions) from the Explanatory Notes.
- The Explanatory Notes are a valid guide to the interpretation of the standard but are in no way binding for the Member States.





(ii) Call-off stock

This second section of the questionnaire deals with the call-off stock scheme. Several questions have been posed in the questionnaire on some of the most controversial aspects of this type of operations.

Question 2.1 relates to the circumstances under which a warehouse where goods are deposited for subsequent delivery can be considered a fixed establishment.

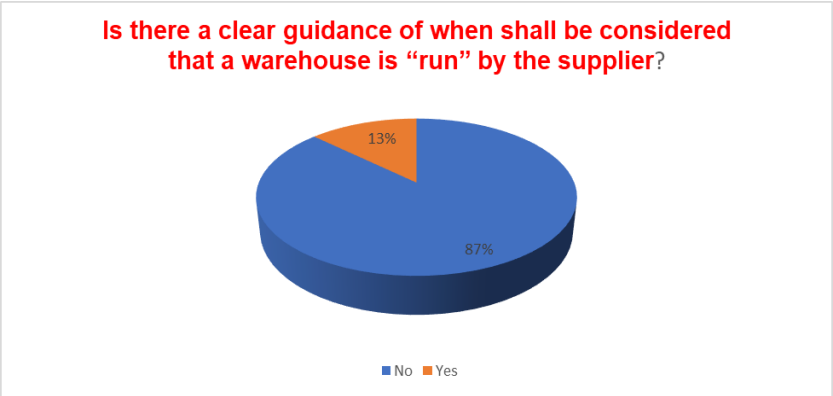
According to the guidelines resulting from the 113th meeting of the VAT Committee, a large majority of the Member States is of the opinion that it is generally considered that when a warehouse is owned or rented and directly run by the supplier with his own means present in the Member State where the warehouse is located, this warehouse shall be seen as his fixed establishment. However, when such warehouse is not run by the supplier with his own means, or when those means are not actually present in the Member State in which the warehouse is located (notwithstanding that the warehouse is owned or rented by the supplier), it may not be considered his fixed establishment.

We therefore see that one of the keys to determine whether there is a fixed establishment in the Member State of arrival of the goods may be whether the warehouse in question is managed in some way by the supplier of the goods.

To the question "*Is there a clear guidance of when it shall be considered that a warehouse is "run" by the supplier*?" 87% of the participants answered "no" while the remaining 13% answered "yes".

Even in those cases (13%) where it has been answered that there is a clear definition of what can be considered as running a warehouse (three Member States), the question is far from being clarified, as the answers received seem contradictory to some extent. In this sense, while two of the three Member States that stated that they have a clear definition for the term "warehouse" answered that it is possible that the resources needed for running a warehouse can be outsourced (hired from a third party), the position of the third Member State is the opposite. In this regard, the reply given is as follows "*Where the warehouse to which the goods are transported under call-off stock arrangements is owned and run by a person other than the supplier, the warehouse will not be seen as a fixed establishment of the supplier*".

From all the above, we can point out that, generally and in most of the Member States, there is no clear definition or guidance as to what can be considered as running a warehouse, which ultimately may have an impact to ascertain whether there can be a fixed establishment for VAT. Among the few cases in which it has been answered that there is a definition of what should be understood by running a warehouse, the answers and criteria to be followed do not seem to be uniform.



Continuing with the questionnaire, a number of questions (as from Question 2.3) concerned small losses of goods. In this respect, the VAT Committee almost unanimously agreed in the past that small losses of goods under call-off stock arrangements arising from the actual nature of the goods, from unforeseeable circumstances or from an authorisation or instruction by the competent authorities, shall not give rise to a transfer of these goods within the meaning of Article 17 of the VAT Directive, i.e., the call-off stock arrangements will continue to apply.

Furthermore, the VAT Committee, by large majority, agreed that for the purposes of such call-off stock arrangements, "small losses" shall be taken to mean losses that amount to below 5% in terms of value or quantity of the total stock as it stands after arrival at the place of storage.

According to the replies received in the questionnaire, this is an issue that is accepted in most Member States. Thus, 59% of the replies received stated that tolerance to small losses is in some way accepted in their respective Member State. However, 33% of responses indicated that it is not accepted in their Member State. Most of these responses refer to the fact that the "rule" is not, as such, recognised in domestic VAT legislation. On the other hand, 8% said that they had no clear opinion and that it would depend on each individual case.

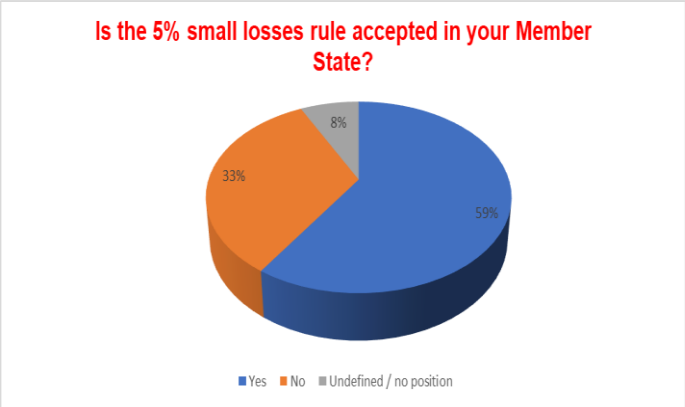
Two more questions regarding small losses (2.4 and 2.5) have been raised in the questionnaire. These questions are formulated as follows:

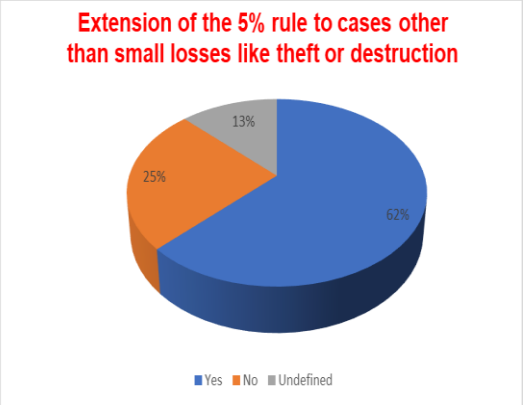
2.4. When applying the 5% rule, the Explanatory Notes only refer to small losses. Do the Authorities of your Member State extend the 5% rule or any other rule referring to tolerance with small losses also to theft and/or destruction?

2.5. Would you consider applying certain tolerance to theft and/or destruction different from the 5% rule? Could you please provide an example?

In about half of the answers to question 2.4, it is pointed out that Member States when talking about the 5% tolerance refer to small losses in a narrow sense. In this case, therefore, a literal interpretation of the term is being considered, i.e., theft and destruction are not considered to be "losses". However, already on this question, some Member States point out that the loss may encompass other cases such as theft.

As regards question 2.5, 62% indicated that the 5% tolerance regarding small losses also encompasses cases of theft or destruction. Conversely, according to 25% of the replies received the tolerance rule did not cover cases like theft or destruction, while 13% of the participants seem to have no clear opinion and point out that the cases may depend on the circumstances.





The questionnaire also addresses a number of questions (2.6, 2.7 and 2.8) on the practical consequences for taxable persons ceasing to meet the requirements for applying the call-off stock rule. There is a virtually unanimous position that as soon as some of the requirements are no longer met, the taxable person should be identified for VAT purposes in the country of arrival of the goods. It is also the general view that there is no simplified procedure for VAT identification in these circumstances. In other words, taxable persons should follow the normal identification and registration procedures existing in the different Member States. There is also a fairly uniform position that in the event of failure to identify themselves, penalties will be applied. In this respect, a large majority of Member States consider that concepts like due diligence and good faith are to be considered.

In relation to the requirements for the application of the call-off stock regulations, of particular relevance is the call-off stock register (Article 243 (3) of the VAT Directive).

In this respect, from the Explanatory Notes (2.5.6) it does not seem to be entirely clear to the business representatives whether the register and its content is a formal requirement or not. In note 2.5.6 it is mentioned that a distinction must be made between, on the one hand, the conditions which necessarily must be fulfilled for the call-off stock arrangements and, on the other hand, additional obligations linked to this scheme. The former are the conditions laid down in Article 17a(2) of the VAT Directive and the latter are any other obligations laid down by the legislation in relation to the call-off stock simplification; the fact that obligations that are not mentioned in Article 17a(2) of the VAT Directive as a requirement of the call-off stock arrangement are not met does not prevent the application of that simplification, although national penalties may apply. Question 2.9 of the questionnaire has the purpose in some way to clear up this confusion. The question has been formulated as follows.

How do the authorities of your Member State implement in practice Article 17a(2)(d) of the VAT Directive? If the supplier does not keep the call-off stock register correctly, is this sufficient reason to cease to apply the simplification?

Positions in this respect are fairly uniform with 80% of the responses received indicating that the call-off stock register is a substantive requirement for the application of the call-off stock rule. Only 15% of the replies received indicated that it is a formal requirement, while 5% indicated that the circumstances may depend on each specific case.

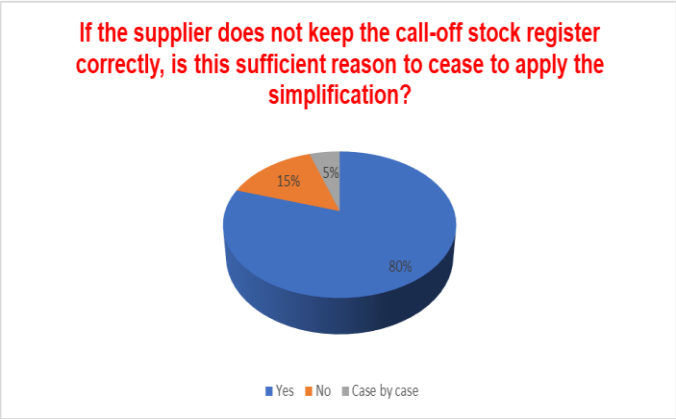
For those who answered that the register is a substantive requirement, an additional question was posed as follows:

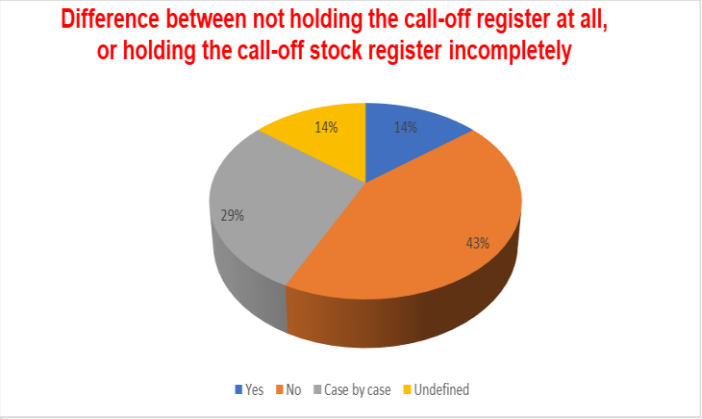
For the application of the simplification, do the Authorities in your Member State differentiate between not holding the call-off register at all, or holding the call-off stock register incompletely?

In contrast to the previous case, the answers to this question are much more varied. There is no longer the uniformity that could be seen in the answers to the previous question.

43% of the replies received said that there should be no difference between not carrying the call-off stock register and carrying it incompletely. 14% pointed out that it seems reasonable to make a differentiation since total non-compliance and partial non-compliance should not be treated in the same way, especially if there is good faith on the part of the taxable person. 29% pointed out that these issues cannot be generalised and should be dealt with on a case-by-case basis. Finally, 14% indicated that they did not have a position on this issue.

The business representatives are of the opinion that the lack of uniformity in this response is something that may need to be clarified as it creates a legal uncertainty for businesses. Since the Quick Fixes came into force, business representatives have repeatedly received queries about the compulsory nature of the register and its content.





To conclude the call-off stock aspects of the questionnaire, a final question was posed which, unfortunately, could not be answered. (Question 2.11 was formulated as follows:

As a consequence of the entry into force of the simplification rule, have you noticed that in your Member State a significant number of companies that in the past were identified for VAT purposes for the mere reason of holding a stock of products under a call-off stock arrangement have been deregistered for VAT purposes?

Most of the Member States have not been able to answer this question. A few Member States did not see a significant number of companies deregistering for VAT purposes.

Business representatives have not seen a considerable number of persons withdrawing their VAT registrations in the Member State of arrival of the goods as a result of the application of call-off stock rule. The business representatives cannot say what the reasons for this are, but

they would think that businesses have decided not to apply the simplification. This may be seen as if the real impact and usefulness of the rule for businesses has been limited.

(iii) Chain transactions

Question 3.1 sought to establish whether, prior to the entry into force of the VAT Quick Fixes, Member States had their own rules governing the VAT treatment of chain transactions. 16 of the Member States replying indicated that they did not, while 5 Member States answered in the affirmative.

Those Member States which answered in the affirmative were asked a further question which sought to determine whether their former local rules on chain transactions covered the cases when the transport of the goods starts and/or ends in a third country or territory.

Three Member States answered that their national legislation would provide some sort of guidance for these cases or, at least, would not exclude cases where the operation starts or ends in a third country.

In chain transactions, the figure of the intermediary operator takes on special relevance when he dispatches or transports the goods either himself or through a third party acting on his behalf. In this respect, question 3.2 of the questionnaire seeks to clarify whether, prior to the entry into force of the Quick Fixes, there was a definition of what an intermediary operator in a chain transaction is. All the answers received were negative. There was no such definition in the legislation of the different Member States.

The VAT treatment of chain transactions revolves around the idea that there are several successive sales of goods and a single transport of the goods in question. It is precisely the fact that there is a single transport of these goods that creates the complexity in the VAT taxation of these operations. The Quick Fix aims to decide to which supply (the supply to the intermediary supplier or the supply by the intermediary supplier) the transport has to be assigned when the goods are transported by or on behalf of the intermediary supplier.

It can be said, therefore, that determining to which supply the transport should be ascribed is fundamental in chain transactions.

Questions 3.3 and 3.4 of the Questionnaire deal precisely with the importance of transport. These questions are formulated as follows:

3.3 Is there a clear definition in the domestic legislation or in some other way in your Member State of what is meant by "goods are dispatched or transported by a taxable person or by a third party on his behalf to another Member State (…)"

3.4 Is there a clear definition in the domestic legislation or in some other way in your Member State of what is meant by a single transport vs fractioned transport?

The answers given to question 3.3 are quite illuminating since 70% of the answers received indicate a negative response. Therefore, in a large majority of Member States there is no definition of what is meant by "*goods dispatched or transported by a taxable person or by a third party on his behalf*". On the other hand, 20% indicated that there is indeed such a definition in their Member State, while 10% indicated that there is "*some guidance*".

Given the importance of the transport of goods for the correct determination of the VAT taxation of chain transactions, a series of questions have been included in the questionnaire in this regard. Firstly, the questionnaire asks whether, in order to determine when transport is conducted on behalf of someone, the factor of who bears the risk for accidental loss during the cross-border transport of the goods is something relevant. Nearly all the replies given point in the direction that this is undoubtedly a decisive factor. Thus, some of the answers given have been as follows: "*this is an important criterion", "different criteria, but one of the most important is risk for accidental loss", "yes", "ultimately yes*" etc.

We understand that for those who responded that the definition is not based on who bears the risk in transport, it is because this is not the only decisive factor but there are others, depending on the case, which should also be considered.

In this regard, the question has been raised as to what happens when the risk for transport is somehow shared between different operators in the chain. There have been neither very clear answers nor harmonised positions. In fact, in many cases an answer was not given or it was answered by pointing out that the circumstances depended on the individual case. Only one single Member State very clearly indicated that "*transport is ascribed to the party who gave the shipping order*".

According to business representatives, splitting the risk on the transport between different operators is a fairly common practice. Given the disparity of positions seen from the questionnaire, the business representatives consider that it should be somehow clarified how the transport should be assigned in such cases.

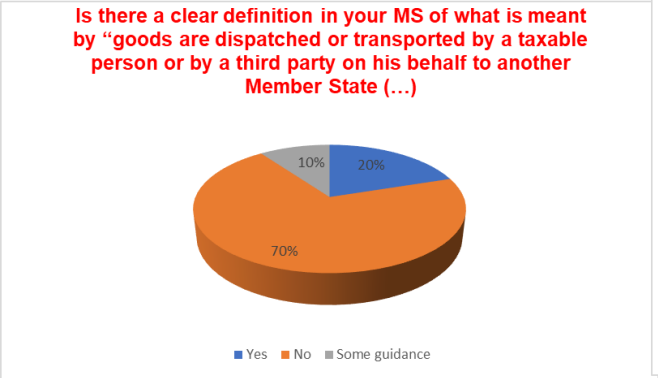
The transport of goods in intra-Community transactions can be a complex matter. We are referring, for example, to cases of long-distance transport or transport which, because of the type of goods, must be fractioned in some way. Since Article 36a of the VAT Directive simply refers to *"goods transported or dispatched from one Member State to another Member State*", there may be doubts as to how the chain transactions rule should be interpreted in case of complex transports.

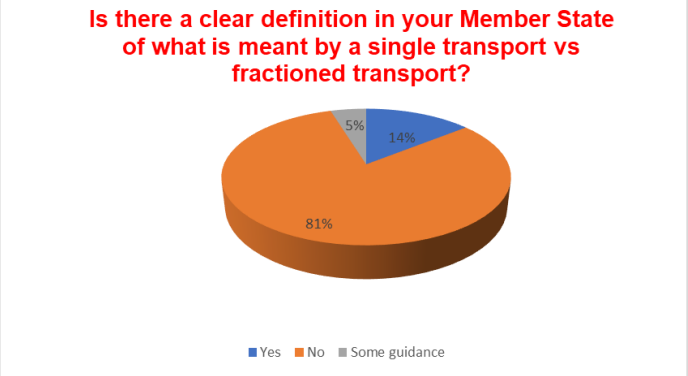
Evidence that this might be a problematic issue can be seen in the answers given to the question formulated as follows: *Is there a clear definition in the domestic legislation or in some other way in your Member State of what is meant by a single transport vs fractioned transport?* 81% answered in the negative, 14% in the affirmative, and 5% indicated that there is "*some guidance*".

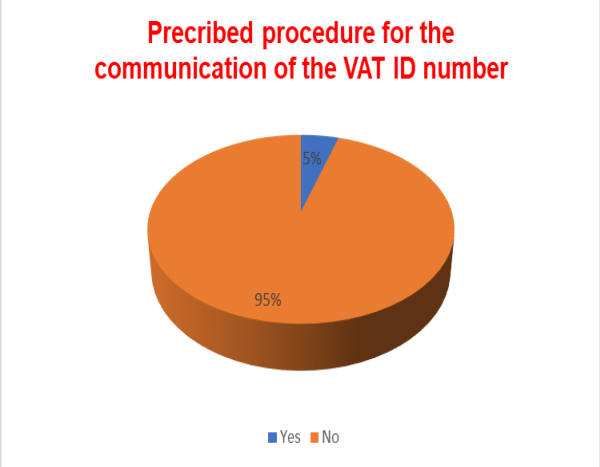
A question regarding the cost and payment of the transport was also raised. To the question whether it is important that one of the parties in the chain pays for the transport and whether it is enough on its own to conclude that this person is organising the transport, there has been large unanimity in answering that it is not a relevant factor. Some other replies from Member States or business representatives pointed out that it may have some relevance.

Other questions seek clarification on whether there are any criteria on what should be considered as a clear break in the transport and whether a stop for a mere logistic reason is to be considered as a break in the transport. In many cases, this question has remained unanswered, and in those cases where it has been answered, the answers are far from uniform. In this regard, some of the answers given mention that the transport must be carried out "*directly*" between one Member State and another.

The last of the questions raised in the questionnaire with regard to chain transactions refers to an issue that has been recurrent since the implementation of Quick Fixes, namely the way in which the intermediary operator must communicate his VAT ID number to the supplier of the goods. To the question of whether there is a prescribed procedure for doing this communication in a reliable manner, 95% of the replies said no and only 5% responded affirmatively.







(iv) The VAT ID number

The first of the questions raised relating to this Quick Fix asks whether before the entry into force of the new European rules in 2020 the national rules of the different Member States required to have a valid VAT ID number for applying the exemption to intra-Community supplies of goods.

All answers, except the ones given by two Member States, were affirmative. In other words, Member States already required the obligation to have a VAT registration number for the exemption to apply.

Question 4.2 of the questionnaire is a particularly relevant question as it seeks to find out what the Member States´ position is on the refund of input VAT to the purchaser of goods in the case where, because of not having a VAT ID number, the supplier of said goods charges the corresponding VAT amounts.

More precisely, participants were asked if it would be possible for the recipient of goods to claim the refund of VAT charged according to the provisions of the VAT Refund Directive (2008/9/EC) where Article 4 of this Directive excludes the refund of VAT charged on intra-Community supplies of goods.

In this respect, 67% of the replies received indicated that it is not possible to obtain a VAT refund under the special procedure of said Directive, precisely because its Article 4 excludes this possibility. However, 33% replied that it should be possible. In some cases, the refund of VAT would be subject to certain conditions. One Member State pointed out that "*Where the seller is unable to issue a corrective invoice or where the correction of the invoice becomes excessively difficult, the non-established taxable person may obtain a refund of the VAT thus incurred".*

If, according to the above, no refund is possible, the VAT charged by the supplier should be recovered by issuing corrective invoices once the recipient has a VAT ID number in place.

In this regard, the answers given in relation to the requirements for issuing corrective invoices vary widely. These requirements differ in terms of the form and deadlines for issuing these invoices. According to the replies received, these requirements may range from the 15th day of the month following the month in which the cause of the refund arose, up to a five-year term in some cases.

A collateral effect of this situation that may be of particular relevance as it could lead to double taxation situations relates to the interaction of Article 138 of the VAT Directive with Article 16 of the VAT Implementing Regulation. This last Article mentions that where an intra-Community acquisition of goods has taken place, the Member State in which the dispatch or transport ends shall exercise its power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began.

In practice, the above could mean that in some cases where VAT has been charged on an intra-Community supply of goods because the recipient of goods does not have a VAT ID number, the transaction could in turn be taxed in the country of destination in accordance with the provisions of Article 16 of the VAT Implementing Regulation.

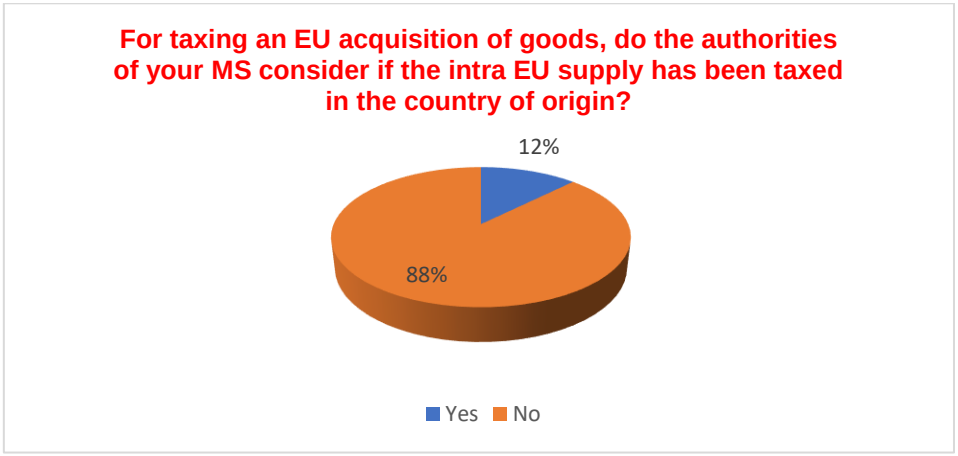
Question 4.3 of the questionnaire refers precisely to this type of situation. To the question "*For taxing an EU acquisition of goods, do the Authorities of your Member State take into consideration if the intra EU supply has been taxed with VAT in the country of origin?",* 88% answered that their Member State does not consider whether the transaction is taxed in the country of dispatch in order to exercise its right to tax the intra-Community acquisition. Only 12% said that this situation should be considered in some way to respect and preserve the principle of VAT neutrality and even proportionality.

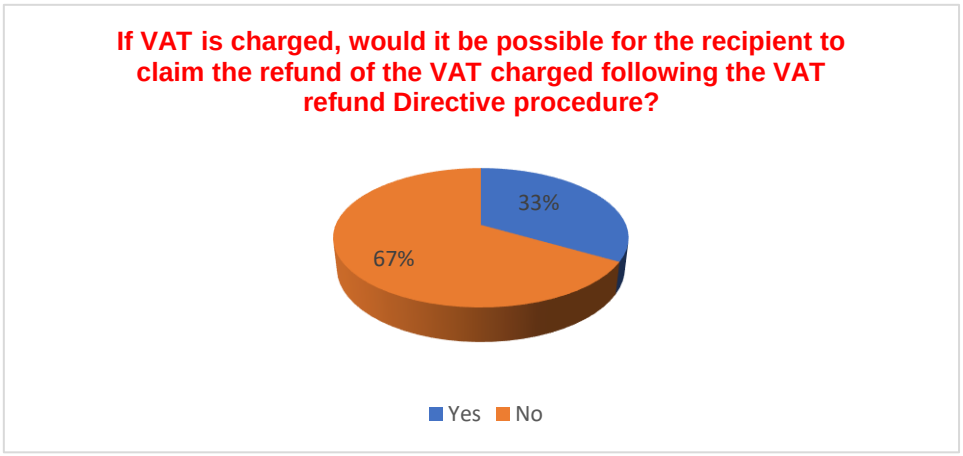
The last of the questions in this section concerns the issue of formal vs. substantive requirements. In this case, the question arises as to how important the requirement of completing the recapitulative statement is for the application of the exemption and if there is any distinction between, on the one hand, a missing recapitulative statement and, on the other hand, an incorrect recapitulative statement.

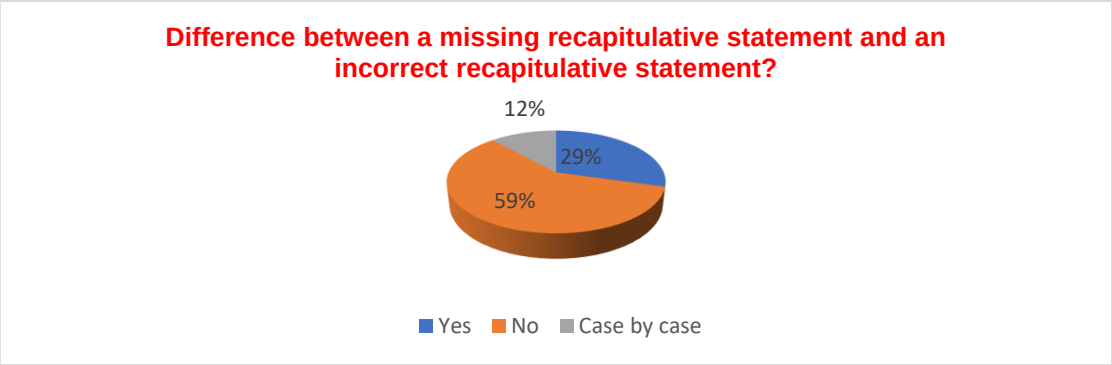
68% of the responses received indicated that this is a substantive requirement while a considerable 32% indicated that it is merely a formal requirement.

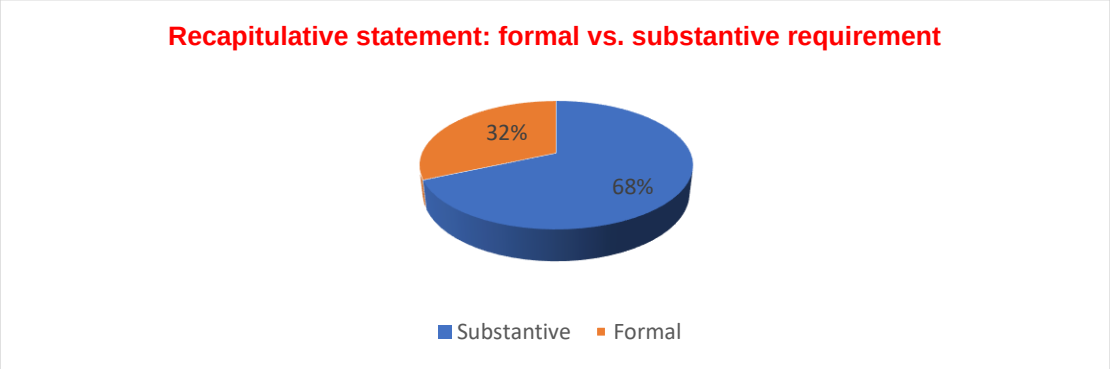
On the other hand, 29% indicated that some kind of distinction should indeed be made between not filing the recapitulative statement at all and filing it incorrectly. However, 59% indicated that there is no reason to make such a differentiation, putting not filing at all and partial non-compliance on the same level. 12% had no opinion on the matter and considered that it should depend on the circumstances of the case.

Explanatory Notes Chapter 4.3.6 deals with this issue, pointing out that an incorrect or missing recapitulative statement results in a taxable intra-Community supply, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.









(v) Proof of transport

The first relevant question queries whether, before the entry into force of the Quick Fixes in 2020, the national rules of the different Member States provided their own list of documents that can be used as a proof of intra-Community movements of goods. In this regard, 14 of the 21 Member States replied that they had their own list of documents that could be used as proof of transport of goods between Member States. All of these 14 Member States pointed out that the list was not exhaustive and that it was more of a kind of guide that could be followed.

An additional question was raised as to whether the old documents that were considered as valid prior to the entry into force of the Quick Fixes could still be used today as sufficient proof of deliveries of goods within the EU.

The response was affirmative in almost 100% of cases. Business representatives have seen on numerous occasions how companies have repeatedly asked if they can use other types of documents and not necessarily those listed in Article 45a of the VAT Implementing Regulation for proving movements of goods between EU Member States.

Questions 5.2, 5.3 and 5.4 deal with this aspect.

Question 5.2 : "*Is there a definition in your Member State's domestic law or in some other way in your Member State of what is to be considered as "independent parties" for the application of this rule*?"

58% of the responses received were negative, while 42% responded in the affirmative. We see, therefore, that the positions are quite divided in this respect. Among the 42% who responded positively, a high number pointed out that the definition of independent parties is based on the provisions of Article 80 of the VAT Directive. Not all Member States have a clear

guidance for determining what are independent parties when it comes to being able to produce the document justifying the reception of the goods in the country of arrival, and in those cases where there is an internal guidance, the position is not uniform.

Continuing with the written statement, question 5.3 refers to whether there is any type of preferred or mandatory procedure in the different Member States regarding the format, content and communication process of said written statement.

70% of the responses were negative, i.e., that there is no specific procedure foreseen, while 30% indicated that there is such a procedure. Among the latter, there were few responses explaining the procedure that should be followed, but it is particularly significant that there were more responses in favour of the hard copy format than the digital one.

In relation to whether it is possible to make a single composite statement covering different consignments or, on the contrary, each consignment should have its own communication independently (question 5.4), responses were very divided. 53% indicated that it is possible to make use of this option. The opposite reply was given by 26% of respondents, while the remaining 21% indicated that they had no clear opinion on the matter and that the answer might depend on the circumstances of each case.

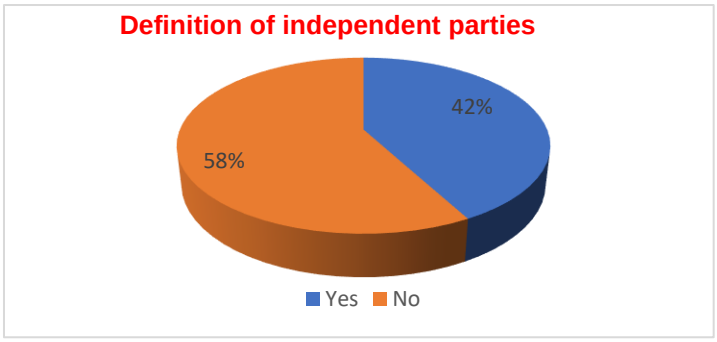
For the sake of effectiveness, the business representatives remark that for companies it is of vital importance to be able to make joint statements, avoiding making a document for each and every shipment made. For companies with substantial number of submissions this situation could become unmanageable.

The last question of the questionnaire (5.5) refers, once again, to the always controversial issue of formal and substantive requirements. In this respect, the third and fourth Quick Fixes (VAT ID number and proof of transport) imply that for zero rating intra-Community EU supplies of goods to apply, five requirements must be met:

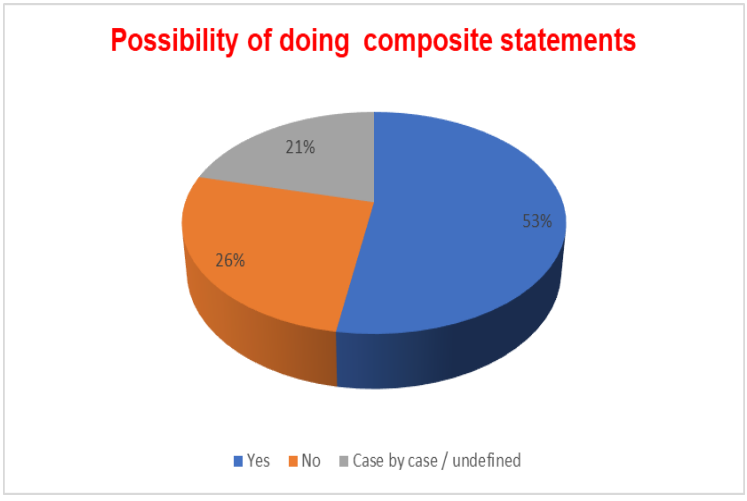
- The recipient of the supply must be a taxable person or a non-taxable legal person;
- The recipient of the supply must act as such;
- The recipient of the supply must have a VAT ID number;
- The recipient of the supply must communicate his VAT ID number to the supplier; and
- The submission of an EU sales list is required.

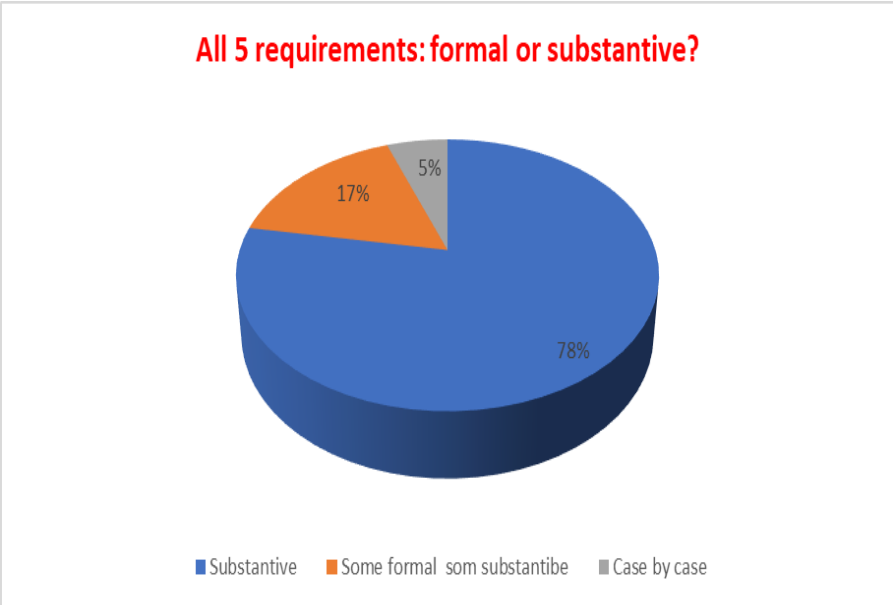
Question 5.5 tries to find out whether it is a widespread practice in Member States to consider each of these requirements to be substantive in order to be able to apply the exemption.

The responses in this respect are quite clear: 78% answered that all of them are substantive requirements, while 17% said that some of them should be considered as formal requirements. The remaining 5% did not have a clear position and the circumstances of each case should be considered.


Definition of independent parties
42%
58%
Yes
No


Preferred procedure to communicate the reception of the goods in MS of arrival?
30%
70%
Yes
No


Possibility of doing composite statements
21%
53%
26%
Yes
No
Case by case / undefined



7. The work of the smaller groups

7.1. Working group on call-off stock

This working group discussed the following issues.

7.1.1. Definition of “warehouse” and running a warehouse

With the simplified rules for the use of call-off stock arrangement a new area of unclarity has been identified. The definition of a warehouse is not clear. A different interpretation of a warehouse in Member States leads to uncertainties for EU-wide operating businesses.

Article 17a of the VAT Directive does not refer to warehouses, and hence a definition of a warehouse is missing. The VAT Implementing Regulation (EU) refers to warehouses in several Articles, especially in those referring to the call-off stock register. Explanatory Notes Chapter 2.5.29 states: “It seems reasonable to assume that call-off stock arrangements will, as a rule, involve a warehouse in the Member State of arrival (…)”. This could prove to be problematic as will be explained below.

The problem could arise in cases where goods do not require to be stored in a warehouse (building) but could be kept in any other place. These “other places” could be a container, a lorry or something alike. The question remains whether for this kind of goods the call-off stock arrangements can be used and thus they can be delivered at a later stage.

7.1.2. Warehouse as a fixed establishment

The question of whether a warehouse is creating a fixed establishment has also been raised due to the call-off stock exemption.

The VAT Committee has agreed at large majority that where a warehouse is owned or rented and directly run by the supplier with his own means present in the Member State where the warehouse is located, this warehouse shall be seen as a fixed establishment. However, where such warehouse is not run by the supplier with his own means, or where those means are not

actually present in the Member State in which the warehouse is located (notwithstanding that the warehouse is owned or rented by the supplier), it may not be considered his fixed establishment.

Although owning or renting a warehouse is something straightforward, there is not an EU common understanding of what is "running" a warehouse. It would be beneficial to get a common understanding of what is to be considered as "running a warehouse".

7.1.3. Call-off stock arrangement as a possibility, not a mandatory element

Since the new rules came into force, the question of whether the call-off stock arrangement is a mandatory element or a possibility has been debated. In the Explanatory Notes Chapter 2.5.2. it has been mentioned that "the system as such is not obligatory as a business may choose to apply or not the call-off stock simplification by fulfilling or not the necessary conditions". However, this is not answering the question of whether the rule is optional in cases where all the requirements are accomplished.

The problem could arise when businesses do not know if they must, or need not, declare deemed EU acquisitions of goods in the Member State of arrival. This may have side effects in other aspects of VAT such as registrations, refunds etc. Therefore, a clarification on whether the call-off stock arrangement option can be opted for on a case-by-case basis would be welcome.

7.1.4. Call-off stock register: substantial or formal requirement

The question has been raised whether the call-off stock register is a formal requirement or a substantial requirement for the simplification to apply. The distinction is important to understand whether or not the register is fully compliant. The question is: What if the taxable person holds the required register for call-off stocks but the register is not fully compliant with the requirements laid down in Article 243(3) of the VAT Directive?

The problem arises especially in cases where all the requirements are met but a taxable person wishes to waive the simplification by simply holding an incomplete call-off stock register.

The issue has been discussed in the Explanatory Notes Chapter 2.5.6, from where it may be understood that the recording of the transport of the goods by the supplier in his call-off stock register is a substantive requirement, while the content of the register is a mere formal requirement. From a business perspective, this may create confusion and uncertainties in some cases, while from the Member States´ side the conclusion arising from the Explanatory Notes is clear enough.

7.1.5. Small losses

The VAT Committee almost unanimously agreed that under the call-off stock arrangement small losses of goods (below 5 %) arising from the actual nature of the goods, from unforeseeable circumstances or from an authorisation or instruction by the competent authorities do not hinder the application of the call-off stock arrangement.

Cases of theft or destruction also fall under small losses arising from the actual nature of the goods, from unforeseeable circumstances or from an authorisation or instruction by the competent authorities. It can be said that a loss from authorisation or instruction by the

competent authority can qualify as “destruction”. The same may happen in case of losses for unforeseeable circumstances.

7.1.6. 12-month limitation period

The speed at which goods move around depends considerably on the given industry. Whereas in some industries goods circle around several times during a 12-month period, in some industries the period of 12 months has proven to be too short. Even if for many companies the 12-month period does not cause problems, for some this artificial limitation is a real issue.

During the Covid-19 pandemic there have been serious delays in production due to shortage of spare parts or components. It has also been seen that when problems occur with the worldwide flow of goods (e.g., at the Suez Canal) or other unexpected circumstances, the 12-month period may prove to be too short.

7.2. Working group on chain transactions

The VAT Directive, in its wording prior to 1 January 2020, did not provide for any concrete rule for the allocation of the intra-Community transport of the goods. The case-law of the CJEU provided some guidance but, in any event, an overall assessment of all the specific circumstances had to be made in each particular case. Article 36a of the VAT Directive addresses this issue, laying down rules to attribute the intra-Community transport of the goods to a concrete supply within a chain of transactions, only when the intermediary operator dispatches or transports the goods either himself or through a third party acting on his behalf.

According to the general rule, the dispatch or transport of the goods is ascribed to the supply made to the intermediary operator. However, the Article provides for the possibility to derogate from the general rule. This will be the case when the intermediary operator communicates to his supplier his VAT identification number issued by the Member State from which the goods are dispatched or transported. In this case the dispatch or transport of the goods is ascribed to the supply made by the intermediary operator.

The intermediary operator is the supplier in the chain, other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf. To prove his status of intermediary operator, he will need to keep evidence that he transported the goods or that they were transported through a third party acting on his own behalf.

7.2.1. ”Dispatching or transporting by or on behalf of”. Article 36a of the VAT Directive

7.2.1.1. Explanatory Notes. Chapter 3.6.5

In the Explanatory Notes Chapter 3.6.5, the Commission tries to describe what “dispatches or transports the goods either himself or through a third party acting on his behalf” means. In general, the intermediary operator will be the supplier within the chain who organises the transport of the goods, i.e., the person who either makes the transport himself on his own behalf or the person who contracts the transport with a third party who will act on his behalf.

Advocate-General Kokott concluded in her opinion to Herst, C-401/18 that the transport should be ascribed to the person who bears the risk for accidental loss during the cross-border transport. According to the Explanatory Notes, the risk approach might lead in some cases to certain practical difficulties. It might be, for instance, that the risk for accidental loss of the

goods is split between the seller and the buyer on certain points of the transport according to the Incoterm used. In such cases it would be difficult to identify a single taxable person within the chain who bears the risk of loss or damage to the goods during all the transport operation.

Therefore, in order to determine who is the intermediary operator, the most suitable criterion in these situations would be that of the taxable person within the chain that transports the goods himself or makes the necessary arrangements with a third party for the transport of the goods, concluding a contract with that third party – except for such cases where the taxable person in question can prove to the satisfaction of the tax authorities that in fact the transport was made, or the contract was concluded, on behalf of another taxable person in the chain who was in fact bearing the risk of accidental loss of the goods during the transport operation.

7.2.1.2. The Herst case

In her Opinion concerning the first question in the Herst case, C-401/18, Advocate-General Kokott concluded that "in ascribing the single cross-border transport to a certain supply in a supply chain, the crucial factor is who bears the risk for accidental loss during the cross-border transport of the goods. That supply is the exempt intra-Community supply, the place for which is where the transport began".[6] According to her opinion, therefore, the intermediary operator would be the taxable person within the chain who bears the risk of loss or damage to the goods during the transport: the risk approach. However, it is important to mention that these conclusions were not carried over to the judgement from the CJEU and that the Court did not answer the first question.

In the Herst case, Article 36a of the VAT Directive was not yet applicable as the Quick Fixes including Article 36a were not yet valid. There has been no case in the CJEU where Article 36a was applicable. For this reason, it is not clear how the CJEU would decide in a case where Article 36a is applicable.

7.2.1.3. Varying interpretation of Member States

According to the answers to the questionnaire referred to in section 6 of this report, there are different interpretations in Member States regarding Article 36a. Despite these different interpretations, all Member States seem to be consider that their interpretation is in accordance with the VAT Directive.

Many Member States follow the risk approach, which is the approach Advocate General Kokott expressed in her opinion. The intermediary operator would be the taxable person within the chain who bears the risk of loss or damage to the goods during the transport.

Some Member States still follow the case-law of the CJEU concerning the time period prior to the entry into force of the Quick Fixes and decide case-by case, on the basis of an overall assessment of the specific circumstances.

There are still Member States where the intermediary has to prove that he owns the goods that are dispatched to the intermediary's supply even now, when Article 36a of the VAT Directive is already applicable.

[6] https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62018CC0401

7.2.1.4. An example showing the problem with the different interpretations

Company A sells goods to company B. Company A takes on the obligation to transport the goods to the customer (company C) of company B. There is a separate price/consideration for the goods and a separate price/consideration for the transport although there is only one contract between company A and company B. Company A, however, does not transport the goods itself but enters into a separate transport contract with a third party.

Company B sells the goods to company C. Company B takes on the obligation to transport the goods to the customer (company C). There is not a separate price/consideration for the transport. The customer (company C) carries the risk of anything happening to the goods during the transportation. Company B uses its VAT identification number in MS 2 (country of arrival) both when buying from A and when selling to company C.

Who should be the one organising and arranging the transport?

In case we consider risk as the key factor, it will be C. In case an assessment of all the circumstances takes place, it may be A-B. If you are to follow who makes the agreement with the transport company, it will be A-B. If you also have to prove who the owner is, it will be even more difficult.

7.2.1.5. The working group reflections

As chain transactions often involve multiple operators in multiple Member States, the chain transaction mechanism needs to be interpreted in the same way in all Member States in order to work in practice.

If there are different interpretations of who organises the transport, the system will be open to evasion and fraud against the Member States and to significant risks for legitimate businesses.

The common definition is set out in Article 36a of the VAT Directive. The text does not provide any derogation for Member States. The Explanatory Notes, even though not binding, are the only common source of interpretation for Member States and businesses.

The Explanatory Notes should not themselves be open to interpretation in the specific case of chain transactions. Member States and the Commission should agree on a more precise definition with a clear technical lead and a reading grid of the rule, whatever it is.

The following possibilities to identify the taxable person by or on behalf of whom the dispatching or transporting takes place have been identified by the working group in the Explanatory Notes as well as in the answers to the Questionnaire regarding the interpretations in Member States:

- Prioritize the business agreement and by default (if not clear) use the time of transfer of risk;
- Prioritize the time of transfer of risk as main indicator;
- Prioritize the time of transfer of ownership;
- Prioritize an assessment of all the circumstances in each case.

7.2.1.6. Conclusions

As long as Member States have different views on when the intermediary person in the supply chain could be the one dispatching or transporting the goods on his behalf, there will be issues in chain transactions. As all Member States believe their interpretation is correct and the one following the EU law, it is an issue. This problem is a legal problem and therefore not within the EU VAT Forum's mandate.

Without any clearer wordings on how Article 36a of the VAT Directive should be interpreted when it comes to who could be the intermediary (when the intermediary dispatches or transports the goods either himself or through a third party acting on his behalf) it is difficult for the EU VAT Forum to provide any best practices on this matter.

7.2.2. Fractioned transports and breaks in the chain

7.2.2.1. Sections 3.6.7 and 3.6.8 of the Explanatory Notes

When there are two different parties organising one movement each in a series of consecutive supplies of goods, there will be two different transports.

The fact that there are different means of transport involved does not necessarily alter the consideration of the transport as a single transport. As long as only one party is responsible for the different contracts with different persons who make different movements of the transport, for example with a truck company for the transport to the harbour and a ship company for the transport with the ship, there will be only one transport.

When there is a break during the transport, it is important to analyse if it is such a clear break as to give rise to different transports or if the whole could still be considered as a single transport.

When the goods are transported from the first supplier to a warehouse and from the warehouse to the final customer, it can be seen as one single transport if the following conditions are met:

- One of the parties in the chain has to organise both movements;
- The agreement between all parties must be concluded before the first movement begins.

If these two conditions are met, the two movements could be seen as a single transport.

The conclusion in the Explanatory Notes of this part is the following. Regarding fractioned transport and breaks in the chain, when there are several "movements" of the goods or several persons involved in the transport, it is important to examine on a case-by-case basis the circumstances in order to determine whether the rules for chain transactions can be applied. Relevant elements will be determining where the goods are located, and not where the suppliers are located, and what transactions have taken place when the movements of the goods were carried out.

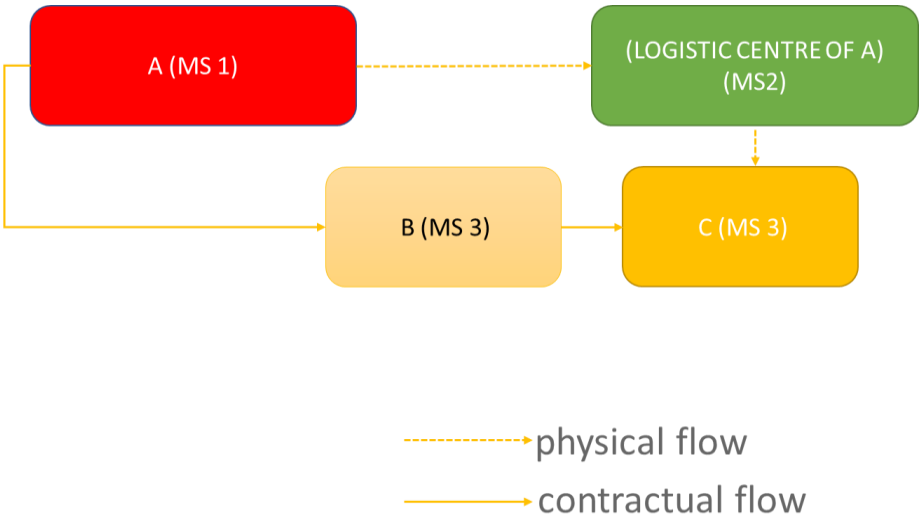
7.2.2.2. The problem

Transportation further to intra-EU supplies is often highly fragmented. Each break during the transportation may last more or less time. It could be, for example, a break in a warehouse.

There can also be a repackaging of goods in the warehouse, maybe for logistic reasons. Can a transport with this kind of repackaging of the goods in a warehouse be considered as a single intra-community transport?

There is no example in the Explanatory Notes dealing with the issue of repackaging of goods during the transport.

7.2.2.3. Example



A sells the goods to B and B sells the goods to C. A is organising the transport to the final customer. First, A sends the goods from MS 1 to MS 2 for logistic reasons (the goods are repacked in smaller packages) and sends them to C afterwards.

Will the repackaging of the goods in the logistic centre be such a break in the chain that it should be seen as one transport or as two transports? If it is considered to be two transports, is the second transport the one that should be seen as the transport connected to the chain transaction?

7.2.2.4. Varying interpretation of Member States

As far as we can conclude from the answers to the questionnaire, many Member States handle the issues according to the Explanatory Notes.

- When it is one party organising the transport, it will be one transport even though there is a change of the means of transport during the transport.
- When it is two parties organising different parts of the transport, there will be two transports.
- For it to be a single transport, the agreements between all parties must be concluded before the first movement begins.

The problem will arise when there is a break at a warehouse with repackaging of goods in the warehouse. This issue is not treated in the Explanatory Notes. It is not clear for the subgroup how different Member States treat repackaging of goods during the transport when the repackaging is done mainly for logistic reasons.

7.2.2.5. Conclusions

For as long as there is no guidance at EU level on how repackaging of goods during the transport should be treated from a legal perspective, there is a risk that Member States have different views on this issue.

Without any clearer guidance on how repackaging of goods during the transport should be treated from a legal perspective, it is difficult for the EU VAT Forum to provide any best practices on this matter.

7.2.3. Proof of who is arranging a transport

7.2.3.1. Section 3.6.9 of the Explanatory Notes

The intermediary operator needs to keep evidence that the goods have been dispatched or transported by himself or by a third party on his behalf. This proof is not the same as the proof of the transport itself. Therefore, there are two different proofs that are necessary.

- The proof of the organisation of the transport (i.e., the proof that the transport has been made “by or on behalf” of a certain taxable person);
- The proof of the transport itself (i.e., the proof that the goods have indeed been transported from one Member State to another).

7.2.3.2. The problem

The intermediary operator needs to keep evidence that he is the one arranging (organising) the transport. It could be very difficult for an intermediary to know which evidence to keep as different Member States have different views on what is important for deciding who is organising the transport.

If a Member State follows the risk approach, the proof should most likely make it clear that it is the intermediary bearing the risk. If a Member State follows the business agreement with the transport company, the proof could most likely be some kind of written contract showing this. If a Member State follows an overall assessment of all circumstances, the proof needs to be evaluated on a case-by-case basis, which will lead to uncertainty for businesses.

7.2.3.3. Conclusions

As long as Member States have different views on which criteria are decisive to determine which party is the one by or on behalf of which the dispatching or transporting of the goods takes place, it is very difficult for businesses to know what proof they shall have to prove that the transport has been made “by or on behalf” of a certain taxable person.

Without an agreement between Member States on which criteria to use when deciding who is the party that dispatches or transports the goods, either himself or through a third party acting on his behalf, it is difficult for the EU VAT Forum to provide any best practices on what proof could be used for this.

7.2.4. Simplified triangulations

The triangulation is a simplification that can be applied to chain transactions, in which three parties (or more) from three different Member States (MS 1, MS 2 and MS 3) are involved and the goods are transported from the first (in the MS 1) to the last party in the chain transaction (in the MS 3) directly.

The conditions for the application of the simplification for triangular transactions are listed in Article 141 of the VAT Directive and are the following:

- The intra-Community acquisition of goods is made by a taxable person (B) not established in the MS 3 and identified for VAT purposes in another MS (MS 2);
- The acquisition of goods is made by B for the purposes of the subsequent supply of those goods in MS 3;
- The goods acquired by B are directly dispatched or transported from MS 1 (other than the MS for which B is identified for VAT purposes) to the person for whom B is to carry out the subsequent supply.
- The person to whom the subsequent supply is to be made is another taxable person or a non-taxable legal person C, identified for VAT purposes in MS 3.
- C has been designated (Article 197 of the VAT Directive) as liable for payment of the VAT due on the supply carried out by B.

The CJEU has decided in C-580/16, Hans Bühler, that when interpreting Article 141(c) of the VAT Directive, only the VAT identification number under which the intra-Community acquisitions was made must be taken into account, as the purpose of Article 141 of the VAT Directive is to avoid situations where B has to satisfy identification/registration and declaration obligations in MS 3. Therefore, the CJEU decided that a VAT registration of B in MS 1 did not interfere with the simplification as B used its VAT ID number of MS 2.

As prerequisite for applying the simplification is that when there is an intra-Community acquisition resp. an intra-Community supply, only one of the taxable persons involved in the chain transaction – the one making the intra-Community acquisition - can benefit from the triangular simplification.

7.2.4.1. Relevant guidelines of the VAT Committee

The VAT Committee unanimously agrees that in a chain transaction only the taxable person making the intra-Community acquisition (B) may, subject to meeting all conditions, benefit from the simplification for triangular transactions laid down in Article 141 of the VAT Directive.

The VAT Committee almost unanimously agrees that the condition laid down in Article 141(c) of the VAT Directive shall be seen as fulfilled when the goods are directly dispatched or transported, from a Member State other than that which has issued the VAT identification number used for the purposes of the intra-Community acquisition, to the place designated by the person for whom B carries out the subsequent supply (C).

The VAT Committee almost unanimously agrees that the fact that C makes a subsequent supply of the goods to another person within the chain shall have no impact on the application

of the simplification for triangular transactions to the transactions made by B. For that simplification to apply, however, all the conditions in Article 141 of the VAT Directive must be fulfilled, which, according to the view held almost unanimously by the VAT Committee, shall require that C is identified for VAT purposes in the Member State where the VAT on that subsequent supply is due and designated, in accordance with Article 197 of the VAT Directive, as liable for the payment of the VAT due on that supply.

7.2.4.2. Section 3.6.17 of the Explanatory Notes

The scope of the rules in Article 36a of the VAT Directive is limited to clarifying which transaction in the chain the transport is assigned to. These rules do not have any impact on the liability of the tax, which is determined according to the general rules. Nor do they have an impact on the possibility to apply the simplification laid down for triangular transactions when all conditions in Article 141 of the VAT Directive are met.

In the Explanatory Notes different examples with more than three parties in the chain transaction are described and how the simplification for triangular transactions could be used.

The rules for chain transactions apply independently of the number of parties involved in the chain. However, the simplification for triangular transactions is applicable only when for the transactions involving three parties in that chain all the conditions for that triangular simplification are met. In practice, only one of the taxable persons involved in the chain transaction – the one making the intra-Community acquisition – can potentially benefit from the triangular simplification.

7.2.4.3. Varying interpretation of Member States

Member States have a different understanding whether the intermediary (B) in the triangular transaction is allowed to also be registered in the country of departure or in the country of arrival or in both.

- Some Member States are of the view that the intermediary is allowed to be registered also in the country of departure but not in the country of arrival.
- Some Member States are of the view that the intermediary is not allowed to be registered in the country of departure but could be registered in the country of arrival.
- For some Member States it does not matter if the intermediary has a registration in the country of departure or in the country of arrival as long as he does not use either of them when making the intra-Community acquisition.

7.2.4.4. The problem

It is described in both the Guidelines and in the Explanatory Notes how the simplification for triangular transactions could be used when there is a chain transaction with more than three parties. For example, if there are four parties in the chain transaction, the transactions between the first three parties can form a triangular simplification and the last transaction in the chain transaction could be seen as a subsequent supply not part of the triangular transaction.

Both in the Guidelines and in the Explanatory Notes it is clear that the simplification for triangular transactions is applicable only if all the conditions for that triangular simplification are met.

As it seems, Member States have different views on the question whether the intermediary in the triangular transaction is allowed to also be registered in the country of departure or in the country of arrival. This makes it difficult for businesses to know if the conditions for the triangular simplification are met or not.

7.2.4.5. Conclusions

As long as Member States have different views on the question whether the intermediary in the triangular transaction is allowed to also be registered in the country of departure or in the country of the arrival, it is difficult to follow the Guidelines and the Explanatory Notes in different situations. This problem is a legal problem and therefore not within the EU VAT Forum mandate.

Without an agreement between Member States on what are the conditions for the simplification for triangular transactions to be applicable it is difficult for the EU VAT Forum to provide any best practices on this matter.

7.3. Working group on VAT ID number and proof of transport

The starting point for the analysis is the outcome of the previously discussed questionnaire, which is mostly oriented on the Member States' perspective.

To supplement the answers to the questionnaire, the working group used the Explanatory Notes and the relevant business experiences.

This section is the result of those discussions.

7.3.1. Practical issues detected on the VAT ID number

The working group identified two major issues that have been analysed in depth.

7.3.1.1. The validity of the VAT ID number

The working group noted that, before the entry into force of the Quick Fixes, the majority of Member States required that a company had a valid VAT ID number in order to apply the exemption to intra-Community supplies of goods.

With the entry into force of the new rules, having a valid VAT ID number has become a substantive condition.

Nevertheless, the working group observed that companies have some difficulties to verify the validity of the VAT ID number communicated by the supplier. In practice, these difficulties can be classified in two categories:

- Difficulties related to the VAT Information Exchange System (VIES).
- Difficulties related to the lack of a common and specific procedure for the verification of the validity of the VAT ID number.

7.3.1.1.1. Difficulties related to the VAT Information Exchange System (VIES)

Firstly, the working group noted a lack of regular updating of the VIES database. In fact, businesses reported that, in some cases, a VAT number is shown as invalid in the VIES system while in reality the given entity declared a valid VAT ID number.

In addition, businesses reported difficulties in some Member States requiring an additional registration for intra-EU transactions which record in their national VIES databases only such VAT ID numbers. Consequently, it is possible that a VAT ID number, even if correct, will not be validated through VIES, because the owner of that VAT ID number is not involved in intra-EU transactions or did not register for those purposes with his/her tax administration.

7.3.1.1.2. Difficulties related to the lack of a common and a specific procedure for the verification of the validity of the VAT ID number

Businesses have noted a divergent approach among Member States as regards checking the validity of the VAT ID number.

Indeed, some tax administrations have published guidance on the procedure that businesses must follow to check the validity of the VAT ID number, while other tax administrations have not provided any specific details.

In both cases, the working group recognised that difficulties have arisen. On the one hand, certain procedures can appear cumbersome and complex and, on the other hand, the lack of legal certainty for businesses is problematic.

7.3.1.2. Absence of the VAT ID number and correction of the invoice and the recapitulative statement

The working group has identified the following situations in which there could be a problem concerning the application of the exemption for an intra-Community supply where the goods are transported from one Member State to another one:

- The buyer has submitted a request to obtain a VAT identification number from the national tax authorities but has not obtained it at the moment of the supply or at the moment the supplier has to issue the invoice.
- The buyer has no VAT ID number issued from another Member State at the moment of the supply, but he wishes to correct his mistake (this can happen to persons not familiar with the VAT legislation, such as for example a company of a third country or a non-taxable legal person who has exceeded the threshold of Article 3(2) of the VAT Directive).

In these situations, the conditions for applying the exemption of Article 138 of the VAT Directive must be seen as not being fulfilled and the supplier shall have no other option but to charge VAT (Article 138 VAT Directive).

However, in accordance with the Explanatory Notes[7], the working group observed that if the buyer communicates a VAT ID number issued to him by another Member State than the one

[7] Sections 4.3.2 and 4.3.6 of the Explanatory Notes on the Quick Fixes.

of departure of the goods at a later stage and if the VAT ID number has been issued to him with retroactive effect or without retroactive effect and the buyer can prove that at the time of the supply he was a taxable person or a non-taxable legal person acting as such in the other Member State whose intra-Community acquisitions are subject to VAT, the supplier can rectify the initial invoice when there is no indication of fraud or abuse. The period in which the correction of the initial invoice can be made is subject to the regulations applicable in the Member State of departure of the goods.

Also, concerning the recapitulative statement, the condition of Article 138(1) of the VAT Directive does not apply when the supplier acts in good faith, which implies that he can duly justify the shortcomings regarding the intra-Community sales listing to the satisfaction of the competent authorities.

7.3.2. Practical problems on the proof of transport

To facilitate the working group´s analysis and discussions and their work to propose tailor-made recommendations, Members of the EU VAT Forum were kindly invited to send their replies to an additional questionnaire regarding the documental proof of transport (called hereafter “additional questionnaire”).

These discussions led to the analysis of three topics.

7.3.2.1. Compare which systems exist in all the Member States and maybe identify the “best” practice

Thanks to the feedback received to the questionnaire, the working group noted that before the implementation of the Quick Fixes, there were no specific rules on this topic. However, the majority of Member States had already domestic guidance that provided a non-exhaustive list of documents that could be used as a proof of intra-EU movements of goods. And, according to the replies to the questionnaire, these internal rules or guidance are still valid.

In addition, in light of the replies to the questionnaire regarding the documental proof of transport, the business representatives noted that the majority of businesses do not use the EU legal presumption introduced by the Article 45a of the VAT Implementing Regulation. More precisely, business representatives set out two main reasons: a) the complexity of Article 45a of the Implementing Regulation and b) the non-applicability of these rules in every situation.

Thanks to the additional questionnaire, the working group observed that some Member States have developed a specific system to prove the intra-EU transportation of the goods.

The additional questionnaire revealed a multitude of specific systems in Member States that set out local requirements for VAT exemptions:

- A specific refutable legal presumption based on a destination document validated upon arrival of the goods in combination with commercial documents that prove the reality of the transaction and the transport invoice if the goods are transported on behalf of the supplier.
- Combination of an open legislative standard (books and records) and substantial requirements plus an assessment of the facts and circumstances of the specific case.

- The transportation of the goods must be proved by transport documentation or in any other credible way.
- Communication of the following documents :
    - Transport documents received from the carrier responsible for the dispatch of goods from the territory of the country, which clearly indicate that the goods have been delivered to their destination in the territory of a Member State other than the territory of the country - if the transport of the goods is commissioned to the carrier;
    - Specification of individual pieces of cargo.
- To be in possession of the following documents: invoice with a valid VAT ID number, transportation documents and confirmation of receiving the goods entailing the required pieces of information (date and place of destination, type and quantity of goods, name of the person who received the goods and his official capacity).

Consequently, in the majority of Member States, at least two systems are admissible to prove the intra-EU transportation.

7.3.2.2. Identify in which situation a tax administration can refuse a document that a company shows or refuses the legal presumption

Concerning this question, it results from the additional questionnaire that Member States have a divergent approach.

Indeed, a minority of the tax administrations have clearly identified the situations in which they will refuse to apply the presumption, while most of the tax administrations consider, in general, that the presumption can be refused when it can be demonstrated that the transportation of the goods did not take place or in case of fraud.

Nevertheless, the working group agrees that on this topic the Explanatory Notes are clear.

7.3.2.3. The transport of goods when a company uses its own means of transport and/or the transport of small goods carried out by express carriers

The working group observed that there is an important issue when a company uses its own means of transport and especially in the case of transfer of small items.

In fact, when a company uses its own means of transport, the EU legal presumption introduced by Article 45a of the VAT Implementing Regulation is not applicable, because this regulation covers only the cases where the transport is carried out by a third party.

Moreover, concerning the issue of the transfer of small items, the business representatives explained that it is complicated to collect the necessary proof of transport from express carriers.

In the light of these difficulties, the working group noted that neither the EU legislation nor the Explanatory Notes solved the above-mentioned problem or at least provided a roadmap. As a result, Member States have a different approach on this issue.

Indeed, on the one hand, some tax authorities can accept as a valid proof of transport a document with tracking number, address of destination of the goods and the weight of the

shipment, or accept that the supplier has to prove transport by a whole of probative documents, or companies can use a national legal rebuttable presumption, while other authorities just refuse in most of these cases the VAT exemption on the grounds of lack of adequate documents of proof.

8. Overall impression and conclusions

The Quick Fixes", in force since January 2020, are a set of rules intended to simplify and harmonise the VAT treatment of certain intra-Community transactions, as follows:

- Call-off stock
- Chain transactions
- VAT identification number
- Proof of intra-EU supplies

These new EU VAT rules were developed with the objective to make the EU VAT system simpler, more fraud-resistant and more business-friendly.

They are known as "Quick Fixes" because they are intended to be a temporary solution until the current Common VAT System is modified towards a definitive system based on the destination principle. Moreover, they prove to be valid measures providing easy solutions to tackle certain inconsistencies that occur in the intra-Community trade of goods. For this reason and considering that it is unclear when the definitive VAT system could be agreed upon, , the Quick Fixes will remain relevant for several years to come.

It can be affirmed that these measures are essential for the proper functioning of the internal market, as far as certain transactions in the transport/dispatch of goods are concerned.

It can also be affirmed that, according to what the EU VAT Forum has been able to observe throughout the work carried out in this project, these measures have been implemented by all Member States, and, generally, the interpretation and understanding of the Quick Fixes is more or less uniform.

This can be concluded from the answers given to the questionnaire used in this project (see section 6), from which it can be seen that all Member States have implemented these rules – though in some cases not as quickly as it would be desirable-- in their domestic legislation.

At the same time, some Member States have created their own guidance for the implementation of the Quick Fixes. In these cases, they do not significantly differ from the EU Commission´s Explanatory Notes.

On the other hand, as the questionnaire carried out for this project has shown, the Quick Fixes are measures that are widely known by taxable persons throughout the EU single market.

Nevertheless, it is worth noting that according to some Member States, there are currently some practical problems with certain aspects of the Quick Fixes.

The fact that the Quick Fixes have been implemented correctly and that, in general, they are fulfilling an important function does not prevent the EU VAT Forum from concluding that there are some areas for improvement in order for these Quick Fixes to fulfil their aim,.

At the time the EU VAT Forum started this analysis, close to two years had passed since the Quick Fixes came into force. This is a reasonable amount of time to do an assessment of the results of the implementation of these measures and possible areas for improvement.

One of the first problems that has been detected throughout this project is that the Explanatory Notes are not able to cover all the aspects that may occur in real life when implementing the Quick Fixes. This is something that, a priori, should not come as a surprise, since it happens on a regular basis. It is somewhat common that when a legislative act is implemented, practical aspects begin to appear that were not initially foreseen by the legislator. This is in many cases unavoidable, since the ways of doing business can be very different, especially nowadays with the extremely rapid changes in the new digital economy. Thereby new and different scenarios emerge over time that were not, or could not have been, considered from the beginning.

The practical problems that have arisen and are mentioned in this report are mainly due to the different interpretation of the rules.

The Explanatory Notes are intended as a non-binding guidance for the correct interpretation of the Quick Fixes. In order to keep up with evolving business scenarios, a revision and update of the Explanatory Notes would be a welcome measure for taxable persons and for Member States' tax administrations as well.

Similarly, the EU VAT Forum has seen that there is a certain lack of awareness of what other Member States are doing. This lack of awareness does not occur to the same extent among taxable persons, since some of them are, through business associations and other fora, aware of what other taxable persons are doing in their intra-Community business activities and of the implications for VAT.

Additionally, it is also noticed that Member States occasionally arrive at different interpretations for the same cases, with each Member State believing that its interpretation is the correct one.

Since the Quick Fixes mainly concern intra-Community transactions, in which the administrations of several Member States are involved, and since a reasonable uniform interpretation of these rules seems to be necessary, we consider that it would be advisable to improve, in some way, the communication between them in order to ensure that a given transaction within the scope of the Quick Fixes receives consistent VAT treatment in MS1 and MS2, something that currently is not always happening.

The most highlighted problems could be summarised as follows:

- No clear definition of what is to be considered as a "warehouse".
- No uniform criteria of when a warehouse can be considered as run by the supplier (in this particular topic, some of the answers received by Member States were contradictory).
- Possible confrontation (this is not new) between formal and substantive requirements.
- Different interpretations concerning several aspects of intra-Community transport of goods in chain transactions (i.e. transport with stops or stopovers, scope of "*transport on behalf of someone*" etc.).
- Practical problems with the use of the VIES database.
- Practical difficulties in proving intra-Community transport of goods even after the approval of the new rules, which in some cases seem to be too complicated to put in

practice. An example of this are the problems in the case of transport of small goods, which is usually done by express carriers, for which no clear solution is provided by the Quick Fixes.

- Practical problems in the case where the transport of goods is done with the company's own means of transport (the EU legal presumption introduced by the Article 45a of the VAT Implementing Regulation is not applicable in that situation).

Even after the adoption of the Quick Fixes, it is difficult in some cases to deviate from the typical "case-by-case analysis". The EU VAT Forum is aware that it is impossible to find a one-size-fits-all solution, but at the same time for businesses this case-by-case analysis needs to be reduced as much as possible.

The business representatives would like to highlight a specific problem which, in view of the answers given by Member States and business representatives, could occur in practice. It concerns the complex interactions between Article 138 of the VAT Directive 2006/112 (the necessity of counting on a VAT ID number to exempt intra-Community supplies of goods), Article 16 of the VAT Implementing Regulation 282/2011 (Member States shall exercise their power of taxation of intra-Community acquisitions of goods irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began*)* and Article 4 of the VAT Refund Directive 2008/9 (no VAT shall be refunded following the special procedure for non-established entrepreneurs when this VAT has been charged as a consequence of an intra-Community supply of goods). This difficult interaction might create situations of double taxation or irrecoverable VAT, which should be avoided in the interest of preserving the principle of VAT neutrality (see analysis in section 6).

The problems are pointed out here in a generic way since, by virtue of its mandate, the EU VAT Forum mandate is a platform where stakeholders and Member States' tax authorities can informally discuss practical issues with regard to VAT in a cross-border environment. The EU VAT Forum cannot propose solutions or recommendations involving changes, amendments or clarifications to the current legal provisions governing the Quick Fixes or the interpretation of these provisions.

However, the EU VAT Forum draws attention to the practical problems identified throughout this project and recommends that measures should be taken by the relevant groups within the EU Commission. The Forum believes that there should be a dynamic dialogue between tax administrations, business representatives and these groups, as appropriate.

These problems will remain as economic activity continues to grow. The EU VAT Forum, therefore, believes that this dialogue should take place on an ongoing and proactive basis. It should be possible to use any of the different mechanisms that already exist within the EU Commission to encourage dialogue between business representatives and Member States to identify those ongoing problems and also to create a communication channel to the relevant expert groups in the VAT area within the EU Commission.

According to the above, the EU VAT Forum believes that the work that has been initiated with this project should, in some way, continue.

On the basis of the work carried throughout this project, the following may be concluded:

- There is a fairly uniform interpretation of the Quick Fixes at an EU level.
- At the same time, there is a number of practical problems with the implementation of the solutions proposed by the Quick Fixes.
- If not addressed, these problems will remain and most likely increase with the growth of economic activity and the emergence of new types of business.
- The Explanatory Notes, even if they are non-binding, may be adapted to new realities. The longer they remain unchanged, the further away they are from being a useful consultation tool for businesess and administrations. Therefore, some Member States are in favour of modifying the existing Explanatory Notes.
- There is a certain lack of awareness among Member States in terms of cross-border VAT issues and in some cases there are different interpretations for the same situations.
- Dialogue between Member States could facilitate a reasonably uniform interpretation of the VAT treatment and VAT consequences for businesses of intra-Community transactions.There are already mechanisms in place that can be used to encourage this dialogue: the VAT Committee, the VAT Cross-Border Ruling pilot project and the VAT double taxation dialogue between tax administrations.
- The EU VAT Forum has demonstrated throughout this project that it is possible to identify these practical problems on a regular basis. The work initiated with this project should, in some way, continue. Both business representatives and Member States would benefit from it.

Annexes

Annex 1. List of the meetings and members.

The members of the group met on the following dates:

- October 28th, 2021
- November 25th, 2021
- January 27th, 2022
- February 24th, 2022
- March 24th, 2022
- April 28th, 2022
- May 26th, 2022
- June 23rd, 2022
- July 5th, 2022

In addition, the three working groups organised separate working sessions over the months during which the project was carried out.

The following EU VAT Forum members participated in the project.

- BusinessEurope
- CFE Tax Advisers Europe
- Confederation of Finnish Industries
- EuroCommerce
- International VAT Association
- Paolo Centore & Associati
- International Chamber of Commerce
- EuroChambres
- France
- Belgium
- Poland
- Sweden
- Greece
- Germany
- Austria
- Denmark
- Italy
- Spanish VAT Services Asesores SL (rapporteur)

Annex 2. Working method. Working in three smaller groups.

After discussion at one of the first meetings of the subgroup on how best to work and take the project forward, it was decided to divide the work according to subject matter.

It was agreed that while the general subgroup meetings allowed each member to express their opinion on each of the topics, the best way to move the project forward was to divide it among three working groups.

Although we can say that there are four Quick Fixes, the last two are closely related to each other, therefore it was decided to set up three working groups as follows:

- Working group on call-off stock (WG1)
- Working group on chain transactions (WG2)
- Working group on VAT ID number and proof of transport (WG3)

Each group was free to decide on the best way to carry out its work, on the periodicity of its meetings and on its work methods, with the sole condition that each group reports on the progress of its work to the other groups at the monthly general meetings.

To encourage the smooth running of the groups, each group appointed a coordinator.

The composition of the groups was as follows.

WG1 on call-off stock	**WG2 on chain transactions**	**WG3 on VAT ID number and documental proof of transport**
Confederation of Finnish Industries – **coordinator**	CFE Tax Advisers Europe	BusinessEurope
EuroCommerce	EuroCommerce	EuroChambres
Spanish VAT Services Asesores	International Chamber of Commerce	Studio Paulo Centore e Associati
Germany	International VAT Association	Belgium
Greece	Austria	France – **coordinator**
Italy	Belgium	Greece
	Denmark	
	Poland	
	Sweden - **coordinator**	