



Quick Fixes

Jan 1, 2020

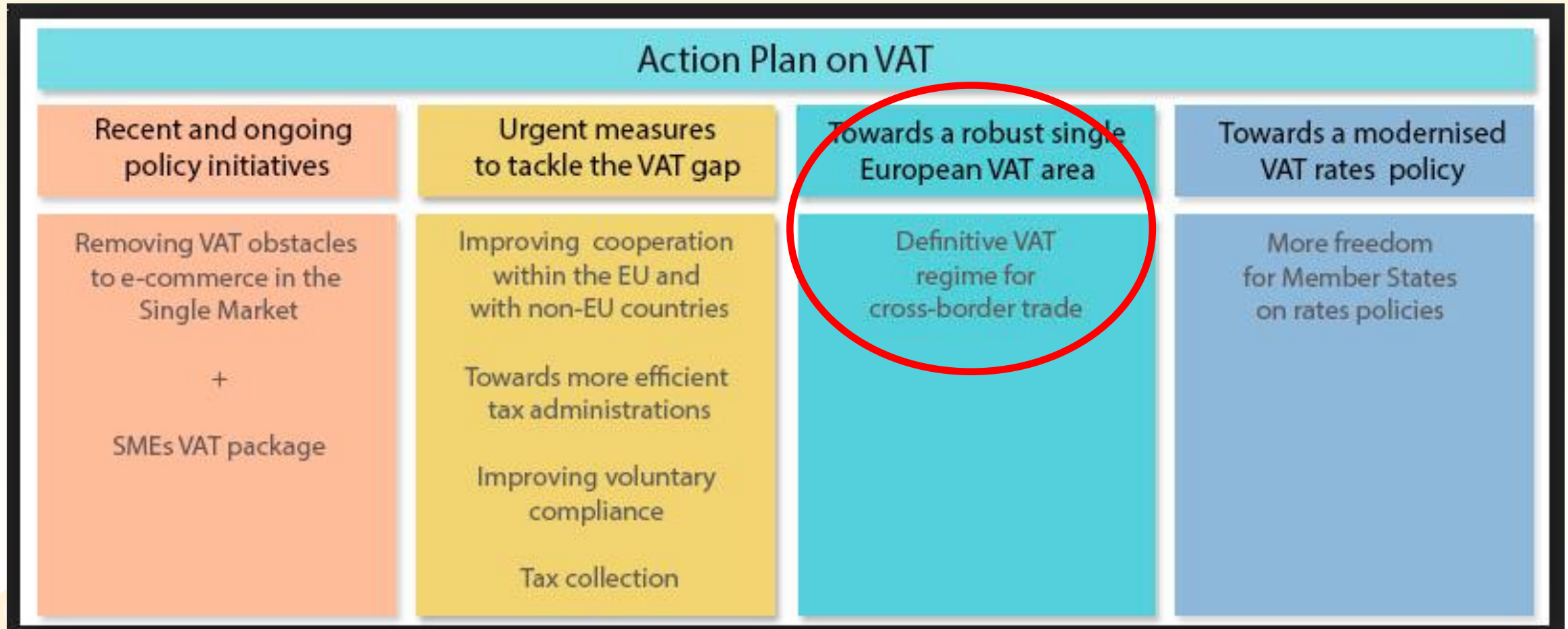




What are the 4 Quick Fixes?



EU Action Plan on VAT



Recent and ongoing
policy initiatives

Removing VAT obstacles
to e-commerce in the
Single Market

+

SMEs VAT package

Urgent measures
to tackle the VAT gap

Improving cooperation
within the EU and
with non-EU countries

Towards more efficient
tax administrations

Improving voluntary
compliance

Tax collection

Towards a robust single
European VAT area

Definitive VAT
regime for
cross-border trade

Towards a modernised
VAT rates policy

More freedom
for Member States
on rates policies

4 Quick fixes – Applicable as of Jan 1, 2020

Simplified
treatment
call-off stock

Standard
criteria for
**chain
transactions**

**VAT
exemption**
for certain
**intra-EU
transactions**

More clarity for the
**documentary
evidence** required for
the **VAT exemption**
for **intra-EU supply of
goods**

Legislative Acts



Legislative Acts

3 legislative acts adopted by ECOFIN on December 4, 2018

Why? Adjustments to the EU VAT rules (awaiting the introduction of the definitive VAT system) in order to fix specific and practical issues regarding the VAT aspects of trade between the Member States.

[12848/1/18 REV 1](#) “COUNCIL **DIRECTIVE** 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**”

[12850/18](#) “COUNCIL **REGULATION** amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of **call-off stock arrangements**”

[12849/18](#) “COUNCIL **IMPLEMENTING REGULATION** amending Implementing Regulation (EU) No 282/2011 as regards certain **exemptions for intra-Community transactions**”

Agreed by the Member States – Applicable as of Jan 1, 2020

Legislative Acts

Changes to the Council Directive 2006/112/EC (VAT Directive)

Definitive VAT system for cross-border business-to-business (B2B) trade between Member States

that would be based on the principle of taxation of cross-border supplies of goods in the Member State of destination

Improvements to the Union VAT rules for cross-border transactions, regarding the role of the

- **VAT identification number in the context of the exemption for intra-Community supplies**
- **Call-off stock arrangements**
- **Chain transactions**
- **Proof of transport for the purposes of the exemption for intra-Community transactions.**

Legislative implementation

- Call-Off Stock Provision
EU VAT Directive (“shall”)
& Implementing Regulation
- Chain Transactions
EU VAT Directive (“shall”)
- VAT Identification Number
EU VAT Directive (“shall”)
- Proof of intra-EU supplies
Implementing Regulation

The devil may be in the details

Implementing Regulation: Member State needs to implement, even if not implemented, it is directly enforceable

Other Guidelines @ EU Level

- Explanatory notes issued by the European Commission (final version dd. Dec 20, 2019) – [Link](#)
- Guidelines of the VAT Committee - [Link to Working Paper No 968](#)
- Group on the future of VAT on the Quick Fixes - [Link to GFV No 090](#)
- VAT Expert on the Quick Fixes
 - Sept 19, 2019 - [Link to VEG No 84](#) - [Link to VEG No 85 \(Minutes of the VEG\)](#)
 - Nov 27, 2019 - [Link to VEG No 84 REV1](#)





Quick Fix #1

Call-Off Stocks



Call-Off Stock

Definition Call-Off Stock

- where at the time of transport of goods to another Member State
- the supplier already knows the identity of the person acquiring the goods to whom they will be supplied at a later stage
- after arrival of the goods in the Member State of destination

Current handling

- a deemed supply (in the Member State of departure of the goods) and
- a deemed intra-Community acquisition (in the Member State of arrival of the goods),
- followed by a 'domestic' supply in the Member State of arrival and
- requires the supplier to be identified for VAT purposes in that Member State
- applicable rules and conditions vary country-by-country

Future handling

- where they take place between two taxable persons
- one exempt supply in the Member State of departure
- one intra-Community acquisition in the Member State of arrival

Simplification : No need for the supplier to be VAT registered in the country of arrival

Call-Off Stock



- Intra-Community supply of goods (and Intra-Community acquisition) at the moment of removal from warehouse in MS B
- Instead of transfer of own stock and local supply



[Directive as regards harmonising and simplifying certain rules in the VAT system for the taxation of trade between Member States](#)

[\(click to open the link\)](#)

Changes to the VAT Directive 2006/112/EC



Call-Off Stock – New art. 17a in the Directive

Trf of Goods to another MS under Call Off Stock arrangement is **NOT a taxable transaction (art. 17a,1)**

Conditions Call-Off Stock

- Trpt of goods to another MS whereby ownership of goods transfers later – agreement required
- Supplier has no (fixed) establishment in the MS of arrival
- Identity and VAT number of customer in MS of arrival is known to the supplier
- Supplier records the trf of the goods in a register
- Supplier includes identity and VAT number of the customer in the recapitulative statement

Upon trf of the ownership of the goods

- Supplier makes an exempted I/C Supply of Goods in the MS from which the goods are supplied
- Customer makes an I/C acquisition of Goods in the MS to which the goods were transported

If no trf of ownership within 12 months after arrival of the goods, a “transfer of goods’ (art. 17) shall be deemed to take place on the day following the expiry of the 12 months period

- No “transfer of goods’ (art. 17) if no trf of ownership and goods are returned to MS from which they have been transported – Return of goods recorded in the ‘Register’ (art. 17a,5)
- If customer is substituted, no ‘transfer of goods’, if other conditions are met (art. 17a, 6)
- If goods are transported to another country than the MS where they were initially shipped from, condition for Call-off Stock ceased to exist before the transport starts (art. 17a,7)
- In case of destruction, loss or theft of the goods, conditions cease to be fulfilled on the day that the goods were actually removed or destroyed (art. 17a,7)

Call-Off Stock – Changes to the Directive *Taxable Transaction*



Article 17a is inserted:

1. The transfer by a taxable person of goods forming part of his business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods for consideration.



Call-Off Stock – Changes to the Directive *Taxable Transaction*



2. For the purposes of this Article, call-off stock arrangements shall be deemed to exist where the following conditions are met:
 - (a) goods are dispatched or transported by a taxable person, or by a third party on his behalf, to another Member State with a view that those goods shall be supplied there, at a later stage and after arrival, to another taxable person who is entitled to take ownership of these goods in accordance with an existing agreement between both taxable persons;
 - (b) the taxable person dispatching or transporting the goods has not established his business nor has a fixed establishment in the Member State to which the goods are dispatched or transported;
 - (c) the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are transported or dispatched and both his identity and the VAT identification number assigned to him by that Member State are known to the taxable person referred to in point (b) at the time when the dispatch or the transport begins;
 - (d) the taxable person dispatching or transporting the goods records the transfer of the goods in the register provided for in Article 243(3) and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the recapitulative statement as provided for in Article 262 (2).

Call-Off Stock – Changes to the Directive

Taxable Transaction



3. Where the conditions laid down in paragraph 2 are met, the following rules shall apply, at the time of the transfer of the right to dispose of the goods as owner to the taxable person referred to in point (c) of that paragraph, provided the transfer occurs within the deadline referred to in paragraph 4:
 - (a) a supply of goods in accordance with Article 138(1) shall be deemed to be made by the taxable person that dispatched or transported the goods either by himself or by a third party on his behalf in the Member State from which the goods were dispatched or transported;
 - (b) an intra-Community acquisition of goods shall be deemed to be made by the taxable person to whom those goods are supplied in the Member State to which the goods were dispatched or transported.

Call-Off Stock – Changes to the Directive *Taxable Transaction*



4. If within 12 months after arrival of the goods in the Member State to which they have been dispatched or transported, the goods have not been supplied to the taxable person for whom they were intended referred to in paragraph 2(c) and paragraph 6 and none of the circumstances in paragraph 7 have occurred, a transfer within the meaning of Article 17 shall be deemed to take place on the day following the expiry of the 12 months period.



Call-Off Stock – Changes to the Directive *Taxable Transaction*



5. No transfer within the meaning of Article 17 shall be deemed to take place where the following conditions are met:
 - a) the right to dispose of the goods has not been transferred and those goods are returned to the Member State from which they have been transported or dispatched, within the time limit referred to in paragraph 4, and
 - b) the taxable person who dispatched or transported the goods records their return in the register provided for in Article 243(3).



Call-Off Stock – Changes to the Directive *Taxable Transaction*



6. Where within the period referred to in paragraph 4, the taxable person referred to in paragraph 2(c) is substituted by another taxable person, no transfer within the meaning of Article 17 shall be deemed to take place at the time of the substitution, provided that: a) all other applicable conditions in paragraph 2 are met; and b) the substitution is recorded by the taxable person referred to in paragraph 2(b) in the register provided for in Article 243(3)



Call-Off Stock – Changes to the Directive

Taxable Transaction



7. Where within the time limit referred to in paragraph 4, any of the conditions determined in paragraphs 2 and 6 ceases to be fulfilled, a transfer of goods according to Article 17 shall be deemed to take place at the time this condition is no longer fulfilled.

If the goods are supplied to a person other than the taxable person referred to in paragraph 2(c) or in paragraph 6, it shall be deemed that the conditions determined in paragraphs 2 and 6 cease to be fulfilled immediately before this supply.

If the goods are transported or dispatched to a country other than the Member State from which they have been initially moved, it shall be deemed that the conditions determined in paragraphs 2 and 6 cease to be fulfilled immediately before the transport or dispatch of the goods to another country starts.

In case of destruction, loss or theft of the goods it shall be deemed that the conditions determined in paragraphs 2 and 6 cease to be fulfilled on the day that the goods were actually removed or destroyed, and if it is impossible to determine such a day, on the day on which the goods were found to be destroyed or missing.

Call-Off Stock – Changes to the Directive *Reporting*



Article 243, the following paragraph 3 is added:

3. Every taxable person who transfers goods under the call-off stock arrangements referred to in Article 17a shall keep a register that permits the tax authorities to verify the correct application of that article. Every taxable person to whom goods are supplied under the call-off stock arrangements referred to in Article 17a shall keep a register of those goods.



[Council Implementing Regulation
as regards certain exemptions for intra-
Community transactions](#)

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Register goods trf'ed under 'call-off stock'

Obligations for the person 'who transfers the goods'

CHAPTER X OBLIGATIONS OF TAXABLE PERSONS AND CERTAIN NON-TAXABLE PERSONS (TITLE XI OF DIRECTIVE 2006/112/EC)

SECTION 1a General obligations (Article 242 to 243)

Article 54a

1. The register referred to in Article 243(3) of Directive 2006/112/EC kept by every taxable person **who transfers goods** under call-off stock arrangements shall contain the following information:
 - (a) the Member State from which the goods were dispatched or transported and date of dispatch or transport of the goods;
 - (b) the VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported;

Register goods trf'ed under 'call-off stock'

Obligations for the person 'who transfers the goods'

- (c) the Member State to which the goods are dispatched or transported, the VAT identification number of the warehouse keeper, the address of the warehouse where they are stored upon arrival and the date of arrival of the goods in the warehouse;
- (d) the value, description and quantity of the goods arrived in the warehouse;
- (e) the VAT identification number of the taxable person substituting the person referred to in point b) under the conditions referred to in article 17a (6) of Directive 2006/112/EC;
- (f) the taxable amount, description and quantity of the goods supplied and the date when the supply of the goods referred to in Article 17a(3)(a) of Directive 2006/112/EC is made and the VAT identification number of the buyer;
- (h) the taxable amount, description, quantity of the goods, the date of occurrence of any of the conditions and the respective ground in accordance with Article 17a (7);
- (i) the value, description and quantity of the returned goods and the date of the return of the goods referred to in article 17a (5) of Directive 2006/112/EC.

Register goods trf'ed under 'call-off stock'

Obligations for the person 'to whom the goods are supplied'

2. The register referred to in Article 243(3) of Directive 2006/112/EC kept by every taxable person to whom the goods are supplied under call-off stock arrangements shall contain the following information:
 - (a) the VAT identification number of the taxable person who transfers goods under call-off stock arrangements;
 - (b) description and quantity of the goods intended for him;
 - (c) the date when the goods intended for him arrive in the warehouse;
 - (d) the taxable amount, description and quantity of the goods supplied to him and the date when the intra-Community acquisition of the goods referred to in Article 17a(3)(b) of Directive 2006/112/EC is made ;

Register goods trf'ed under 'call-off stock'

Obligations for the person 'to whom the goods are supplied'

- (e) description and quantity of the goods and the date when the goods are removed from the warehouse by order of the person referred to in point (a);
- (f) description and quantity of the goods destroyed or missing and the date of destruction, loss or theft of the goods previously arrived in the warehouse or the date on which the goods were found to be destroyed or missing;

In case the goods are transported or dispatched under the call-off stock arrangements to a warehouse keeper different from the taxable person for whom the goods are intended to be supplied, the register of that taxable person does not need to contain the information referred to in points (c), (e), and (f).

[Regulation as regards the exchange of information
for monitoring the application of call-off stock
arrangements](#)

(ctrl+click to open the link)



Exchange of info – monitoring call-off stock arrangements



COUNCIL REGULATION

Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of the call-off stock arrangements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,



Exchange of info – monitoring call-off stock arrangements



- (1) In order to ensure that the simplification introduced in Directive 2006/112/EC as regards call-off stock arrangements can be monitored properly, it is necessary that the relevant competent authorities of the Member States have an automated access to the data collected from the taxable person as regards such transactions.
- (2) Taking into account that the provisions included in this Regulation result from the amendments introduced by Council Directive [...]25/EU, this Regulation should apply from the date of the application of those amendments.
- (3) Regulation (EU) No 904/2010 should therefore be amended accordingly,



Exchange of info – monitoring call-off stock arrangements



Article 1

Regulation (EU) No 904/2010 is amended as follows:

(1) Article 21, paragraph 2 is amended as follows:

(a) point (c) is replaced by the following:

(c) the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point (b) and the VAT identification numbers of the persons who submitted information in accordance with Article 262(2) of Directive 2006/112/EC about the persons holding a VAT identification number referred to in point (a);

Exchange of info – monitoring call-off stock arrangements



(b) in point (e), the introductory words are replaced by the following:

(e) the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number issued by another Member State and for each person who submitted information in accordance with Article 262(2) of Directive 2006/112/EC, his VAT identification number and the information he submitted about each person holding a VAT identification number issued by another Member State, under the following conditions:'



Editorial Comments



QF#1: Call-Off Stock



If conditions are not fulfilled

- Example – Supplier not preparing the register
- Customer preparing the register is not a condition – only a compliance requirement
- Art. 17: A transfer of own goods by the supplier to the MS of destination will be deemed to be made
- A VAT registration for the supplier in the country of destination of the goods

QF#1: Call-Off Stock - Reporting



Reporting obligations	Upon transport of the goods to MS2	Upon transfer of ownership
Party A in MS1	Specific register (needs to indicate dispatch of goods) Recapitulative statement (ESL): VAT number of B, no values	Specific register (needs to indicate sale of goods) VAT return: intra-Community supply Recapitulative statement (ESL): VAT number of B and taxable amount
Party B in MS2	Specific register (arrival of goods)	VAT return: intra-Community acquisition Specific register (needs to indicate purchase of goods)

QF#1: Call-Off Stock - Reporting



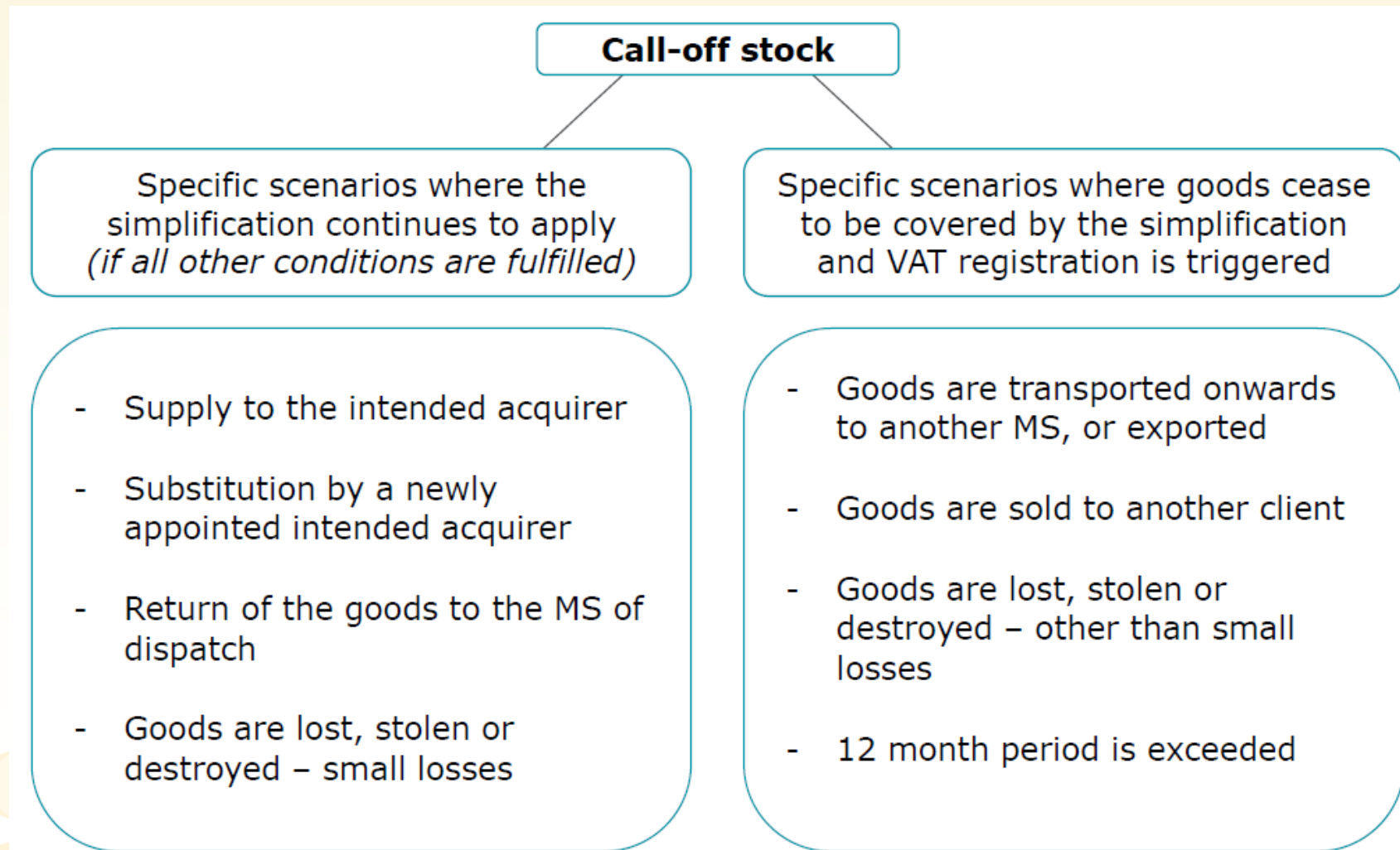
Register Call-Off Stock Simplification					
	Supplier	Customer		Reference to Council Implementing Regulation	
		Goods delivered to warehouse of the customer	Goods delivered to a warehouse keeper different than the customer	Supplier	Customer
At the moment the goods are sent to country where call-off stock will be located					
<i>When goods are shipped</i>					
Member State from which the goods were dispatched	X			Art. 54a, 1, (a)	
Date of dispatch or transport of the goods	X			Art. 54a, 1, (a)	
VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported	X			Art. 54a, 1, (b)	
<i>When goods are arriving</i>					
Member State to which the goods are dispatched or transported	X			Art. 54a, 1, (c)	
VAT identification number of the warehouse keeper	X			Art. 54a, 1, (c)	
Address of the warehouse where they are stored upon arrival	X			Art. 54a, 1, (c)	
Date of arrival of the goods in the warehouse	X	X		Art. 54a, 1, (c)	Art. 54a, 2, (c)
Value of the goods	X			Art. 54a, 1, (d)	
Description and quantity of the goods	X	X	X	Art. 54a, 1, (d)	Art. 54a, 2, (b)
VAT identification number of the taxable person who transfers goods		X	X		Art. 54a, 2, (a)
Description and quantity of the goods		X	X		Art. 54a, 2, (b)
When goods are sold to the consumer					
Taxable amount	X	X	X	Art. 54a, 1, (f)	Art. 54a, 2, (d)
Description and quantity of the goods supplied	X	X	X	Art. 54a, 1, (f)	Art. 54a, 2, (d)
Date when the supply of the goods is made/removed from the warehouse	X	X	X	Art. 54a, 1, (f)	Art. 54a, 2, (d)
VAT identification number of the buyer	X			Art. 54a, 1, (f)	

QF#1: Call-Off Stock - Reporting



Register Call-Off Stock Simplification					
	Supplier	Customer		Reference to Council Implementing Regulation	
		Goods delivered to warehouse of the customer	Goods delivered to a warehouse keeper different than the customer	Supplier	Customer
When the goods are sold to another party					
VAT identification number of the taxable person substituting the person to who the goods were initially dispatched	X			Art. 54a, 1, (e)	
Description and quantity of the goods and the date the goods are removed from the warehouse		X			Art. 54a, 2, (e)
Upon expiry of the 12 month limit					
Taxable amount, description, quantity of the goods, the date of occurrence of any of the conditions and the respective ground	X			Art. 54a, 1, (h)	
Upon return of the goods to the Member State of Origin					
Value of the returned goods	X			Art. 54a, 1, (i)	
Description and quantity of the returned goods and the date of the return of the goods/date the goods are removed from the warehouse	X	X		Art. 54a, 1, (i)	Art. 54a, 2, (e)
Upon destruction of the goods					
Date of destruction, loss or theft of the goods or the date on which the goods were found to be destroyed or missing		X			Art. 54a, 2, (f)

QF#1: Call-Off Stock – Specific situations



QF#1: Call-Off Stock – Fixed Establishment

VAT Committee Guidelines – Minutes of the 113th meeting

Scenario's	Guidelines VAT Committee	Minutes VAT Committee
Scenario 1 The warehouse is owned and run by the acquirer	Call-off stock warehouse is not a fixed establishment of the supplier	Most of them agreed with the assessments of scenarios 1) and 2).
Scenario 2 The warehouse is owned and run by a third person, different from the supplier and the acquirer		
Scenario 3 The warehouse is owned by the supplier, regardless of whether he is running the warehouse himself or rents it out to another person	(1) If the supplier, apart from owning the call-off stock warehouse, is also running it (directly or through his own employees) with the aim of supplying the goods to his clients	The views on scenarios 3) and 4) were more divergent. Delegations preferred a softer and more nuanced approach in those two scenarios.
	(2) The supplier is renting the warehouse to a third person (who still allows the supplier to store his own goods there) then the supplier is providing a rental service, the warehouse being the object of that rental service.	
	(3) The supplier entrusts an independent third party (therefore not an employee of the supplier) with running the call-off stock warehouse for him. It might be thought that because the supplier is not actively involved in running the call-off stock warehouse the conclusion would be different than in the previous cases. The supplier is buying a service for his own establishment i.e. a business activity <u>in order to</u> supply the goods to his clients.	
Scenario 4 The warehouse is owned by a third party who has rented it to the supplier.	(1) in order to further sub-rent the call-off stock warehouse (with the person sub-renting the warehouse still allowing the supplier to store his own goods),	Supplier renders a service = Supplier has a fixed establishment
	(2) to run it himself	As the supplier is running the warehouse in order to supply the goods to his clients => Supplier has a fixed establishment
	(3) with a view to hiring an independent third party that will run the warehouse for the supplier.	If the supplier rents a call-off stock warehouse and hires an independent third person to run it, he should <u>be seen as</u> having a fixed establishment.

QF#1: Call-Off Stock – Shipments before Jan 1, 2020

- Look after transitional measures for your country!!!!
- General guidance
 - VAT treatment of shipments before Jan 1, 2020
 - with customer buying the goods after Jan 1, 2020
 - should follow the treatment applicable before Jan 1, 2020





Quick Fix #2

Chain Transactions



Chain transactions

Objective: Allocate the direct cross-border transport to one single supply in the chain transaction, *ONLY if an intermediate pays for the transport*

Currently - the criteria may vary from country-by-country, not clear which single transaction qualifies as the VAT exempt intra-Community supply of goods.

Definition

Chain supplies =
Successive supplies
of goods which are
subject to a single
intra-Community
transport

I/C supply goods allocated to which leg

The intra-Community movement of the goods should only be ascribed to one of the supplies, and only that supply should benefit from the VAT exemption provided for the intra-Community supplies.

The other supplies in the chain should be taxed and may require the VAT identification of the supplier in the Member State of supply.

The transport of the goods should be attributed to one supply within the chain of transactions.

Chain transactions – New art. 36a in the Directive

Main rule – Only in case an intermediate party transports the goods

Where the same goods are supplied successively transported from one Member State to another Member State directly from the first supplier to the last customer in the chain the transport shall be ascribed only to the supply made to the intermediary operator

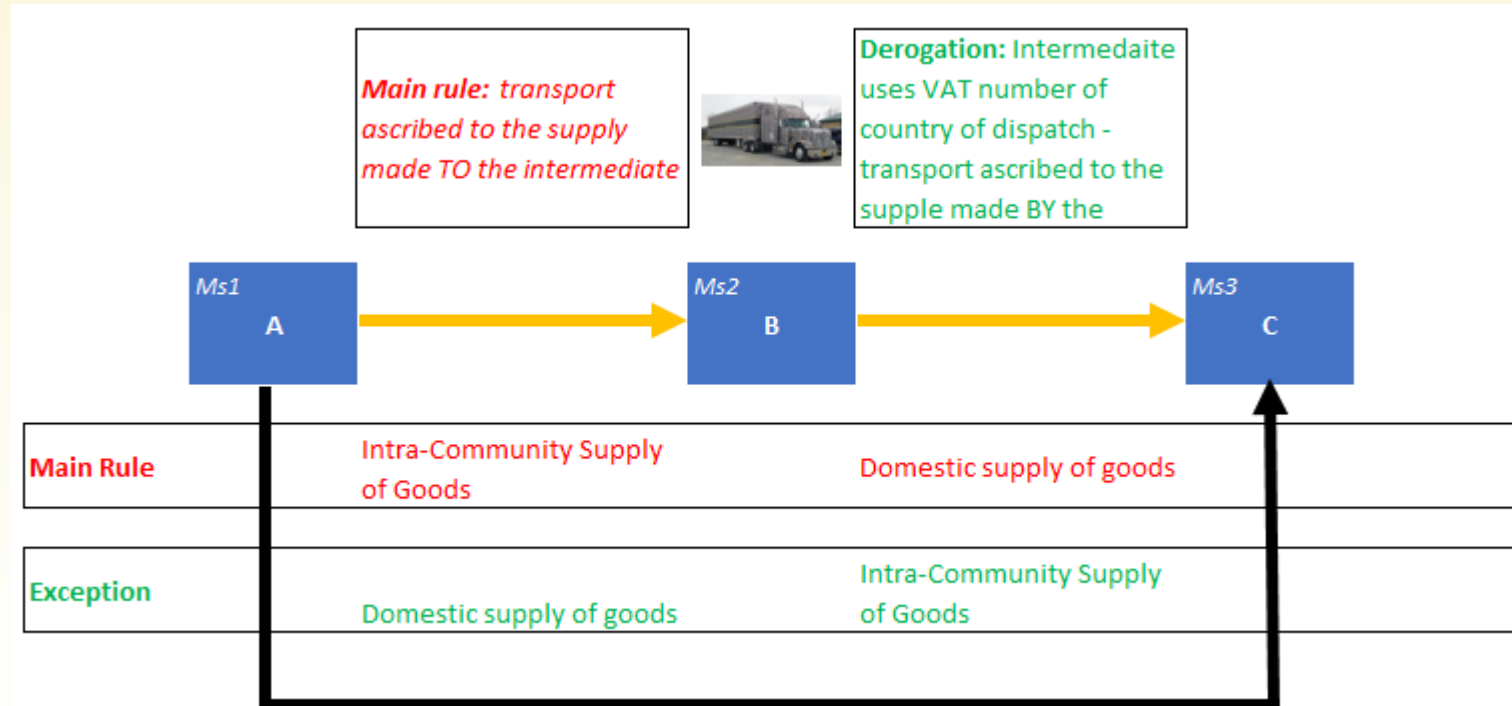
Derogation

If the intermediary operator passes his VAT number from the country of which the goods are transported The transport shall be ascribed only to the supply of goods by the intermediary operator

Definition ‘intermediary operator’

A supplier in the chain other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf

Chain Transactions



- Middleman (Intermediate) pays for the transport
- Main rule: Transport allocated to leg 1
- Derogation if Intermediate uses his VAT number in the country of dispatch, transport allocated to leg 2

[Directive as regards harmonising and simplifying certain rules in the VAT system for the taxation of trade between Member States](#)

[\(click to open the link\)](#)

Changes to the VAT Directive 2006/112/EC



Chain transactions – Changes to the Directive

(2) The following Article 36a is inserted: Article 36a

1. Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator.
2. By way of derogation from paragraph 1, the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.
3. For the purposes of this Article, ‘intermediary operator’ shall mean a supplier in the chain other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf.
4. The provisions in this Article shall not apply to the situations covered by Article 14a.



Editorial Comments



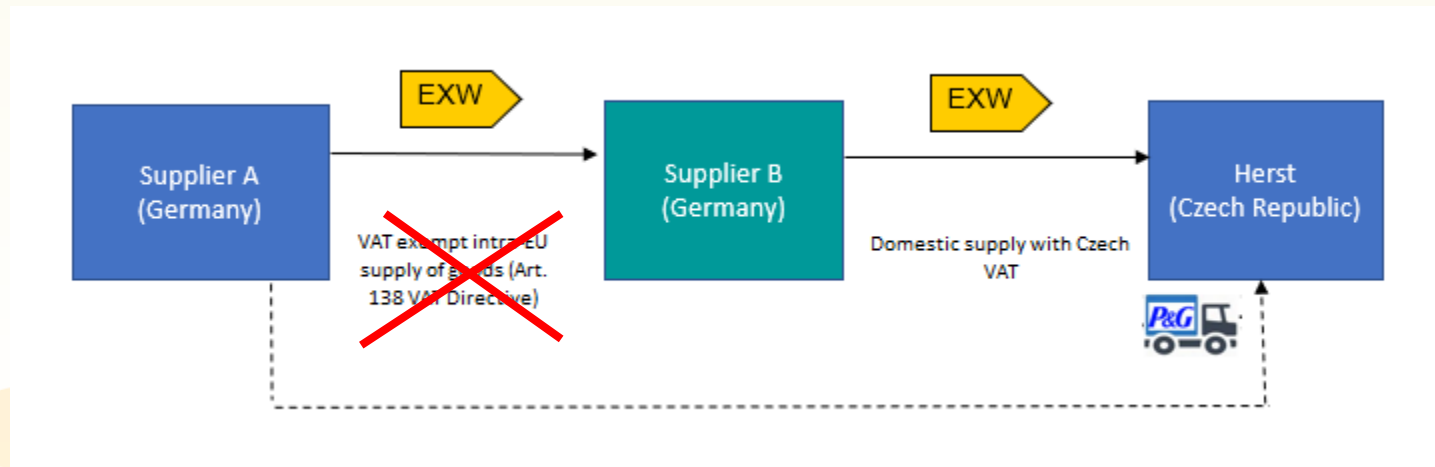
What does “dispatches or transports the goods either himself or through a third party acting on his behalf” mean?

AG Opinion in ECJ case (C-401/18) *Herst*

- *“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 transport began”.*
- AG opinion demonstrates the importance of **Incoterms**. These terms define who bears risk of loss at the time of transport and when that risk is transferred from supplier to customer.

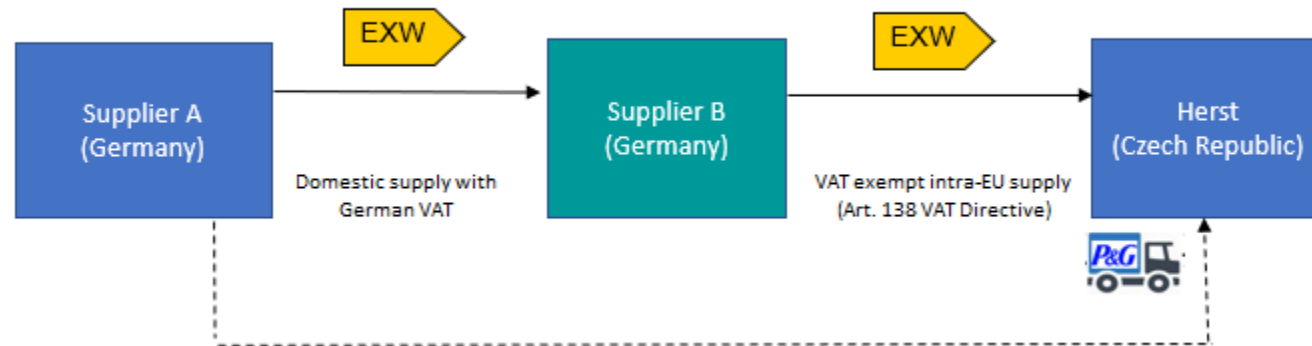
ECJ case (C-401/18) *Herst* - Issue

- Supply A->B cannot be exempt because there is no transport
- Herst cannot deduct VAT incurred on the domestic supply in Czech Rep



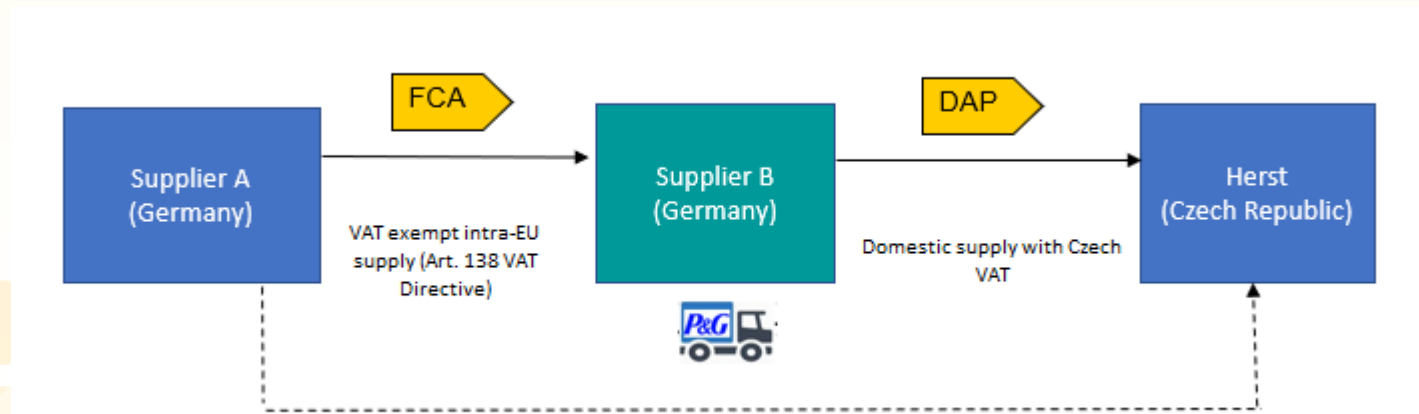
ECJ case (C-401/18) *Herst* – The solution

- The only party carrying risk of loss is Herst, because party B transfers the risk immediately after acquisition of ownership
- Therefore, supply B->Herst shall be the exempt intra-EU supply



ECJ case (C-401/18) *Herst & Quick Fix*

- The Quick Fix regulates a chain supply in which intermediary B in an A->B->C chain supply pays for transport
- If B would assume risk of loss at the time the transport starts, then he could call in the VAT exemption if he also pays for the transport from Germany to Czech Rep



What does “dispatches or transports the goods either himself or through a third party acting on his behalf” mean?

- Quid if 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
- *Opinion Commission: 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*
- Unless the taxable person can prove to the satisfaction of the tax authorities that in fact the transport was made, or the contract 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
- The fact that one of the parties in the chain pays for the transport is not enough on its own to conclude that this person is the intermediary operator. That party could pay the price of the transport, for instance, as a partial payment of the supply made to him.

What does “dispatches or transports the goods either himself or through a third party acting on his behalf” mean?

Who’s organizing/performing the transport?

Not only legal obligations but also economic and operational reality determine whether transport *on behalf of* B:

- Who is arranging/instructing the transport?
- Who assumes the risk regarding the goods?
- Incoterms not decisive as such





Quick Fix #3

VAT Identification Number



VAT Identification Number

VAT identification number and listing requirement as substantive condition to VAT exempt an intra-Community supply of goods

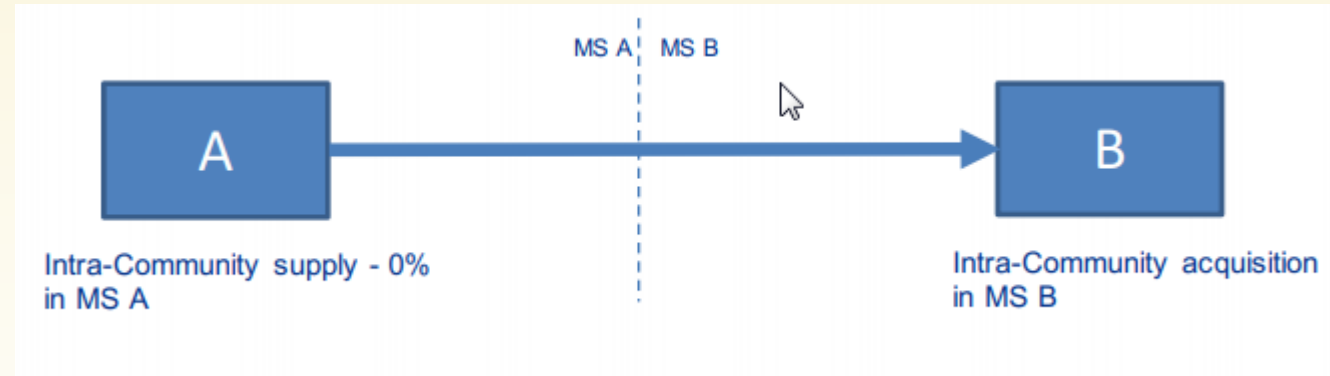
This will increase the need for checking the validity of the VAT ID number of the customer in a timely and efficient manner. When a valid VAT ID number is not available, VAT will need to be charged of the Member State of departure of the goods. Question is whether in the various EU Member States the absence of a valid VAT ID number at the time of supply would entail that the VAT charged is irreversibly due and deductible by the customer, or whether the VAT applied could still be corrected when the valid VAT ID number is obtained later on.

- The inclusion of the **VAT identification number** of the person acquiring the goods in the VAT Information Exchange System (VIES),
- assigned by a Member State other than that in which the transport of the goods begins should become,
- **in addition to the condition of transport** of the goods outside the Member State of supply,
- **a substantive condition** for the application of exemption rather than a formal requirement.

The **VIES listing** is essential for informing the Member State of arrival of the presence of goods in its territory and is therefore a key element in the fight against fraud in the Union.

- Member States should ensure that when the supplier does not comply with his VIES listing obligations
- the exemption should not apply except when the supplier is acting in good faith, that is to say,
- when he can duly justify before the competent tax authorities any of his shortcomings relating to the recapitulative statement,
- that could also include at that time providing by the supplier the correct information required by article 264.

VAT Identification Number



- Valid VAT ID number of acquirer required for application of exemption to intra-Community supplies of goods
- Correct & valid VAT ID number also to be included in listing à risk of VAT assessments

[Directive as regards harmonising and simplifying certain rules in the VAT system for the taxation of trade between Member States](#)

[\(click to open the link\)](#)

Changes to the VAT Directive 2006/112/EC



VAT Identification Number – Changes to the Directive



Article 138, paragraph 1 is replaced by the following:

1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:
 - (a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins;
 - (b) **the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes** in a Member State other than that in which dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier ;

VAT Identification Number – Changes to the Directive



Article 138, following paragraph is inserted

1a. The exemption provided for in paragraph 1 shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 to submit a **recapitulative statement** or the recapitulative statement submitted by him does not set out the correct information concerning this supply as required under Article 264 , unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities."



VAT Identification Number – Changes to the Directive



Article 262 is replaced by the following:

'Article 262

1. Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:
 - (a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c);
 - (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Article 42;
 - (c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to whom he has supplied services, other than services that are exempted from VAT in the Member State where the transaction is taxable, and for which the recipient is liable to pay the tax pursuant to Article 196.

VAT Identification Number – Changes to the Directive



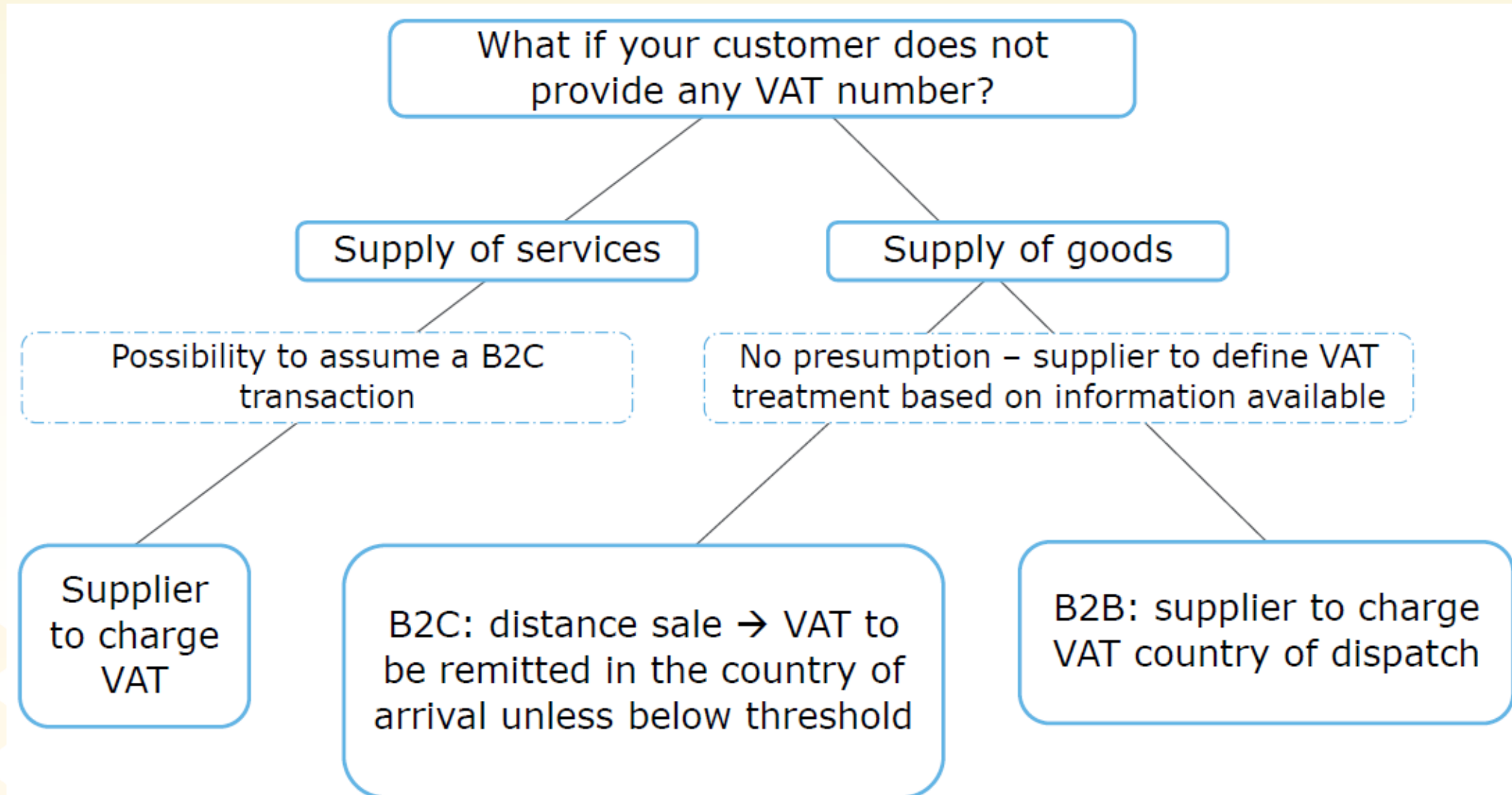
2. In addition to the information referred to in paragraph 1, every taxable person shall submit information about the VAT identification number of the taxable persons for whom goods are intended and which are dispatched or transported under call-off stock arrangements in accordance with the conditions set out in Article 17a and about any change in the submitted information.



Editorial Comments



QF#3: VAT Identification Number



QF#3: VAT Identification Number

What if customer provides VAT number **after the supply**?

- No valid VAT number available at time of supply → VAT of dispatch country due

If valid VAT number is provided at a later stage (*e.g.* customer's VAT number was in process), the supplier can **correct** original invoice and credit the VAT charged

Keep in mind

- Timeframe for corrections depends on MS legislation but should be possible for reasonable timeframe
- No double taxation for taxpayer acting in good faith
- Requirement also applicable for transfer of own inventory

QF#3: VIES Checks

- Mass validation of VAT numbers before the submission of the EU VAT Sales Listing
- Consultation # to be kept on file

Record No.	Status	VAT Number	Trader Name	Company Type	Address	Consultation Number
1	Valid	DE812962775	WAPIAAAAW6i9mrEp			
2	Valid	CZ680454432	Procter & Gamble International Operations SA		Route de Saint-Georges 47 LANCY WAPIAAAAW6i9mxMe	
3	Valid	ESN0391140A	WAPIAAAAW6i9m2GJ			
4	Valid	FR87431438662	STE PROCTER & GAMBLE INTERNATION OPERATI		163 QUAI AULAGNIER 92600 ASNIERES-SUR-SEINE WAPIAAAAW6i9nEbC	
5	Valid	GB176424887	PROCTER AND GAMBLE INTERNATIONAL OPERATIONS SA		NEW HEDLEY HOUSE UNIT 12 SILVER FOX WAY COBALT BUSINESS PARK NEWCASTLE UPON TYN	



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VIES VAT number validation

No, invalid VAT number for cross border transactions within the EU (please refer to FAQ, questions 7, 11, 12, 13 and 20 for more information).

The owner of the VAT number may contact the competent authorities for correction or clarification:
<https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/ZZ09.shtml>

Member State	ES	
VAT Number	ES B83871236	
Date when request received	2019/12/14 08:15:29	
Name	---	vies_approx_match_0
Company Type	---	vies_approx_match_0
Street	---	vies_approx_match_0
Postal Code:	---	vies_approx_match_0
City/Town	---	vies_approx_match_0
Consultation Number		

Which VAT identification number is to be used for applying the exemption of Article 138 VD when the acquirer is part of a VAT group in accordance with Article 11 VD?

ECJ, C-162/07 Amplifin

- The effect of implementing Article 11 VD (VAT grouping) ... allows persons, in particular companies, which are bound to one another by financial, economic and organisational links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person.
- Thus, ..., the closely linked person or persons within the meaning of Article 11 VD cannot be treated distinctly as a taxable person or persons within the meaning of Article 9 VD.
- ... a single taxable person precludes persons who are thus closely linked from continuing to be identified as individual taxable persons
- *This implies that de facto only the VAT group has a VAT identification number which is to be used for the exemption of Article 138 VD*

Quick Fix #4

Proof of intra-EU supplies

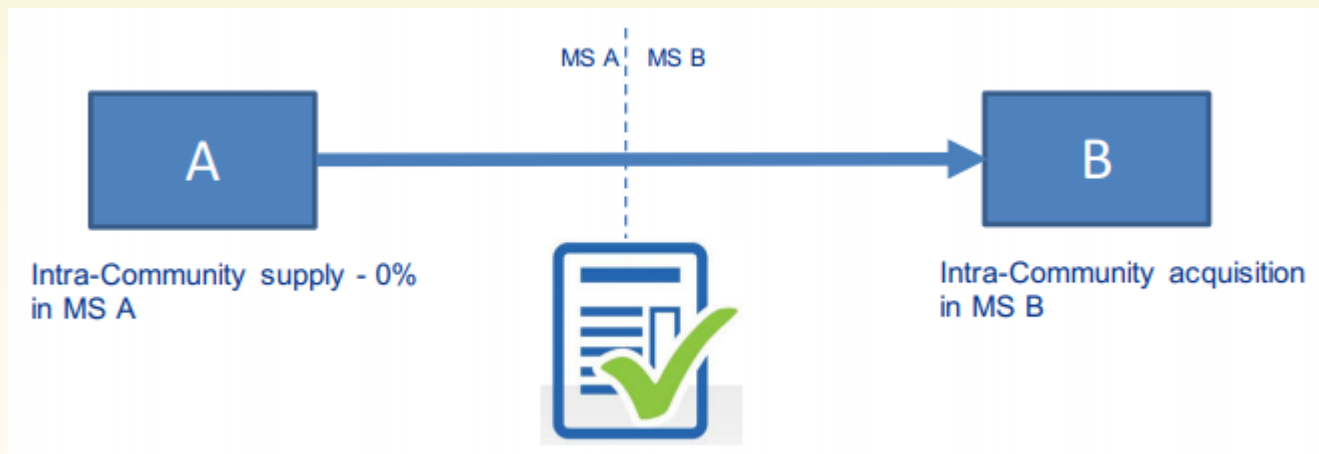


Proof of intra-EU supplies

Standardized and harmonized rules regarding proof of intra-Community transport, required to VAT exempt an intra-Community supply of goods.

- A limited number of documents is collected
- Also in case the typical transport documentation (cf. CMR) would not be available.
- Simplify and secure pick-up cases (cf. Ex Works supplies),
- Need to implement a process to timely (no later than on the tenth day of the month following the supply) collect the customer's written statement that the goods have been transported to the relevant Member State.

Proof of intra-EU supplies



- Simplification: presumption of transport outside the MS
- 2 options, both requiring 2 items of non-contradictory evidence
- Tax authorities may rebut presumption in case of indications of misuse or abuse by vendor or acquirer

Proof of intra-EU supplies

Transport by the supplier

Transport by the customer

Alternative 1

Alternative 2

Alternative 3

Alternative 4

The vendor indicates that the goods have been transported by him or by a third party on his behalf
AND

The vendor is in possession of the following

A written statement from the person acquiring the goods stating that the goods have been transported by him, or by a third party on his behalf, and referring to the Member State of destination of the goods. This document shall state the date of issue, the name and address of the acquirer, the quantity and nature of the goods, the date and place of the arrival of the goods and , in the case of supply of means of transport its identification number and the identification of the individual accepting the goods on behalf of the acquirer ; **AND**

Min 2 items of Bucket 1 of non-contradictory evidence issued by two parties independent of each other, of the vendor and the acquirer

2 Items : One item of each bucket confirming the transport or dispatch, issued by two parties independent of each other, of the vendor and the acquirer

Bucket 1

- documents relating to the transport or dispatch of the goods such as
- a signed CMR document or note,
 - a bill of lading,
 - an airfreight invoice,
 - an invoice from the carrier of the goods

Bucket 2

- an insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch 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 confirming the storage of the goods in that Member State

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[Council Implementing Regulation
as regards certain exemptions for intra-
Community transactions](#)

(ctrl+click to open the link)



Proof of intra-EU supplies

New Article 45a

1. For the purposes of applying the exemptions laid down in Article 138 of Directive 2006/112/EC, it shall be presumed that goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community in either of the following circumstances:

(a) the vendor indicates that the goods have been transported or dispatched by him or by a third party on his behalf, and

Alternative #1 he is in possession of at least two items of non-contradictory evidence referred to in paragraph 3 point (a),

issued by two parties independent of each other, of the vendor and the acquirer, or

Alternative #2 or any single item referred to in paragraph 3 point (a) in combination with any single item of non-contradictory evidence referred to in paragraph 3 point (b)

confirming the transport or dispatch, issued by two parties independent of each other, of the vendor and the acquirer;

Proof of intra-EU supplies

(b) **Alternative #3 & 4** the vendor is in possession of the following:

- (i) a written statement from the person acquiring the goods stating that the goods have been transported or dispatched by him, or by a third party on his behalf, and referring to the Member State of destination of the goods.

This document shall state

the date of issue

the name and address of the acquirer

the quantity and nature of the goods

the date and place of the arrival of the goods and

in the case of supply of means of transport its identification number

the identification of the individual accepting the goods on behalf of the acquirer ;

Proof of intra-EU supplies

(ii) **Alternative #3** at least two items of non-contradictory evidence referred to in paragraph 3 point (a),

issued by two parties independent of each other, of the vendor and the acquirer or

Alternative #4 any single item referred to paragraph 3, point (a) in combination with any single item of non-contradictory evidence referred to in paragraph 3, point (b) confirming the transport or dispatch,

issued by two parties independent of each other, of the vendor and the acquirer .

The person acquiring the goods must furnish the written statement, referred to in point (b)(i), to the vendor by no later than the tenth day of the month following the supply.

Proof of intra-EU supplies

2. A tax authority may rebut a presumption that has been made under paragraph 1.
3. For the purposes of paragraph 1, the following shall be accepted as evidence of the transport or dispatch:
 - (a) documents relating to the transport or dispatch of the goods such as
 - a signed CMR document or note,
 - a bill of lading,
 - an airfreight invoice,
 - an invoice from the carrier of the goods ;
 - (b) other documents:
 - i. an insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch of the goods;
 - ii. official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
 - iii. a receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State;

Editorial Comments



QF#4: Proof of intra-EU supplies

- Safe haven for taxable persons –rebuttable presumption
- This Quick Fix can be challenging to apply in practice as proof must be provided by independent parties
- Not an obligation to apply this Quick fix if Member States apply standards that are less strict
- German draft law continues to allow other documentary proof for EU supplies -in particular the well known ‘Gelangensbestätigung’
- Number of other Member States have equally interesting approaches



Status on the Implementation in the European Union

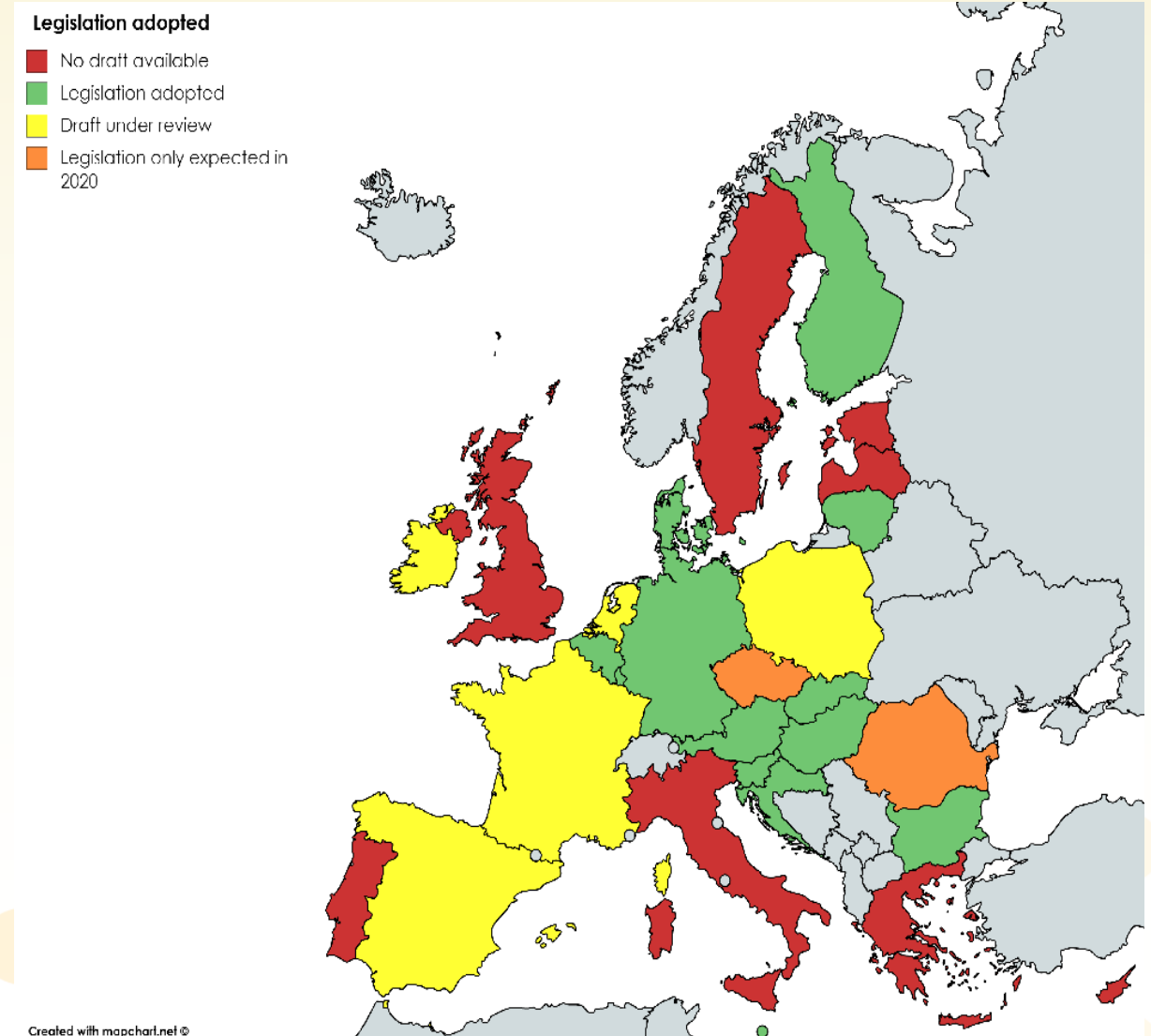
Update Dec 18, 2019



Status on the Implementation in the European Union (Update Dec 18, 2019)



- Legislation adopted (13)
 - Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Hungary, Lithuania, Malta, Slovakia and Slovenia
- Draft under discussion/legislative review (5)
 - France, Ireland, Netherlands, Poland, Spain
- No draft available yet (8)
 - Cyprus, Estonia, Greece, Italy, Latvia, Portugal, Sweden, UK
- Approval only expected in 2020 (2)
 - Czech Republic, Romania



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