

Presentation of Working paper No 1008

*Selected CJEU cases with impacts on businesses
operating in the EU Single Market
– issues evoked by the VAT Expert Group –
right of deduction and supply chains*

**Joachim Englisch & Madeleine Merkx
on behalf of the VEG**

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AGENDA

❖ Input VAT Deduction:

- Right to deduct – triangular cases with spillover effects
- Execution of the right to deduct – formality vs neutrality

❖ Legal uncertainty caused by CJEU cases themselves

- Chain transactions vs. direct supply to the end user – *Vega* etc.
- Suggestions for future support from the VEG

❖ Discussion

Input VAT Deduction

Right to deduct – triangular cases with spillover effects

→ What is the problem?

- Input supply sometimes benefits both, the purchaser and a third party
- Inconsistent approaches by different Member States
- Some pursue an overly formalistic approach: undermines VAT neutrality

→ How to resolve?

- Establish uniform criteria for triangular cases based on CJEU case law
- Clarify open issues so as to enhance neutrality of VAT

→ Our request?

- Adopt guidelines, in consideration of the VEG position

Input VAT Deduction

Execution of the right to deduct – formality vs neutrality

→ What is the problem?

- Several Member States apply a very formalistic approach with respect to the condition of a correct invoice, contrary to settled CJEU case law

→ How to resolve?

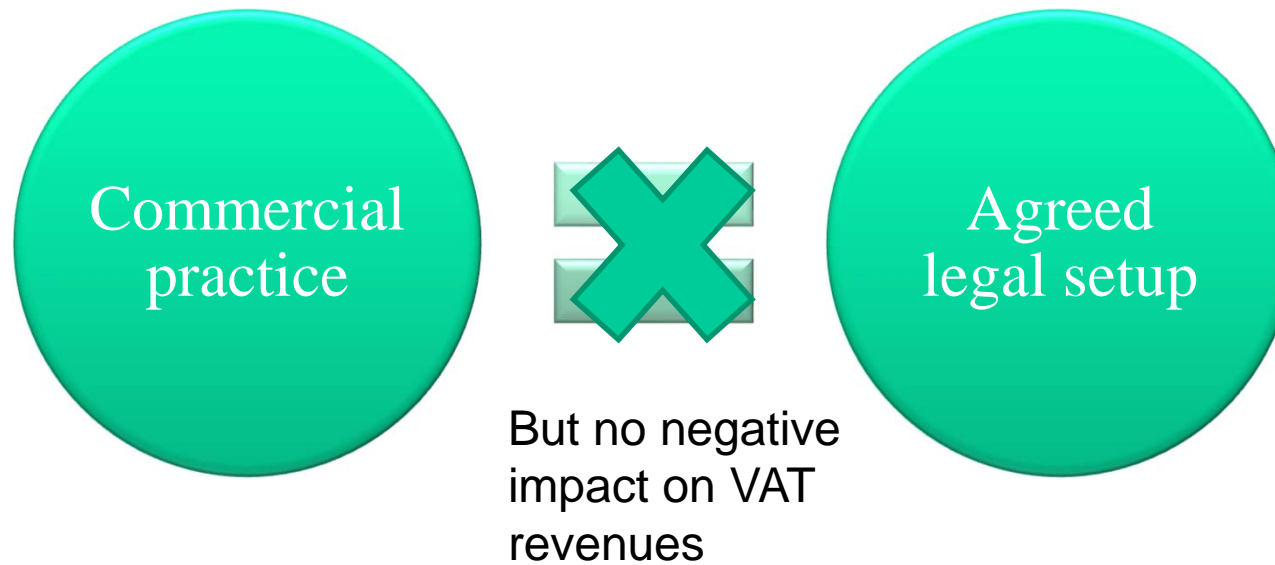
- Establish uniform criteria for invoice corrections and alternative evidence, based on the CJEU cases listed in the VEG paper
- Clarify open issues so as to enhance neutrality of VAT

→ Our request?

- Adopt guidelines, in consideration of the VEG position
- In the long term, foster discussion on the use of new technologies

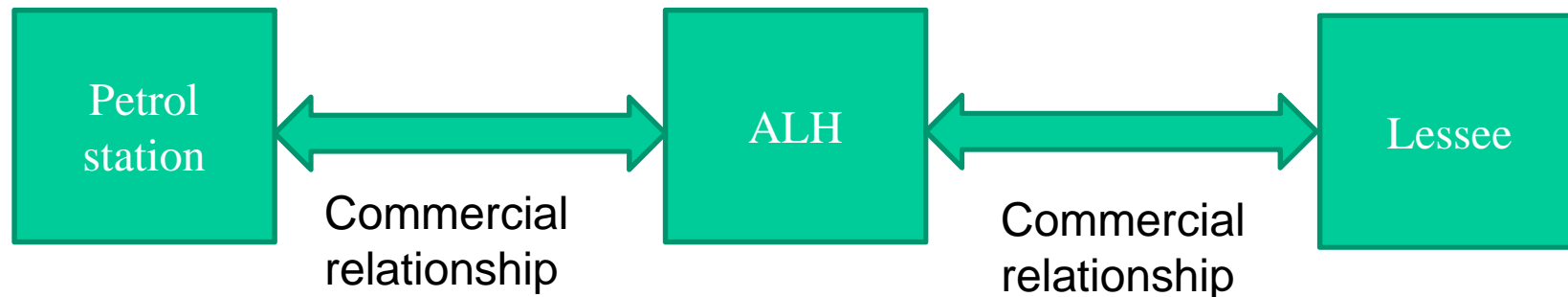
Legal uncertainty

→ What is the problem?

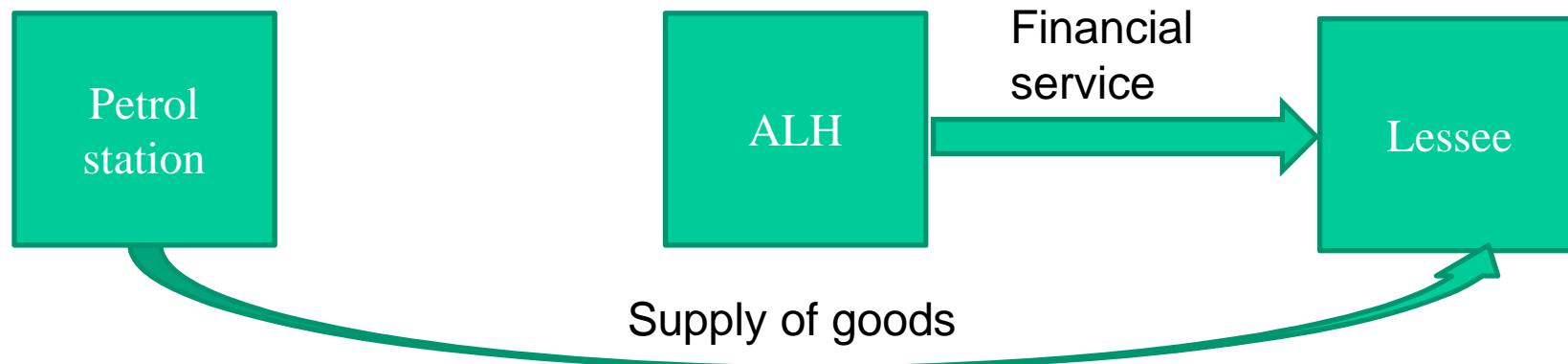


Legal uncertainty

→ Example (Auto Lease Holland and Vega International case)



Outcome of the CJEU cases:



Legal uncertainty

→ How to solve?

EU Member States unilaterally

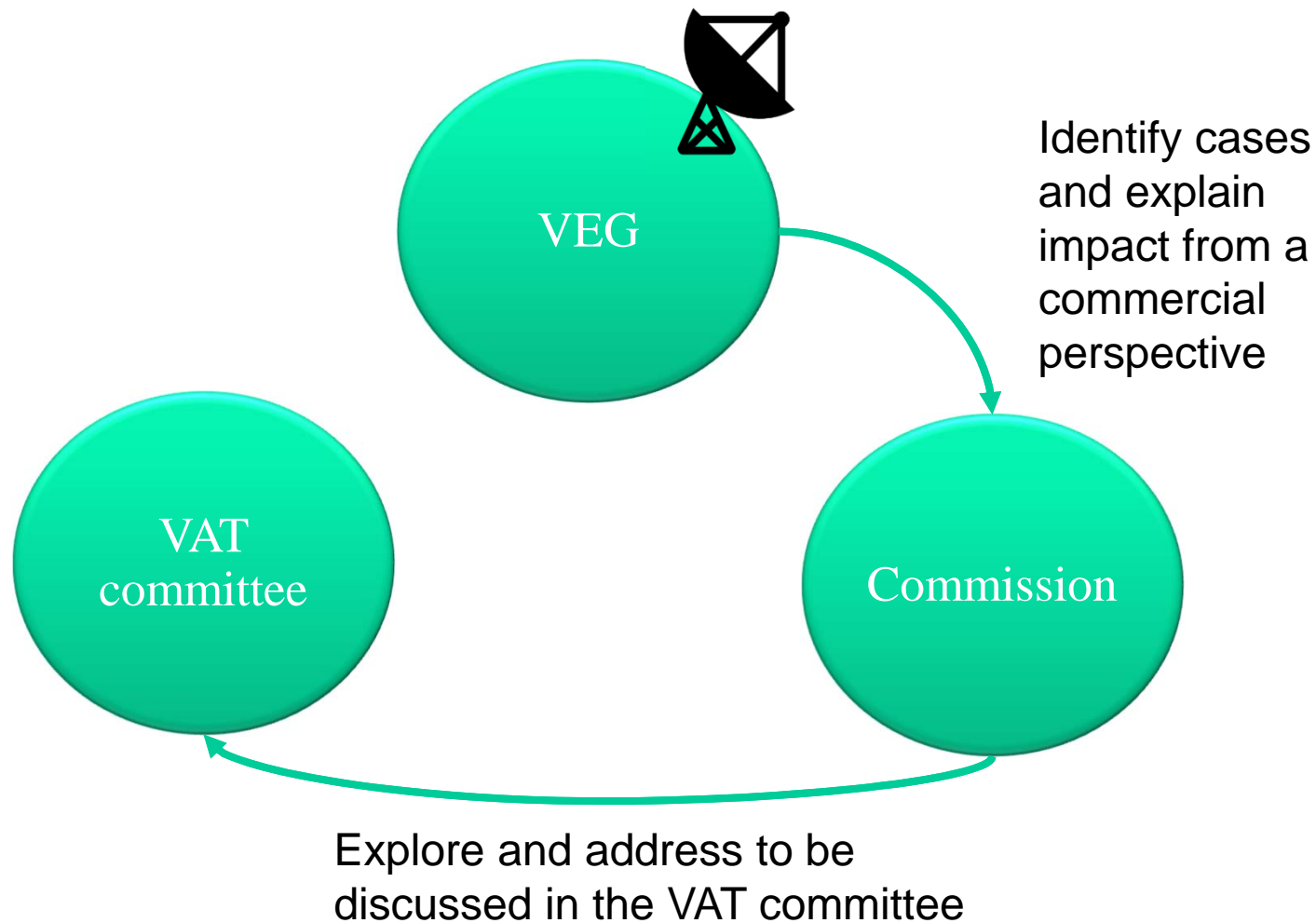
- Describe under which conditions there is a chain transaction and in which cases there is a financing transaction
- Follow the commercial supply chain - regard supply as a chain transaction (treat as own costs) or cost in transit (payment made to third party on behalf of customer)

VAT committee

- Adopt guidelines that decision must be applied narrowly
→ for example Fast Bunkering Klaipeda

Legal uncertainty

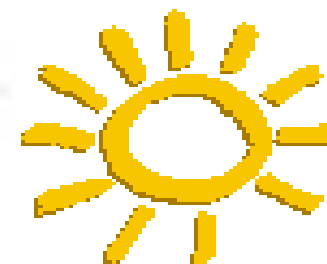
→ How the VEG can help



Summary

- **Right to deduct in triangular situations with spillover effects**
 - Application of the ‘objectively necessary’ test
 - No reasonableness test
- **Formalistic/legalistic approach as regards the execution of the right to deduct**
 - Especially alternative evidence for input VAT deduction claim
- **Legal uncertainty caused by CJEU cases from a broader commercial practice**
 - Identification of specific cases and explanation by VEG on impact from a broader commercial perspective

THANK YOU TO ALL - we hope, we see us all soon again in Brussels !!!



... as our journey continues, the VEG is very happy to support!!!