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Requirements for chain transactions in European VAT

by

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Summary

Transactions where goods are successively supplied by several businesses and transported directly from the first supplier to the last customer are defined as chain transactions. There is currently no provision in the VAT Directive which generally defines and determines the VAT treatment of chain transactions. The concept of chain transactions has been implemented by the CJEU through its case law (e.g. in *EMAG / Euro Tyre / Toridas*). This however leads to legal uncertainty for the parties involved, as there are questions that have not been subject to the case law of the Court. In case the case law is not interpreted uniformly in the Member States, the different VAT treatment might lead to double (non) taxation or multiple registration obligations in different Member States related to high compliance costs.

There is however a special form of chain transactions which is defined in Art. 141 of the VAT Directive. The scheme for triangulation provides a simplified VAT treatment especially for the intermediary in case the requirements are fulfilled.

The Council has already adopted a new provision which will enter into force with effect of 1 January 2020. The aim of the provision is to harmonize the VAT treatment of chain transactions within the European Union. It however only targets situations where the intermediary is responsible for the transport of the goods. In case the first supplier or the last customer arrange for transport, the VAT treatment has to be determined in accordance with the case law of the CJEU. It neither clarifies when the requirements for chain transactions are fulfilled, as it is only applicable where those are satisfied.

The definition of chain transactions developed by the CJEU requires that the transfer of the goods gives rise to single intra-Community dispatch. It needs to be verified if that requirement is still fulfilled where the transport responsibility for the goods is shared. At least one Member State in the European Union (Germany) takes the view, that the requirements for chain transactions are not satisfied in such a situation. This might lead to double (non) taxation and a non-harmonized VAT treatment within the European Union.

Further, it is not clear if goods that are processed or temporarily stored still can give rise to single intra-Community supply of those goods. Where this is not the case, the transactions have to be regarded individually for VAT purposes. In case the last customer is a private person, it needs to be verified to what extent the rules for distance sales are applicable.

The thesis aims at clarifying when the requirements for chain transactions are fulfilled and will analyze different situations where it can be questioned if those are fulfilled.

Abbreviation list

Art.	Article
AG	Advocat General
BMF	Bundesministerium der Finanzen (German Ministry of Finance)
CJEU / the Court	Court of Justice of the European Union
EC	European Community
EU	European Union
FG	Finanzgericht (German Fiscal Court)
Ibid	Ibidem
OJ	Official Journal
Para.	Paragraph
UStAE	Umsatzsteueranwendungserlass (German VAT guidelines)
UStG	Umsatzsteuergesetz (German VAT law)
VAT	Value Added Tax
VEG	VAT expert group

1 Introduction

1.1 Background

Chain transactions are transactions where goods are successively supplied by at least two businesses. Those goods have to be directly transported from the first supplier to the last customer. The VAT Directive¹ has not laid down a provision defining and determining the VAT treatment in general. The definition and VAT treatment have been implemented through the case law of the CJEU.

In respect to chain transactions, the VAT Directive currently only includes a provision targeting a special form of chain transactions. Triangulation is a special scheme for chain transactions where three businesses from three different Member States are involved. In case the requirements as laid down in that provision are fulfilled, the VAT treatment for those transactions is simplified.

Due to the fact, that chain transactions are widely spread in practice and there is no provision in the VAT Directive (except for triangulation), those transactions have been subject to the case law of the CJEU within the last years. The lack of rules in the VAT Directive leads to a non-harmonized VAT treatment of chain transactions within the EU.

According to the destination principle, VAT should generally be chargeable in the Member State where the goods are consumed.² In case of two successive supplies, but only one transport, the CJEU has decided that the transport can only be ascribed to one of the transactions in the chain which therefore can qualify as intra-Community supply in case the requirements laid down in Art. 138 of the VAT Directive are fulfilled.³ The VAT treatment of the transactions without transport is dependent on the fact whether they occur before or after the intra-Community supply.⁴ Therefore, in case of chain transactions it needs to be determined to which transaction the transport should be ascribed to in order to determine the VAT treatment of the transactions in the chain.

There is only a provision for a special type of chain transactions in the VAT Directive defining and determining the VAT treatment, but not for general chain transactions. Member States have to determine the VAT treatment of chain transactions on the basis of case law decided by the CJEU. It might occur that the case law is interpreted differently by the Member States. This

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347/1 (2006), further referenced as VAT Directive.

² Dr Braun, Karel M., An Alternative to the Place of Supply of Services and the Deduction of VAT, July/August 2003, <https://www.ibfd.org>.

³ Case C-245/04 - EMAG Handel Eder EU:C:2006:232. For a full description of the facts see Chapter 2.4.1.1.

⁴ For a detailed explanation see Chapter 2.4.

leads to legal uncertainty and the risk of double (non) taxation of chain transactions where a cross-border supplies of goods are included due to a non-harmonized VAT treatment within the EU. Further, businesses have the right of registration obligations in different Member States which is associated with higher compliance costs.

With effect as of 1 January 2020 a new provision⁵ will be included in the VAT Directive, which main aim is to harmonize the VAT treatment of chain transactions within the European Union.

1.2 Aim

The aim of this thesis is to analyze what the requirements of chain transactions are. Further, situations shall be analyzed in which it can be questionable if those requirements are fulfilled. Therefore, the case law of the CJEU especially in respect to chain transactions will be analyzed. The applicability of the rules established in the cases in respect will be interpreted and verified in different forms of transactions.

1.3 Method and Material

The provision laid down in the VAT Directive and the case law of the CJEU will be analyzed. German VAT law, will partly be taken into consideration in order to analyze the transposition into national law.

If not stated otherwise or differently the examples used will analyze a supply chain with 3 parties for simplification reasons and due to the fact, that in those cases more parties would not alter the VAT treatment to be pointed out.

1.4 Delimitations

In order to focus on the aims of the thesis, only chain transactions within the EU shall be analyzed. Chain transactions including transactions related to import / export will be left out of scope for further research.

It will only be discussed which effect shared transport responsibility has on the requirements of chain transactions. It will not be analyzed when and where the right to dispose of goods as owner is transferred in such situations.

In Chapter 3.3.2, temporary storage will only be compared to call-off stocks. The rules for consignment stocks will not be discussed in this thesis.

It will be open to further research to what extent the implementation of the definitive VAT system will eliminate the problems described in this thesis.

⁵ 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, OJ L 311/3, Art. 2.

1.5 Outline

In Chapter 2.1 chain transactions will be defined and the current. The requirements and the VAT treatment of the special scheme for triangulation will be explained in Chapter 2.2 in order to compare it to general chain transactions and to verify the applicability in the examples later on. Due to the fact, that the case law of the CJEU is only applicable, in case of cross-border transport of the goods, the requirements for intra-Community supplies and acquisition will be explained and a possible problem in terms of chain transactions will be defined in Chapter 2.3.

In Chapter 2.4, the VAT treatment of chain transactions will be examined by analyzing the case law of the CJEU. A new provision regarding the allocation of the transport within chain transactions will enter into force with effect as of 1 January 2020. Therefore, the “Quick fixes” will be mentioned in Chapter 2.5.

In Chapter 3, it will be further analyzed if the requirements for chain transactions are fulfilled in a situation of shared transport (where at least two parties within the chain are involved in the transport of the goods, Chapter 3.1). Further, the influence of processing of goods (Chapter 3.2), temporary storage (Chapter 3.3) and the final customer being private person (Chapter 3.4) will be analyzed in the following.

2 Definitions

2.1 Chain transactions

In EMAG⁶ the CJEU defined chain transactions as follows: *“Two successive supplies of the same goods, effected for consideration between taxable persons acting as such, gives rise to a single intra-Community dispatch or a single intra-Community transport of those goods”*⁷

Therefore, several transactions qualify as chain transaction, where the same goods are successively supplied by several businesses⁸ and the transfer of those goods gives only rise to a single movement of goods.⁹ In other words, the goods have to be supplied in a chain by several businesses and directly transported from the first supplier to the last customer.

Consequently, a chain transaction can only occur, where the goods are subject to transport.¹⁰ Each transaction taking place between the businesses

⁶ Case C-245/04 - EMAG Handel Eder EU:C:2006:232.

⁷ Ibid. para. 32.

⁸ AG Opinion Case C-245/04 - EMAG Handel Eder EU:C:2005:675, para. 1.

⁹ Case C-245/04 - EMAG Handel Eder EU:C:2006:232, para. 32.

¹⁰ See also: Aleksandra Bal, Import and Export in Multi-Sale Transactions – Part II, *International VAT Monitor*, May / June 2016. /

Dr Wolf, Redmar, VAT Pitfalls in Intra-EU Commodity Trade, *EC TAX REVIEW* 2012/1.

constitutes a supply of goods for VAT purposes. From an EU law perspective, there needs to be a cross border supply of goods.¹¹

The CJEU has decided in its case law, that the transport can only be ascribed to one of the transactions in the chain. Only the transaction to which the transport is ascribed to can fulfill the criteria of an intra-Community supply.¹²

There is no provision in the VAT Directive defining to which transaction the transport should be ascribed to. To this effect the CJEU has provided guidance in its case law.¹³

The further VAT treatment of chain transactions will be described in Chapter 2.4 by analyzing the most important cases of the CJEU.

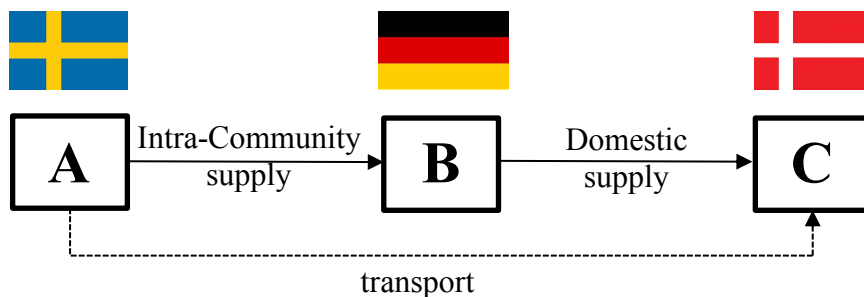
2.2 Triangulation

The VAT Directive defines in Art. 141 a special form of chain transactions – triangulation. This special scheme provides a simplified VAT treatment.

In the following the requirements for triangulation laid down in Art. 141 of the VAT Directive will be explained. Afterwards, the simplified VAT treatment will be elaborated.

2.2.1 Requirements

For Art. 141 to be applicable, goods have to be successively supplied by three taxable persons established in three different Member States.¹⁴ The good have to be directly transported from the first supplier to the last customer.¹⁵



According to Art. 141 (a) the transport has to be allocated to the first supply in the chain. Therefore, the intermediary is acquirer of the goods. This

¹¹ Case C-245/04 - EMAG Handel Eder EU:C:2006:232, para. 32.

¹² Ibid. para. 45. The requirements for intra-Community supplies will be elaborated in Chapter 2.3.

¹³ Horsthuis, Mathijs / Nellen, Frank, A Critical Analysis of the Quick Fixes for the EU Intra-Community B2B VAT System, International VAT Monitor, 2019 (Volume 30), No. 3.

¹⁴ See also: Van de Leur, Michael, Triangulation or Strangulation?, International VAT Monitor, November/ December 2010. /

Pozvek, Maruša, VAT Regime – Triangular Intra-Community Operations and Recent ECJ Case Law, European Taxation OctOber 2018.

¹⁵ Art. 141 (b) of the VAT Directive.

acquisition is taxable in the Member State where the transport of the goods ends.¹⁶

The intermediary is not allowed to be identified for VAT purposes in the Member State where the transport begins,¹⁷ or to be established in the Member State where the acquisition is taxable.¹⁸ However, he needs to be established in another Member State.¹⁹

The second supply in the chain constitutes a domestic supply in the Member State where the acquisition of the goods is taxable.²⁰ Another criterium for triangulation is the applicability of the reverse charge mechanism according to Art. 197 of the VAT Directive to the second supply. Therefore, the VAT liability for the (second) domestic supply is shifted from the intermediary to the last customer.

2.2.2 VAT Treatment

In case the requirements for triangulation are fulfilled, the intra-Community acquisition of goods shall not be taxed by the competent Member State.²¹ Art. 141 for triangulation refers to Art. 40 which defines the place of intra-Community acquisition which is located at the place where the dispatch or transport of the goods ends.

The following examples shall illustrate the simplification where the requirements for triangulation are fulfilled.²² Therefore, the theoretical VAT treatment without the triangulation simplification shall be illustrated at first.

VAT treatment without triangulation

A (established in Sweden) sells car tyres to B (established in Germany). Those goods are successively supplied by B to C (established in Denmark). The goods are transported on behalf of A directly from its premises to a warehouse of C in Denmark.

The transfer of the right to dispose of the goods as owner from A to B takes place after the cross-border transport of the goods. Therefore, the transport has to be ascribed to the first supply. The place of the first supply is located in Sweden, where the transport of the goods begins.²³ As the goods are transported to another Member State (Denmark), the requirements for an exempt intra-Community supply of goods are fulfilled.²⁴ The place of the

¹⁶ Art. 40 of the VAT Directive.

¹⁷ Art. 141 (c) of the VAT Directive.

¹⁸ Art. 141 (a) of the VAT Directive.

¹⁹ Ibid.

²⁰ Art. Art. 141 (b) of the VAT Directive.

²¹ Art. 141 of the VAT Directive.

²² See also illustration on page 9.

²³ Art. 32 of the VAT Directive.

²⁴ Art. 138 (1) of the VAT Directive. The requirements will be further elaborated in Chapter 2.3.

intra-Community acquisition effected by B is in Denmark, where the transport ends.²⁵ Therefore, a registration obligation of B in Denmark would arise in order to account for the VAT related to the acquisition of goods.

The place of the second supply is also located in Denmark, where the goods are located at the time the supply takes place.²⁶ As the goods remain in Denmark, the second supply is a domestic supply and subject to Danish VAT.²⁷ As B is registered for VAT purposes in Denmark, the reverse charge mechanism is generally not applicable.²⁸

VAT treatment with triangulation

The facts shall be the same as in the previous example.

In order to avoid a registration obligation of B in Denmark, the VAT due regarding the intra-Community acquisition shall not be charged in Denmark, due to the triangulation simplification.²⁹ Further, the VAT liability for the second (domestic supply) is shifted from the second supplier (B) to the last customer (C) in accordance with Art. 197³⁰, provided that the other requirements of Art. 197 are fulfilled.

Therefore, the triangulation simplification avoids the bureaucratic burden of registration for VAT purposes for the taxpayer (B as second supplier) and for the Member State. It is however only applicable to a limited amount of cases, as the parties have to be identified for VAT purposes in three different Member States. Further, the simplification is only available in case of three-party transactions. Longer transaction chains do not qualify for the simplification.³¹

2.3 Intra-Community supply / acquisition requirements

In case of chain transactions including cross-border transport of goods within the European Union, it needs to be verified, if the requirements for a zero-rated intra-Community supply are fulfilled.

Art. 138 of the VAT Directive lays down the substantial requirements for intra-Community supplies. Therefore, transactions where goods are dispatched or transported from the territory of one Member State to the territory of another Member State qualify as intra-Community supplies. It is irrelevant which party is responsible for the transport.³² With effect as of 1

²⁵ Art. 40 of the VAT Directive.

²⁶ Art. 31 of the VAT Directive.

²⁷ Provided that no national exemption is applicable.

²⁸ Provided that there is no national exception applicable.

²⁹ Art. 141 of the VAT Directive.

³⁰ Art. 197 of the VAT Directive.

³¹ See also: Peter Hughes, EU VAT Aspects of Longer Chains of Triangular Transactions, *International VAT Monitor*, July / August 2012.

³² Art. 138 (1) of the VAT Directive.

January 2020 the VAT ID of the acquirer will become a substantial requirement as well (so far it has only been a formal requirement).³³

In respect to zero-rated intra-Community supplies within chain transactions, the CJEU has recalled the requirements in the case *Toridas*³⁴:

- The right to dispose of the goods as owner has been transferred to the person acquiring the goods;
- The supplier establishes that those goods have been dispatched or transported to another Member State; and
- As a result of that dispatch or transport, they have physically left the territory of the Member State of supply of the goods.³⁵

The corollary of an intra-Community supply is an intra-Community acquisition. Art. 20 of the VAT Directive defines intra-Community acquisitions as follows:

- Acquisition of the right to dispose as owner of movable tangible property;
- Dispatch / transport to the person acquiring the goods on behalf of supplier or person acquiring the goods;
- Acquisition is effected in another Member State than that in which the transport or dispatch of the goods began.

As the intra-Community acquisition is the corollary of the intra-Community supply, both provisions must be interpreted in a uniform manner in terms of meaning and scope.³⁶

In *Toridas*³⁷, the CJEU has made the comment that transaction cannot qualify as intra-Community acquisition in case the goods are not transported / dispatched to the person acquiring the goods.³⁸ Consequently, the requirements for intra-Community supplies are only fulfilled where the goods are dispatched / transported to the person acquiring the goods.³⁹

In chain transactions where the transport is ascribed to the first supply in the chain, the intra-Community acquisition is made by the second supplier. The goods are however directly transported to the last customer, as otherwise the requirements of chain transactions would not be fulfilled. It could therefore be disputable if the requirements of intra-Community supplies / acquisitions are fulfilled in case the transport is ascribed to the first supply in the chain.

³³ 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, OJ L 311/3, Art. 1 (3a).

³⁴ Case C-386/16 – *Toridas* EU:C:2017:599. The facts of the case will be described in Chapter 2.4.1.3.

³⁵ *Ibid.* para. 30.

³⁶ Case C-184/05 - *Twoh International* EU:C:2007:550 para. 23.

³⁷ For a description of the facts of the case, see Chapter 2.1.1.3.

³⁸ *Ibid.* para. 32.

³⁹ *Ibid.* para. 33.

The CJEU does not further elaborate its comment in *Toridas*, what the term “dispatched / transported to the person acquiring the goods” means and if this can be fulfilled in a chain transaction where the second supplier would be the acquirer according to Art. 20 of the VAT Directive.

Provided that the second supplier cannot be regarded as acquirer of the goods where the transport is ascribed to the first supply, the particular supply of goods cannot be treated as zero-rated intra-Community supply. This would however contradict with the purpose of the transitional arrangements for intra-Community trade, as the tax revenue shall be transferred to the Member State where the final consumption takes place.⁴⁰

Further, the new Article 36a, which will enter into force as of 1 January 2020 establishes as new rule the allocation of the transport to the first supply where the intermediary is arranging the transport. In case the intermediary cannot be seen as acquirer to which the goods transported, the new provision creates through its general rule chain transaction where the exemption of zero-rated intra-Community supplies would not be applicable.

One could argue that the CJEU has not mentioned this problem in its case law where the transport could have been allocated to the first supply. In *VSTR*⁴¹, the CJEU had to decide if the first supply in a chain transaction can constitute an intra-Community supply in case the second supplier does not provide its VAT ID to the first supplier.⁴²

The determination of the supply to which the transport should be ascribed to was finally referred back to the national court which should determine if the right to dispose of the goods as owner was transferred to the last customer before the cross-border transport took place.⁴³ Therefore, the allocation of the transport to the first supply could have been possible in this case.

The CJEU mentioned regarding intra-Community supplies and acquisitions that the requirements include the transport from one Member State to another to a taxable person or non-taxable legal person acting as such located in another Member State than where the transport of the goods began.⁴⁴ The Court further stated that despite for transfer of the right to dispose of the goods as owner and the physical movement of those goods from one Member State to another, no other condition applies for classification as intra-Community supply or acquisition.⁴⁵

⁴⁰ Case C-580/16 - Firma Hans Bühler EU:C:2018:26 para. 39.

⁴¹ Case C-587/10 – VSTR EU:C:2012:592.

⁴² Ibid. para. 26.

⁴³ Ibid. para. 37.

⁴⁴ Ibid. para. 29.

⁴⁵ Ibid. para. 30.

Further, the subject of the case *Hans Bühler*⁴⁶ was the special scheme for triangulation. The transport in the chain was allocated to the first supply. The CJEU had to decide if the requirements for triangulation are fulfilled where the second supplier is resident and identified for VAT purposes in the Member State where the transport of the goods begins, but uses the VAT ID of another Member State.⁴⁷

The Court concluded that the requirements for triangulation are fulfilled in such a case, provided the taxable person uses a VAT ID of another Member State for the respective intra-Community supply.⁴⁸

It therefore seems that the Court has implicitly accepted that in case of a chain transaction where the transport is ascribed to the first supply, the intermediary can be regarded as acquirer of the goods even though the goods are not physically transported to him.

Otherwise, the simplification scheme for triangulation would be redundant, as one of the requirements is that the second supplier is acquirer of the goods.⁴⁹ In case the second supplier could not be regarded as acquirer, because the goods are not transported to him, the scheme would never apply.

The CJEU has only mentioned in *Toridas* as a sidenote that the requirements for intra-Community acquisitions and supplies cannot be fulfilled in case the goods are not transported to the person acquiring them.⁵⁰ It was not further elaborated if this means that the first supply in a chain transaction cannot be treated as intra-Community supply, as the requirements for intra-Community acquisitions are not fulfilled. It was however not required in this case, as the transport was allocated to the second supply.

Due to fact that the impact on chain transactions would be enormous and the CJEU has not analyzed this question in any other case even where the transport was allocated to the first supply (e.g. *Hans Bühler*), it can be concluded that the intermediary can be regarded as acquirer of the goods, although the goods never reach him physically.

2.4 Chain Transactions – Analysis of case law

2.4.1 Intermediary responsible for transport

2.4.1.1 EMAG

In *EMAG*⁵¹, the Austrian Higher Administrative Court asked the question, whether in case of two successive supplies but single movement of goods

⁴⁶ Case C-580/16 - Firma Hans Bühler EU:C:2018:26.

⁴⁷ Ibid. para. 25.

⁴⁸ Ibid. para. 43.

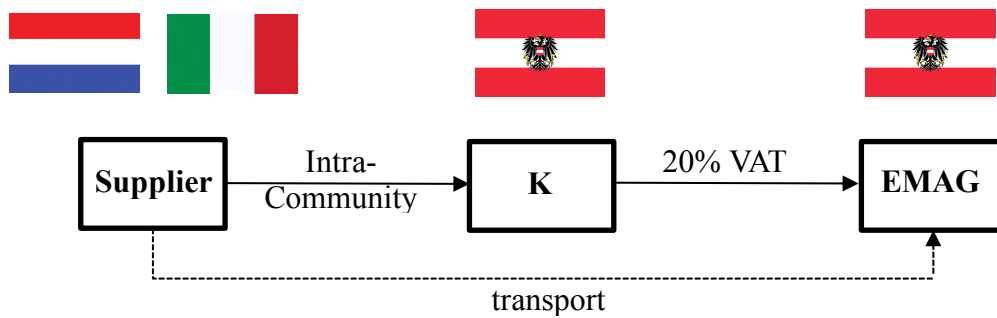
⁴⁹ Art. 141 (a and b) of the VAT Directive.

⁵⁰ Case C-386/16 – *Toridas* EU:C:2017:599 para. 33.

⁵¹ Case C-245/04 - *EMAG Handel Eder* EU:C:2006:232.

both supplies can be treated as zero-rated intra-Community supplies and how the place of supply should be determined.⁵²

EMAG bought non-ferrous metals from K, both companies were established in Austria.⁵³ K bought the metals from suppliers established in the Netherlands and Italy. The goods were directly transported on behalf of K either to the premises of EMAG or to EMAG's customers (both premises were located in Austria).⁵⁴



The CJEU decided, that although there is only a single movement of goods, the successive supplies have to be regarded as followed each other in time, as the second supply can only take place where the right to dispose of the goods as owner have been transferred to the second supplier.⁵⁵ This means that the transport can only be ascribed to one of the supplies in the chain. Therefore, only one of the supplies can fulfill the criteria for intra-Community supplies, as Art. 138 of the VAT Directive requires the dispatch or transport of the goods. This shall also apply regardless which party has the right to dispose of the goods as owner during dispatch or transport.⁵⁶ The CJEU has not answered in this case how the transport of the goods should be ascribed to one of the transactions.⁵⁷

In respect to the determination of the place of supply, the transaction which the transport of the goods is ascribed to, is determined in accordance with Art. 32 of the VAT Directive – namely where the transportation of the goods begins. The place of supply for the transaction without transport is the place where the goods are located at the time the supply takes place.⁵⁸ This means, that in case the transport of the goods is ascribed to the first transaction in the chain, the place of supply for the transaction without transport is the Member State of arrival. Vice versa, the place of supply for the transaction without

⁵² Ibid. para. 25.

⁵³ Ibid. para. 14.

⁵⁴ Ibid. para. 15.

⁵⁵ Ibid. para. 38.

⁵⁶ Ibid. para. 45.

⁵⁷ This question was answered in Case C-430/09 - Euro Tyre Holding EU:C:2010:786, which will further be elaborated in this thesis.

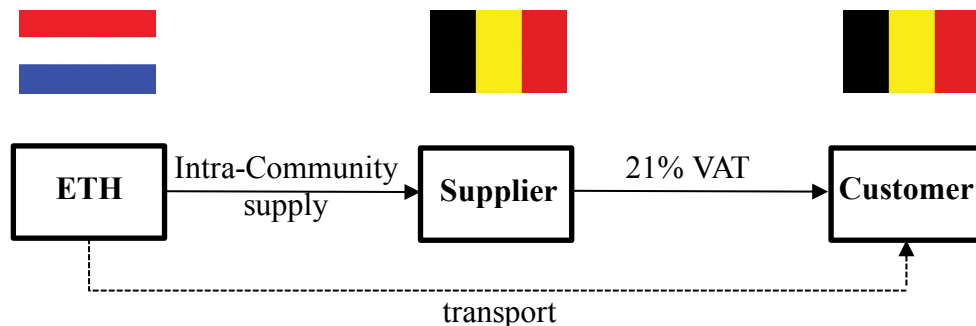
⁵⁸ Art. 31 of the VAT Directive.

transport is the Member State of dispatch where the transport of the goods is ascribed to the second transaction.⁵⁹

In case the transport is allocated to the first supply in the chain, this transaction can enjoy the exemption of an intra-Community supply.⁶⁰ According to Art. 32 of the VAT Directive this supply is taxable in the Member State where the transport of the goods begins. The mirror transaction – the intra-Community acquisition - is taxable in the Member State where the transport of the goods ends according to Art. 40 of the VAT Directive. The place of supply of the second transaction without transport is located in the Member State where the transport which is ascribed to the first transaction ends.⁶¹ The second transaction therefore qualifies as domestic supply in the Member State where the transport (ascribed to the first transaction) ends.

2.4.1.2 Euro Tyre

In *Euro Tyre*⁶² the CJEU has elaborated to which supply the transport should be ascribed to in case the second supplier is responsible for transport.⁶³ Euro Tyre Holding (ETH), a Dutch company, sold spare parts for automobiles and vehicles to two Belgian companies who further resold those goods to a company also established in Belgium. The goods were picked up by the Belgian companies from ETH's warehouse in the Netherlands and directly transported to the Belgian customer. ETH treated its supplies to the Belgian companies as zero-rated intra-Community supplies.⁶⁴



For the determination to which transaction the transport has to be ascribed to, which therefore constitutes the intra-Community supply, an overall assessment of all the specific circumstances of the case has to be undertaken.⁶⁵ It especially needs to be determined when the second transfer of the right to dispose of the goods as owner has taken place. In case the second transfer of the right to dispose has taken place before the intra-

⁵⁹ Case C-245/04 - EMAG Handel Eder EU:C:2006:232, para. 50.

⁶⁰ Provided that the requirements laid down in Art. 138 of the VAT Directive are fulfilled.

⁶¹ Art. 31 of the VAT Directive.

⁶² Case C-430/09 - Euro Tyre Holding EU:C:2010:786.

⁶³ See also: Maunz, Stefan /Marchal, Hendrik, Zero Rating Cross-Border Triangular Transactions under EU VAT, International VAT Monitor, October / November 2012.

⁶⁴ Ibid. para 12 – 15.

⁶⁵ Ibid. para. 27.

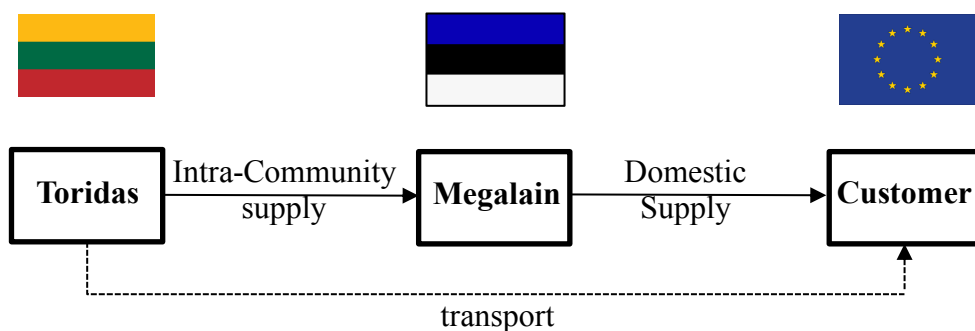
Community supply of goods, the transport cannot be ascribed to the first transaction in the chain.⁶⁶

In case the purchaser expresses the intention to transport the goods to another Member State and presents a VAT identification number of that Member State, the transport should be ascribed to the first supply in the chain.⁶⁷ However, if the first supplier is informed that the goods have been further resold to another taxable person after the right to dispose of the goods as owner has been transferred to the second supplier but before the goods have left the Member State, the transport of the goods has to be ascribed to the second supply in the chain.⁶⁸

2.4.1.3 Toridas

In *Toridas*⁶⁹ the referring court asked if the transport and therefore the intra-Community supply can be allocated to the first supply in the chain where the first purchaser expresses the intention to resell the goods before that supply transaction is entered into and therefore before the goods are transported to the third party.⁷⁰

Toridas, a Lithuanian company, sold frozen fish to the Estonian company *Megalain*. Both companies agreed, that *Megalain* had to resell the goods at hand within 30 days to customers not established in Lithuania.⁷¹ The goods were resold to customers established within the EU.⁷² *Toridas* has allocated the transport to the first supply between *Toridas* and *Megalain* which was therefore treated as intra-Community supply.⁷³



The CJEU began its analysis with reference to the rules established in settled case law regarding the applicability of the exemption for intra-Community supplies. It is only applicable where the right to dispose of the goods as owner has been transferred to the acquirer. Further, the goods have to be transported

⁶⁶ Ibid. para. 33.

⁶⁷ Ibid. para. 35.

⁶⁸ Ibid. para. 36.

⁶⁹ Case C-386/16 – *Toridas* EU:C:2017:599.

⁷⁰ Ibid. para. 24.

⁷¹ Ibid. para. 12.

⁷² Ibid. para. 13.

⁷³ Ibid. para. 15.

or dispatched to another Member State and consequently have left the territory of the first Member State.⁷⁴

It was further referred to the settled case law. The Court repeated the rules set up for the determination of the VAT treatment of chain transactions. The Court referred to *EMAG* stating that the intra-Community supply can only be allocated to one transaction in the chain.⁷⁵ In *Euro Tyre* the CJEU decided that for the allocation of the transport to one of the supplies an overall assessment of the facts at hand has to be performed.⁷⁶ Finally, the CJEU cited *VSTR*⁷⁷, that it is decisive when the right to dispose of the goods as owner has been transferred to the second acquirer. In case the right to dispose of the goods as owner has been transferred to the second acquirer before the intra-Community supply takes place, the transport has to be allocated to the second supply.⁷⁸

In case the second supply takes place before the transport, the latter has to be allocated to the second supply.⁷⁹ In the case at hand, it was clear for the CJEU that the reselling of the goods by Megalain to the last customer took place before the goods were transported.⁸⁰ Therefore, the supplies from Toridas to Megalain constituted domestic supplies in Lithuania (subject to verification of the referring court) for which the requirements for intra-Community supplies were not fulfilled.⁸¹

This conclusion is not influenced by the fact, that Megalain is established in Estonia. The referring court remarked that in case the first supplies constitute domestic supplies in Lithuania, the risk of double taxation arises as Megalain has declared intra-Community acquisitions in Estonia.⁸²

According to the CJEU, it is not a criterion for the classification of intra-Community supplies / acquisitions where the trader is identified for VAT purposes.⁸³ Even where the risk of double taxation arises, that risk cannot justify an exemption of those transactions. The double taxation can be avoided by applying the VAT Directive correctly.⁸⁴

⁷⁴ Ibid. para. 30.

⁷⁵ Ibid. para. 34.

⁷⁶ Ibid. para. 35.

⁷⁷ Case C-587/10 – VSTR EU:C:2012:592.

⁷⁸ Case C-386/16 – Toridas EU:C:2017:599 para. 36.

⁷⁹ Ibid. para. 37.

⁸⁰ Ibid. para. 38.

⁸¹ Ibid. para. 40.

⁸² Ibid. para. 41.

⁸³ Ibid. para. 42.

⁸⁴ Ibid. para. 43.

2.4.2 First supplier or last customer responsible for transport

The allocation of the transport to one of the transactions in the chain should be clearer, where either the first supplier or the last customer is responsible for transport of the goods.

If the first customer arranges the transport to the final customer, the right to dispose of the goods as owner usually should be transferred to the second supplier in the Member State of destination after the cross-border transport of the goods has taken place. In those cases, the transport of the goods has to be ascribed to the first supply in the chain.

Provided that the final customer is responsible for the transport of the goods and picks them up at the premises of the first supplier, the transport of the goods should usually be ascribed to the second supply. In *Euro Tyre*⁸⁵, the CJEU stated that the picking up of the goods at the premises of the first supplier by a representative of the intermediary must be regarded as a transfer of the right to dispose of the goods as owner.⁸⁶ In case the goods are not picked up by the intermediary but by the last customer, this rule should also be applicable.

The right to dispose of goods as owner in such cases should usually be transferred in the Member State where the transport of the goods begins, which means that the ownership is transferred before the goods leave the Member State. However, even where the first supplier or the last customer are responsible for transport of the goods, an overall assessment of the facts at hand should be done as there can be exceptions.

In the following case of the CJEU, the last customer has picked up the goods at the premises of the first supplier. It shall further illustrate why a detailed analysis of the facts at hand is required in order to determine the VAT treatment in case of chain transactions.

2.4.2.1 Kreuzmayr

In *Kreuzmayr*⁸⁷, the CJEU decided that the transport has to be allocated to the second supply in the chain.⁸⁸

The Austrian company BIDI Ltd. bought petroleum products from the German company BP Marketing GmbH. The goods should have been picked up by BIDI at the premises of BP in Germany and transported to Austria.⁸⁹

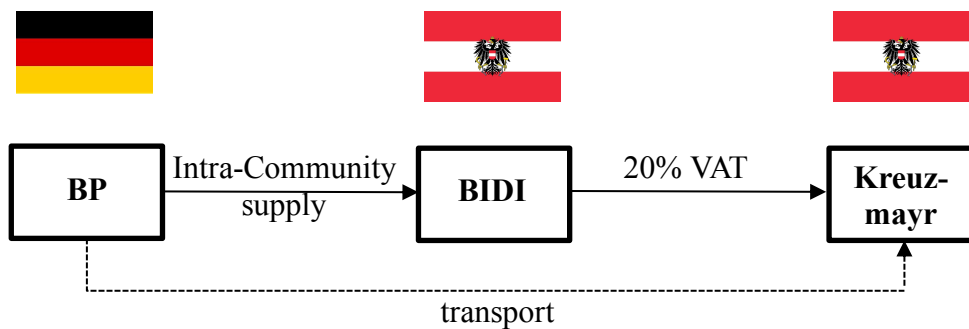
⁸⁵ Case C-430/09 - Euro Tyre Holding EU:C:2010:786.

⁸⁶ Ibid. para. 32.

⁸⁷ Case C-628/16 – Kreuzmayr EU:C:2018:84.

⁸⁸ Ibid. para. 38.

⁸⁹ Ibid. para. 10.



Instead of picking up the goods itself, BIDI resold those goods to Kreuzmayr, also established in Austria and provided it with the collection numbers for the picking up of the goods at the premises of BP.⁹⁰

BP treated the transactions between itself and BIDI as zero-rated intra-Community supplies. The supplies between BIDI and Kreuzmayr were treated as domestic supplies in Austria.⁹¹ Kreuzmayr wanted to deduct the input VAT invoiced by BIDI in Austria.⁹²

The first question referred was to which transaction the transport should be ascribed to.⁹³ The Court started its analysis with reference to *Toridas*. An overall assessment of the facts has to be made in order to determine to which transaction the transport should be ascribed to. It is decisive at which time the second transfer of the right to dispose of the goods as an owner has taken place.⁹⁴

Without further elaboration, the Court states, that in the case at hand it is clear that the second transfer of the right to dispose happened before the intra-Community transport of the good took place. Therefore, the transport has to be ascribed to the second transaction.⁹⁵

By its second question the referring court wanted to know, if Kreuzmayr is allowed to deduct the incorrectly invoiced input VAT by BIDI based on the principle of the protection of legitimate expectations.⁹⁶

The input VAT deduction is an integral part of the VAT system which may in principle not be limited.⁹⁷ However, input VAT can only be deducted where it is actually due. The deduction right is not extended to VAT which is only due because it is stated on an invoice.⁹⁸ Therefore, Kreuzmayr can only request the VAT unduly paid from BIDI,⁹⁹ but is not allowed to deduct the

⁹⁰ Ibid. para. 11.

⁹¹ Ibid. para. 12.

⁹² Ibid. para. 14.

⁹³ Ibid. para. 27.

⁹⁴ Ibid. para. 32.

⁹⁵ Ibid. para. 35.

⁹⁶ Ibid. para. 39.

⁹⁷ Ibid. para. 41.

⁹⁸ Ibid. para. 43.

⁹⁹ Ibid. para. 47.

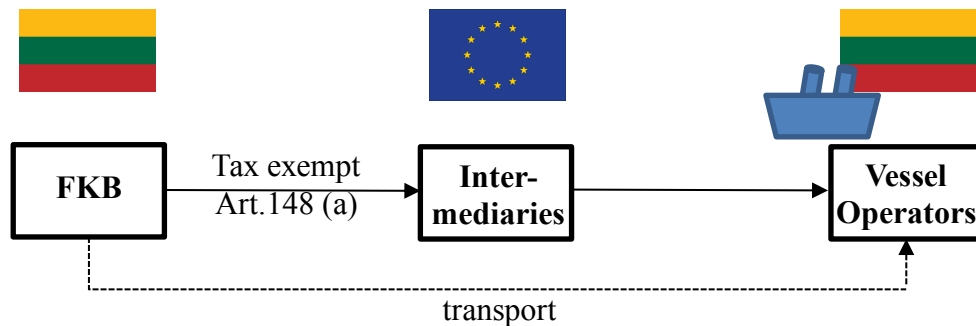
input VAT invoiced relying on the principle of the protection of legitimate expectations.¹⁰⁰

It can also be questioned to what extent the requirements for a supply of goods to the intermediary are fulfilled in case the first supplier or the last customer are responsible for transport. This is subject of the next case described.

2.4.2.2 Fast Bunkering Klaipeda

In *Fast Bunkering Klaipeda*¹⁰¹ (FBK) the CJEU decided that in case the intermediary has at no time the power to dispose of the goods supplied, the transaction to him does not qualify as supply of goods even where the ownership is formally transferred.¹⁰²

FBK was a supplier of fuel registered in Lithuania, which supplied fuel, within Lithuanian territorial waters to vessels used for navigation on the high seas.¹⁰³ The fuel was loaded by FBK into the fuel tanks of the vessels.¹⁰⁴ The invoices were however sent by FBK to intermediaries which acted in their own name. Those intermediaries bought the fuel from FBK and further resold it to the operators of the vessels.¹⁰⁵



At first glance, the requirements for chain transactions seem to be fulfilled, as the fuel is successively supplied by several businesses and directly transported to the last customer. As mentioned above, the CJEU has analyzed the question, if the transaction between FBK and the intermediaries can qualify as supply of goods.

In the case at hand, the transfer of ownership to the intermediaries takes place at the end of loading. This transfer therefore coincides with the point where the operators of the vessels are entitled to dispose of the fuel as if they were the owners.¹⁰⁶ Therefore, the intermediaries have at no time been in a position to dispose of the quantities supplied.¹⁰⁷ In such circumstances, the transaction

¹⁰⁰ Ibid. para. 46.

¹⁰¹ Case C-526/13 - Fast Bunkering Klaipėda EU:C:2015:536.

¹⁰² Ibid. para. 52.

¹⁰³ Ibid. para. 11.

¹⁰⁴ Ibid. para. 12.

¹⁰⁵ Ibid. para. 13.

¹⁰⁶ Ibid. para. 48.

¹⁰⁷ Ibid. para. 50.

to the intermediary cannot qualify as supply of goods,¹⁰⁸ as the concept of supply of goods covers any transfer of tangible property which empowers the other party to dispose of the goods as if he were its owner.¹⁰⁹ Therefore, the responsibilities and liabilities of the intermediaries has to be carefully analyzed in order to determine the consequences for VAT purposes.¹¹⁰ In case the requirements for a supply of goods are not fulfilled, the respective transaction cannot be part of a chain transaction. The subject of the following case was also the supply of fuel.

2.4.2.3 Auto Lease Holland

*Auto Lease Holland*¹¹¹ (ALH) is a leasing company which provided its customers with motor vehicles.¹¹² It offered a program where the customers could buy fuel and oil products in the name and on expense of ALH.¹¹³

The CJEU had to decide if ALH is the recipient of the supply of fuel and therefore allowed to deduct the input VAT related to the fuel.¹¹⁴ The Court concluded that ALH did not have the right to dispose of the fuel as if it was an owner.¹¹⁵ The lessee bought the fuel in the name and on behalf of ALH, but it was the customer who had to bear the costs in the end.¹¹⁶ Further, it was the customer who decided about the quantity or type of fuel purchased. Therefore, the transaction between ALH and the customer does not constitute a supply of fuel, but rather a financing contract to buy the fuel.¹¹⁷ Consequently, the supply of fuel took place directly between the gas stations and the lessees.¹¹⁸

2.4.3 Final analysis

Regardless who is responsible for the transport of the goods, an overall assessment of the facts at hand has to be undertaken. In case the VAT treatment is determined incorrectly, the parties cannot rely on the principle of legitimate expectations (*Kreuzmayr*) and input VAT deduction not possible as only VAT actually due can be recovered.

The determination of the VAT treatment and the allocation of the transport has always to be performed according to the rules established by the CJEU,

¹⁰⁸ Ibid. para. 52.

¹⁰⁹ Ibid. para. 51.

¹¹⁰ Jan Sanders, Implications of the FBK Case on Chain Transactions, International VAT Monitor January / February 2016.

¹¹¹ Case C-185/01 - Auto Lease Holland EU:C:2003:73.

¹¹² Ibid. para. 10.

¹¹³ Ibid. para. 11.

¹¹⁴ Ibid. para. 20.

¹¹⁵ Ibid. para. 34.

¹¹⁶ Ibid. para. 35.

¹¹⁷ Ibid. para. 36.

¹¹⁸ Ibid. para. 37.

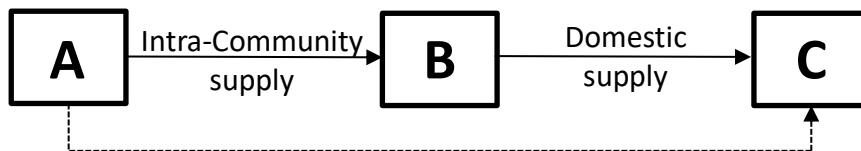
even in case double taxation arises. In *Toridas*, the CJEU stated that this double taxation can be avoided in case the VAT Directive is applied correctly.

Especially transactions regarding the successive supply of fuel have to be determined carefully, as the CJEU has decided in *Fast Bunkering Klaipeda* and *Auto Lease Holland*, that the intermediary is not part of the chain in case he has at no time the right to dispose of as owner. To what extent those rules can be transferred to other goods supplied, needs to be determined carefully.

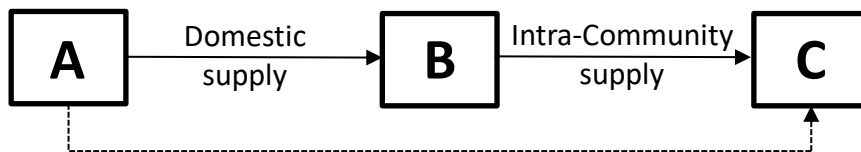
2.5 Quick fixes

An overall assessment of the facts and the determination at which time the second transfer of the right to dispose has taken place is rather difficult in practice, especially where the second supplier is responsible for transport. The Council has therefore agreed on a simplification within the adoption of the so called “Quick fixes”.¹¹⁹ In respect to chain transactions, the Council has agreed on a new provision (Art. 36a) which will enter into force with effect of 1 January 2020.¹²⁰

The main aim of this provision is to avoid different approaches in the Member States which could lead to double taxation respectively double non-taxation and to enhance legal certainty for operators.¹²¹ In case the transport is arranged by the second supplier, the transport is allocated to the supply of goods to him (first supply in the chain).¹²²



There is an exception that the transport of the goods can also be ascribed to the second supply in the chain where the second supplier communicates a VAT ID which is issued by the Member State where the transport of the goods begins to the first supplier.¹²³



¹¹⁹ For further information in respect to the „quick fixes“ see also: Ben Terra/Julie Kajus: Council adopts four quick fixes, available online at <https://www.ibfd.org>.

¹²⁰ 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, OJ L 311/3, Art. 2.

¹²¹ Ibid. para. 6.

¹²² Ibid. Art. 1 para. 2 (1).

¹²³ Ibid. Art. 1 para. 2 (2).

The CJEU had to implement through its case law¹²⁴ how to allocate the transport especially where the second supplier is transporting the goods. Therefore, the new provision should enhance the legal certainty for chain transactions with three parties where the second supplier is responsible for transport. Especially in respect to a uniform VAT treatment within the EU.

However, the new provision does not remove all ambiguities in respect to chain transactions – e.g. situations where the first supplier or the last customer are arranging the transport are not in scope of this provision. Therefore, the VAT treatment in those situations still has to be determined on basis of the rules established through the case law of the CJEU.

Another problem arises in case of longer transaction chains which include more than three parties.¹²⁵ In case one of ABCD scenarios where C as intermediary party is arranging the transport, the transport in the chain is generally allocated to the supply to the intermediary C. However, in case C provides a VAT ID of the Member State where the transport of the goods begins to B, the transport is allocated to the supply made by him. Regardless if C makes use of the derogation for allocation of the transport, A has to charge local VAT to B. Therefore, it needs to be communicated through the chain that the goods are not directly sold by B to the last customer, but that another intermediary is included who is responsible for the transport of the goods. If A is not aware that party C is included in the chain and responsible for transport, the general rule laid down in Art. 36a of the VAT Directive would ascribe the transport to the supply between A and B. Therefore, A would incorrectly treat the first supply as intra-Community supply.

Due to the fact, that some transactions are not in the scope of the new provision, the goal of a uniform VAT treatment within the EU and the enhancement of legal certainty cannot be achieved on the sole basis of the implementation of the new Article 36a. In order to fully achieve a harmonized VAT treatment of chain transaction within the EU, a provision defining and determining the VAT treatment of chain transactions in general needs to be included in the VAT Directive.

As described in Chapter 2.1, the VAT Directive does not include a provision to which transaction the transport should be allocated. The VAT treatment has to be determined on the basis of the case law of the CJEU. The new Article 36a solves this problem for transactions where the intermediary is responsible

¹²⁴ E.g. Case C-430/09 - Euro Tyre Holding EU:C:2010:786, Case C-386/16 – Toridas EU:C:2017:599, Case C-587/10 – VSTR EU:C:2012:592, Case C-628/16 – Kreuzmayr EU:C:2018:84.

¹²⁵ The members of the VAT expert group have submitted comments and questions in respect to the quick fixes. See also: Comments received from VEG members on documents: VEG No 079 - VAT “quick fixes” legislative package - Call-off stock VEG No 080 - VAT “quick fixes” legislative package - Chain transactions - Exemption of an intra-Community supply of goods: conditions and proof taxud.c.1(2019)2631719.

for transport. The VAT treatment of transactions where the first supplier or the last customer are responsible for transport are still to be determined on the basis of the case law. In order to fully achieve legal certainty, situations where the first supplier or the last customer are responsible for transport should be included in the provision.

3 Problems with chain transactions

3.1 Shared transport

One of the requirements for chain transactions defined by the CJEU is the single intra-Community dispatch or transport of the goods supplied.¹²⁶ In case the transport responsibility is shared and two parties are responsible for the transport it needs to be verified if the requirements for chain transactions are still fulfilled.

3.1.1 German interpretation

According to settled case law of the CJEU, a chain transaction is defined as two successive supplies of the same goods that give rise to a single intra-Community dispatch / transport.¹²⁷ Based on a literal interpretation of this definition, transaction chains where more than one party is responsible for transport should also qualify as chain transactions, as there is no obvious reason why the shared transport responsibility cannot give rise to single intra-Community transport of the goods supplied. However, in German VAT law, those transactions are explicitly excluded from the VAT treatment for chain transactions.

The German Ministry of Finance (BMF) has issued a letter¹²⁸ which clarifies that the requirements for chain transactions are not fulfilled in case more than one party is transporting the goods (“broken transport”). The definition of chain transactions is laid down in German VAT law in Art. 3 (5) UStG (German VAT law), which are defined as follows:

More than one business enters into turnover transactions for the same goods and those goods are transported directly from the first supplier to the last customer.¹²⁹

According to the BMF, the requirements for chain transactions are not fulfilled, as the goods are not directly transported from the first supplier to the last customer. This interpretation is unknown in other EU countries.¹³⁰

¹²⁶ Case C-245/04 - EMAG Handel Eder EU:C:2006:232 para. 32.

¹²⁷ Case C-245/04 - EMAG Handel Eder EU:C:2006:232, para. 32.

¹²⁸ BMF v. 07.12.2015 - III C 2 - S 7116-a/13/10001 III C 3 - S 7134/13/10001 BStBl 2015 I S. 1014.

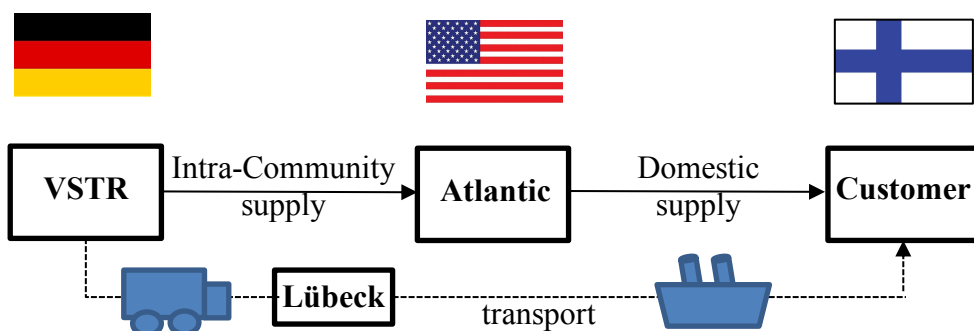
¹²⁹ Art. 3 (5) UStG.

¹³⁰ Stellungnahme der Bundessteuerberaterkammer zu den Vorstellungen des BMF über einen möglichen Vorschlag an den Gesetzgeber zur Bestimmung der bewegten Lieferung in einem Reihengeschäft dated 29.01.2016 available online at:

According to German law, the subsequent supplies have to be regarded separately for VAT purposes.

3.1.2 VSTR

The German interpretation of chain transaction is likely to contradict with the CJEU case *VSTR*.¹³¹ A German branch of VSTR has sold stone crushing machines to Atlantic, which is established in the US.¹³² The goods were resold by Atlantic to a Finnish company.¹³³ The goods were picked up at the premises of the branch of VSTR and transported to Lübeck by land and further transported by sea to Finland. The transport company was instructed by Atlantic.¹³⁴ Regarding the transport by sea, the branch of VSTR is named as “shipper” and the Finnish company as “consignee”.¹³⁵



The main issue in the case at hand was that Atlantic did not provide the branch of VSTR with its own VAT ID, but instead with the VAT ID of the Finish customer.¹³⁶ The question referred was therefore if the transactions between the branch of VSTR and Atlantic only qualifies as zero-rated intra-Community supply where Atlantic provides its own VAT ID.¹³⁷

The CJEU started its analysis with reference to *R*¹³⁸. A transaction qualifies as intra-Community supply in case of a supply of goods where the goods are transported or dispatched from one Member State to another by the supplier or the acquirer. The person acquiring the goods has to be a taxable person or a non-taxable legal person acting as such.¹³⁹ The only requirements for intra-Community supplies are therefore the capacity of the taxable person, the transfer of the right to dispose of the goods as owner and the physical movement of the goods from the territory of one Member State to another.¹⁴⁰

https://www.bstbk.de/de/presse/stellungnahmen/archiv/20160129_stellungnahme_bstbk/index.html

¹³¹ Case C-587/10 – VSTR EU:C:2012:592.

¹³² Ibid. para. 14.

¹³³ Ibid. para. 15.

¹³⁴ Ibid. para. 16.

¹³⁵ FG Sachsen, Urteil vom 12.03.2014 – 2 K 1127/13.

¹³⁶ Case C-587/10 – VSTR EU:C:2012:592 para. 15.

¹³⁷ Ibid. para. 26.

¹³⁸ Case C-285/09 - R. EU:C:2010:742.

¹³⁹ Ibid. para. 40.

¹⁴⁰ Ibid. para. 30.

For the Court it was clear, that the requirements for chain transactions are fulfilled based on the facts provided.¹⁴¹ It is however not clear to what extent the CJEU was informed about the transport arrangements between the parties. It is likely that the Court has noticed, that the possibility for shared transport responsibility might exist. But even in case the Court was not aware of the fact that more than one party was responsible for transport of the goods, it is highly doubtful that it would have concluded that the requirements for chain transactions cannot be fulfilled.

3.1.3 Final analysis

As outlined above, chain transactions have to give rise to a single intra-Community movement of goods. In case the means of transport are exchanged, a single intra-Community dispatch is still given. It is therefore questionable if shared responsibility leads to the fact, that the requirement of single intra-Community movement is not fulfilled, as in those cases, the goods can still be directly transported from the first supplier to the last customer.

Further, in terms of the definition of intra-Community supplies, Art. 138 of the VAT Directive states “*dispatched or transported ... by or on behalf of the vendor or the person acquiring the goods*”. Based on a literal interpretation, the conditions for an intra-Community supply stated Art. 138 would only be fulfilled in case the goods are transported on behalf of the supplier **or** the acquirer. Such an interpretation would however contradict with the purpose of this provision which shall ensure the taxation rights of the Member State where the final consumption takes place.¹⁴²

The requirements for intra-Community supplies can be fulfilled in case both parties split the transport responsibility according to the German tax authorities. The customer has to be known at the time the transport begins. Contrary, in case of chain transactions, the requirements can never be fulfilled where transport responsibility is shared from a German view.¹⁴³

As outlined above, the literal interpretation of Art. 138 would not include transactions with shared transport. In case of chain transactions, the literal interpretation can however include transactions with shared transport responsibility.

According to the AG Opinion in *Lipjes*¹⁴⁴, Member States are independent to define which transactions are taxable, but tax raising powers have to be coordinated in intra-Community trade.¹⁴⁵ Due to the fact that other Member

¹⁴¹ Ibid. para. 31.

¹⁴² Case C-409/04 - Teleos and Others EU:C:2007:548 para. 36.

¹⁴³ BMF v. 07.12.2015 - III C 2 - S 7116-a/13/10001 III C 3 - S 7134/13/10001 BStBl 2015 I S. 1014.

¹⁴⁴ AG Opinion case C-68/03 – Lipjes EU:C:2004:19.

¹⁴⁵ Ibid. para. 35.

States have a different interpretation where more parties are involved in the transport, there is a risk of double (non) taxation. This contradicts with the principle with the neutrality of the VAT system which is a fundamental principle of the common system of VAT.¹⁴⁶

Due to the fact, that the CJEU has applied the principles of chain transactions in *VSTR* and the concept of “broken transport” is rather unknown in other Member States, it is very likely that the German interpretation is not in line with EU law.

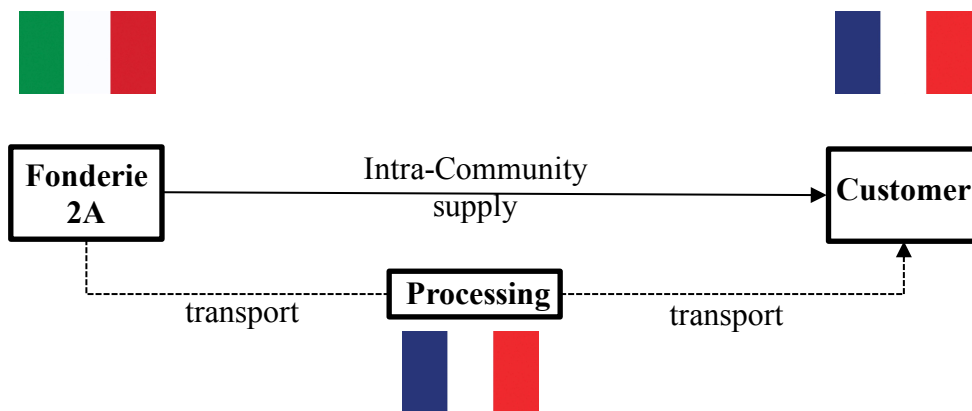
3.2 Processing

In a situation where goods are successively supplied, but one of the entrepreneurs in the chain arranges for processing of those goods, the question arises if the requirements for chain transactions are still fulfilled. According to the definition of the CJEU two successive supplies of the **same** goods have to give rise to a single intra-Community dispatch / transport.¹⁴⁷

3.2.1 Fonderie 2A

In respect to processing of goods in the context of intra-Community supplies, in *Fonderie 2A*¹⁴⁸ (Fonderie) the CJEU has answered the question how the place of supply should be determined.

Fonderie, a company established in Italy sold metal parts to an office of Atral which was registered in France.¹⁴⁹ Before the parts were transported to the premises of Atral, the metal parts were dispatched to a company also established in France in order to carry out painting work. The work was carried out on behalf of Fonderie. After finishing the painting, the goods were directly transported to Atral.¹⁵⁰ The price paid by Atral to Fonderie included the value of the goods and the finishing work.¹⁵¹



¹⁴⁶ C-454/98 - Schmeink & Cofreth und Strobel EU:C:2000:469 para. 59.

¹⁴⁷ Case C-245/04 - EMAG Handel Eder EU:C:2006:232, para. 32.

¹⁴⁸ Case C-446/13 - Fonderie 2A EU:C:2014:2252.

¹⁴⁹ Ibid. para. 14.

¹⁵⁰ Ibid. para. 15.

¹⁵¹ Ibid. para. 16.

Fonderie treated the supply to Atral as zero-rated intra-Community supply.¹⁵² They wanted to deduct the input VAT invoiced by the company carrying out the finishing work.¹⁵³ The French tax authorities qualified the supply between Fonderie and Atral as domestic supply in France. Therefore, the CJEU had to answer the question if a supply of goods can still be qualified as intra-Community supply provided that the goods were processed on behalf of the supplier in the country where the customer is located.¹⁵⁴

According to the VAT Directive the place of supply for goods that are transported is the place where the goods are located at the time the transport to the customer begins.¹⁵⁵ According to the CJEU, the place of supply of the goods at hand cannot be Italy, as the goods were located in France at the time the transport began, in case the provision is interpreted literally. The goods subject to contract between Fonderie and Atral were the finished goods and not the ones sent by Fonderie to the company in France to carry out finishing work.¹⁵⁶

Further, the qualification of a transaction as intra-Community supply requires a sufficient temporal and material link between the supply and the dispatch / transport of the goods.¹⁵⁷ In the case at hand, the link is missing, as the goods were sent to France for finishing work before they were finally supplied to Atral. Therefore, the requirements for an intra-Community supply are not fulfilled and the transaction has to be qualified as domestic supply in France.¹⁵⁸

The transaction at hand does not constitute a chain transaction, as the right to dispose of the goods as owner was not transferred to the company carrying out the finishing work.

Fonderie, could have an influence on the VAT treatment of chain transactions where the transport is allocated to the first supply in the chain, which therefore can generally qualify as intra-Community supply. In such cases, it needs to be verified where the place of supply for the first supply is located and if the requirements for an intra-Community supply are still fulfilled.

In case the processing is performed on behalf of the first supplier and the transport would generally be ascribed to the first supply, the place of supply for that transaction is located at the place where the goods are processed, based on *Fonderie*. The goods subject to the contract are located there at the time the transport begins. If the requirements for chain transactions from an EU perspective are still fulfilled, would depend on the location of the

¹⁵² Ibid. para. 20.

¹⁵³ Ibid. para. 17.

¹⁵⁴ Ibid. para. 21.

¹⁵⁵ Art. 32 of the VAT Directive.

¹⁵⁶ Case C-446/13 - *Fonderie 2A* EU:C:2014:2252 para. 27.

¹⁵⁷ Ibid. para. 29.

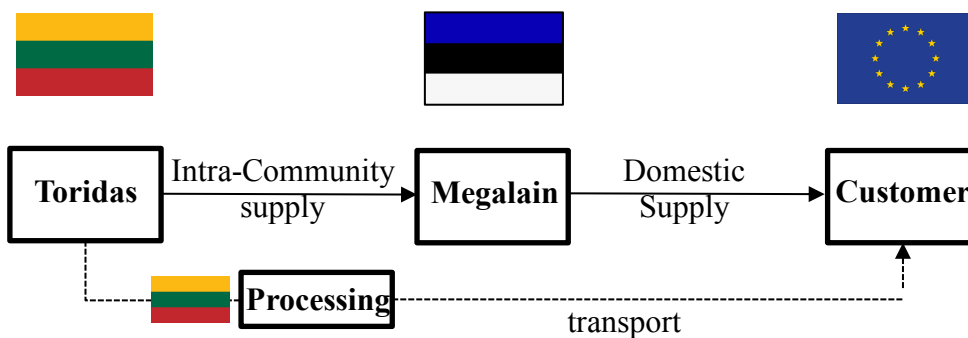
¹⁵⁸ Ibid. para. 30.

processing company. In case it is located in the same Member State as the last customer, no cross-border transport of goods would take place.

3.2.2 Toridas

In *Toridas*¹⁵⁹ the CJEU was asked if the allocation of the transport to one of the supplies in a supply chain is affected by the fact, that a part of those goods was processed on behalf of the intermediary.¹⁶⁰

As described in Chapter 2.4.1.3, the Lithuanian company Toridas sold frozen fish to Megalain (Estonia). The goods at hand were resold by Megalain within 30 days,¹⁶¹ to customers established within the EU.¹⁶² The goods were partly dispatched after resale and partly graded, glazed and packaged on behalf of Megalain before they were transported to the final customers.¹⁶³



Regarding the processing, the referring court was of the opinion that in the event of zero-rated intra-Community supplies, the same unprocessed goods have to be supplied.¹⁶⁴ The CJEU answered that processing of the goods is not a substantial requirement laid down in the VAT Directive.¹⁶⁵ Due to the fact, that in the case at hand the transport and therefore the zero-rated intra-Community supply is allocated to the second supply and not to the first supply, the processing of the goods after the first supply took place, cannot alter that VAT treatment.¹⁶⁶

The CJEU has however not further commented if the transactions at hand still constitute a chain transaction in respect to the processed goods and if the processing therefore has influence on the applicability of the rules for chain transactions. In the case at hand, the VAT treatment would not differ whether or not the transactions can be qualified as chain transactions.

¹⁵⁹ Case C-386/16 – *Toridas* EU:C:2017:599.

¹⁶⁰ *Ibid.* para. 24.

¹⁶¹ *Ibid.* para. 12.

¹⁶² *Ibid.* para. 13.

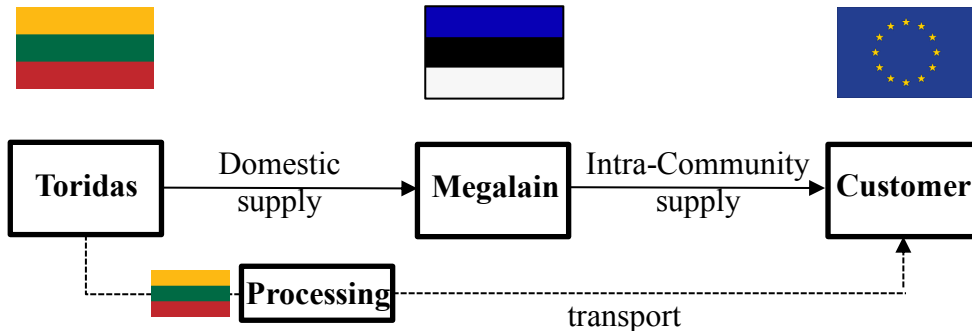
¹⁶³ *Ibid.* para. 14.

¹⁶⁴ *Ibid.* para. 46.

¹⁶⁵ *Ibid.* para. 47.

¹⁶⁶ *Ibid.* para. 48.

Provided that the requirements for chain transactions are fulfilled, the transport is allocated to the second supply. The supply from Toridas to Megalain is therefore taxable in Lithuania.¹⁶⁷ The zero-rated intra-Community supply is allocated to the second supply from Megalain to the customers in the other EU countries.¹⁶⁸



In case, the requirements for chain transactions would not be fulfilled, the VAT treatment would have to be determined individually for each transaction in the chain, the result would however be the same. The transport of the goods would not have to be allocated to one of the transactions. Therefore, the place of supply for both transactions would have to be determined in accordance with Art. 32 of the VAT Directive.

The supply from Toridas to Megalain would still constitute a domestic supply in Lithuania. The requirements for an intra-Community supply are not fulfilled, due to the fact that the goods are transported to a business located in Lithuania which performs the processing.¹⁶⁹ Therefore, the goods do not leave the territory of Lithuania.¹⁷⁰

The second supply would still fulfill the requirements of an intra-Community supply, as the goods after processing are transported out of Lithuania to other Member States.¹⁷¹

3.2.3 Final analysis

Due to the fact, that the VAT treatment of the transactions in *Toridas* does not alter whether or not the requirements for chain transactions are fulfilled, the question remains which influence the processing of goods has. Provided that the transport of the goods would have been allocated to the first transaction in the chain, the VAT treatment would change in case the requirements for chain transactions are not fulfilled. The following example based on the facts from *Toridas* shall illustrate this. Contrary to the facts of the real case, the transport shall however be allocated to the first supply:

Requirements for chain transactions are fulfilled

¹⁶⁷ Art. 31 of the VAT Directive.

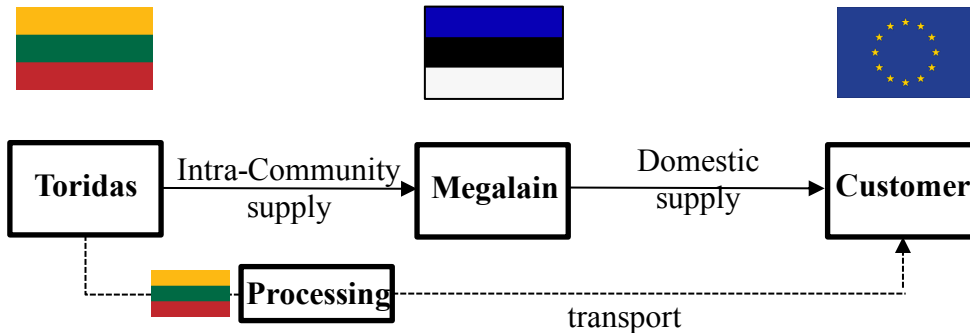
¹⁶⁸ Art. 32 of the VAT Directive.

¹⁶⁹ Case C-386/16 – *Toridas* EU:C:2017:599 para. 14.

¹⁷⁰ Art. 138 of the VAT Directive.

¹⁷¹ *Ibid.*

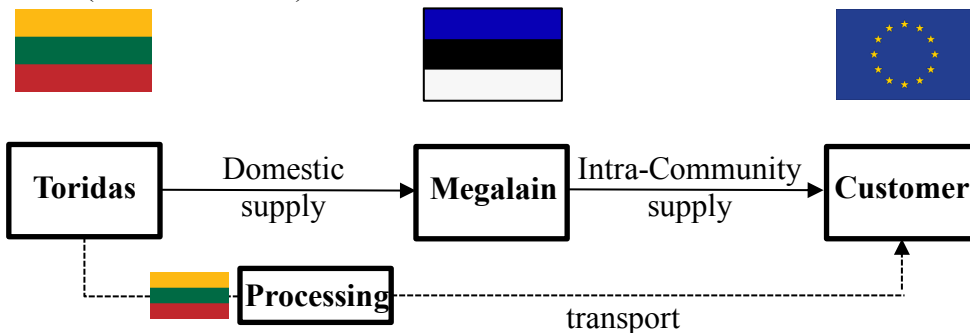
The first supply would be an intra-Community supply for which the place of supply would be located in Lithuania, where the transport of the goods begins. The place of supply for the corresponding intra-Community acquisition would be located in the Member State where the transport of the goods ends (acc. to Art. 40 of the VAT Directive).



Due to the fact that the transport is allocated to the first supply, the place of supply for the second transaction is determined in accordance with Art. 31 of the VAT Directive. As it follows the first supply, the place of supply is located in the Member State where the goods are located at the time the supply takes place (which is the place where the transport of the goods allocated to the first supply ends). The second supply would therefore constitute a domestic supply in the respective Member State.

Requirements for chain transactions are not fulfilled

The VAT treatment of the two transactions has to be determined individually. The first supply is a domestic supply in Lithuania, as the goods are transported to a processing company located in Lithuania (Art. 32). The second supply is an intra-Community supply of goods to the customer in the other Member State (Art. 32 and 138).



In case the goods are processed in a chain of transactions, an overall assessment of the individual facts should be performed in order to analyze if the requirements for chain transactions are still fulfilled. Criteria for the analysis could be which party is responsible for processing. Based on *Fonderie*, one could argue that the requirements for chain transactions are not fulfilled in case the processing is performed on behalf of the first supplier where it is performed in the same Member State where the final customer is located. In case the processing is performed on behalf of the intermediary before the intra-Community transport takes place, the requirements for chain

transactions could be fulfilled. The Court has however not explicitly clarified if this is the case, as it was not necessary in *Toridas*.

It should further be analyzed in which Member State the processing of the goods is performed, as it could either be done in the Member State where the first or the last supplier is located or even in another Member State. In case it is concluded that the processed goods are subject to the contract between the parties, the transport of those goods begins at the premises of the processing company. Provided, that the processing company is located in the same Member State as the last customer, no cross-border transport of goods is performed in the chain transaction.

The time at which the processing takes place - before or after the cross-border transport and which goods are subject to the contract should be reviewed carefully. Without further clarification, there is a risk of different VAT treatment in the Member States which leads to a risk for double (non) taxation.

The impact on the VAT treatment is even bigger in a situation where the other requirements for triangulation are fulfilled. In case processing causes non-applicability of the triangulation rules, the simplification is not applicable for the second supplier which can lead to registration obligation in the Member State where the transport of the goods ends. This obligation would be associated with compliance costs to fulfill the foreign obligations.

3.3 Temporary storage

Similar to the question raised in the Chapter regarding shared transport, it should be checked the conditions for chain transactions are fulfilled in case the goods are temporarily stored. Temporary storage as discussed in this thesis means short term storage of goods (several days up to few weeks), e.g. due to transport interruption or transshipment.

3.3.1 X

In *X*¹⁷², the CJEU decided in respect to intra-Community supplies, that the transport of the goods does not have to take place within a certain period of time.¹⁷³

X is a private individual with residency in Sweden. He intended to buy a newly manufactured sailing boat for private use in the UK. He did not want to sail the boat directly to Sweden, but wanted to use it for three to five months for recreational purposes.¹⁷⁴ X applied to the Swedish tax authorities for a preliminary decision in order to clarify the tax consequences.¹⁷⁵

¹⁷² Case C-84/09 – X EU:C:2010:693.

¹⁷³ Ibid. para. 51.

¹⁷⁴ Ibid. para. 16.

¹⁷⁵ Ibid. para. 17.

The Swedish court *inter alia* referred the question if the transport of goods has to be commenced or completed within a certain period of time in order to qualify as intra-Community supply.¹⁷⁶

A transaction qualifies as intra-Community supply in case the right to dispose of the goods as owner is transferred. Further, the goods have to be transported to another Member State and must therefore physically have left the territory of the Member State where the transport began.¹⁷⁷

As the intra-Community acquisition is the corollary of the intra-Community supply, those provisions have to be interpreted as to confer identical meaning and scope.¹⁷⁸ Neither Art. 20 nor Art. 138 of the VAT Directive require that the transport has to be performed within any specific time period.¹⁷⁹ Such a time period would contradict with the objectives of the transitional VAT arrangements applicable to intra-Community trade,¹⁸⁰ as it would provide the person acquiring the goods with the possibility to choose in which Member State the transaction has to be taxed.¹⁸¹

Therefore, the qualification of a transaction as intra-Community supply is not dependent on a specific time period during which the transport was to be performed. However, there has to be a temporal and material link between the supply and the transport of the goods and a continuity in the course of the transaction.¹⁸²

The CJEU does not further specify in *X* how the temporal and material link should be determined. In *Fonderie*¹⁸³ the CJEU decided that such a link is missing, in case the goods are dispatched for the purpose of processing, before they are supplied to the person acquiring them.¹⁸⁴

3.3.2 Comparison to call-off stock arrangements

Call-off stock is a situation where goods are transported to another Member State and the supplier knows the identity of the person acquiring the goods, but does not immediately transfer the ownership. The ownership is transferred at a later stage, after the acquirer has taken the goods from a stock of the supplier at his own discretion.¹⁸⁵

Due to the fact that the ownership is transferred at a later stage, the supplier currently has to account for a deemed intra-Community supply at the time the

¹⁷⁶ Ibid. para. 20.

¹⁷⁷ Ibid. para. 27.

¹⁷⁸ Ibid. para. 28.

¹⁷⁹ Ibid. para. 29.

¹⁸⁰ Ibid. para. 30.

¹⁸¹ Ibid. para. 31.

¹⁸² Ibid. para. 33.

¹⁸³ See Chapter 3.2.1.

¹⁸⁴ Case C-446/13 - *Fonderie* 2A EU:C:2014:2252 para. 30.

¹⁸⁵ Ben J. M. Terra and Julie Kajus, *Introduction to European VAT*, Chapter 10.2.1.7 Call-Off Stock.

goods are transported with a subsequent domestic supply in the Member State of destination at the time the goods are taken from the stock.¹⁸⁶

In order to avoid a registration obligation of the supplier in the Member State of destination, the newly implemented Art. 17a will apply with effect as of 1 January 2020.¹⁸⁷ According to this provision, the transactions between the supplier and the acquirer qualify as direct intra-Community supply, provided that certain requirements are fulfilled.

These conditions include a requirement that the goods are dispatched or transported to another Member State by a taxable person. Those goods should be supplied at a later stage to another taxable person. The ownership is transferred in accordance with an existing agreement.¹⁸⁸

The provision requires that the supplier is not established in the Member State of destination and does not have a fixed establishment there.¹⁸⁹ He is identified for VAT purposes in the Member State of destination. Further, the identity and VAT ID of the acquirer is known at the time the transport of the good begins.¹⁹⁰ The supplier records the transfer of the goods in a register.¹⁹¹

One could argue that a situation where the goods are temporarily stored in a chain transaction does have similarities with the situation where goods are transported to a stock in another Member State and the ownership is transferred at the time, the goods are taken from the stock.

Similar to call-off stock arrangements, a crucial requirement in case of chain transactions should also be that the identity of the person acquiring the goods is known at the time the transport begins. Otherwise, the requirements for intra-Community supplies would not be fulfilled as one of the requirements is that the acquirer is a taxable person or a non-taxable legal person acting as such.¹⁹² In case that person is unknown at the time the transport begins, the requirements can consequently not be fulfilled.

3.3.3 Final analysis

In case the goods are temporarily stored, the specific facts of the case at hand have to be analyzed carefully in order to determine if the requirement of single intra-Community dispatch is fulfilled.

The CJEU has decided in *X*, that there is no specific time period during which the intra-Community supply has to take place, as otherwise the taxable person

¹⁸⁶ 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, OJ L 311/3, Preamble 5.

¹⁸⁷ *Ibid.* Art. 1 and 2.

¹⁸⁸ *Ibid.* Art. 1 (a).

¹⁸⁹ *Ibid.* Art. 1 (b).

¹⁹⁰ *Ibid.* Art. 1 (c).

¹⁹¹ *Ibid.* Art. 1 (d).

¹⁹² Art. 138 (1) of the VAT Directive.

could choose the Member State where the transactions should be taxed. This is contrary to the objective of the transitional VAT arrangements for intra-Community trade.¹⁹³

In *VSTR*¹⁹⁴, the goods were stored for three days before they were transported by sea from Germany to Finland.¹⁹⁵ In this case the requirements for chain transactions were fulfilled. From the Courts decision in *X*, it is known, that a temporal and material link as well as a continuity in the course of the transaction has to exist in order to qualify as intra-Community supply. Such a link should exist in case the goods are stored due to logistic purposes (e.g. exchange of means of transport).

It is however crucial to know the final customer in the chain at the time the transport of the goods begins. In case the acquirer is known at the time the transport of the goods begins and there is a temporal and material link and a continuity in the course of the transaction¹⁹⁶, the requirements for chain transactions should be fulfilled.

An overall assessment of all the specific circumstances has to be performed in order to determine if the requirements for chain transactions are fulfilled in case of temporary storage of the goods.

3.4 Private person as final customer

In *EMAG*¹⁹⁷ the CJEU defined chain transactions as follows: “*Two successive supplies of the same goods, effected for consideration between taxable persons acting as such, gives rise to a single intra-Community dispatch or a single intra-Community transport of those goods*”.¹⁹⁸

Based on a literal interpretation of the definition, the requirements for chain transactions could be fulfilled where the last customer is a private person, as the definition does not include a specific number of taxable persons to be involved. Such an interpretation should also apply where it is put in the context of Art. 36a and Art. 141 of the VAT Directive.

Neither does the new Art. 36a which will enter into force as of 1 January 2020¹⁹⁹ include specific requirements in respect to the taxable persons involved.

In contrast, the requirements for triangulation are not fulfilled where the last customer is a private person. Art. 141 of the VAT Directive requires three

¹⁹³ Case C-84/09 – X EU:C:2010:693 31.

¹⁹⁴ See Chapter 3.1.2.

¹⁹⁵ Case C-587/10 – VSTR EU:C:2012:592 para. 19.

¹⁹⁶ *Ibid.* para. 33.

¹⁹⁷ Case C-245/04 - EMAG Handel Eder EU:C:2006:232.

¹⁹⁸ *Ibid.* para. 32.

¹⁹⁹ 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, OJ L 311/3, Art. 2.

taxable persons to be involved in the transactions. The purpose of this provision is to provide a simplified VAT treatment for the intermediary which is achieved by the applicability of the reverse charge mechanism to the last (domestic) supply. Therefore, the simplification cannot not applicable where the final customer is a private person.

One could argue that the definition of chain transactions established by the CJEU through its case law does not include transactions where the last customer is a private person as the wording “*between taxable persons acting as such*” includes the last customer. Nonetheless, the new Art. 36a does not include specific requirements in respect to the taxable person involved in a chain transaction, whereas Art. 141 for triangulation does. Therefore, it could be implicitly suggested that the requirements for chain transactions are fulfilled in case the last customer is a private person. This has however not been subject to the case law of the CJEU. The following analysis shall determine the difficulties with the VAT treatment of chain transactions in case the last customer is a private person.

In case the transport is ascribed to the first supply in the chain, no problem arises as the last transaction to the private person is a domestic supply in the Member State where the transport of the goods ends.²⁰⁰

A closer look at the VAT treatment has to be taken where the transport is ascribed to the second supply in the chain. Just like B2B transactions, the place of supply in B2C transactions with transport determined in accordance with Art. 32 of the VAT Directive. The place of supply is deemed to be where the goods are located at the time when dispatch or transport begins.

However, there is a derogation from the main rule in case goods are transported or dispatched to a non-taxable person²⁰¹ in another Member State. The derogation for distance sales is laid down in Art. 33 of the VAT Directive. It is applicable in case of supplies of goods where the supplier is responsible for transport. New means of transport or goods supplied after assembly or installation are excluded from the distance sale rules.²⁰² The rules neither apply where certain second-hand goods are dispatched.²⁰³

In case the requirements for distance sales are fulfilled, the place of supply is located where the dispatch or transport of the goods to the customer ends. The purpose of this provision is to avoid distortion of competition. Without this provision, consumers would have the possibility to choose the lowest VAT

²⁰⁰ Art. 31 of the VAT Directive.

²⁰¹ Taxable persons or non-taxable legal persons whose intra-Community acquisitions are not subject to VAT are also covered by this provision (Art. 33 (1a)).

²⁰² Art. 33 (1b) of the VAT Directive.

²⁰³ Art. 35 of the VAT Directive.

rate, as according to Art. 32 of the VAT Directive the supply of goods would be taxable in the Member State where the transport begins.²⁰⁴

However, the rules for distance sales do not apply where the goods supplied exclusive of VAT to one Member State in one calendar year do not exceed a certain threshold.²⁰⁵ In case the threshold is not exceeded, the general rule applies and the place of supply is located where the transport of the goods begins (in accordance with Art. 32 of the VAT Directive).

With effect as of 1 January 2021 the rules for distance sales of goods will be amended.²⁰⁶ Art. 34 of the VAT Directive which currently defines the threshold for distance sales will be removed. However, the new Art. 59c defines a new threshold of EUR 10,000 for distance sales and cross-border electronically supplied services. In case the total value of those supplies is below the threshold the derogations defined in Art. 33 for distance sales and Art. 58 electronically supplied services do not apply and the main rules for the determination of the place of supply are applicable. In case of supplies of goods, the place of supply is determined in accordance with Art. 32 of the VAT Directive.

The new provision 14a will be added in the VAT Directive which creates deemed chain transactions in case of distance sales of imported goods (intrinsic value below EUR 150) from third countries via electronic interfaces such as platforms. The taxable person operating the electronic interface shall be deemed to have received and supplied the goods, which means that it will be included in the supply chain.²⁰⁷ The requirements for chain transactions are fulfilled, as the goods are successively supplied by several businesses and are transported directly from the first supplier to the last customer. Due to the fact that electronic interfaces are widely spread within the EU, the new provision will increase the amount of chain transactions where the last customer is a private person.

In case the rules for distance sales apply, the place of supply for the second transaction is located where the dispatch or transport to the customer ends.²⁰⁸ Otherwise, the place of supply for the second transaction is located where the dispatch or transport begins.²⁰⁹ The following example shall illustrate the

²⁰⁴ Ben J. M. Terra and Julie Kajus - Introduction to European VAT, Chapter 11.2.2.2 Distance sales.

²⁰⁵ Art. 34 (1b) of the VAT Directive.

²⁰⁶ Art. 2 of the Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348/7, further referenced as Distance Sales Directive.

²⁰⁷ Art. 2 (2) of the Distance Sales Directive.

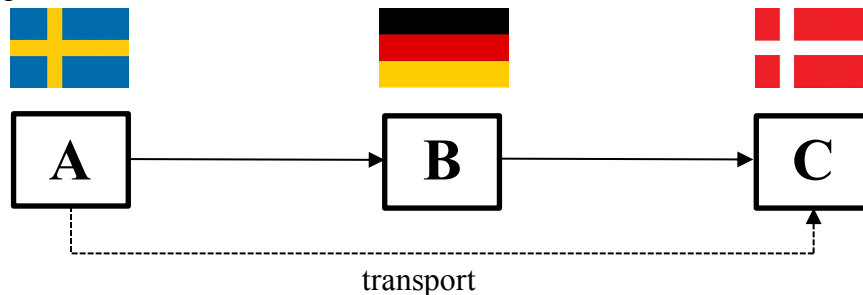
²⁰⁸ Art. 33 1 of the VAT Directive.

²⁰⁹ Art. 32 of the VAT Directive.

difference in the VAT treatment dependent on the application of distance sales rule in a chain transaction:

Case Study 1

Private person C located in Denmark orders from retailer B established in Germany. The retailer orders those clothes from a wholesaler A, established in Sweden. The goods are directly sent on behalf of B from Sweden to Denmark. The transport shall be ascribed to the supply between B and C, as the second supply of goods shall take place before the intra-Community transport.²¹⁰



Requirements for Distance sales are fulfilled

The first supply between A and B is taxable in Sweden.²¹¹ As the transport is ascribed to the other supply in the chain, the first supply constitutes a domestic supply in Sweden, because the requirements for intra-Community supplies are not fulfilled.²¹²

The second supply between B and C is taxable in Denmark as the transport of the goods ends there.²¹³ It is therefore a domestic supply in Denmark.²¹⁴

In case the total value of supplies by B to Denmark does not exceed the threshold, the distance sales rules do not apply.²¹⁵ In this case, the place of supply would be Sweden, where the transport of the goods begins.²¹⁶

Requirements for Distance sales are not fulfilled

The VAT treatment for the first supply between A and B is the same. In respect to the second supply, the VAT treatment equals the VAT treatment where the threshold is not exceeded. The place of supply for the transaction between B and C where the transport of the goods begins, in this case Sweden.²¹⁷

Due to the fact, that lower thresholds for distance sales apply as of 1 January 2021 and the new Art. 14a leads to deemed chain transactions in case of

²¹⁰ Case C-386/16 – Toridas EU:C:2017:599 para. 36.

²¹¹ Art. 31 of the VAT Directive.

²¹² Case C-386/16 – Toridas EU:C:2017:599 para. 34.

²¹³ Art. 33 of the VAT Directive.

²¹⁴ Provided that the threshold is exceeded.

²¹⁵ Art. 34 1b of the VAT Directive. No longer applicable as of 1 January 2021.

²¹⁶ Art. 32 of the VAT Directive.

²¹⁷ Ibid.

distance sales of imported goods, the rules for distance sales are triggered faster. The VAT treatment of the last supply in a chain transaction differs whether or not the distance sales rules apply. Therefore, it is decisive to determine if those are applicable in a chain transaction or not.

The VAT treatment of chain transactions should also apply where the last customer is a private person, as the definition established by the CJEU in its case law cover such transactions if it is interpreted literally and in the context of other provisions.

In case the transport is allocated to the first supply in the chain, the rules for distance sales are not applicable as Art. 33 requires the dispatch or transport of the goods. In case the transport is allocated to the first supply in the chain, the place of supply for the second transaction is determined in accordance with Art. 31 of the VAT Directive.

A possible disparity therefore only arises where the transport is allocated to the second supply in the chain. Art. 33 of the VAT Directive requires a transport of goods *by or on behalf of the supplier*. In case of chain transactions, there are however at least two suppliers. In most cases, the intermediary will be responsible for transport, as an allocation of the transport to the second supply where the first supplier is responsible for transport is theoretically possible, but rather exceptional.

The “Quick fixes” which will enter into force as of 1 January 2020 generally allocate the transport to the first supply in the chain where the intermediary is responsible for transport. This change in VAT treatment reduces the amount of disputable cases. For the remaining cases, there is legal uncertainty due to a lack of rules if distance sales rules are applicable in case of chain transactions which could lead to double (non) taxation due to different interpretation of Member States.

4 Conclusion

Due to the fact that the CJEU has implemented the concept of chain transactions through its case law, some questions that have not been decided by the CJEU are unanswered. This leads to legal uncertainty for the parties involved and a possible double (non) taxation or multiple registration obligations due to a non-uniform VAT treatment of different Member States. Especially in situations where the second supplier is responsible for transport the question arises to which supply in the chain the transport should be ascribed to.

The implementation of the new provision within the adoption of the “Quick fixes” reduces uncertainty regarding the allocation of the transport to one of the transactions in the chain where the intermediary is responsible for transport. The provision is however not applicable in case the first supplier or the last customer arrange for transport. Therefore, the main aim of avoiding

different approaches within the European Union cannot fully be achieved. The provision neither clarifies when the requirements for chain transactions are fulfilled, as it is only applicable where those are fulfilled.

There are different situations where it needs to be reviewed carefully if the requirements for chain transactions, especially with regard to the *single intra-Community dispatch* of the goods are fulfilled. The situations analyzed in this thesis were shared transport responsibility, processing, temporary storage and the private person as final customer. In case the requirements for chain transactions are not fulfilled, each transaction has to be regarded separately for VAT purposes.

The concept that shared transport responsibility leads to a non-applicability of the rules for chain transactions is rather unknown in the European Union. The German tax authorities take the view that the requirement of single intra-Community dispatch is not fulfilled in case more than one party is responsible for transport. This interpretation is likely to contradict with the Courts decision in *VSTR*.

The situation where goods are processed at some point in a chain transaction, could have influence on the applicability of the rules established by the CJEU. The Court has not explicitly decided in *Toridas*, if the processing of goods has an influence on the applicability of the rules for chain transactions, as it was not necessary in the case.

The requirements for chain transactions should be fulfilled, where goods are temporarily stored, provided that there is a temporal and material link and a continuity in the course of the transaction.

In case the last customer in a chain transaction is a private person, difficulties might arise where the transport is allocated to the second supply. In such cases the rules for distance sales should be applicable.

Although, chain transactions are widely spread in practice, there are situations where it is not clear to what extent the rules are applicable. This leads to legal uncertainty and might cause a different approach in the Member States. The newly implemented provision of the “quick fixes” clarifies to some extent difficulties in respect to the allocation of the transport, can however not fully achieve the goal of harmonization of the rules for chain transactions in the European Union, as transactions where the first supplier or the last customer are responsible for transport are out of scope of this provision. In those situations, the VAT treatment still has to be determined on the basis of the case law of the Court.

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