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AI agents as Intermediaries

The EU VAT Classification of Agentic Commerce

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Table of Contents

Abstract

This thesis examines the EU VAT classification of agentic commerce in relation to goods, with particular focus on the conditions under which deemed supplier treatment may arise. Agentic commerce refers to the use of AI agents to search for, select, and in some configurations complete purchases of goods on behalf of a user through an AI interface. The thesis asks who qualifies as a taxable person, how the supply made through the interface should be characterised, and whether the deemed supplier rules in Art. 14(2)(c) or Art. 14a VAT Directive apply.

The thesis employs a legal dogmatic method, applying the VAT Directive, the Implementing Regulation, CJEU case law, and supporting sources to the fact pattern of current consumer-facing implementations.

The analysis establishes that the provider of the AI interface is the taxable person under Art. 9(1) VAT Directive. The provider's service is electronically supplied in its mode of delivery and, where commercial arrangements with vendors exist and consideration is linked to completed transactions, intermediary in function. The commissionaire fiction under Art. 14(2)(c), read conjunctively with Art. 28, does not apply because the provider does not act in its own name in relation to the underlying supply, and does not satisfy the power criterion developed by the Court in *Fenix International* and confirmed in *Xyrality*. However, under Art. 14a, the provider satisfies the positive definition of facilitation, but whether it can rely on the cumulative exclusions to escape deemed supplier status is contested, depending on whether the exclusions are read broadly or narrowly.

The thesis concludes that neither deemed supplier provision fully captures the AI agent provider's role. The provider occupies a position functionally comparable to platform intermediation, holding transactional information at least as strong as that of a platform, yet the current framework does not clearly capture it as a deemed supplier, raising the question whether the deemed supplier rules adequately reach this type of intermediary.

Sammanfattning

Denna uppsats analyserar hur agentbaserad e-handel ska klassificeras inom ramen för EU:s mervärdesskattesystem, med fokus på leveranser av varor. Agentbaserad e-handel innebär att konsumenter använder AI-agenter för att söka efter, välja ut och i vissa fall genomföra köp av varor genom ett AI-gränssnitt. Uppsatsen undersöker vem som utgör beskattningsbar person, hur leverantörens tjänst ska karaktäriseras, samt om de fiktioner enligt vilka en förmedlare anses ha tagit emot och levererat varorna själv, i artikel 14(2)(c) och artikel 14a i mervärdesskattedirektivet, kan tillämpas.

Uppsatsen tillämpar en rättsdogmatisk metod och prövar mervärdesskattedirektivet, tillämpningsförordningen, EU-domstolens praxis och doktrin mot de faktiska förhållandena i nuvarande konsumentinriktade implementeringar av agentbaserad e-handel.

Analysen fastställer att den som tillhandahåller AI-gränssnittet är den beskattningsbara personen enligt artikel 9.1 i mervärdesskattedirektivet. Tjänsten tillhandahålls på elektronisk väg och har, när kommersiella arrangemang med säljare föreligger och ersättningen är kopplad till genomförda transaktioner, karaktären av en förmedlingstjänst. Kommissionärsfiktionen i artikel 14.2 c, tolkad i förening med artikel 28, är inte tillämplig. Leverantören agerar inte i eget namn i förhållande till den underliggande leveransen, och uppfyller inte heller det maktkriterium som EU-domstolen utvecklade i *Fenix International* och bekräftade i *Xyrality*. Vad gäller artikel 14a uppfyller leverantören den positiva definitionen av att möjliggöra en leverans, men huruvida de kumulativa undantagen kan åberopas är omtvistat beroende på om undantagen tolkas extensivt eller restriktivt.

Slutsatsen är att ingen av bestämmelserna fullt ut fångar AI-agentleverantörens roll. Leverantören intar en ställning som funktionellt motsvarar plattformsförmedling och förfogar över transaktionsinformation jämförbar med den en plattform innehar. Trots detta fångas leverantören inte tydligt av det nuvarande regelverket, vilket väcker frågan om reglerna i tillräcklig utsträckning omfattar denna typ av förmedlare.

Acknowledgement

The best way to learn is to ask those who know. I have been fortunate to receive generous help along the way.

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1 Introduction

1.1 Agentic commerce

The use of AI agents to search for, select, and in some configurations complete purchases of goods on behalf of a user is referred to as “agentic commerce”.[1] Rather than navigating a vendor’s website or browsing an online platform, the customer states a purchasing objective and constraints within an AI interface, such as product attributes, price and delivery time. The agent identifies and presents purchasable options matching that intent within the same digital environment, and the customer reviews and chooses between alternatives.[2] The customer can in some configurations confirm and complete the purchase within the interface, while in others the customer is redirected to the vendor’s checkout.[3] The AI agent thereby operates as a layer between the customer and the vendor through which the purchasing process is carried out.[4]

[1] Christoph Busch, 'Consumer Law for AI Agents' (SSRN, 20 March 2025) https://doi.org/10.2139/ssrn.5187056 last accessed 20 February 2026; IBM, 'What is agentic commerce?' (IBM Think, 23 January 2026) https://www.ibm.com/think/topics/agentic-commerce accessed 20 February 2026. AI agents are built on foundation models such as large language models but operate as a distinct functional layer capable of interacting with external systems and executing tasks, see OECD, 'The Agentic AI Landscape and Its Conceptual Foundations' (OECD, 13 February 2026) https://www.oecd.org/en/publications/the-agentic-ai-landscape-and-its-conceptual-foundations_396cf758-en.html accessed 20 February 2026. For the underlying technical definition, see Tallam, 'Alignment, Agency and Autonomy in Frontier AI' (arXiv, February 2025) as cited therein.
[2] OpenAI, 'Shopping with ChatGPT Search' (OpenAI Help Center) https://help.openai.com/en/articles/11128490-shopping-with-chatgpt-search accessed 20 February 2026; Google, 'New tech and tools for retailers to succeed in an agentic shopping era' (Google Ads & Commerce Blog, January 2026) https://blog.google/products/ads-commerce/agentic-commerce-ai-tools-protocol-retailers-platforms/ accessed 20 February 2026; Universal Commerce Protocol, 'Core Concepts' (UCP Documentation) https://ucp.dev/documentation/core-concepts/ accessed 20 February 2026.
[3] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout: Buy Directly from Merchants through ChatGPT' (OpenAI Help Center) https://help.openai.com/en/articles/12440090-instant-checkout-buy-directly-from-merchants-through-chatgpt accessed 28 February 2026; Microsoft Advertising, 'Conversations that Convert: Copilot Checkout and Brand Agents' (Blog, January 2026) https://about.ads.microsoft.com/en/blog/post/january-2026/conversations-that-convert-copilot-checkout-and-brand-agents accessed 28 February 2026; Amazon, 'Shopping merchants directly using "Buy for Me"' (FAQ) https://www.amazon.com/b?node=204815148011 accessed 20 February 2026. For a full list of sources documenting current implementations, see footnotes throughout Chapters 2-5.
[4] See Yingxuan Yang and others, 'Agentic Web: Weaving the Next Web with AI Agents' (arXiv, July 2025) https://doi.org/10.48550/arXiv.2507.21206 accessed 20 February 2026, on the concept of the 'agentic web' as a paradigm in which autonomous agents plan, coordinate, and execute tasks on behalf of users across digital environments.

1.2 VAT and the Deemed Supplier framework

Value added tax ('VAT') is a transaction tax on consumption. It is collected indirectly: businesses charge VAT on their supplies, remit it to the tax authority, and deduct the VAT incurred on their own inputs. The burden is designed to fall on the final consumer, while businesses operate as collection intermediaries for the state.[5]

The EU VAT model relies on the supplier being identifiable and monitored by tax authorities in the jurisdiction where consumption occurs. A substantial share of online commerce for goods is carried out through digital platforms that connect vendors and customers within shared digital environments. These platforms organise the conditions under which transactions take place and hold information about the supplies facilitated through them.[6]

The rapid growth of cross-border e-commerce through these platforms over the past decades created VAT collection difficulties. Non-resident vendors selling to EU consumers were frequently difficult for tax authorities to supervise, and compliance was uneven.[7] The problem was compounded by the systematic abuse of the low-value consignment exemption and the practice of non-EU suppliers storing goods in EU fulfilment houses and making local supplies without adequate VAT collection.[8] The legislature recognised that platforms, through their role in organising and processing transactions, were already in possession of information about whether a supply was concluded, between whom, and under which terms. That informational position made them the natural candidates for assuming the collection obligation that the vendor model could no longer effectively enforce on dispersed non-resident suppliers.[9]

[5] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L347/1, art 1(2); Ad van Doesum and others, *Fundamentals of EU VAT Law* (3rd edn, Kluwer Law International 2025) 8, 61; Nevia Cicin-Sain, *The Involvement of Intermediaries in the Collection of European VAT* (IBFD 2025) 25, 26, 34.

[6] Cicin-Sain (n 5) 168ff, 264, 265; Juan Manuel Vázquez, *Tax Reporting by Digital Platforms under DAC7: A Proportionality Assessment* (Kluwer Law International 2025) 37-38, 43-44 (platforms connect separate user groups, structure interactions, and organise the transactional environment); Economisti Associati and others, *VAT in the Digital Age: Final Report, Volume 2: The VAT Treatment of the Platform Economy* (European Commission 2022) 18ff.

[7] Cicin-Sain (n 5) 269-270; 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 [2017] OJ L348/7, recital 6.

[8] Cicin-Sain (n 5) 270 (citing European Commission, Impact Assessment of the VAT e-commerce package); European Court of Auditors, *E-Commerce: Many of the Challenges of Collecting VAT and Customs Duties Remain to Be Resolved* (Special Report No 12, 2019) 29.

[9] Cicin-Sain (n 5) 610, (the platform's knowledge of whether a transaction was concluded, between whom, and under which terms is the essential prerequisite for justifying the shift from the vendor collection model); Marie Lamensch and others, 'New EU VAT-Related

The legislative response took the form of a deemed supplier fiction: the intermediary is deemed to have received and supplied the goods or services itself, creating a fictitious supply chain in which the intermediary, rather than the underlying supplier, is responsible for collecting and remitting VAT on the supply to the customer.[10] That fiction carries significant administrative obligations, including the requirement to determine on a transaction basis whether the rules apply, to collect and remit VAT, and to register in the relevant jurisdictions or use the One-Stop Shop schemes.[11]

The deemed supplier fiction is implemented through several provisions in EU VAT law. Art. 14(2)(c) VAT Directive for goods and Art. 28 for services express the general commissionaire fiction: where a taxable person acts in its own name but on behalf of another and takes part in a supply, it is deemed to have received and supplied those goods or services itself. [12]

Art. 14a VAT Directive introduces a separate platform-specific fiction for certain supplies of goods facilitated through an electronic interface.[13] The two provisions share the same legal consequence but constitute independent legal constructions with different conditions and different scope.[14] Art. 14a applies to distance sales of goods imported from third territories in consignments not exceeding EUR 150 and to supplies of goods within the Community by non-EU established vendors to non-taxable persons.[15]

Both Art. 28 and Art. 14a require the intermediary to be a taxable person. Art. 14(2)(c) does not state this textually, but through the conjunctive read-

Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment' (2021) *World Tax Journal* 441, 453.

[10] Cicin-Sain (n 5) 291; Ad van Doesum and others (n 5) 143ff, 165. The underlying supplier's supply to the intermediary is either exempt or outside scope, and the intermediary accounts for VAT on the onward supply to the customer.

[11] Marie Lamensch and others, 'Qualitative Assessment of Two Recent EU Commission Proposals to Impose (More) VAT Obligations on Platforms' (2024) 16(1) *World Tax Journal* 3. The compliance consequences of deemed supplier status, including registration, reporting, and use of the One-Stop Shop schemes, fall outside the scope of this thesis. See section 1.4.

[12] Art. 14(2)(c) VAT Directive; Art. 28 VAT Directive. The CJEU interprets these provisions conjunctively: *European Commission v Grand Duchy of Luxembourg* (C-274/15) ECLI:EU:C:2017:333, para 88.

[13] Art 14a VAT Directive, introduced by 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 [2017] OJ L348/7. The term 'electronic interface' covers a website, portal, gateway, marketplace, application program interface, or similar means: European Commission, *Explanatory Notes on VAT E-Commerce Rules* (2020) 9.

[14] Van Doesum and others (n 5) 165. Kevin van Abswoude and others, 'The Hierarchy Between Intermediaries in EU VAT' (2025) 34(4) *EC Tax Review* 139.

[15] Art 14a(1) and (2) VAT Directive. The EUR 150 threshold corresponds to the customs duty exemption for low-value consignments. On the removal of the customs duty threshold, see Council Regulation (EU) 2026/382 of 11 February 2026 amending Regulation (EC) No 1186/2009 as regards the elimination of the threshold-based customs duty relief [2026] OJ L2026/382.

ing with Art. 28 the same requirement should apply.[16] Whether those provisions capture agentic commerce depends on the conditions each sets for the fiction to apply. With industry projections estimating that AI agents could mediate between USD 3 and 5 trillion in global consumer commerce by 2030, and agentic purchasing features being deployed across interfaces serving hundreds of millions of users, the question carries practical weight.[17]

Whether the current deemed supplier framework captures the AI agent's role in the purchasing process is the question this thesis examines.

1.3 Aim

The aim of this thesis is to examine the EU VAT classification of agentic commerce in relation to goods, with particular focus on the conditions under which deemed supplier treatment may arise. The thesis addresses three questions:

1. Who is the taxable person when goods are purchased through an AI agent?
2. What supply is made by the AI agent in connection with the purchasing process, to whom, and how should it be characterised?
3. Can the deemed supplier rules in Art. 14(2)(c) or Art. 14a apply in the context of agentic commerce, and if not, does that indicate a gap in the current VAT framework?

[16] Art 28 VAT Directive; Art 14a VAT Directive. On the conjunctive reading extending the taxable person requirement to Art 14(2)(c), see Van Doesum and others (n 5) 160.

[17] McKinsey & Company, 'The Agentic Commerce Opportunity: How AI Agents Are Ushering in a New Era for Consumers and Merchants' (McKinsey, 17 October 2025) https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-agentic-commerce-opportunity-how-ai-agents-are-ushering-in-a-new-era-for-consumers-and-merchants accessed 20 February 2026; 'Sam Altman Says ChatGPT Hit 800M Weekly Active Users' (Yahoo Tech, 6 October 2025) https://tech.yahoo.com/ai/chatgpt/articles/sam-altman-says-chatgpt-hit-173027293.html accessed 28 February 2026.

1.4 Methodology and Material

The thesis employs a legal dogmatic method. It examines the relevant rules and principles of EU VAT law and applies them to a new concept in e-commerce not previously tested against the framework.[18] The analysis is descriptive in identifying the current state of the law and applicatory in testing whether and how existing provisions reach the agentic commerce fact pattern. Where the analysis reveals that the provisions produce uncertain or contested results, the thesis identifies the interpretive choices on which the outcome depends.

The primary source is the VAT Directive, which as secondary EU law is binding on the Member States. The Implementing Regulation specifies and clarifies the Directive's provisions and must be interpreted consistently with, but cannot supplement or amend, the Directive.[19] Judgments of the Court of Justice of the European Union ('CJEU') constitute authoritative interpretation of both instruments.[20] Below these instruments, the thesis uses several categories of non-binding sources. VAT Committee working papers and guidelines reflect the collective views of Member State representatives and the Commission on the application of the VAT provisions. These are not legally binding but carry interpretive weight where they represent unanimous or near-unanimous positions.[21] The Commission's Explanatory Notes elaborate on the application of specific provisions. They are non-binding and represent the Commission's views, not enforceable law. Where the Explanatory Notes adopt a broader reading than the provision text supports, the thesis notes the divergence and presents both readings.[22] Doctrinal literature provides analytical frameworks and identifies interpretive problems in the application of the provisions.

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[18] On legal dogmatic method, see Jan M Smits, 'What Is Legal Doctrine? On The Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans-W Micklitz and Edward L Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2017) 210; Terry Hutchinson, 'Doctrinal research' in Dawn Watkins (ed), *Research Methods in Law* (Routledge 2017) 13.

[19] On the relationship between the Directive and the Implementing Regulation, see Case C-695/20 *Fenix International Limited v Commissioners for Her Majesty's Revenue and Customs* ECLI:EU:C:2023:127, paras 49-51 (an implementing measure must respect the general objectives of the Directive, be necessary or appropriate for uniform implementation, and neither supplement nor amend the Directive).

[20] Cf Jörgen Hettne and Ida Otken Eriksson, *EU-rättslig metod: teori och genomslag i svensk rättstillämpning* (2nd edn, Norstedts juridik 2011) 40, 113.

[21] Van Doesum and others (n 5) 23.

[22] European Commission, *Explanatory Notes on the EU VAT Changes to the Place of Supply of Telecommunications, Broadcasting and Electronic Services That Enter into Force in 2015* (2014); European Commission, *Explanatory Notes on VAT E-Commerce Rules* (2020). The Explanatory Notes are non-binding and represent the Commission's views: see Van Doesum and others (n 5) 21; Cicin-Sain (n 5) 286-287.

The thesis interprets the relevant VAT provisions by reference to their wording, context, and purpose, taking account of legislative background where this assists in clarifying the scope of a rule within the VAT system.[23] Economic and commercial reality is used as the CJEU uses it, as a criterion for applying the provisions to the facts of the case, not as an independent interpretive principle that overrides textual meaning.[24] Fiscal neutrality, understood as both a system principle requiring proportionality and a reflection of the general principle of equal treatment requiring that similar transactions bear the same VAT burden, informs the interpretation of the provisions and the evaluation of the results the analysis produces, but it is not an independent ground for extending or restricting the scope of a provision beyond what its text and purpose support.[25]

The analysis follows the structure of the VAT determination scheme, addressing in sequence the taxable person, the nature of the supply, and the application of the deemed supplier provisions.[26] The analysis is based on current consumer-facing implementations of agentic commerce for goods, as documented in the product terms and public-facing materials of the major AI-system providers.[27]

The VAT treatment of platform intermediation has been extensively analysed in the literature, among others by Cicin-Sain, Lamensch, and Beretta.[28] The application of the deemed supplier framework to AI-mediated purchasing has however received limited attention. Beretta's treatment of AI-powered services is the closest existing contribution but does not test the specific fact pattern of agentic commerce against the deemed supplier conditions.[29] This thesis seeks to address that gap.

[23] Christian Amand, 'Has VAT Become Complex because of Its Methods of Interpretation?' (2024) 35(5) *International VAT Monitor*.
[24] Frank Nellen and Ad van Doesum, 'Economic Reality in EU VAT and the Reductionist Approach' (2025) 34(6) *EC Tax Review* 222.
[25] Van Doesum and others (n 5) 40-44 (fiscal neutrality has two aspects: system neutrality requiring proportionality, and legal neutrality as a reflection of the general principle of equal treatment; it is a fundamental principle of the VAT system but not a rule of primary law). See also Cicin-Sain (n 5) 63.
[26] Van Doesum and others (n 5) 50-57.
[27] See footnotes throughout Chapters 2-5 for specific sources documenting current implementations.
[28] Cicin-Sain (n 5); Lamensch and others (n 9 and 11); Giorgio Beretta, 'The Treatment of AI-Powered Services under European VAT' (2026) 9(3) *International Tax Studies* https://doi.org/10.59403/2aqkrx2 accessed 3 March 2026.
[29] Beretta (n 28). Beretta analyses the VAT characterisation of AI-powered services generally but does not test the specific agentic commerce fact pattern, involving an AI agent facilitating purchases of goods from identified vendors, against the conditions of Art 14(2)(c) or Art 14a.

1.5 Delimitation

The thesis examines the EU VAT treatment of agentic commerce in relation to goods. The analysis concerns non-taxable persons purchasing goods through the AI interface from taxable vendors.

Current consumer-facing implementations as described in section 1.1 provide the factual basis. Hypothetical future configurations, including fully autonomous purchasing models operating without customer confirmation, fall outside the scope.

The analysis stops at the allocation of deemed supplier status. Compliance consequences that would follow from such allocation, including registration, invoicing, the use of the One-Stop Shop schemes, and reporting duties, are not examined. The customs implications of cross-border supplies, including the interaction between Art. 14a and customs duty exemptions are not examined. Place of supply consequences are noted where relevant to the characterisation but are not comprehensively analysed.[30]

Agency law, consumer protection, liability for AI agent actions, and competition law are acknowledged as adjacent to the VAT classification but are not examined.[31]

[30] See Chapter 3 (Art. 58 for Electronically Supplied Services, Art. 46 for Disclosed Intermediary services, Art. 46a from July 2028 for Facilitation Services).

[31] On agency law and AI agents, see Noam Kolt, 'Governing AI Agents' (2025) 101 *Notre Dame Law Review* (forthcoming) https://doi.org/10.2139/ssrn.4772956 accessed 20 February 2026; Busch (n 1). On liability, see Deven R Desai and Mark O Riedl, 'Responsible AI Agents' (arXiv, February 2025) https://doi.org/10.48550/arXiv.2502.18359 accessed 20 February 2026; Maarten Herbosch, 'Liability for AI Agents' (2025) 26(3) *North Carolina Journal of Law & Technology* 391. See also Chapter 2 (discussing attribution of the AI agent's actions to the provider under contract law, AI regulation, and competition law).

1.6 Outline

Chapter 2 addresses the taxable person question. It establishes that the AI agent's actions are attributed to the provider and that the provider independently carries on an economic activity within Art. 9.

Chapter 3 characterises the supply made by the provider. It tests the customer-facing service against the criteria for electronically supplied services, examines whether the provider intermediates and on what basis, and concludes with an interim assessment that provides the factual foundation for the deemed supplier analysis.

Chapter 4 tests the commissionaire fiction under Art. 14(2)(c), read with Art. 28, against the provider's fact pattern. It examines whether the power criterion developed in the CJEU's case law is satisfied on current implementations of agentic commerce.

Chapter 5 tests the platform fiction under Art. 14a against the same fact pattern. It examines whether the provider facilitates within the meaning of Art. 5b of the Implementing Regulation and whether the provider can rely on the exclusions from the facilitation concept.

The Conclusion draws the findings together, answers the research questions, and addresses whether the results indicate a gap in the current framework.

2 Taxable Person

A taxable person under Art. 9(1) VAT Directive is any person who independently carries out an economic activity, whatever the purpose or result of that activity. [32] The purchasing process in agentic commerce involves both an AI agent performing operational steps and a provider[33] organising and monetising the interface through which those steps are performed. Art. 9 requires a determination of which, if either, carries on the relevant activity independently. [34]

The AI agent searches for products, presents options, and in some configurations supports checkout inside the provider's interface. Those functions can give the appearance of an independent actor, particularly where the interface is designed to simulate conversational interaction. That appearance does not, however, translate into legal status. The agent has no legal identity, no assets, no business organisation of its own, and no capacity to assume rights or obligations. It cannot act for its own account or present itself to third parties as a bearer of obligations.[35] Under Art. 9, those features are precisely what distinguishes a person carrying on an economic activity from the technical means through which an activity is carried out.[36]

That conclusion is not unique to VAT. Across legal contexts, the output of automated systems is attributed to the person who chose to deploy them. In contract law, the execution of a computer program derives from an earlier human decision to write and deploy it, and contractual effects attach to the

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[32] Van Doesum and others (n 5) 63-64 (the provision identifies the taxable person through the activity; when independence in an economic activity can be established, the person carrying it on is the relevant person for VAT purposes); Cicin-Sain (n 5) 35.

[33] The thesis uses 'provider' to refer to the person operating the AI interface and carrying on the economic activity, whether that person developed the underlying AI system or deploys a system developed by another. The distinction between developer and deployer under the AI Act (arts 3(3) and 3(4)) does not affect the Art 9 analysis, which looks to who independently carries on the economic activity. See Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L2024/1689 (AI Act).

[34] The question of who participates in the transaction for VAT purposes when an AI agent is involved in the purchasing process has attracted early commentary. See eg Aleksandra Bal, 'Agentic Commerce and EU VAT Compliance: When AI Buys for You' (*Forbes*, 9 June 2025) https://www.forbes.com/sites/aleksandrabal/2025/06/09/agentic-commerce-and-eu-vat-compliance-when-ai-buys-for-you/ accessed 20 February 2026.

[35] Van Doesum and others (n 5) 63-64. A person relevant for VAT must have its own separate pool of assets that it can independently decide to use in transactions. The AI agent has no bank account, no inventory, no funds, and no infrastructure of its own. It operates entirely on the provider's resources.

[36] See also Xavier Oberson, *Taxing Artificial Intelligence* (Edward Elgar 2024) 111-113 (under current law, AI systems are not taxable persons; VAT liability remains with the enterprise controlling and using the system).

operator regardless of the program's complexity or apparent autonomy.[37] Whether the system is a simple automated script or a sophisticated AI agent, the legal consequences of its actions attach to the person who deployed it.[38]

EU regulation follows the same pattern. The AI Act assigns compliance obligations to providers and deployers, defined as natural or legal persons in the system's economic cycle, rather than to the system itself.[39] The provider is defined as the person who develops an AI system, or has one developed, and places it on the market or puts it into service under its own name or trademark, whether for payment or free of charge.[40] In competition law, the DMA's categories of core platform services address the undertaking providing the service, not the technology through which it operates; the autonomous execution of tasks by an AI agent is treated as part of the provider's offering, not as a separate legal activity.[41] No construction of legal personality for the AI agent is therefore required. The European Parliament's 2017 proposal to explore electronic personhood for autonomous systems was also dismissed by expert groups advising the Commission, which concluded that existing attribution rules are sufficient: computer programs are always created and deployed by

someone, and there is always a person who can be legally responsible for their operations.[42] That person, in the present context, is the provider.[43]

[37] Eliza Mik, 'Artificial Intention, Unintended Contracts' in Woodrow Barfield and Ugo Pagallo (eds), *Research Handbook on the Law of Artificial Intelligence: Current and Future Directions* (Edward Elgar 2025) 402-424 (contractual effects attach to the person who deployed the program; whether the transactional steps are executed by a human or by software does not change who bears the legal consequences).
[38] Mik (n 37) (the legal consequences of actions performed by software cannot depend on the type or complexity of the program; computer programs are always deployed by someone, and there is always a person legally responsible for their operations).
[39] Nathalie Nevejans, 'European Union's Regulation on the Placing on the Market and Use of AI Systems: A Critical Overview of the AI Act' in Woodrow Barfield and Ugo Pagallo (eds), *Research Handbook on the Law of Artificial Intelligence: Current and Future Directions* (Edward Elgar 2025) (the AI Act assigns compliance obligations to identifiable operators in the system's economic cycle, including providers and deployers; the AI system itself is not the addressee of any obligation). See also Hans Graux and others, *Interplay between the AI Act and the EU Digital Legislative Framework* (Study requested by the ITRE Committee, PE 778.575, October 2025).
[40] AI Act, art 3(3). The definition applies whether the system is placed on the market for payment or free of charge: Nevejans (n 39) 505.
[41] Jan-Frederick Göhsl, 'Future Proofing the DMA for Agentic AI: Lessons from the AI Act' (2025) 48(3) *World Competition* 315, 324-325, 328 (under the DMA framework, the provider of the AI system is the relevant undertaking; the AI agent's execution of tasks on behalf of the consumer forms part of the provider's service offering, not a separate economic activity). See also Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products [2024] OJ L2024/2853, recital 13 (software is a product irrespective of supply model; providers of AI systems are treated as manufacturers for liability purposes).
[42] European Parliament, *Artificial Intelligence and Civil Liability: A European Perspective* (Study requested by the JURI Committee, PE 776.426, July 2025) 28 (the concept of electronic personhood was proposed by the European Parliament in 2017 as a functional expe-

The remaining question is whether the provider satisfies Art. 9. The provider is not in an employment relationship with any party in the agentic commerce chain.[44] It performs its activity in its own name, on its own behalf, and under its own responsibility. It designs or deploys the system, determines the commercial terms on which the interface is made available, bears the operational and economic risk of offering it, and receives the revenue generated through its use.[45] The AI agent, which has no separate legal identity and bears no economic risk, cannot satisfy those criteria. The provider is accordingly the person carrying on the activity within Art. 9.[46]

Economic activity under Art. 9 is a broad and objective concept. It covers any activity of producers, traders, or persons supplying services, and expressly includes the exploitation of intangible property for the purpose of obtaining income on a continuing basis.[47] The concept is assessed per se, without regard to purpose or results, and it does not require the activity to be profitable.[48] What matters is whether the person aims to generate income on a continuing basis, assessed by reference to what an active entrepreneur in the field would typically do.[49]

The provider's activity satisfies that standard. Current consumer-facing AI interfaces are made available as part of organised commercial operations reflected in subscription-based access, advertising revenue, merchant-side remuneration, paid placement, and similar arrangements.[50] Those features

dient comparable to corporate legal personality, but dismissed by expert groups advising the Commission on the ground that existing attribution rules are sufficient). See Expert Group on Liability and New Technologies, *Report on Liability for Artificial Intelligence and Other Emerging Digital Technologies* (European Commission 2019) 38.

[43] See also Noam Kolt, 'Governing AI Agents' (2025) 101 *Notre Dame Law Review* (forthcoming) https://doi.org/10.2139/ssrn.4772956 accessed 20 February 2026, 5-6; Christiane Wendehorst, 'Discussion Draft: Principles for AI in Contracting (Version 2.1)' (2024) 13(1) *Journal of European Consumer and Market Law* 43, Principle 3(2); Maarten Herbosch, 'Liability for AI Agents' (2025) 26(3) *North Carolina Journal of Law & Technology* 391, 404.

[44] Art 10 VAT Directive; Van Doesum and others (n 5) 93-95.

[45] Van Doesum and others (n 5) 93-95 (independence requires acting in one's own name, on one's own behalf, under one's own responsibility, and bearing the economic risk of the activity); Mik (n 37) (the operator deploys the program in pursuit of commercial objectives).

[46] Van Doesum and others (n 5) 63-64 (the criteria of acting for own account and bearing economic risk serve both to identify whether a relevant person exists and to determine whether that person acts independently).

[47] Art 9(1), second paragraph, VAT Directive; Van Doesum and others (n 5) 70-71; Cicin-Sain (n 5) 36-37.

[48] Case C-320/17 *Marle Participations SARL v Ministre de l'Économie et des Finances* ECLI:EU:C:2018:537, para 22; Case C-421/17 *Szef Krajowej Administracji Skarbowej v Polfarmex Spółka Akcyjna w Kutnie* ECLI:EU:C:2018:432, para 39.

[49] Van Doesum and others (n 5) 75-76; Case C-32/03 *I/S Fini H* ECLI:EU:C:2005:128, para 19.

[50] Based on current consumer-facing implementations. On subscription access, see Microsoft, 'Microsoft Copilot for individuals: Terms of Use' https://www.microsoft.com/en-us/microsoft-copilot/for-individuals/termsofuse accessed 27 February 2026. On advertising and paid placement, see OpenAI, 'Ads in ChatGPT' (Help Center)

are the typical conduct of a commercial digital service provider. Even where some configurations offer free access to the purchasing interface, the provider's broader commercial model is directed at continuing income generation through other streams.[51] The existence of supplies for consideration is a necessary starting point for that finding, but it is not the whole inquiry. Economic activity in Art. 9 looks to the activity taken as a whole, including whether it is organised commercially and directed at ongoing remuneration, not at any single transaction.[52]

Providers of large-scale digital interfaces routinely supply advertising and paid placement services to third parties in exchange for pecuniary consideration. That those supplies fall within the scope of VAT is well established.[53] That alone is sufficient to confirm economic activity. Where the provider also receives vendor-side fees or subscription revenue, the case is even more straightforward. The taxable person finding does not, however, require each of those revenue streams to be fully characterised at this stage.[54]

The provider making the AI interface available is therefore the relevant taxable person in the context of agentic commerce. That conclusion establishes the person to whom the activity is attributed for VAT purposes. It does not, however, determine what supplies the provider makes in connection with the purchasing process, to whom those supplies are made, or how they

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https://help.openai.com/en/articles/20001047-ads-in-chatgpt accessed 5 March 2026; Google, 'New tech and tools for retailers to succeed in an agentic shopping era' (Google Ads & Commerce Blog, January 2026) https://blog.google/products/ads-commerce/agentic-commerce-ai-tools-protocol-retailers-platforms/ accessed 28 February 2026. On merchant-side remuneration, see OpenAI, 'Instant Checkout: Buy Directly from Merchants through ChatGPT' (OpenAI Help Center) https://help.openai.com/en/articles/12440090-instant-checkout-buy-directly-from-merchants-through-chatgpt accessed 28 February 2026; 'Shopify Merchants to Pay 4% Fee on Sales Made through ChatGPT Checkout' (*PYMNTS*, 2026) https://www.pymnts.com/news/ecommerce/2026/shopify-merchants-to-pay-4percent-fee-on-sales-made-through-chatgpt-checkout/ accessed 28 February 2026. On comparable monetisation structures in the platform economy, see Cicin-Sain (n 5) 170; Vázquez (n 6) 47-48.

[51] Van Doesum and others (n 5) 70-71 (the provider's broader commercial model, rather than any single configuration, determines whether the activity is directed at continuing income generation).

[52] Van Doesum and others (n 5) 70-71 (economic activity is assessed by reference to the activity as a whole, including whether it is organised commercially and directed at ongoing remuneration, not by reference to individual transactions).

[53] Van Doesum and others (n 5) 155-160 (supply of services for consideration). On the economic activity of platforms monetising user engagement through advertising, see Paweł Marcin Dudek, 'Enduring Measurement as User Consideration on Social Media Platforms under EU VAT Law' (2025) 53(8/9) *Intertax* 595.

[54] That is, establishing taxable person status requires showing that the provider carries on an economic activity, not that each individual revenue stream is classified as a particular type of supply for VAT purposes. The economic activity concept operates as a threshold; the substantive characterisation of each supply, including whether it constitutes an electronically supplied service, an intermediary service, or advertising, follows in Chapter 3. See Van Doesum and others (n 5) 70; Cicin-Sain (n 5) 36; Oberson (n 36) 115-116.

should be characterised. The provider's commercial terms may involve more than one legal relationship, a customer-facing interface service alongside separate remunerated arrangements with vendors, advertisers, or other commercial counterparties. Identifying and characterising those supplies is the work of the following chapter.[55]

[55] See Chapter 3 below.

3 Characterisation of the Supply

3.1 The Provider's Service and Consideration

A supply of services under Art. 24 VAT Directive is any transaction that does not constitute a supply of goods.[56] Since the provider does not acquire, hold, or deliver tangible goods in any current configuration, its activity in connection with the purchasing process falls on the service side of that distinction.[57] The provider makes an AI interface available through which the customer searches for products, compares options, and in some configurations reviews and confirms a purchase. From the customer's perspective, the interface delivers a purchasing-support function. From the vendor's perspective, where a commercial arrangement exists, the interface surfaces products and routes purchasing activity. However, what the provider supplies should be assessed by reference to what each recipient receives from the service, not by the form of technology through which it is delivered.[58]

Where the provider charges a subscription or access fee, the direct link between the service and consideration is straightforward.[59] In most current implementations, however, the customer accesses the purchasing interface without monetary payment. Where access is offered without monetary payment, the question arises whether the user's provision of data or attention to the platform could constitute non-monetary consideration in the form of a barter transaction. The VAT Committee has taken the position that where an IT service is provided under the same conditions to all users irrespective of the data provided, no direct link can be established between the service and

[56] Art 24 VAT Directive; Van Doesum and others (n 5) 127, 157-159. Oberson (n 36) 115-116 (AI-related activity is analysed by reference to the nature of the underlying transaction).

[57] The provider's service-side position is consistent across all current implementations. See OpenAI, 'Instant Checkout' (n 3); Microsoft, 'Microsoft Copilot for individuals: Terms of Use' (n 50); Amazon, 'Shopping merchants directly using "Buy for Me"' (n 3). In none of these does the provider acquire, hold, or deliver goods.

[58] Van Doesum and others (n 5) 216 (the nature of the service is the decisive criterion for classification; a service is characterised based on what it is, not on the identity of the supplier or the chain through which it is delivered). See also Case C-438/01 *Design Concept v Flanders Expo* ECLI:EU:C:2003:325, paras 24-26.

[59] Art 2(1)(c) VAT Directive; Case C-16/93 *R J Tolsma v Inspecteur der Omzetbelasting Leeuwarden* ECLI:EU:C:1994:80, para 14 (a supply of services is effected for consideration only if there is a legal relationship involving reciprocal performance and a direct link between the service and the remuneration received). A direct link exists where the supply will not be made without consideration and no consideration will be paid without the supply: Van Doesum and others (n 5) 166. On flat-rate fees not breaking the direct link, see Case C-174/00 *Kennemer Golf* ECLI:EU:C:2002:200; Case C-463/14 *Asparuhovo Lake Investment Company v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna* ECLI:EU:C:2015:542, paras 38-39; Van Doesum and others (n 5) 169-170.

any non-monetary consideration. The Committee's most recent analysis distinguishes three situations: standard free access without data adjustment, where no direct link exists; reduced functionality following data restrictions, where a direct link is possible on a case-by-case basis; and subscription payment, which constitutes a taxable supply.[60] Where no direct link is established, the provision of the interface service to the customer without monetary payment does not constitute a supply for consideration under Art. 2(1) and falls outside the scope of VAT on the customer side.[61]

Where commercial arrangements with vendors exist, the provider receives fees or commissions linked to completed orders routed through the interface.[62] In current implementations, the provider surfaces products only from vendors with whom such an arrangement is in place, typically involving structured product data integration that enables the interface to display pricing, availability, and product attributes.[63] The provider may also supply advertising or paid placement to third parties within the interface, generating revenue independent of the sales facilitated through it.[64] Since the advertising supply does not relate to the purchase of goods between vendor and customer, it falls outside the characterisation exercise in the remainder of this chapter.[65]

The provider's commercial model may accordingly involve more than one supply for consideration. A customer-facing interface service can coexist

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[60] VAT Committee, Working Paper No 1118, taxud.c.1(2025)11627393, sections 3.2.3-3.2.5. The Committee's earlier analysis reached the same conclusion on standard free-access models: see VAT Committee, Working Paper No 958; VAT Committee, Guidelines resulting from the 111th meeting (2018).

[61] This thesis does not take a position on whether non-monetary user contributions could constitute consideration in data-dependent models, as the provider's taxable supplies through vendor-side fees and advertising are sufficient to sustain the characterisation exercise regardless of the customer-side position. On the broader debate, see Dudek (n 53) 595 (arguing the user's obligation to permit monitoring creates a direct link). The Italian tax authorities have argued for a barter theory (WP 1118, section 2.2), but the Commission's analysis does not support that position for standard free-access models.

[62] See eg 'Shopify Merchants to Pay 4% Fee on Sales Made through ChatGPT Checkout' (*PYMNTS*, 2026) https://www.pymnts.com/news/ecommerce/2026/shopify-merchants-to-pay-4percent-fee-on-sales-made-through-chatgpt-checkout/ accessed 28 February 2026. See also OpenAI, 'Instant Checkout' (n 3); Google (n 2).

[63] Universal Commerce Protocol, 'Core Concepts' (n 2). The provider's commercial model creates incentives to route purchasing through authorised vendor integrations rather than through unrestricted browsing, which shapes the interface into a selective environment comparable to how platforms aggregate supply from participating business users. See Cicin-Sain (n 5) 264.

[64] OpenAI, 'Ads in ChatGPT' (n 50); Google (n 2). The provider's interest in presenting checkout within the interface is reinforced by the ability to monetise user attention and purchasing behaviour through advertising alongside the transaction. See Kiri Masters, 'Amazon "Buy For Me" Is The Latest Entrant In The AI Shopping Agent Race' (*Forbes*, 8 April 2025) https://www.forbes.com/sites/kirimasters/2025/04/08/amazon-buy-for-me-is-the-latest-entrant-in-the-ai-shopping-agent-race/ accessed 28 February 2026 (discussing the strategic value of capturing purchase-intent data within the AI interface).

[65] On the classification of advertising space as an electronically supplied service, see Annex II, point 3(h) VAT Directive.

with separate remunerated relationships with vendors, advertisers, or other commercial counterparties. The following sections characterise the provider's service and examine how it should be classified for VAT purposes.

3.2 Electronically Supplied Services

The purchasing interface of the AI agent is delivered over the internet, operates through automated processing, and could not function without information technology. Those features correspond to the general definition of an electronically supplied service ('ESS') under Art. 7(1) of the Implementing Regulation: a service delivered over the internet or an electronic network, the nature of which renders its supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology.[66] Whether the provider's service satisfies that definition requires closer examination of each element on the present fact pattern.

The customer accesses the interface, inputs purchasing criteria such as product type, price range, or brand preference, and receives an automated response in the form of search results, product comparisons, and purchasing options generated by the system. That pattern closely matches several illustrative examples recognised as electronically supplied services under the Implementing Regulation and the VAT Directive, in particular services automatically generated from a computer in response to specific data input by the recipient, and the use of search engines and internet directories.[67] The provider's service is not explicitly listed, but the lists are non-exhaustive and the ESS concept is future-oriented, applying to new types of electronically supplied services as they develop.[68] The general Art. 7(1) criteria are therefore decisive for classification, and the absence of the provider's service from the lists does not exclude it from the ESS concept.

The element most likely to raise questions is minimal human intervention. The threshold concerns the delivery of the service on the supplier's side, not

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[66] Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax [2011] OJ L77/1 (VAT Implementing Regulation), art 7(1); recitals 12-13.
[67] VAT Implementing Regulation, art 7(2)(c) (services automatically generated from a computer via the internet, in response to specific data input by the recipient); VAT Directive, Annex II, point 3(g) (online information generated automatically by software from specific data input by the customer); VAT Directive, Annex II, point 3(i) (use of search engines and internet directories).
[68] VAT Committee, Working Paper No 843, taxud.c.1(2015)694775, 5.

the actions of the customer or any third party.[69] The customer's active role in setting constraints, reviewing options, and confirming a purchase is an input to the automated system, not human intervention in the provision of the service itself.[70] On the supply side, the provider's development, training, and maintenance of the AI model are preparatory activities undertaken once but enabling an indefinite number of individual supplies.[71] Ongoing monitoring of system performance by technical staff to prevent breakdowns also falls within the limits of minimal human intervention.[72] Each individual delivery of the service, each automated search, comparison, and presentation of options in response to a customer's input, is generated without human intervention on the provider's side.[73]

Conversely, the provider's service does not fall within any of the situations recognised as exceeding the minimal human intervention threshold. There is no element of interaction between a human on the supplier's side and the customer, nor is such interaction inherent in the service. The service is not manually tailored to individual customer needs; the system processes the customer's criteria automatically. Nothing is transmitted manually.[74] The conversational quality of the interface does not alter that conclusion. The interaction is with software, not with a human service provider, and the Art. 7 criterion assesses automation in delivery, not whether the interface feels interactive to the user.[75]

The provision of advertising space and paid placement within the interface likewise falls among the recognised examples of electronically supplied services.[76] Where a commercial arrangement with vendors exists, the provider also surfaces vendor products within the interface and routes purchas-

[69] VAT Committee, Working Paper No 896, taxud.c.1(2016)922288, 5, 13 (the mere fact that suppliers sometimes need to intervene does not disqualify a service as ESS, as long as intervention is normally not necessary); Madeleine Merkx, 'VAT and E-Services: When Human Intervention Is Minimal' (2018) 29(1) *International VAT Monitor* 17, 18; Fabian Barth, 'Why (Most) Sales of Digital Assets are Not Electronically Supplied Services' (2024) 33(5) *EC Tax Review* 245.
[70] Beretta (n 28) (citing Matthias Weidmann, 'The New EU VAT Rules on the Place of Supply of B2C E-Services' (2015) 24(2) *EC Tax Review* 112, on the distinction between customer input and supplier-side human intervention).
[71] VAT Committee, Working Paper No 919, taxud.c.1(2017)1270284, 6. See also Merkx (n 69) 19 (human intervention exceeds the threshold only if the adaptation is made specifically for an individual customer in each delivery).
[72] VAT Committee, Working Paper No 896 (n 69) 5; VAT Committee, Guidelines from the 108th meeting of 27-28 March 2017, Document C, taxud.c.1(2018)2397450.
[73] VAT Committee, Working Paper No 919 (n 71) 3. The threshold is more contested in hybrid configurations where human oversight is integrated into the delivery process: see Beretta (n 28) (discussing grey areas in AI-powered services combining automated and manual components). On the present fact pattern, no human intervention occurs at the level of individual deliveries, and the debate does not affect the classification.
[74] Merkx (n 69) 18 (more than minimal human intervention exists where there is an element of interaction between the supplier and the customer, where the service is tailored to individual customer needs, or where information is transmitted manually).
[75] VAT Directive, art 58(1), second paragraph.
[76] VAT Directive, Annex II, point 3(h); VAT Implementing Regulation, art 7(2)(b).

ing activity toward those vendors. That vendor-facing function is delivered through the same automated electronic infrastructure as the customer-facing service and satisfies the Art. 7(1) criteria in terms of mode of delivery.[77]

The customer-facing function of the AI interface, and the vendor-facing and advertising functions where present, therefore satisfy the criteria for classification as electronically supplied services. That characterisation carries a place-of-supply consequence: for B2C supplies, Art. 58 VAT Directive locates the supply where the customer is established, has a permanent address, or usually resides. The provider would accordingly owe VAT in the customer's Member State regardless of where the provider itself is established.[78] Where the provider supplies services to vendors in a B2B context, Art. 44 locates the supply where the recipient is established.[79]

The ESS characterisation does not, however, exhaust the characterisation inquiry. The provider's service also has an intermediary dimension, connecting vendors with customers and supporting the path to a purchase through the interface. How that dimension should be characterised is examined in the following section.[80]

3.3 Intermediation Service

The provider's role must be located within the spectrum of intermediaries recognised in EU VAT. At one end, a disclosed agent acts in the name and on behalf of the principal, supplying an intermediary service that remains distinct from the underlying transaction.[81] At the other, a commissionaire acts in its own name but on behalf of the principal, and under the fiction in Art. 14(2)(c) for goods and Art. 28 for services is deemed to have received and supplied the underlying goods or services itself, creating two consecu-

[77] Whether the vendor-facing function is characterised as an intermediary service or as a bilateral electronically supplied service is addressed in section 3.4.
[78] VAT Directive, art 58(1)(c); Van Doesum and others (n 5) 244.
[79] Art. 44 VAT Directive; Van Doesum and others (n 5) 228.
[80] See section 3.3 below.
[81] Cicin-Sain (n 5) 204; VAT Directive, art 46; VAT Implementing Regulation, art 30 (the intermediation service of a disclosed agent is distinct from the underlying supply). A disclosed agent is not a deemed supplier: it supplies its own intermediary service, and the underlying transaction occurs directly between the vendor and the customer. The distinction turns on in whose name the intermediary acts. A disclosed agent acts in the name and on behalf of the principal. A commissionaire acts in its own name but on behalf of the principal and is deemed under Art 14(2)(c) or Art 28 to have received and supplied the underlying goods or services itself. See Van Doesum and others (n 5) 138-139, 143-145; Van Abswoude and others (n 14) 141.

tive supplies in the chain.[82] The commissionaire does not supply a separate intermediary service; its commission is absorbed into the deemed supply.[83] Between those poles sit platforms, subject to their own deemed supplier rules.[84] The characterisation of the provider's own service depends on where in that spectrum its role falls.

The provider makes an AI interface available through which the customer searches for products, compares options, and in some configurations reviews and confirms a purchase. Where a commercial arrangement with vendors exists, the provider surfaces those vendors' products and routes purchasing activity toward them. The question is whether those functions amount to intermediation, and if so, of what kind.

Where such arrangements exist, the intermediary character is present. The provider's interface connects customers with vendor products and supports the path to a transaction between them. That function goes beyond merely providing a digital tool for the customer's own use. The interface structures the customer's choice by presenting purchasing options drawn from vendor inventories, and in some configurations supports the completion of the transaction within the same environment. From the vendor's side, the provider brings customer purchasing activity to the vendor's products. The service relates to an underlying transaction between the customer and the vendor, which is the hallmark of intermediation.[85]

The provider's service facilitates a transaction between vendor and customer, but the transaction remains transparently structured as a purchase from the vendor.[86] The vendor is identified as the seller in checkout and post-purchase materials, sets the price and delivery terms, creates the order in its

[82] VAT Directive, art 14(2)(c) (goods); VAT Directive, art 28 (services); Case C-464/10 *État belge v Henfling* ECLI:EU:C:2011:489, para 35. The CJEU interprets these provisions conjunctively: Case C-274/15 *Commission v Luxembourg* ECLI:EU:C:2017:333, paras 87-89. Art 14(2)(c) functions as lex specialis to Art 14(1): Case C-60/23 *Skatteverket v Digital Charging Solutions GmbH* ECLI:EU:C:2024:673, para 37; Van Abswoude and others (n 14) 143.
[83] Cicin-Sain (n 5) 223 (the commission of the undisclosed agent is absorbed into the deemed supply; noting at fn 1068 that this is the prevailing opinion in the literature).
[84] Van Abswoude and others (n 14) 139 (discussing the intermediary spectrum between disclosed agents, commissionaires, and platforms, with reference to AG Ćapeta in Case C-60/23 *Digital Charging Solutions* ECLI:EU:C:2024:896, paras 33-35). On the platform fiction specifically, see VAT Directive, art 14a; Van Doesum and others (n 5) 165, 614; and Chapter 5 below.
[85] Van Doesum and others (n 5) 138-139; Case T-657/24 *Versãofast v Commission* ECLI:EU:T:2025:1062 (intermediation can consist in enabling parties to conclude a contract; the classification depends on the nature and purpose of the services, not on formal criteria such as a power to negotiate). See Erwan Loquet, 'Intermediation for VAT Purposes: Substance over Labels' (2026) 37(2) *International VAT Monitor* (IBFD 2026). See also Cicin-Sain (n 5) 220.
[86] The term 'facilitates' is used here in its ordinary sense to describe the provider's function, not in the technical meaning of Art. 14a VAT Directive, as defined in Art 5b of the Implementing Regulation. The Art 5b concept is tested in Chapter 5.

systems, fulfils the purchase, and handles returns and customer support. The customer places the order in its own name using its own payment details. The provider does not present itself as the seller of the goods.[87] To the extent the provider intermediates, it therefore does so on a disclosed basis: the vendor's identity is known to the customer, and the transaction is structured as a purchase from the vendor, not from the provider.[88] Where a commercial arrangement with the vendor exists, it provides the contractual basis on which the provider acts in connection with the vendor's supply.[89] Accordingly, the intermediary service is supplied in connection with the vendor's supply: the provider brings customer purchasing activity to the vendor's products on the basis of the vendor arrangement, and the vendor remunerates the provider for that function. The provider does not act as an intermediary for the customer. There is no mandate from the customer to intermediate on their behalf, and no consideration from the customer for an intermediation service. The customer's relationship with the provider is the electronically supplied service characterised in section 3.2.[90]

On the present fact pattern, the provider intermediates on a disclosed basis. The vendor is identified as the seller, the transaction is transparently structured as a purchase from the vendor, and the provider does not present itself as the customer's counterparty for the underlying sale. The commissionaire fiction would therefore not apply on the traditional reading. After the Court's judgment in *Fenix International*, however, the fact that the customer knows the identity of the principal does not by itself prevent the fiction from applying. Whether the conditions of the fiction are met in agentic commerce is tested in Chapter 4.[91]

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[87] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout' (n 3) (purchase is directly from the merchant; OpenAI not merchant of record); Microsoft, 'Microsoft Copilot for individuals: Terms of Use' (n 50) (goods are sold and shipped by a third-party merchant); Amazon, 'Shopping merchants directly using "Buy for Me"' (n 3) (stating 'you are buying from the merchant').

[88] Van Doesum and others (n 5) 239 (Art 46 applies to intermediaries acting in the name and on behalf of the principal); Case C-89/05 *United Utilities v Commissioners of Customs & Excise* ECLI:EU:C:2006:469, para 9; *Henfling* (n 82).

[89] Case C-707/18 *Amărăşti Land Investment v Direcţia Generală Regională a Finanţelor Publice Timişoara* ECLI:EU:C:2019:1136, paras 41, 43 (the agency can originate from a contractual agreement); Case C-501/19 *UCMR-ADA v Asociaţia Culturală 'Suflet de Român'* ECLI:EU:C:2021:50, paras 32, 47 (the agency can also originate from law).

[90] The provider's intermediary function runs from provider to vendor. The vendor arrangement provides the basis on which the provider connects the vendor's products with customers through the interface. The customer does not engage the provider to act on their behalf and pays no consideration for intermediation. Where the customer pays a subscription, that consideration relates to access to the interface as an electronically supplied service, not to an intermediation service. See section 3.1; section 3.2.

[91] Case C-695/20 *Fenix International v Commissioners for Her Majesty's Revenue and Customs* ECLI:EU:C:2023:127, para 88. Some authors refer to commissionaires as 'undisclosed agents,' though the CJEU has held that the principal's disclosed identity does not preclude the fiction: *Fenix International* para 87; Van Abswoude and others (n 14) 141 (preferring 'commissionaire' for that reason). The conditions of the commissionaire fiction,

Whether the commissionaire fiction applies determines the VAT treatment of the provider's service. Where it applies, the intermediary's own service is reclassified: rather than supplying an intermediary service, the commissionaire is deemed to receive and supply the underlying goods or services itself.[92] Where it does not, the intermediary supplies its own service, and the underlying transaction occurs directly between vendor and customer. The provider's service, compromising automated search, comparison, and transaction support is therefore distinct in nature from the vendor's supply of goods, which reinforces the provider's service-side position.[93] The provider's service is accordingly characterised, pending the deemed supplier analysis in the following chapters, as an intermediary service with a facilitating character.[94]

The intermediation service supplied to the vendor, for which the vendor remunerates the provider, follows Art. 44 as a B2B supply.[95] Where the same intermediary function is characterised as a service rendered to the customer in the name and on behalf of the vendor, Art. 46 locates the supply where the underlying transaction is supplied.[96]

in particular the power criterion developed in *Fenix International*, are examined in Chapter 4.

[92] Cicin-Sain (n 5) 223ff. Where the deemed supplier fiction applies, the intermediary's own service disappears for VAT purposes: *Henfling* (n 82) para 35; Fabian Barth, 'Forum Contribution: Facilitation Service and Deemed Supply at the Same Time? Ultra Vires' (2025) 34(3) *EC Tax Review* 117 (arguing the fictitious supplies replace the real-world service); Cicin-Sain (n 5) 434-436.

[93] On the identical supplies question as a condition versus effect of the commissionaire fiction, see Van Abswoude and others (n 14); Case C-734/19 *ITH Comercial Timișoara v Agenția Națională de Administrare Fiscală* ECLI:EU:C:2020:919, para 51; *Digital Charging Solutions* (n 82) para 38; Ad van Doesum, 'Revisiting the Commissionaire Fiction in EU VAT: Cause, Effect and the Role of Identical Supplies' (2024) 35(6) *International VAT Monitor* (IBFD 2024) (arguing that identical supplies are a consequence of the fiction, not a condition; the fiction should apply regardless of additional elements added by the commissionaire). The prevailing view treats identity as an effect of the fiction rather than a precondition. The provider's service is distinct in nature from the vendor's supply of goods regardless of which view is adopted. See also Cicin-Sain (n 5) 225-227.

[94] The relationship between these characterisations is drawn together in section 3.4. Whether the deemed supplier rules reallocate supplier status to the provider is examined in Chapters 4 and 5. The facilitating character identified here corresponds to the concept of facilitation tested under Art 14a in Chapter 5. See VAT Implementing Regulation, art 5b. From July 2028, Art 46a VAT Directive (as introduced by Council Directive (EU) 2025/516 of 11 March 2025 amending Directive 2006/112/EC as regards VAT rules for the digital age [2025] OJ L2025/516) treats the facilitation service of a platform as an intermediary service for place of supply purposes, locating the supply where the underlying transaction takes place.

The legislature's choice supports the view that the intermediary function carries significant weight alongside the electronic mode of delivery: Cicin-Sain (n 5) 434. For the view that ESS classification would have been more pragmatic, see Cicin-Sain (n 5) 436.

[95] VAT Directive, art 44; Van Doesum and others (n 5) 228.

[96] VAT Directive, art 46; VAT Implementing Regulation, art 30 (covering intermediaries acting in the name and on behalf of either the recipient or the provider of the services pro-

3.4 Interim Conclusion

The provider's service is electronically supplied in its mode of delivery and intermediary in its function. These characterisations are not mutually exclusive: an intermediation service delivered through automated electronic means can itself qualify as an electronically supplied service.[97] The ESS characterisation captures how the service is delivered. The intermediary characterisation captures what the service does.[98]

The intermediary finding is, however, contingent on the vendor-side arrangement. Where the vendor's consideration is linked to completed transactions, the provider's service is functionally connected to the underlying sale, which is what distinguishes intermediation from bilateral service provision. Where consideration is limited to a flat fee for display or listing, the provider's vendor-side service could be characterised as a bilateral electronically supplied service, and the intermediary dimension would be less certain.[99] Where no vendor arrangement exists at all, there is no intermediation. As such, the ESS characterisation applies across all configurations. The intermediary and facilitating characterisation is, however, contingent on the vendor-side arrangement.[100]

The provider supplies a digital service. The vendor supplies physical goods. That difference in nature does not prevent the commissionaire fiction from applying, since the prevailing view treats identical supplies as an effect of the fiction, not a precondition. It does, however, confirm that the provider's activity is on the service side of the transaction.[101]

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cured); Van Doesum and others (n 5) 239. On the present fact pattern, the underlying transaction is the vendor's supply of goods to the customer.

[97] Cicin-Sain (n 5) 222-223; VAT Implementing Regulation, art 7(2)(c) and (d).

[98] Beretta (n 28) (for ESS, the decisive question is whether each individual supply requires the supplier's human input; for platform services, whether the operator exerts control over transactional parameters; even if fully automated, the economic role as intermediary remains determinative). From the customer's perspective, the interface may appear as a digital purchasing tool rather than as an intermediary: see Lily Zechner, 'Understanding VAT in Three-Party, Platform-Based Business Models: Which Party Is Supplying Which Service?' (2022) 31(4) *EC Tax Review*.

[99] Where vendor consideration takes the form of a flat fee for product visibility, the characterisation as disclosed intermediation or bilateral ESS is less clear, though the practical VAT consequences may not differ significantly. See Lamensch and others (n 9) 456.

[100] The ESS characterisation established in section 3.2 applies regardless of the vendor-side arrangement. The intermediary characterisation established in section 3.3 depends on it.

[101] *Henfling* (n 82) para 35; *Fenix International* (n 91) para 54. Cf *ITH Comercial Timișoara* (n 93) para 51 (formulating identity as a condition). On this debate, see Ad van Doesum (n 93); Cicin-Sain (n 5) 225-227; Van Abswoude and others (n 14). See also *Digital Charging Solutions* (n 82) para 57.

Whether the deemed supplier rules could reallocate supplier status to the provider, despite the disclosed basis and service-side position established in this chapter, is the question the following chapters address. Art. 14(2)(c), tested in Chapter 4, requires the intermediary to take part in the supply acting in its own name, a condition that the provider does not satisfy on the traditional reading but which the power criterion developed in *Fenix International* may qualify. Art. 14a, tested in Chapter 5, requires the intermediary to *facilitate* the supply through an electronic interface.[102]

[102] See Chapters 4 and 5 below.

4 The Commissionaire Fiction

Chapter 3 established that the provider intermediates on a disclosed basis, with the vendor identified as the seller throughout the purchasing process. On the traditional reading of the commissionaire fiction, that finding would end the analysis: a disclosed intermediary supplies an intermediary service, and the fiction does not apply. The question is whether the CJEU's subsequent interpretation of the fiction changes that result.

Art. 14(2)(c) VAT Directive concerns the transfer of goods pursuant to a contract under which commission is payable on purchase or sale. Art. 28 provides the equivalent for services: where a taxable person acting in its own name but on behalf of another person takes part in a supply of services, it is deemed to have received and supplied those services itself. Despite textual differences, the CJEU interprets these provisions conjunctively, holding that they have the same reasoning and the same legal consequences.[103] On the basis of Art. 28's wording, Art. 14(2)(c) should accordingly be read as: where a taxable person acting in its own name but on behalf of another takes part in a supply of goods, it must be considered to have received and supplied those goods itself.[104]

Art. 9a of the Implementing Regulation introduces a rebuttable presumption for the application of Art. 28 to electronically supplied services provided through an interface: the platform taking part in the supply is presumed to act in its own name but on behalf of the provider. The CJEU has confirmed that Art. 9a merely clarifies Art. 28 without supplementing or amending it.[105] Since Art. 28 and Art. 14(2)(c) are interpreted conjunctively, the clarifications in Art. 9a should also be relevant to Art. 14(2)(c).[106] Art. 9a and the case law interpreting it concern platforms through which electronically supplied services are provided, such as app stores and online content platforms. The provision does not by its terms apply to the supply of goods. The question for the present analysis is therefore whether the power criterion

[103] Case C-274/15 *Commission v Luxembourg* ECLI:EU:C:2017:333, para 88; *Henfling* (n 82) para 35; Van Doesum and others (n 5) 143, 159.

[104] Ben Terra and Julie Kajus, *Introduction to European VAT* (IBFD 2026) sec 10.2.1.4; Cicin-Sain (n 5) 207.

[105] *Fenix International* (n 91) paras 68-70; Case C-101/24 *Xyrality v Finanzamt Hamburg-Altona* ECLI:EU:C:2025:764, paras 43-44; Van Doesum and others (n 5) 164. Art 9a(1) third subparagraph provides that the presumption becomes irrebuttable where the platform authorises the charge, authorises the delivery, or sets the general terms and conditions of the supply. These conditions were elevated by the Court in *Fenix International* to the decisive criterion for Art 28 itself.

[106] Van Doesum and others (n 5) p. 160, fn 118 (since Art 9a is a mere clarification and Arts 28 and 14(2)(c) must be interpreted conjunctively, Art 9a should also be relevant to Art 14(2)(c)).

developed in that context applies, through the conjunctive reading of Art. 28 and Art. 14(2)(c), to an intermediary taking part in a supply of goods.

Under the pre-Fenix standard, exemplified by the Court's judgement in *Henfling*, the question whether an intermediary acted in its own name was assessed primarily by reference to whose name was disclosed to the customer. The Court listed factors including whether the intermediary's name appeared on documentation, whether the customer accepted the intermediary's regulations, and whether the business carried the intermediary's sign.[107] On that approach, the provider in agentic commerce would not be acting in its own name. The vendor is identified as the seller in checkout and post-purchase materials. The customer places the order in the customer's own name. The terms of use and product documentation consistently present the transaction as a purchase from the vendor.[108]

The judgement in *Fenix International* shifted that analysis. The Court held that even where the customer is in a position to know the existence of the agency and the identity of the principal, those circumstances are not sufficient in themselves to exclude that the intermediary acts in its own name within Art. 28. What matters above all are the powers enjoyed by the intermediary in the context of the supply in which it takes part.[109] Where the intermediary authorises the charge, authorises the delivery, or sets the general terms and conditions of the supply, it may unilaterally define essential elements of the supply and must be regarded as the supplier pursuant to Art. 28.[110] In *Xyrality*, the Court confirmed that Art. 28 should not be interpreted differently from what is apparent from Art. 9a, and that this applied even before Art. 9a's entry into force, because the provision merely explains and clarifies a concept applicable since the Directive's inception.[111] The contractual and documentary presentation of the vendor as supplier, which would have been dispositive under *Henfling*, is accordingly no longer sufficient to preclude the commissionaire fiction.[112]

The condition that the intermediary must act on behalf of another person is satisfied where a commercial arrangement with the vendor exists, providing the contractual basis on which the provider acts in connection with the ven-

[107] *Henfling* (n 82) para 43; Cicin-Sain (n 5) 209.
[108] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout' (n 3); Microsoft, 'Microsoft Copilot for individuals: Terms of Use' (n 50); Amazon, 'Shopping merchants directly using "Buy for Me"' (n 3).
[109] *Fenix International* (n 91) para 88.
[110] *Fenix International* (n 91) para 83.
[111] *Xyrality* (n 105) paras 43-44; Madeleine Merkx, 'Case Note on Xyrality' (2025) *Highlights & Insights on European Taxation* 2025/327.
[112] Merkx (n 111) (the CJEU's approach undermines the practice of platforms indicating in their terms that the underlying supplier provides the service); cf Christina Pollak, *Platforms in EU VAT Law: A Legal Analysis of the Supply of Goods* (Kluwer 2022) 51.

dor's supply.[113] The condition that the intermediary must take part in the supply requires an economic role in the transaction, beyond a merely administrative or financial one.[114] Both conditions are satisfied on the present fact pattern. The remaining question is whether the power criterion is satisfied. Some authors initially limited the impact of the Court's judgement in *Fenix International* to electronically supplied services facilitated by platforms, but the Court's confirmation in *Xyrality* that Art. 28 itself contains the power criterion significantly weakens that restrictive reading.[115] If the power criterion is part of Art. 28, and Art. 28 and Art. 14(2)(c) are interpreted conjunctively, the criterion should in principle be applicable to goods. The analysis must therefore test the three conditions against the provider's role in the purchasing process.[116]

The first condition is whether the provider authorises the charge to the customer. In current implementations, payment for the underlying goods flows through integrated payment infrastructure to the vendor. The provider integrates with payment service providers through checkout protocols, but the payment-provider layer functions as a bridge between authorisation in the AI interface and processing in the vendor's checkout stack.[117] As such, the provider does not itself collect payment from the customer for the goods, and the vendor remains the party to whom payment is directed. The terms of service of current implementations consistently state that the provider is not the merchant of record and does not process payment for the underlying

[113] *Amărăști* (n 89) paras 41, 43; *UCMR-ADA* (n 89) paras 32, 47. Cicin-Sain (n 5) 210-212. Where the provider has a vendor arrangement involving structured product data integration and transaction-linked consideration, that arrangement provides the requisite basis for acting on behalf of the vendor.

[114] Case C-1/08 *Athesia Druck v Ministero dell'economia e delle finanze* ECLI:EU:C:2009:108, para 36 (the intermediary must play an economic role in the supply); Cicin-Sain (n 5) 239; Van Abswoude and others (n 14) 143.

[115] Cf Fernando Matesanz, 'What Does the Fenix Case Mean for VAT Management?' (2023) *International Tax Review* (limiting impact to e-services). For the broader reading, see Cicin-Sain (n 5) 258-260; Madeleine Merkx, 'Case Note on Fenix International' (2023) *Highlights & Insights on European Taxation* 2023/110 (the case has wider implications than only for electronically supplied services).

[116] The conditions for the commissionaire fiction as identified in the case law are: (i) acting in own name, (ii) acting on behalf of another person, for which a mandate is required, (iii) taking part in the supply in an economic sense, (iv) the creation of two identical supplies as an effect of the fiction, and (v) post-Fenix, the powers enjoyed by the intermediary. See Cicin-Sain (n 5) 209-212; Van Abswoude and others (n 14). Conditions (ii) and (iii) are addressed above and in the service characterisation in Chapter 3. The present chapter focuses on the power criterion as the decisive element on the current fact pattern. Art 14(2)(c) textually requires a contract under which commission is payable on purchase or sale. Where the provider receives transaction-linked fees, this condition is satisfied. Whether fixed-fee arrangements qualify is less clear: see Cicin-Sain (n 5) 212 (with reference to Van Doesum and others (n 5) 131 and Pollak (n 112) 184).

[117] Based on current consumer-facing implementations. See Stripe, 'Supporting Additional Payment Methods for Agentic Commerce' (n 50); Microsoft Advertising, 'Conversations that Convert' (n 3) (merchant remains merchant of record; integrations with PayPal, Shopify, Stripe); Google (n 2) (Google Pay, PayPal integration).

purchase.[118] A person who only provides payment processing does not take part in the supply for these purposes.[119] The first condition is not satisfied.

The second condition is whether the provider authorises the delivery of the goods. The vendor creates the order in its systems, fulfils the purchase, ships the goods to the customer, and handles returns and customer support. The provider never receives, holds, or delivers goods. The AI interface may remain present as an information layer displaying confirmation details and order status, but fulfilment and post-purchase handling are vendor-run throughout.[120] The second condition is not satisfied.

The third condition is whether the provider sets the general terms and conditions of the supply. The provider sets terms and conditions for access to and use of the AI interface, including account terms, content policies, and interface rules. The vendor, by contrast, sets the terms of the underlying sale: price, delivery terms, return policy, and product specifications.[121] The power to set the general terms and conditions of the supply refers to the terms of the underlying transaction, not to the interface operator's terms for its own service. A platform or interface operator will invariably set terms governing the use of its service, but that does not by itself determine the conditions under which the facilitated supply is made.[122] On the present fact pattern, the separation between interface terms and sale terms is relatively clear: the provider governs the digital environment, the vendor governs the purchase.[123] The third condition is not satisfied.

The contrast with the fact patterns in *Fenix International* and *Xyrality* is instructive. In *Fenix International*, the customer paid the platform the full amount for the content, the payment appeared on the customer's bank statement as a payment to the platform, the platform retained 20% of every sum paid and remunerated the creator with the remainder, and the platform set the general terms and conditions under which creators supplied content to

[118] OpenAI, 'Instant Checkout' (n 3) (purchase directly from merchant; OpenAI not merchant of record); Microsoft, 'Microsoft Copilot for individuals: Terms of Use' (n 50) (Microsoft not processing payments; goods sold and shipped by third-party merchant).
[119] VAT Implementing Regulation, art 9a(3) (a taxable person who only provides payment processing and does not take part in the supply is excluded).
[120] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout' (n 3); Microsoft (n 50); Amazon (n 3).
[121] Based on current consumer-facing implementations.
[122] Merkx (n 115) (conditions regarding payment and delivery that are part of the contract between supplier and operator should be distinguished from conditions that form part of the supply between customer and supplier; only the latter triggers the irrebuttable presumption); Pollak (n 112) 123 (the wording is limited to the terms under which the supply is made, not the terms of use of the platform); Cicin-Sain (n 5) 287; Giorgio Beretta, 'Taxable and Non-Taxable Transactions under European VAT' in Georg Kofler and others (eds), *CJEU: Recent Developments in Value Added Tax* (Linde International 2024) 124-128.
[123] Cf *Fenix International* (n 91) paras 12-18, where the platform set the general terms under which creators supplied content and the overlap between platform terms and supply terms was substantially greater. See Cicin-Sain (n 5) 260.

fans.[124] In *Xyrality*, the customer paid through the app store, the app store retained 30% and remunerated the developer with the remainder, and the entire payment interaction occurred within the app store environment.[125] In both cases, the intermediary occupied a position between customer and supplier in the payment chain, retained a share of the payment, and set the conditions of the supply. On the provider's fact pattern, by contrast, the vendor sets price and delivery terms, payment flows through integrated payment infrastructure to the vendor without the provider retaining a share, and the vendor is identified as the seller throughout. The provider influences which products the customer sees. The vendor controls the terms on which any purchase is made.

That influence warrants closer examination. The provider controls which products the customer sees within the interface. Where vendor arrangements exist, only products from integrated vendors are surfaced. The provider's algorithms determine presentation order, filtering, and the framing of purchasing options. That curation function gives the provider influence over the supply environment, shaping what the customer can purchase and from whom. Under a narrow reading of the power criterion, influence over the supply environment is distinct from defining the essential elements of any individual supply, which remains with the vendor.[126] Under the wider interpretation reflected in the Explanatory Notes, which treat influencing the conditions under which a supply is made more broadly, the curation function could be viewed as a form of power over the supply.[127] On the current fact pattern, however, where the vendor retains control over price, delivery, and terms, the narrower reading is more consistent with the provider's actual position. The provider structures the purchasing environment but does not unilaterally define the essential elements of the supply in the manner contemplated by the Court in *Fenix International*.[128]

A recent decision of the Fiscal Court of Lower Saxony reached a comparable conclusion in the context of NFT trading via a digital marketplace. De-

[124] *Fenix International* (n 91) paras 12-18. The customer paid the platform for the content; the payment was processed by a third-party payment provider but the full amount was received by the platform which then remunerated the creator with 80% of the net amount.
[125] *Xyrality* (n 105) paras 8-12. The customer paid through the app store (Apple App Store or Google Play Store), and the app store retained 30% of the purchase price before remuneration of the developer.
[126] Merkx (n 115); see also fn 122 above.
[127] European Commission, *Explanatory Notes on the EU VAT Changes to the Place of Supply of Telecommunications, Broadcasting and Electronic Services That Enter into Force in 2015* (2014) 28-29 (listing indicators including exerting control or influence over the presentation and format of the virtual marketplace). The Explanatory Notes' indicators of 'taking part' are broader than the three irrebuttable conditions in Art 9a(1) third subparagraph. The indicators are non-binding and represent the Commission's view: see section 1.3. See also Cicin-Sain (n 5) 260; cf Lamensch (n 9) (arguing the Explanatory Notes extend indicators beyond the wording of Art 9a).
[128] *Fenix International* (n 91) para 83 (the intermediary must have the power to unilaterally define essential elements relating to the supply).

spite the marketplace providing transaction infrastructure and retaining a commission, the court found that the deemed supplier rule did not apply because the seller controlled the essential elements of the sale, including price, duration, and buyer selection, and the marketplace did not exercise influence over the sale or payment process comparable to that in *Fenix International*.[129] In the Amazon "Buy for Me" variant, where the AI agent completes checkout steps on the vendor's own website using the customer's encrypted details, the vendor's checkout system is visibly in control and the power criterion is even more clearly unmet.[130]

Accordingly, on current consumer-facing implementations of agentic commerce, the provider does not authorise the charge for the underlying goods, does not authorise delivery, and does not set the general terms and conditions of the underlying sale. The curation function gives the provider influence over the purchasing environment, but that influence does not amount to the power to unilaterally define essential elements of the supply. The commissionaire fiction in Art. 14(2)(c), read with Art. 28, does not apply to the AI agent provider on the present fact pattern.[131]

[129] Niedersächsisches Finanzgericht, 10 July 2025, 5 K 26/24.
[130] Amazon, 'Shopping merchants directly using "Buy for Me"' (n 3); Amazon, 'Amazon shopping app "Buy for Me"' (n 3). In this configuration, the customer stays within Amazon's interface while the agent navigates the vendor's checkout on the customer's behalf using encrypted customer details. This is distinct from a redirect, where the customer is transferred to the vendor's interface, and from the checkout-within-interface configuration, where a vendor arrangement enables order data to be transmitted through integrated protocols. The 'Buy for Me' feature does not appear to involve vendor-side consideration or customer-side fees, which raises the prior question whether a supply for consideration exists at all under Art 2(1). See Chapter 3, section 3.1.
[131] The result may differ for providers whose existing infrastructure involves integrated payment processing, such as Google's use of Google Pay within Gemini, where involvement in authorising the charge may be more direct.

5 The Platform Fiction

The commissionaire fiction does not apply to the AI agent provider on the present fact pattern. The question remains whether Art. 14a, which deems a taxable person who *facilitates* certain supplies of goods through an electronic interface to have received and supplied those goods itself, reaches the provider through a different route. Art. 14a operates as a fiction in its own right, independent of Art. 14(2)(c) and Art. 28.[132] Art. 14a was introduced on the basis that the commissionaire fiction did not capture platforms facilitating supplies of goods. Before its entry into force, platforms operated as disclosed intermediaries without Art. 14(2)(c) being considered applicable to them.[133]

The concept of "*facilitates*" in Art. 14a differs from "*takes part*" in Art. 9a and Art. 28. "Takes part" is undefined in the legislation, and the power criterion developed in *Fenix International* fills that gap through case law interpretation. "Facilitates" is positively defined in Art. 5b of the Implementing Regulation, which requires that the contact between supplier and customer results in a supply through the electronic interface. The difference between the two concepts is one of kind rather than degree: they ask different questions, not the same question at different thresholds. "Takes part" asks whether the intermediary exercises power over essential elements of the supply, while "facilitates" asks whether the intermediary enables contact resulting in a supply through the interface.[134]

The provider operates an AI interface through which customers search for products, compare options, and in some configurations review and confirm purchases. The term "electronic interface" in Art. 14a covers a marketplace, platform, portal or similar means, defined broadly to include any website, portal, gateway, marketplace, application program interface, or similar current and future technology.[135] The provider's AI interface falls within that definition.

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[132] See Chapter 4 above.

[133] Van Doesum and others (n 5) 165 (the platform fictions for goods do not depend on nor refer to the commissionaire fiction of Art 14(2)(c)).

[134] Pollak (n 112) 52-53; Cicin-Sain (n 5) 284. See also Finanzgericht Düsseldorf, 1 K 2693/17 U; Bundesfinanzhof, XI B 113/19.

[135] VAT Implementing Regulation, art 5b; Cicin-Sain (n 5) 443 (the concept of 'facilitating' requires that the contact between supplier and customer results in a supply through the interface, not merely that the parties are brought into contact; in this sense facilitation can be considered narrower than 'taking part'). The threshold is different in kind: 'takes part' is filled by the power criterion through case law, while 'facilitates' is positively defined by legislative text requiring a supply to be concluded through the interface.

Whether the provider *facilitates* within Art. 5b depends on the configuration in which the purchasing process operates. Where the customer is redirected to the vendor's checkout to complete the purchase, the supply does not result through the provider's interface. Art. 5b third subparagraph(c) explicitly excludes a taxable person whose activity is limited to redirecting or transferring customers to other electronic interfaces where goods are offered for sale, without further intervention in the supply.[136] In that configuration, accordingly, Art. 14a does not apply.

The analysis proceeds on the configuration where the customer reviews the order summary and confirms the purchase within the AI interface, with order data and payment authorisation transmitted to the vendor's systems through integrated checkout protocols.[137]

Under the positive definition in Art. 5b first subparagraph, a taxable person *facilitates* a supply when it allows a customer and a supplier, selling goods through that electronic interface, to enter into contact which results in a supply of goods through that interface.[138] The Explanatory Notes elaborate that the sale must be realised or concluded with the help of the platform, reflected in the ordering and checkout process being carried out by or with the help of the platform.[139] On the present fact pattern, the provider's interface is where the customer identifies vendor products, compares options, reviews the order, and confirms the purchase. The vendor's products are surfaced within the interface on the basis of commercial arrangements involving structured data integration.[140] The contact between customer and vendor accordingly results in a supply of goods concluded through the provider's interface. The positive definition of facilitation is satisfied.[141]

A taxable person may, however, escape the facilitation concept if all three cumulative exclusions in Art. 5b second subparagraph are satisfied: (a) it does not set, directly or indirectly, any of the terms and conditions under which the supply is made, (b) it is not, directly or indirectly, involved in authorising the charge to the customer, and (c) it is not, directly or indirect-

[136] VAT Directive, art 14a; Explanatory Notes on VAT E-Commerce Rules (n 13) 9; Cicin-Sain (n 5) 290.
[137] VAT Implementing Regulation, art 5b, third subparagraph(c); Explanatory Notes on VAT E-Commerce Rules (n 13) 21.
[138] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout' (n 3); Google (n 2); Universal Commerce Protocol, 'Core Concepts' (n 2); Microsoft Advertising, 'Conversations that Convert' (n 3).
[139] VAT Implementing Regulation, art 5b, first subparagraph.
[140] Explanatory Notes on VAT E-Commerce Rules (n 13) 17.
[141] Universal Commerce Protocol, 'Core Concepts' (n 2); Google (n 2). The provider surfaces products from vendors with whom commercial arrangements exist, through structured data integration enabling the interface to display vendor-controlled pricing, availability, and product attributes. See section 3.1.

ly, involved in the ordering or delivery of the goods.[142] Failure to satisfy even one exclusion means the taxable person remains within the facilitation concept.

On the first exclusion, the provider sets terms and conditions for access to and use of the AI interface but does not set the terms of the underlying sale. The vendor determines price, delivery terms, and return conditions. The terms governing the interface should be distinguished from the terms governing the supply.[143] This exclusion is likely satisfied.

On the second exclusion, the provider does not itself collect payment from the customer for the underlying goods. Payment flows through integrated payment providers to the vendor, and the provider is not the merchant of record. The question is whether the provider's role in the checkout-within-interface configuration constitutes involvement in authorising the charge. The Explanatory Notes define the concept broadly, covering situations where the platform can influence whether, when, or under what conditions the customer pays, including where the platform connects the customer to a third-party payment processor.[144] On that reading, the provider is involved: the customer authorises payment within the provider's environment, and the provider's interface connects the customer to the payment processor through integrated checkout protocols. On a narrower reading of Art. 5b's text, however, involvement in authorising the charge could require something more direct than hosting the environment through which payment is initiated. The provider does not determine payment terms, does not decide whether the customer's account can be debited, and does not collect or hold funds. The payment decision and processing sit with the third-party provider and the vendor. The distinction Merkx draws in the context of the power criterion is relevant here as well: conditions regarding payment that form part of the contract between the vendor and the interface operator should be distinguished from conditions that form part of the supply between vendor and customer.[145] On the broader reading, this exclusion is not satisfied. On the narrower reading, the provider's role may be limited to providing infrastructure through which the vendor's payment process operates, which would leave the exclusion open.

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[142] For e-commerce platforms, engaging in activities such as setting terms, authorising the charge, or participating in ordering is not automatically sufficient to become a deemed supplier. The platform must still meet the positive definition of facilitation in Art 5b first subparagraph independently: Cicin-Sain (n 5) 443.
[143] VAT Implementing Regulation, art 5b, second subparagraph; Explanatory Notes on VAT E-Commerce Rules (n 13) 18-21.
[144] Pollak (n 112) 123 (setting terms and conditions should be understood as setting the terms regarding the sale, not the terms of use of the platform); Cicin-Sain (n 5) 287; Merkx (n 115).
[145] Explanatory Notes on VAT E-Commerce Rules (n 13) 19-20. The Explanatory Notes are not legally binding: see section 1.3.

On the third exclusion, the provider is not involved in the delivery of goods. The vendor fulfils, ships, and handles returns.[146] The provider is, however, present in the ordering process. The interface provides the technical environment for order review and confirmation, and the customer confirms the purchase within the provider's interface before the order data is transmitted to the vendor's systems. The Explanatory Notes treat providing the technical tools to take the order, typically the shopping cart or checkout process, as involvement in ordering.[147] On that reading, the provider is involved in ordering and the exclusion is not satisfied. On a narrower reading of Art. 5b's text, however, a distinction could be drawn between presenting the order to the customer and taking the order from the customer. The provider displays the order summary and enables the customer to confirm, but the vendor creates and processes the order in its own systems. The order originates in the vendor's inventory and is fulfilled by the vendor. On that reading, the provider's role is closer to displaying a purchasing opportunity than to participating in the ordering process itself, and the exclusion could remain open.[148] The answer depends on whether involvement in ordering requires active participation in generating or processing the order, or whether providing the environment in which the customer initiates it is sufficient.

Overall, on either exclusion, the broader interpretation supported by the Explanatory Notes points toward the provider remaining within the facilitation concept. The narrower reading of Art. 5b's own text leaves both exclusions genuinely contested. Since the exclusions are cumulative and the provider must satisfy all three to escape facilitation, even one unsatisfied exclusion is sufficient. The stronger view, taking into account both the Explanatory Notes and the provider's actual role in structuring the checkout environment, is that the provider does not satisfy at least one of exclusions (b) and (c), and therefore remains within the concept of facilitating under Art. 5b.[149]

In addition to the cumulative exclusions, Art. 5b third subparagraph provides further explicit exclusions for taxable persons whose activity is limited to payment processing, listing or advertising goods, or redirecting cus-

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[146] Merkx (n 115) (conditions regarding payment that form part of the contract between the vendor and the interface operator should be distinguished from conditions that form part of the supply between vendor and customer); see also fn 122 above. Where the provider operates its own payment wallet within the interface, as Google does with Google Pay in Gemini, the involvement in authorising the charge is more direct than where a third-party processor is integrated.
[147] Based on current consumer-facing implementations. See OpenAI, 'Instant Checkout' (n 3); Microsoft (n 50); Amazon (n 3).
[148] Explanatory Notes on VAT E-Commerce Rules (n 13) 20-21 (providing the technical tools to take the order from the customer, communicating confirmation or details of the order, charging a fee or commission based on the order's value)
[149] Cf Niedersächsisches Finanzgericht (n 129), where the court found the marketplace provided transaction infrastructure but the seller controlled the essential elements of the sale. The distinction between providing the environment and participating in the ordering process raises a comparable question.

tomers to other interfaces without further intervention.[150] In the checkout-within-interface configuration, the provider's activity extends beyond all of these. It provides the ordering environment, connects to payment processing, and transmits order data to the vendor. The provider also has knowledge, through its vendor integration, of whether transactions are concluded and where goods are shipped, which a merely listing or advertising platform would not possess.[151] The explicit exclusions do not apply.[152]

The provider, in the checkout-within-interface configuration, *facilitates* the supply of goods within the meaning of Art. 14a read with Art. 5b on the broader reading of the exclusions.[153] On the narrower textual reading, the result is, however, genuinely contested.

Even where the broader reading points toward facilitation, the provider's limited commercial involvement raises a further question. No payment flows through the provider, and it has no power over the essential terms of the supply. The provision was introduced to capture online platforms but its specific reach was not assessed.[154] Whether the facilitation concept extends to intermediaries whose role is confined to structuring the purchasing environment, without substantive intervention in the transaction itself, remains open on the current state of the law.[155]

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[150] The Explanatory Notes on VAT E-Commerce Rules are not legally binding and represent the Commission's views: see section 1.3. Where the Explanatory Notes adopt a reading broader than the wording of Art 5b itself supports, the text of the Implementing Regulation prevails. Separately, Art 5b must be interpreted consistently with Art 14a of the Directive: implementing measures cannot supplement or amend the Directive (*Fenix International* (n 91) paras 49-51). See Lamensch and others (n 9) 456 (the broad reading may capture 'unintended e-commerce platforms' whose inclusion was not the legislator's intention).

[151] VAT Implementing Regulation, art 5b, third subparagraph.

[152] Explanatory Notes on VAT E-Commerce Rules (n 13) 21 (a platform excluded under the third subparagraph would not have knowledge of whether a transaction is concluded, where goods are located, or where they are transported). On whether the three excluded activities can be cumulated, see Lamensch and others (n 9) 456, fn 64 (the wording implies cumulation is possible); contra Pollak (n 112) 124.

[153] Where other intermediaries are present in the supply chain, such as an existing marketplace through which the vendor sells, each intermediary's position must be assessed separately, but there can be only one facilitating platform per transaction: Cicin-Sain (n 5) 299; Explanatory Notes on VAT E-Commerce Rules (n 13).

[154] See Chapter 4 (the provider does not authorise the charge, does not authorise delivery, and does not set the general terms of the underlying sale). The deemed supplier rules for e-commerce platforms were not part of the European Commission's initial proposal and were added shortly before adoption by the Council upon suggestion of the European Parliament, without an assessment of the reach of the facilitation concept: Lamensch and others (n 9) 453. Council deliberation (ECOFIN) of 30 October 2017, 13376/17. The legislature's purpose, to concentrate VAT collection on platforms already in possession of transactional information, is clear. The question is how far beyond that core the facilitation concept extends.

[155] The objective scope of Art 14a further limits the transactions to which deemed supplier status would attach: the provision applies to distance sales of goods imported from third territories or countries in consignments with an intrinsic value not exceeding €150, and to

6 Conclusion

The aim of this thesis has been to examine the EU VAT classification of agentic commerce in relation to goods, with particular focus on the conditions under which deemed supplier treatment may arise.

On the first question, the taxable person is the AI agent provider. The AI agent is not a legal subject. Its actions are attributed to the provider, who independently carries on an economic activity through the monetisation of the AI interface. The provider is therefore the person whose activity is tested against both deemed supplier provisions.

On the second question, the provider supplies its own distinct service. That service is electronically supplied in its mode of delivery and intermediary in its function, where a commercial arrangement with a vendor exists and consideration is linked to completed transactions. Where no such arrangement is in place, there is no vendor-side intermediation. Where consideration is limited to a flat fee for product display, the intermediary dimension is less certain. The ESS characterisation applies across all configurations. The intermediary and facilitating characterisation is however contingent on the vendor-side arrangement.

On the third question, neither deemed supplier provision fully captures the provider's role on the present fact pattern.

Under Art. 14(2)(c), the commissionaire fiction does not apply. The provider does not satisfy the power criterion: it does not authorise the charge, does not authorise delivery, and does not set the general terms of the underlying sale. The curation function gives the provider influence over the purchasing environment, but that influence does not amount to power over essential elements of the supply.[156]

Under Art. 14a, however, the provider satisfies the positive definition of facilitation in the checkout-within-interface configuration: it enables contact between vendor and customer resulting in a supply through the interface. Whether the provider can rely on the cumulative exclusions to escape

distance sales of goods within the Community by suppliers not established in the Member State of taxation. Deemed supplier status accordingly attaches only to transactions falling within those categories, not to all supplies facilitated through the interface. Art 14a(1) and (2) VAT Directive.

[156] The result may differ for providers whose existing infrastructure involves integrated payment processing, such as Google's use of Google Pay within Gemini, where involvement in authorising the charge may be more direct. See Chapter 4.

deemed supplier status is contested. On the broader reading supported by the Explanatory Notes, the provider is involved in ordering and authorising the charge through the checkout environment it provides. On the narrower textual reading, both exclusions remain open. The provision was introduced to capture platforms but its specific reach was not assessed. Whether the facilitation concept extends to intermediaries whose role is confined to structuring the purchasing environment remains open on the current state of the law.[157]

Absent deemed supplier treatment, the provider remains a disclosed intermediary supplying its own service, while the underlying supply occurs directly between vendor and customer. Platforms such as Amazon Marketplace were in the same structural position before Art. 14a was introduced. The AI agent provider may now occupy an analogous position, intermediating in a way the current framework does not fully reach.[158]

Through its integration with vendors and its role in the purchasing process, the provider knows whether a transaction was concluded, between whom, at what price, and from which vendor. Its informational position is at least as strong as that of a platform.[159] Yet the current framework does not clearly capture it as a deemed supplier. Whether that result indicates a gap depends on how the constitutive elements of the provisions are read. Interpreting them too broadly risks capturing intermediaries outside a reasonable and feasible scope. Interpreting them too narrowly may leave functionally comparable intermediaries outside the framework.[160]

Beyond agentic commerce, the analysis also reveals a broader development. The two deemed supplier provisions have converged following the Court's judgement in Fenix International. Art. 14(2)(c) now requires the intermediary to exercise power over essential elements of the supply, while Art. 14a defines facilitation by reference to comparable conditions: setting terms, authorising charge, and involvement in ordering or delivery. However, while the conditions are comparable, the relationship is asymmetric: power entails involvement, but involvement does not entail power. It could therefore be argued that the development of the power criterion under Art. 28, extended to Art. 14(2)(c) through the conjunctive interpretation, could mean that platforms exercising significant commercial involvement may already

[157] Art 14a's objective scope further limits which transactions would trigger deemed supplier status. See fn 155; section 1.2. In the redirect configuration, where the customer is transferred to the vendor's checkout to complete the purchase, Art. 14a does not apply: see Chapter 5.
[158] See eg Van Abswoude and others (n 14); Cicin-Sain (n 5) 285, 443.
[159] Cicin-Sain (n 5) 610 (the platform's knowledge of whether a transaction was concluded, between whom, and under which terms is the essential prerequisite for justifying the shift to the intermediary collection model).
[160] Cicin-Sain (n 5) 443 (a precise scope is important; interpreting the constitutive elements too broadly might capture platforms outside a reasonable and feasible scope).

be captured by Art. 14(2)(c) as deemed suppliers, leaving Art. 14a necessary only for platforms that facilitate without exercising power. If Art. 14(2)(c) applies, deemed supplier status carries no objective scope limitations. For platforms that already control payment flows and impose their own terms of sale, the resulting obligation would accordingly extend to all goods supplied through the interface, significantly expanding the administrative burden beyond what Art. 14a currently requires.[161]

[161] See fn 155.

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