

ECJ Case Flo Veneer (C -639/24): the evidence of intra-EU supply of good

An important judgment of the Court of Justice on intra-Community supplies of goods and the related VAT exemption regime was delivered on November 13 in the Case *Flo Veneer* (C -639/24).

In particular, the Court focused on a sensitive and practically relevant aspect for taxable persons: the evidentiary requirements necessary to benefit from the exemption under article 138 VAT Directive.

In the case at hand, the referring court was asked to assess the validity of a tax assessment issued by the Croatian tax administration, which—considering the evidence of the transport of oak logs to another Member State insufficient—had refused the VAT exemption and reassessed the corresponding VAT.

Legal Framework

Pursuant to the combined provisions of Article 138 of the VAT Directive and Article 45a of Implementing Regulation 282/2011, Member States exempt intra-Community supplies of goods when two conditions are met:

- I. The goods are supplied to another taxable person, and
- II. the recipient to whom the goods are dispatched or transported has provided a valid VAT identification number.

This rule, laid down in Article 138, is complemented by the presumption of dispatch or transport established in Article 45a of the Implementing Regulation, according to which, to presume that the goods have actually been transported from one Member State to another, the supplier must be in possession of at least *two non-contradictory items of evidence* issued by two different and independent parties, other than the seller and the purchaser.

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Then, the acceptable combinations depend on who arranges the transport:

Case A: Transport carried out or arranged by the supplier under Article 45a (1)(a)

The supplier must have:

- I. A written statement confirming that the goods have been dispatched or transported (which may be made by himself or by a third party on his behalf), and
- II. at least two non-contradictory items of evidence from those listed under 45a (3)(a):
 1. Signed CMR or transport note;
 2. Bill of lading;
 3. Airfreight invoice;
 4. Invoice from the carrier of the goods.

Alternatively, one of these may be combined with other documents listed under 45a (3)(b):

- ▶ Insurance policy relating to the transport;
- ▶ Banking document proving payment for the transport;
- ▶ Official document (e.g. from a public authority or notary) confirming arrival in the country of destination;
- ▶ Receipt issued by a warehouse keeper confirming the reception of the goods in a warehouse in the country of destination

Case B: Transport carried out or arranged by the purchaser under Article 45a (1)(b)

The supplier must have:

- I. A written statement from the purchaser (to be provided no later than the tenth day of the month following the supply) indicating:
 1. Date of issue, name and address of the purchaser;
 2. Quantity and nature of the goods;
 3. Date and place of arrival;
 4. Identification of the means of transport (registration number, etc.);
 5. And the name of the person who accepted the goods.
- II. At least two non-contradictory items of evidence as in Case A, issued by two independent parties.

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Case background

Based on the factual circumstances—specifically, the incomplete transport documentation (e.g. a CMR letter missing the delivery date)—and adopting a strict and formal interpretation of the above provisions, the Croatian tax authority considered the evidence provided to be insufficient.

Although the taxpayer subsequently produced additional supporting documents during the administrative proceedings, the authority upheld its decision, emphasizing the occurrence of the aforementioned formal deficiencies, which could not be remedied on the basis of the literal wording of the provisions.

The dispute was therefore brought in front of the Croatian Administrative Court, which decided to refer a preliminary question to the Court of Justice in order to clarify the correct interpretation of the provisions and the extent of the taxpayer's evidentiary burden.

ESJ Ruling

The Court of Justice has now issued its ruling, providing important guidance on the documentation that suppliers must be able to produce during a tax inspection in order to retain the VAT exemption for intra-Community supplies of goods.

In this regard, the Court recalls the purpose of the reform introducing Article 45a, namely to simplify the evidentiary regime by establishing a presumption of transport.

Indeed, by citing recitals 2-5 of Implementing Regulation 2018/1912 (which amended Implementing Regulation 2011/282 by introducing Article 45a), the Court points out that the purpose of the reform was to improve intra-EU trade in a context where differing approaches among Member States created difficulties and legal uncertainty for businesses. The aim was therefore to clarify and harmonize the conditions under which the VAT exemption may apply, providing a practical solution for both companies and tax administrations.

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Through the introduction of two rebuttable presumptions, the reform intended on the one hand to strengthen the fight against cross-border VAT fraud, and on the other to offer good-faith operators a form of protection against negative consequences where they hold the documentation referred to. Accordingly, the presumption must not operate to the detriment of *bona fide* traders who nonetheless possess reliable evidence demonstrating the actual dispatch or transport of goods from one Member State to another within the European Union.

Tax authorities must therefore accept alternative evidence capable of proving that the goods have indeed been moved across borders within the internal market given that Article 45a merely identifies the cases in which the presumption applies, without setting out an exhaustive list of the necessary evidence.

This interpretation is also supported by the principle of VAT neutrality, which requires that taxable persons not be burdened with heavy or unnecessary evidentiary obligations, except where additional checks are justified by indications of fraud.

In its judgment, also the Court refers to its earlier decision in *Euro Tyre* (C-21/16), in which the Court held that the exemption for intra-Community supplies cannot be refused solely because the purchaser was not registered in the VAT Information Exchange System (VIES) or subject to the intra-Community acquisitions regime, provided that the substantive conditions of Article 138 of the VAT Directive were met and there was no evidence of fraud.

In light of the above considerations, the Court formulates the following principle of law:

- I. The VAT exemption for intra-EU supplies cannot be denied solely because the supplier did not provide the specific pieces of evidence listed in Article 45a;
- II. Tax authorities must consider any reliable evidence showing that the goods were dispatched or transported from one Member State to another within the EU, except in the situations where the presumption under Article 45a applies.

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Documents to be kept: checklist of evidence

To remain fully compliant with EU legislation and the principles established by the Court of Justice, we provide below a concise checklist of evidence that suppliers should keep readily available when performing intra-Community supply of goods.

To benefit from the exemption under Art. 138 of Directive 2006/112/EC, the supplier must therefore, within a reasonable time, be in possession of:

- ▶ The valid VAT identification number of the customer in another Member State (verifiable through VIES);
- ▶ Proof of the transport of the goods outside the Member State of departure, consisting of at least two independent pieces of evidence among:
 - Signed CMR / bill of lading / airfreight invoice / carrier's invoice;
 - Insurance policy, banking document, certificate from an authority, warehouse receipt;
 - And, if the transport is arranged by the customer, a written statement from the purchaser containing the shipment details.

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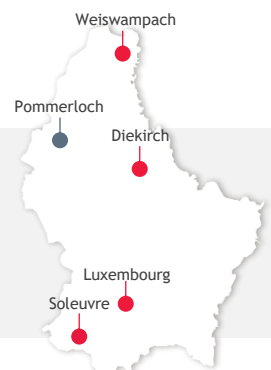
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