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VAT NEWSLETTER

ECJ: Proof of intra-Community supplies not limited

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1 Background

The VAT exemption for intra-Community supplies requires that the goods actually arrive in another EU Member State. This must always be proven. In practice, however, providing proof is often difficult. For instance, confirmation of arrival may not be formally acknowledged by the customer, freight documents may not have been archived, and electronic processes, in general, have their limitations. Furthermore, EU Member States have different expectations about how proof should be provided. In order to create uniformity and legal certainty in this area, Art. 45a of the EU Council Implementation Regulation 282/2011 (CIR) was introduced in 2019 as part of the Quick Fixes. The standard was intended to establish uniform documentation requirements in the EU. However, in practice, it is complex and difficult to comply with. It requires at least two pieces of non-contradictory evidence from two different parties, which must also be independent of each other, the supplier, and the customer. The ECJ has now dealt with this issue for the first time in its ruling of 13 November 2025 (FLO VENEER, C-639/24).

2 Facts

The case in question concerned an intra-Community supply from Croatia to Slovenia. The goods were actually physically transported to Slovenia, a fact which was not disputed by the Croatian tax authorities. However, the evidence required under Art. 45a CIR was incomplete. The tax authority therefore refused to grant the VAT exemption. The Zagreb Administrative Court then referred the question to the ECJ as to whether the evidence required under Art. 45a CIR must be provided or whether other evidence may also be sufficient, and whether the tax authorities are obliged to take this into account.

Ronny Langer
Certified Tax Consultant,
Dipl.-FW (FH)

+49 (0) 89 217 50 12-50
ronny.langer@kmlz.de

3 Decision

The ECJ first reiterates that the VAT exemption may not be refused solely on the grounds of missing or incomplete evidence if it is objectively established that the supply actually took place. The material requirements are decisive, while the formal requirements are secondary. This also applies with regard to Art. 45a CIR.

Furthermore, Art. 45a CIR does not contain an exhaustive list. The provision only mentions evidence for which there is a (rebuttable) presumption that an intra-Community supply has taken place. If individual documents mentioned therein are missing, other evidence may be used.

Furthermore, the ECJ stipulates that the tax authorities have a duty to verify. They must take due account of all evidence in their possession in order to verify whether these documents can substantiate the existence of an actual intra-Community supply. The tax authorities are not required to obtain evidence themselves. However, they are obliged to assess all evidence submitted by the taxable person.

4 Practical consequences

For Germany, the ruling does not bring about any revolution: alternative evidence has long been recognized here, above all the entry certificate pursuant to sec. 17b of the German VAT Implementation Regulation (UStDV). The requirements of Art. 45a CIR were only incorporated into sec. 17a UStDV as an additional option for the provision of evidence.

In addition, Germany has consistently implemented the ECJ case law and also recognizes VAT exemption in the case of formal deficiencies if, on the basis of the available evidence and the resulting actual circumstances, it is objectively clear that the requirements of sec. 6a para. 1 and 2 of the German VAT Act are met (sec. 6a.2 para. 3 sentence 5 of the German Administrative VAT Guidelines).

However, the ruling is significant for intra-Community supplies from other EU Member States. Countries that have previously adhered strictly to Art. 45a CIR must now adapt their practices. Taxable persons can argue that the VAT exemption should not be denied solely on the basis of formal deficiencies. If individual pieces of evidence specified in Art. 45a CIR are missing, this should not automatically result in the VAT exemption being denied. The tax authorities must make an overall assessment, taking into account all of the circumstances and all available documents.

Nevertheless, the recommendation remains to set up clear processes for providing evidence and to apply them consistently. In doing so, the requirements of Art. 45a CIR or other national regulations should be followed, to the extent possible. Otherwise, uncertainties and, in some cases, disputes will remain. After all, the tax authorities must examine the evidence submitted. However, there is no guarantee that the (alternative or incomplete) evidence will be accepted. Art. 45a CIR therefore remains relevant – but not exclusive.

KMLZ Rechtsanwaltsgesellschaft mbH | www.kmlz.de | office@kmlz.de
D-80331 München | Unterer Anger 3 | Tel.: +49 89 217501220 | Fax: +49 89 217501299
D-40221 Düsseldorf | Speditionstraße 21 | Tel.: +49 211 54095320 | Fax: +49 211 54095399