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THE INTERMEDIARY COLLECTION MODEL IN THE EUROPEAN VAT SYSTEM – PROPOSALS FOR SPECIFIC IMPROVEMENTS AND A GENERAL ASSESSMENT[1]

1. Setting the scene

Value added tax (VAT) remains a cornerstone of the tax system of European Union's Member States, accounting for a substantial portion of both national and EU revenues. Characterized as a broad-based tax on final household consumption, VAT is collected indirectly—more specifically through a staged mechanism that imposes the tax on transactions carried out by vendors acting as unpaid tax collectors. The neutrality of this system hinges on the principle of full input tax deduction across the supply chain, terminating at the final consumer. This structural design, rooted in the goal of avoiding tax cascading, differentiates VAT from its predecessor, the gross turnover tax, and anchors its function in economic neutrality and administrative efficiency.

Against this backdrop, the EU VAT system is harmonized through secondary and tertiary legislative instruments, specifically the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter: VATD) and the related 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 (hereinafter: VAT IR), and Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax. However, these instruments operate within a wider legal framework, and are bounded by primary EU law—notably the Treaty on the Functioning of the European Union (TFEU) and the fundamental freedoms contained therein, the Charter of Fundamental Rights of the European Union, and the general principles of EU law articulated by the Court of Justice of the European Union (CJEU). It is this dense normative landscape that instructs and limits the legislative activity not only of national,[2] but also that of the Union legislature. Therefore, when regulating the substance of EU VAT law but also its application the legislature needs to make sure to respect the higher-ranking

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[2] In the area in which the national legislature still have power to legislate, such as when the VAT Directive provides Member States with options.

primary EU law framework. This applies equally to the legislation that is the topic of this article – the European VAT Intermediary Collection Model (ICM).

This article[3] aims to examine very dynamic and consequential evolutions within the European VAT framework: the growing involvement of intermediaries in the collection and remittance of VAT, starting with its introduction in the context of e-service platforms, followed by its expansion in the context of online sales of goods within the framework of the VAT e-commerce package,[4] and culminating with the recent expansion of the ICM with respect of certain sharing economy activities under the Vat in the Digital Age (ViDA) initiative.[5] From

[3] This article performs a comparative analysis of all three sets of deemed supplier rules imposed on platforms in EU VAT law and focuses on the question where are the limits in replacing the vendor collection model with the ICM in light of the higher-ranking general principle of equality. In addition, the article proposes concrete recommendations how the three sets of deemed supplier rules should be amended in order to achieve a more equal and streamlined approach to deemed supplier rules in the EU VAT law. This is somewhat different to the existing literature that researches in-depth individual EU VAT deemed supplier rules, but does not expressly juxtapose all three of them in order to ascertain potential improvements to the entire EU ICM system and to assess them in light of the principle of equality. Some of the more prominent books and articles written on individuals aspects of deemed supplier rules include the following: E.T. Sroka, *Short-Term Rental Platforms as Deemed Suppliers in the EU VAT System | Wolters Kluwer Legal & Regulatory* (Wolters Kluwer Legal & Regulatory 2024); G. Beretta, *European VAT and the Sharing Economy* (Kluwer Law International 2019); C. Pollak, *Platforms in the EU VAT Law - A Legal Analysis of the Supply of Goods* vol. 70 (Eucotax, Wolters Kluwer); M. Lamensch, E. Traversa & S. van Thiel, *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* (Kluwer Law International 2015); S. Messina, *EU "Distance Sales of Goods Imported" and Customs Duties: Mind the "Link"*, 35 International VAT Monitor 3 (2024); S. Messina, *VAT E-Commerce Package: Customs Bugs in the System?*, 13 World Tax Journal 1 (4 Mar. 2021); M. Papis Almansa & E.T. Sroka, *Questioning the Proportionality of the ViDA Rules on the Platform Economy: Are We Veering off Course?*, 35 International VAT Monitor 3 (10 May 2024); M. Lamensch et al., *Qualitative Assessment of Two Recent EU Commission Proposals to Impose (More) VAT Obligations on Platforms*, 16 World Tax Journal 1 (Feb. 2024); M. Lamensch et al., *New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment*, 13 World Tax Journal 3 (2021); T. Ehrke-Rabel, S. Hammerl & L. Zechner, *Umsatzsteuer in Einer Digitalisierten Welt* (Institut für Finanzen und Steuern 2021); L. Zechner, *Internetplattformen Und Umsatzsteuerrechtliche Leistungszurechnung Am Beispiel Airbnb*, 11 Österreichische Steuerzeitung 2020; L. Zechner & S. Hammerl, *SWK-Spezial Plattformhaftung* (Linde Verlag 2020); M. Lamensch, *Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?*, 29 International VAT Monitor 2 (Mar.–Apr. 2018); M. Lamensch, *Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One*, 27 EC Tax Review 4 (2018); M. Merkx et al., *VAT in the Digital Age Package: Viva La ViDA or Livin' La ViDA Loca?*, 32 EC Tax Review 3 (2023); F. Matesanz, *VAT Treatment of the Sharing Economy*, 32 International VAT Monitor 2 (2021); F. Matesanz, *The Increasing Liability of Digital Platforms in the Collection of EU VAT*, 34 International VAT Monitor 3 (May 2023); F. Matesanz, *What Does the Fenix Case Mean for VAT Management?*, 14.03.2023. International Tax Review; Lamensch, Traversa & Thiel; M. Lamensch, *Tax Assessment in a Digital Context: A Critical Analysis of the 2015 EU Rules*, in *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* (M. Lamensch, E. Traversa & S. van Thiel eds., Kluwer Law International 2015).

[4] The VAT e-commerce package, adopted on December 5th, 2017, consists of: Council Directive (EU) 2017/2455, Council Regulation (EU) 2017/2454 and Council Implementing Regulation (EU) 2017/2459. Furthermore, on November 21st, 2019, the Council adopted the implementing measures for the VAT e-commerce package consisting of: Council Directive (EU) 2019/1995 and Council Implementing Regulation (EU) 2019/2026. Finally on February 12th, 2020, the Commission adopted the Implementing Regulation (EU) 2020/194 laying down details on the working of the VAT One Stop Shop.

[5] At the time of submission of this article in May 2025, the latter rules, being part of the VAT in a Digital Age package (ViDA), have been formally adopted by the Council on 11 Mar. 2025 and published in the Official Journal on 25 Mar. 2025. Council Directive (EU) 2025/516 of 11 March 2025 amending Directive 2006/112/EC as regards VAT rules for the digital age, OJ; Council Implementing Regulation (EU) 2025/518 of 11 March 2025 amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes, OJ; Council Regulation (EU) 2025/517 of 11 March 2025 amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, OJ. The ViDA package entered into force 20

vending intermediaries, i.e. platforms taking part/facilitating certain transactions that are treated as deemed suppliers for VAT purposes, to transport intermediaries, i.e. express couriers and postal operators, intermediaries are increasingly placed at the heart of the VAT collection process. This shift reflects a broader trend in international tax coordination, driven by technological change, enforcement challenges, and the demand for greater administrative efficiency.

However, the shift of the tax collection burden onto intermediaries raises a series of legal questions that warrant closer scrutiny. Namely, under the vendor collection model, the standard rule set out in Article 193 VATD assigns the obligation to collect VAT to the taxable person who performs a taxable supply of goods or services, i.e. the vendor. There are only a few exceptions to this rule, the most notable being the reverse charge mechanism and the splitting of a cross-border supply into an exempt intra-Community supply and a taxed intra-Community acquisition. In those B2B situations, VAT must be accounted for by the recipient of the goods or services (i.e. the buyer). The reason for which the legislature chose to impose the VAT collection obligation initially on the seller, and alternatively on the buyer, was not a haphazard choice. On the contrary, these two persons are participants of a civil or commercial law relationship, therefore they two possess all the relevant information necessary for correctly assessing the VAT.

The ICM, by contrast, transfers the VAT collection obligation to taxable persons that are external to the underlying civil law contractual relationship. In principle, the taxable transactions under this framework—namely, the sale of goods and services—remain the same as those that would have been taxed at the vendor level had the ICM rules not been implemented.[6] However, the key distinction lies in the fact that these transactions are no longer taxed in the hands of the vendor but rather in the hands of the intermediary. As a result, the VAT liability borne by intermediaries is not based on their own turnover but rather on the turnover generated by the vendors. As the proliferation of the ICM evolves at a rapid pace—exemplified by the measures adopted under the VAT e-commerce package and the recent ViDA

days after being published in the Official Journal, that is 14 Apr. 2025. However, the rules on sharing economy platforms (Article 28a of the VAT Directive and the related articles in the VAT Implementing Regulation) are part of amendments to the VAT Directive with effect from 1 July 2028. Accordingly, the Member States have to transpose the sharing economy platform rules into their national legislations by 30 June 2028 and apply them from 1 July 2028, with the option to postpone their application until 1 January 2030 at the latest. *See* Council Directive (EU) 2025/516 amending Directive 2006/112/EC as regards VAT rules for the digital age, art. 6 (Transposition).

[6] An exception would be the deemed supplier rules in the sharing economy under the recently adopted Article 28a of the VAT Directive that will enter into effect from 1 July 2028. Without the application of the ICM in this scenario, the vendor would not be required to collect VAT either because the person would be a non-taxable person or would be a taxable person that profits from the exemption for small and medium enterprises and therefore does not charge VAT on the supplies.

package—the questions surrounding the ICM increasingly become not only technical ones, but also principle-based. While conceptually appealing from an enforcement perspective, the ICM poses challenges related to accountability, compliance costs, legal safeguards, and fundamental rights of the intermediaries involved.

This article begins by succinctly presenting the EU VAT ICM rules found to exist in three specific sectors in order to introduce the various readers to the analyzed provisions. This includes an analysis of their legal basis, policy justifications, and key operational features. Also, the numerous differences in the legislative models and their impacts on the different platforms targeted by the respective rules are highlighted in that part (section 2). This shall lead to the following part, in which the author suggests certain technical improvements to the regulatory framework of the EU ICM to ensure its consistency and efficiency (section 3). Subsequently, the author shall test the EU ICM in light of the primary EU law equality principle, to which all secondary and tertiary EU law must abide (section 4). Ultimately, the author shall present her overall conclusions on the EU VAT ICM, as a way to outsource the public function of tax collection onto certain intermediaries in the final part (section 5).

2. Presenting the ICM in the EU VAT system

The three sectors of commerce that have been targeted with the ICM rules by the EU legislature are: e-services (Article 9a VAT IR in connection to Article 28 VATD), e-commerce (Article 14a and Title XII, Chapter 7 VATD), and certain transactions in the sharing economy sector (Article 28a VATD).

It is important to emphasise that the ICM in the EU VAT system encompasses two types of rules: deemed supplier rules applicable to platforms acting as vending intermediaries, but also VAT collection rules imposed on transport intermediaries as the persons presenting the goods to customs on behalf of the person for whom the goods are destined (Title XII, Chapter 7 VATD). The latter rules are relevant solely in the context of e-commerce (that is the sale of physical goods online that are then transported to the customer) which is the only sector among the three where transport occurs. Out of the two types of rules within the ICM, the rules concerning transport intermediaries appear to be less contentious. This is due to the fact that the transport intermediary's obligation to collect and remit the import VAT is limited to the amount of import VAT actually collected from the primary debtor (currently the customer),[7]

[7] Article 201 VATD stipulates that import VAT shall be payable by any person, or persons, designated or recognised as liable by the Member State of importation. Currently, in the vast majority of EU Member States this is the customer/consignee. European Commission, *Explanatory Notes on VAT E-Commerce Rules* p. 98 (2020) [hereinafter *Explanatory Notes on VAT E-Commerce Rules* (2020)]. However, this need not always be the case. France chose to designate the platform as the person liable to pay import VAT, when the platform facilitates a "direct" distance sale of imported goods (the sort in which the Member State of arrival and import are the same),

under Article 369z(1) VATD, thereby rendering the intermediary's liability subsidiary in nature.

In contrast, the deemed supplier rules impose a primary and full liability on the platform taking part/facilitating a relevant transaction. These rules are notably more complex in their practical application, impose a greater administrative burden, and entail a higher degree of risk for the intermediary. Consequently, they are considered to be significantly more controversial and will thus be the focus of this article.

The following subsections will examine each of these rules in turn, outlining their legal basis, policy justifications, and key operational features.

2.1. Deemed supplier rules imposed on e-service platforms – oldest and perhaps outdated?

The earliest implementation of deemed supplier rules tailored specifically to platforms involved those taking part in the supply of e-services (and certain telephone over the Internet services, such as VoiP). This development must be viewed in the context of the 2015 reform of the VAT Directive that extended the destination principle to all B2C e-services, including those supplied by providers established within the EU. Although this change was welcomed for its potential to curb competition distortions, it simultaneously introduced significant administrative complexity, particularly for small and medium-sized service providers. These suppliers now bore the burden of verifying the taxable status, capacity, and the location of their customers in order to correctly assess VAT obligations and determine whether the reverse

regardless of the intrinsic value of the consignment (however for consignments above the value of EUR 150 the supplier has the option to be liable for import VAT). Also, in case of an "indirect" distance sale of imported goods (the sort in which France is the Member State of arrival but the Member State of importation is a different one), if the value of the consignment does not exceed EUR 150, the person liable for import VAT is the platform (if the value is above EUR 150, the person liable is always the supplier). See BOI-TVA-DECLA-10-30, applicable from 18 Jan. 2023, available at: https://bofip.impots.gouv.fr/bofip/13160-PGP.html/identifiant%3DBOI-TVA-DECLA-10-30-20230118 in the context of Article 293 A of FR: Code général des impôts. Moreover, on 13 May 2025, the Council reached an agreement on the position of Member States on the Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT directive on value added tax (VAT) rules for distance sales of imported goods and import VAT. Pending its adoption, non-EU established suppliers or deemed suppliers making a distance sale if imported goods that would be eligible to be declared under IOSS who decide not to use the IOSS, shall be the persons liable to pay the VAT on importation. In line with the objective of shifting the liability from the customer to the supplier or deemed supplier and making them systematically liable for the import VAT relating to those goods, special arrangements for declaration and payment of import VAT in Title XII, Chapter 7 VATD would be deleted. However, amendments to Article 205 VATD would ensure that Member States could provide that a person other than the supplier or deemed supplier (and where applicable the tax representative) or the customer (if the customer agreed to pay import VAT due by the supplier or the deemed supplier in order for the goods to be released into free circulation) is to be held jointly and severally liable for the payment of VAT on importation. If the author correctly understood the aim of this provision, it is to ensure that transport intermediaries who are acting as direct customs representatives (i.e. in the name and on the account of the declarant) can be held jointly and severally liable for the import VAT (which is currently only the case if the transport intermediary acts as an indirect customs representative).

charge mechanism should apply. Despite the introduction of certain presumptions in the VAT IR to assist suppliers in fulfilling these new obligations, many continued to face practical difficulties.[8] This was especially true where services were delivered through a complex network of intermediaries, such as telecommunications networks or digital marketplaces. In such cases, the original service provider often lost visibility over the transaction path, thereby undermining their ability to ensure VAT compliance.

To address this issue, Article 9a VAT IR was introduced[9] as an implementing measure of Article 28 VATD, i.e. the "general" article regulating the VAT treatment of situations in which a taxable person, acting in his own name but on behalf of another person, is taking part in a supply of services.

According to Article 9a(1) VAT IR, when e-services are supplied via a telecommunications network, interface, or portal (e.g. a digital app store), the platform is presumed to be acting in its own name, unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties. This presumption is rebuttable, but only if the platform clearly identifies the actual supplier in all relevant documentation, including invoices and customer receipts.

However, the presumption becomes irrebuttable, and the platform is necessarily regarded as the supplier, under the third subparagraph of Article 9a(1) VAT IR if the platform is involved in any one of the following activities: (a) authorizing the charge to the customer; (b) or the delivery of the service; or (c) sets the general terms and conditions of the supply.

In comparison to the other deemed supplier rules for e-commerce and sharing economy platforms,[10] the deemed supplier rules for e-service platforms can rely only on one explicit exclusion from the rules – that for platforms that only process the payments of e-services without any further intervention in the supply (Article 9a(3) VAT IR).[11] Another striking

[8] M. Lamensch, *The 2015 Rules for Electronically Supplied Services – Compliance Issues*, 26 International VAT Monitor 1, p. 11 (2015); D. Raponi & D. O'Sullivan, *VAT and Taxation of the Digital Economy from the Perspective of the EU Policy Maker*, in *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* p. 13 (M. Lamensch, E. Traversa & S. van Thiel eds., Kluwer Law International 2015); C.A. Herbain, *Value Added Tax 3.0*, in *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* p. 35 (M. Lamensch, E. Traversa & S. van Thiel eds., Kluwer Law International 2015).

[9] Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services, OJ L 284 [hereinafter Implementing Regulation 1042/2013].

[10] These are excluded also when they only list or advertise the goods or services or redirect or transfer the customer to another platform where the goods or services are offered for sale, without any further intervention in the supply, as explained below.

[11] The Explanatory Notes of the Commission on TBE services also mention internet providers and mobile operators as excluded, but these Notes are non-binding. 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* p. 29 (2014), available at https://vat-one-stop-shop.ec.europa.eu/document/download/78103105-cf0c-4949-9162-

difference between the deemed supplier rules for e-service platforms, and those for e-commerce and sharing economy platforms is that the former do not provide any kind of liability limitation rule for the e-service platforms. This means that e-service platforms cannot protect themselves from VAT liability in case they relied on information provided by third parties that is erroneous, and the platform acted in good faith (the platform can demonstrate that it did not and could not reasonably know that this information was erroneous).

2.1. Deemed supplier rules imposed on e-commerce platforms – a more modern concept?

The second legislative intervention addressed platforms that facilitated the sale of physical goods ordered online and delivered to non-taxable persons within the EU. These platforms, typically referred to as e-commerce platforms, became subject to deemed supplier obligations as part of the VAT e-commerce package introduced to combat widespread abuse of the low-value import VAT exemptions and to rectify distortions of competition.[12]

In light of the fact that over 70% of online sales were facilitated by a small number of major platforms,[13] the EU legislature introduced deemed supplier rules in Article 14a VATD, implemented by Articles 5b to 5d VAT IR. Under these rules, a platform becomes liable for VAT if it facilitates:

1. Distance sales of goods imported into the EU in consignments of an intrinsic value not exceeding EUR 150; or
2. Sales of goods within the Community to a non-taxable person, provided the seller is not established within the EU.

Contrary to the deemed supplier rules for e-services platforms, the deemed supplier rules for e-commerce are not based on Article 28 of the VAT Directive, but instead have their own separate legal basis in Article 14a VATD. The author would thus argue that these are to be seen as distinct from the concept of undisclosed agent and its related VAT treatment and are also not bound by the jurisprudence of the CJEU on the topic. The legal definition of "facilitation" in Article 5b VAT IR specifies that this occurs when a platform allows a customer and a supplier to enter into contact, resulting in a supply of goods via the platform. A platform will not be deemed to facilitate a transaction if it does not set the terms and conditions of the supply, nor

daab6f5d11d4_en?filename=explanatory_notes_2015_en_0.pdf [hereinafter *Explanatory Notes of the Commission on TBE Services* (2014)].

[12] Prior to the reform, goods imported from non-EU countries in consignments valued at EUR 22 or less were exempt from VAT. This threshold was frequently exploited by sellers—particularly those outside the EU—to avoid VAT liabilities. In many cases, these sellers stored goods in EU-based fulfilment centres, thereby enabling local deliveries without VAT collection. The abolition of the low-value consignment relief, effective 1 July 2021, closed this loophole and aligned EU VAT law with the principle of taxing all imports, regardless of value.

[13] International Post Corporation, *IPC Online Shopper Survey 2019 Report* p. 4 (2020).

authorizes the charge to the customer, and does not participate in ordering or delivery of the goods, whether directly or indirectly, as detailed in the second subparagraph of the same article.

Explicit exclusions are available not only for e-commerce platforms that only engage in payment processing, but also those that limit their activity only to advertising, or customer redirection, with no further involvement in the supply. In addition, Article 5c VAT IR introduces a limited liability rule, allowing platforms to avoid VAT liability for *underpaid* VAT[14] if they relied on erroneous third-party information and can demonstrate that they could have not reasonably known that the information was incorrect.

2.3. Deemed supplier rules imposed on sharing economy platforms – the newest addition to the arsenal

The third and most recent category of platforms targeted by the deemed supplier rules are those facilitating transactions within the sharing economy, specifically short-term accommodation rentals (STAR) and passenger transport services by road (PTR).

The policy rationale for this extension lies in the increasing competitive tension between traditional business models—such as hotels and taxi companies—and micro-providers operating through sharing economy platforms. The latter often escape VAT liability either because their activities are not deemed to constitute an economic activity or because they fall below VAT registration thresholds (i.e. they benefit from SME exemptions). From both a policy and administrative standpoint, collecting VAT directly from these micro-suppliers would have been costly and inefficient.

Article 28a VATD, along with Articles 9b to 9g of the VAT IR, introduces a deemed supplier model whereby platforms become liable for VAT on supplies of STAR or PTR unless the underlying provider has submitted a VAT or OSS identification number and declared an intention to account for VAT. This information must be provided to the platform only once, streamlining the compliance burden.

As with the deemed supplier rules for e-commerce platforms, the author views these rules as distinct from the concept of undisclosed agent, since Article 28a VATD explicitly begins with "*Notwithstanding Article 28…"*. Similarly, the concept of "facilitation" is defined in Article 9b(1) VAT IR and the exclusions therefrom, in Article 9b(2) VAT IR, mirror those applicable to e-commerce platforms. The rules also provide from the same explicit exclusion from the deemed supplier rules as those for e-commerce, excluding those that merely process payment, or list or advertise or redirect or transfer customers of STAR or PTR to other platforms

[14] This resorts from the wording "shall not be held liable for the payment of VAT in excess of the VAT which it declared and paid on these supplies".

without any further intervention in the supply. However, these rules also add that platforms which merely enable cost-sharing of rides are not subject to the deemed supplier provisions (Article 9b(4) VAT IR.[15]

A liability limitation provision in Article 9d VAT IR, shields these platforms from VAT responsibility for *not applying the deemed supplier rules* if they depend on supplier-provided information that later proves to be erroneous, as long as they can demonstrate they can prove that they did not and could not reasonably have known that that information was erroneous. Although very similar to the liability limitation for e-commerce platforms in Article 5c VAT IR the scopes of the provisions do not align. Article 5c VAT IR permits e-commerce platforms to rely on information from both suppliers and third parties, whereas Article 9d VAT IR restricts its application only situations where the platform depends on supplier-provided information. In practice, this distinction has limited impact, as both types of platforms must act in good faith.[16] More importantly, Article 5c VAT IR explicitly limits liability to underpaid VAT but may arguably extend by way of interpretation to cases where deemed supplier rules were not applied.[17] In contrast, Article 9d VAT IR clearly applies *only* when the deemed supplier rules were not applied *at all*, excluding situations of VAT underpayment. It is the view of the author that it is not possible to interpret Article 9d VAT IR so that extends also to underpayment of VAT by the sharing economy platforms.

3. Suggested technical improvements to the regulatory framework of the EU ICM to ensure its consistency

Given that the deeming provisions applicable to e-service platforms are the oldest within the EU VAT framework, they may be regarded as no longer fully aligned with the realities of the modern digital economy. It is submitted that the continued reliance on Article 28 VATD—governing the treatment of undisclosed agents in the supply of services—as the legal basis for these rules may not represent the most appropriate legislative approach for e-service platforms operating in a digital context. Namely, in the brick-and-mortar economy the customer (in a sales commission) was not aware of the fact that the intermediary was not the actual supplier but was

[15] Such as BlaBlaCar. Merkx & Gruson underline that home-swapping should also have been included because barter transactions are difficult to tax due to challenges in determining the taxable amount of the remunerations in kind. M. Merkx & J. Gruson, *EU Member States Agree on ViDA: A Major Step for the EU VAT System and a Digital Leap for Businesses*, 34 EC Tax Review 1, p. 13 (1 Feb. 2025).

[16] This means that both platforms need to diligently cross-check information whether it is obtained from the underlying supplier or a third-party, otherwise they cannot rely on the safe harbour.

[17] Pollak considers that the wording could also cover the situation where the platform did not apply the deemed supplier rules at all because in such a situation the VAT would be zero. Pollak, *supra* n. 3, at p. 208.

only acting as an agent[18] (in other terms, the principal remained undisclosed). The legal fiction of undisclosed agent was thus created for VAT purposes to preserve the right to deduct of the customer on the one hand, and not to disclose the identity of the principal, on the other.[19] However, since then circumstances have changed significantly and in the digital environment the customer is often perfectly aware that the platform is acting as an agent and not the actual supplier. Therefore, the CJEU has to somewhat "bend" the concept of undisclosed agent in the *Fenix International* judgement to arrive to the conclusion that it is not irreconcilable with Article 28 VATD that the customer is, in certain cases (i.e., when e-services are provided through a platform), aware of the agency and the true identity of the supplier.[20]

In more practical terms, conceiving the deeming provisions for e-service platforms on the concept of undisclosed agent risks creating inconsistencies with the VAT treatment of platform facilitation fees, particularly in light of the newly introduced Article 46a VATD under the ViDA package. This article creates a new, specific, place of supply rule for facilitation services provided by platforms and, according to Article 30(2) second subparagraph of VAT IR, that service shall be regarded as *distinct and independent* from the goods or services that the taxable person is *deemed* to supply. This is obviously difficult to reconcile with the prevailing opinion that under Article 28 VATD the intermediation service of the undisclosed agent (in this case the e-service platform) is absorbed into the underlying supply.[21] Moreover, since the facilitation fees charged to the users by the platforms can be charged not only as a commission, but also as a subscription or a combination thereof, it would be a far more practicable solution to disassociate the intermediation service of e-service platforms from the underlying service in all cases. Indeed, in a recent case, the Court decided that the way of charging the service can have

[18] This is because the agent acts in his own name. A. van Doesum et al., *Fundamentals of EU VAT Law* p. 130 (Second edition, Wolters Kluwer 2020).

[19] A fictitious supply had been introduced in Article 5(2)(c) of the Second VAT Directive already at the very beginning of the EU VAT system. Its scope was however limited only to goods. C. Amand, *EU Value Added Tax: The Directive on Vouchers in the Light of the General Value Added Tax Rules*, 19, p. 158. In the 1970-ties, the application of the fiction was expanded to services by Article 6(4) of the Sixth VAT Directive. Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, OJ L145 (1977) [hereinafter Sixth VAT Directive (1977/388)]. C. Amand, *Disclosed/Undisclosed Agent in EU VAT: When Is an Intermediary Acting in Its Own Name?*, 32 International VAT Monitor 5, p. 244 (2021). These fictions are now contained respectively in Article 14(2)(c) (for goods) and Article 28 of the VAT Directive (for services).

[20] UK: ECJ, 28 Feb. 2023, Case C-695/20, *Fenix International Limited v Commissioners for Her Majesty's Revenue and Customs*, [2023], ECLI:EU:C:2023:127, para. 88, ECJ Case Law.

[21] H.-G. Ruppe & M. Achatz, *Umsatzsteuergesetz: Kommentar* p. 440 (6th ed., facultas). M. Merkx, *Platform Liability: An Efficient and Fair Collection Model for VAT?*, in *VAT Challenges and Opportunities in the New Digital Economy* p. 20 (Madrid VAT Forum 2022); L. Zechner, *Understanding VAT in Three-Party, Platform-Based Business Models: Which Party Is Supplying Which Service*, 31 EC Tax Review 4, p. 181 (2022); van Doesum et al., *supra* n. 18, at p. 130.

an impact on whether the service rendered by the commissionaire is a separate service.[22] An additional practical implication of the absorption of the intermediation service provided by e-service platforms into the deemed underlying supply is that a potential reduced rate applicable to the deemed service would be extended also to the intermediation service.[23] This would not be the case with the platforms subject to the other deemed supplier rules, since these are not based on the concept of undisclosed agent, and thus their facilitation services would always be subject to a separate VAT treatment than the underlying supply.

A further proposal for a technical improvement of the e-service deemed supplier rules goes in the direction of extending the list of explicit exclusions to resemble those of the other two sets of deemed supplier rules. E-service platforms should also benefit from improved legal certainty of knowing that if they limit their activities only to advertising e-services or redirecting customers of e-services to other platforms without further intervention in the supply, they too should be explicitly excluded from the deemed supplier rules. However, the author views the complete absence of a liability limitation provision for e-service platforms subject to the deemed supplier rules under Article 9a of the VAT Implementing Regulation as perhaps the most pressing legislative deficiency requiring modernization. Such a provision could be inspired by the one in the "modern" deemed supplier rules, namely those for e-commerce (Article 5c VAT IR) or sharing economy (Article 9d VAT IR).

Admittedly, these are not without shortcomings and would also benefit from refinement to enhance consistency. For example, under the existing framework, sharing economy platforms do not appear to benefit from liability protection where they apply the deemed supplier rules but underpay VAT, whereas e-commerce platforms may be shielded in both circumstances (depending on whether an *argumentum a minori ad maius* of that provision is permitted). In the interest of ensuring equal treatment among all three categories of deemed supplier rules, it would be appropriate to introduce a harmonized and coherent liability limitation mechanism applicable to all platforms. It must be borne in mind that the latter are considered suppliers

[22] SE: ECJ, 17 Oct. 2024, Case C-60/23, *Skatteverket v Digital Charging Solutions GmbH*, [2024], ECLI:EU:C:2024:896, para. 54, ECJ Case Law.

[23] BE: ECJ, 14 July 2011, Case C-464/10, *État belge v Pierre Henfling, Raphaël Davin and Koenraad Tanghe, acting as administrators in the insolvency of Tiercé Franco-Belge SA*, [2011], ECLI:EU:C:2011:489, para. 43, ECJ Case Law. In general, the reduced rates and exemptions referred to in paragraphs 1 and 2 of Article 98 VATD do not apply to e-services. However, since the entry into force of Council Directive (EU) 2018/1713 of 6 November 2018 amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals, OJ L 286 (2018) [hereinafter E-book Directive (2018/1713)] on 4th of December, 2018, electronic publications can profit from a reduced rate or an exemption equal to those previously only reserved for printed publications. In many Member States (e.g., Austria, Belgium, Latvia, Lithuania, Luxembourg etc.), e-publications can profit from an exemption or a reduced tax rate, but this can be subject to conditions, such as whether the content is adult content. F. Annacondia, *EU VAT Compass 2024/2025* p. 900 et seq. (IBFD 2024).

solely by way of legal fiction and that they remain substantially reliant on information supplied by the underlying supplier or, where applicable, third parties.

A final technical improvement to the existing legal framework goes into the direction of improving the protection of the Member States' tax revenues. It concerns the possibility of Member States to require the nomination of a tax representative when a non-EU established platform is acting as a deemed supplier of services (currently only e-services, but starting from July 2028 also for STAR or PTR sharing economy services) and uses the non-Union One Stop Shop (OSS) to report the VAT dues in all the Member States where VAT is due (Articles 358a-369 VATD). Under the current legal framework, not only is there no obligation under the VAT Directive to require such a non-EU platform to nominate a tax representative (similar to the obligation to nominate an intermediary for the use of the IOSS under Article 369m(1)(b) VATD),[24] but there is on the contrary a prohibition imposed on Member States to demand this in their national legislations, under the third subparagraph of Article 204(1) of the VAT Directive. Given that the amounts of EU VAT that these non-EU established platforms can collect it would be prudent to obligate them to appoint an EU established tax representative who would assume all VAT obligations related to all eligible deemed supplies of services.

4. Evaluation of the coherence of the switch from the vendor collection model to the ICM with the higher-ranking general principle (or fundamental right) of equal treatment

In addition to the analysis of the issues where the existing EU ICM framework could be improved, the author would like to offer a more general take on the switch from the vendor collection model to the ICM in light of the higher-ranking general principle of non-discrimination (i.e., fundamental right of equal treatment under Article 20 of the Charter). This is because the substitution of the vendor by the intermediary is the fundamental concept underpinning all of the different deemed supplier rules that have been analysed in the present article.

In its standard test for examining whether there is an infringement of equal treatment (i.e. discrimination), the CJEU resorts to a tripartite testing scheme – a comparability analysis, a justification analysis and, finally, a proportionality analysis.

[24] The vast majority of non-EU e-commerce platforms (apart from Norwegian) must appoint a tax representative to be able to use the IOSS. This is because currently only the agreement of the EU with the Kingdom of Norway (Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax, OJ L 195) is recognised by the EU as being an equivalent to the legal framework existing in the EU. Commission Implementing Decision (EU) 2021/942 of 10 June 2021 laying down rules for the application of Council Directive 2006/112/EC as regards the establishment of the list of third countries with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Council Regulation (EU) No 904/2010.

At the level of the comparability analysis, comparable situations must not be treated differently, but also *different* situations *must not* be treated the *same*. In principle, it is not sufficient that the two situations that are treated the same have some objective differences. Instead, these differences need to be assessed as a whole, in light of the *objectives and principles of the field to which the rules relate* (a), as well as the *objective of the rules at issue* (b).[25]

In respect of the *objectives and principles of the field to which the rules relate* (a), it can be argued that one of the fundamental principles of (EU) VAT is that it is a tax on the vendor's turnover.[26] Accordingly, as stated above, Article 193 VATD imposes the tax collection obligation on the taxable person carrying out a taxable supply of goods and services, with a limited number of exceptions to the "standard rule" in B2B situations, in which the VAT must be accounted for by the recipient of the goods or services (i.e. the buyer). As mentioned before, the legislature's decision to impose the VAT collection obligation primarily on the supplier and, alternatively, on the customer was not arbitrary. Rather, it reflects the underlying civil law relationship between the two parties, whereby the supplier provides a good or service in exchange for consideration from the customer. As direct participants in the transaction, both parties are presumed to possess all the essential information required for the correct determination of VAT—such as the nature of the supply, the agreed price, the timing of the transaction, the destination of any shipment, and the customer's place of establishment or residence. On the contrary and radically different to the traditional vendor collection model, in the ICM the turnover on which the intermediaries need to pay VAT is not their own, but rather that of the vendors.

Additionally, the comparability, or rather the difference, between the vendor collection model and the ICM has to be assessed also *in light of the objective pursued by the rules* at issue (b). The objectives of the ICM are reflected in the underlying policy rationales for its introduction—namely, to enhance VAT collection, simplify administrative processes, and reduce compliance costs for both businesses and tax authorities in situations where relying on the traditional vendor collection model is overly complicated.

In light of both *objectives and principles of the field to which the rules relate* (a), as well as the *objective of the rules at issue* (b), it is submitted that vendors and intermediaries are in

[25] PL: ECJ, 7 Mar. 2017, Case C-390/15, *Rzecznik Praw Obywatelskich*, [2017], ECLI:EU:C:2017:174, para. 39, ECJ Case Law.

[26] This is visible from the fact that the current VAT Directive (Council Directive 2006/112/EC on the common system of value added tax) incorporates and replaces the former ones that contained the wording "tax on turnover" in their titles. Recital 3 of the Preamble to the current VAT Directive however, states that the recasting and restructuring of the Directive will not, in principle, bring about material changes in the existing legislation. This means that, even though the tax is since called value added tax, it is still fundamentally a tax on turnover.

different positions. While vendors are taxed on their own turnover, are directly party to the underlying civil law relationship, and, in principle, have access to all relevant information pertaining to the transaction, intermediaries, by contrast, are taxed not on their own turnover but on that of the vendor; they are not party to the underlying contractual relationship and may, as a result, lack full access to the information necessary for the accurate application of VAT.

And yet, intermediaries are treated in the same manner as if they were the actual suppliers. They are required to determine the place of taxation, assess the customer's status, establish the taxable amount, and apply the correct VAT rate. Furthermore, they must collect the VAT and remit it to the appropriate tax authority—duties identical to those that would have been imposed on the underlying supplier in the absence of the ICM. Treating economic operators who are in materially different positions in an identical manner may give rise to concerns of unequal treatment, unless such treatment is objectively justified and constitutes the least restrictive means of achieving the intended policy objectives.

Several justifications may be advanced to support the equal treatment of vendors and intermediaries, including the legitimate objective of securing effective tax collection and combating tax evasion or avoidance—essentially, ensuring the effectiveness of fiscal supervision[27]—as well as the legitimate interest of tax authorities in implementing rules that are administratively practicable and conducive to efficient oversight.[28]

The ICM rules can be justified by the effectiveness of fiscal supervision because their application led (or will lead) to the collection of additional VAT on underlying supplies, which would be very complex and expensive to collect under the vendor collection model. In all three sectors, VAT was foregone due to the fact that the underlying suppliers were non-compliant either because of an "information deficit",[29] or because of their intent to evade EU VAT (e.g., non-EU e-service suppliers would not charge EU VAT, or suppliers of imported goods undervalued them to profit from the VAT exemption, or non-EU suppliers made sales from warehouses within the EU without charging any VAT, or sharing economy service providers did not register for VAT despite having breached the threshold etc.). Moreover, in two of the targeted sectors (e-commerce and sharing economy), VAT was foregone due to a deliberate policy choice not to tax certain transactions, because VAT collection based on the classical

[27] SK: ECJ, 26 Oct. 2017, Case C-534/16, *Finančné riaditeľstvo Slovenskej republiky v. BB construct s.r.o*, [2017], ECLI:EU:C:2017:820, para. 39, ECJ Case Law; LU: ECJ, 15 May 1997, Case C-250/95, *Futura Participations SA and Singer v Administration des contributions*, [1997], ECLI:EU:C:1997:239, para. 31, ECJ Case Law; DE: ECJ, 20 Feb. 1979, Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, [1979], ECLI:EU:C:1979:42, para. 8, ECJ Case Law.

[28] *RPO* (C-390/15), at paras 57, 58, 60; NL: ECJ, 24 Feb. 2015, Case C-204/13, *C.G. Sopora v Staatssecretaris van Financiën*, [2015], ECLI:EU:C:2015:108, para. 33, ECJ Case Law.

[29] Pollak, *supra* n. 3, at p. 294.

vendor collection model would be too complex, expensive and ultimately ineffective to introduce (i.e., supplies of small value imported goods, or supplies made by small and occasional service providers in the sharing economy).

The introduction of the deemed supplier rules can also be justified by reasons of administrative practicability. However, a nuanced analysis is needed here, one that considers the perspectives of the different parties involved. From the tax administration's perspective, the ICM simplifies compliance by shifting the responsibility for proper VAT collection to intermediaries. With VAT largely collected through larger, more compliant platforms, tax authorities can manage VAT rules more efficiently.

From the underlying suppliers' perspective, the deemed supplier rules effectively relieve them of VAT collection responsibilities, as platforms handle this task. Suppliers only need to provide accurate information regarding their taxable status, location, and the nature of the supply. Thus, the rules seem justified from their viewpoint.

However, it is the platform's perspective that is the most critical when it comes to how easily the VAT rules can be managed. On the one hand, it could be argued that the choice of the intermediary to assume the supplier's VAT obligations was based on the assumption that platforms typically possess, or can easily access, transaction-related information to a degree comparable to the supplier, and in some cases, even more. Thus, in theory, the ICM rules could be managed easily, not only by tax administrations but also by the intermediaries. However, not all platforms caught by the rules will have the information or the capacity to collect the lacking information necessary to correctly apply the rules. This brings the analysis to the final step in the analysis - the proportionality analysis.

Even if a measure can be justified, in order for it not to infringe the principle of equal treatment, it would also have to be considered by the Court as appropriate and necessary[30] for achieving the pursued objectives (to improve VAT collection, achieve administrative simplicity and reduce costs for businesses and tax administrations). This means that not only is the measure appropriate (suitable) to achieve the objective, but it also has to be the least restrictive one amongst the appropriate measures. Moreover, under proportionality *stricto sensu*, the Court asks whether "the disadvantages caused are disproportionate to its benefits".

The author argues that the ICM is indeed an *appropriate* measure for improving tax collection in the three sectors. Data demonstartes that the ICM is an effective way to tax targeted

[30] Article 52(1) of the Charter: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of *proportionality*, limitations may be made only if they are *necessary* and *genuinely meet objectives of general interest* recognised by the Union or the need to protect the rights and freedoms of others." *RPO* (C-390/15), at paras 63, 68.

transactions.[31] Regarding whether the measure is *necessary*, the author also considers deemed supplier rules for e-services, deemed supplier rules for e-commerce under the VAT e-commerce package and newly adopted ones under ViDA for the sharing economy to be necessary. Namely, these sectors/transactions have been selected precisely because applying the classical vendor collection model in those cases is, or would be, too burdensome or dysfunctional.

However, from a proportionality *stricto sensu* perspective, the author considers that, in general, in respect of all platforms targeted by the deemed supplier rules, it is the amount of information the platform has regarding the underlying supply and supplier that can affect its ability to perform the VAT related tasks akin to those of the vendor. The question that follows is: where are the limits that the legislature must respect when imposing the tax collection obligations on the intermediaries? It is submitted that the content and intensity of the VAT cooperation obligation imposed on the intermediary instead of the vendor must be justified by the content, intensity, and the nature of the legal or economic relationship between the intermediary and the vendor. Imposing measures that require such efforts on the part of the intermediary that require it to restructure its entire business to comply with the ICM obligations would be disproportionate.

In conclusion, regarding the compatibility of the EU ICM with the general principle of equal treatment, the Court's case law indicates that even where the comparability test is met,[32] it adopts a more lenient approach toward EU legislative provisions than toward national VAT measures in areas where Member States retain discretion.[33] The Court justified its approach with the fact that harmonisation between a substantial number of Member States advocating different interests is difficult to achieve, thus meaning that the EU legislature must have more leeway when producing EU law. As a result, the Court limits its review to identifying "manifest

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[31] [31] European Commission, Directorate General for Taxation and Customs Union & Deloitte, *VAT Aspects of Cross-Border e- Commerce - Options for Modernisation Final Report – Lot 3 Assessment of the Implementation of the 2015 Place of Supply Rules and the Mini-One Stop Shop* p. 11 (Publications Office 2016), available at https://taxation-customs.ec.europa.eu/system/files/2016-12/vat_aspects_cross-border_e-commerce_final_report_lot3.pdf (accessed 13 Jan. 2021) [hereinafter *Deloitte Study on MOSS*]; European Commission, *Commission Staff Working Document, Impact Assessment, Accompanying the Document, Proposals for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernising VAT for Cross-Border B2C e-Commerce*, SWD/2016/0379 final p. 80 [hereinafter *Impact Assessment of the VAT E-Commerce Package*]. [31] European Commission, *VAT E-Commerce Package Evaluation – First 6 Months* (10 June 2022), available at https://www.vatupdate.com/wp-content/uploads/2022/06/Presentation-VAT-e-commerce-package-evaluation.pdf (accessed 28 Mar. 2023).

[32] AT: ECJ, 23 Apr. 2009, Case C-460/07, *Sandra Puffer v Unabhängiger Finanzsenat, Außenstelle Linz*, [2009], ECLI:EU:C:2009:254, paras 57, 58, ECJ Case Law. The Court is not consistent in its approach to the comparability analysis. K. Spies & C. Pollak, *Umsatzsteuer Und Verfassungsrecht - Der Gleichheitssatz Im Umsatzsteuerrecht*, in *Steuerpolitik Und Verfassungsrecht* p. 173 (G. Kofler, M. Lang, et al. eds., Linde Verlag 2023).

[33] PL: ECJ, 21 Mar. 2024, Case C-606/22, *Dyrektor Izby Administracji Skarbowej w Bydgoszczy v B. sp. z o.o., formerly B. sp.j.*, [2024], ECLI:EU:C:2024:255, para. 39, ECJ Case Law; UK: ECJ, 10 Apr. 2008, Case C-309/06, *Marks & Spencer*, [2008], ECLI:EU:C:2008:211, para. 54, ECJ Case Law.

errors." [34] Consequently, while concerns over potential breaches of equal treatment may be valid, the likelihood of platforms successfully challenging the deemed supplier rules before the CJEU remains low.

5. Conclusion

The deemed supplier rules imposed on platforms aim to streamline VAT compliance by shifting the responsibility for VAT collection and remittance away from underlying suppliers and concentrating it in the hands of a smaller number of larger, and presumably more compliant, platforms. While this approach eases the burden on tax administrations and small businesses, it introduces specific compliance challenges for the platforms themselves. The growing number of such rules in EU VAT legislation prompted the author to undertake a detailed examination of the three distinct sets of deemed supplier rules applicable to different categories of platforms: e-service platforms (Article 9a of the VAT Implementing Regulation in conjunction with Article 28 of the VAT Directive), e-commerce platforms (Article 14a of the VAT Directive), and sharing economy platforms (Article 28a of the VAT Directive as adopted under ViDA). A comparative analysis revealed variations in the EU legislature's approach across the three sets of rules. Overall, it seems that the deemed supplier rules for e-services are in need of an overhaul and modernization. The author puts forward the hypothesis that linking these rules to Article 28 of the VAT Directive that regulates the concept of undisclosed agents for services in general is not the most appropriate approach for platforms that operate in a digital environment. However, the analysis also revealed that the deemed supplier rules for e-commerce and the sharing economy are not perfect models and could benefit from certain improvements to enhance consistency and efficiency.

The author also conducted a general assessment of whether the switch from the vendor collection model to the ICM is justified in the light of the general principle of equal treatment, given that the intermediaries are treated the same as if they were the actual vendors, despite being in a different position. The author concluded that the crux of the matter lies in the proportionality analysis of the Court's testing scheme. It is the platform's knowledge on whether a transaction was actually concluded, between whom and under which terms (such as location and nature of the goods or services, location and taxable status of the underlying supplier and of the customer, or the value of the goods/services and the price components) that is essential for justifying of the shift from the vendor collection model to the ICM. In the absence of such vital information, it is not reasonable to consider that the intermediary is in a position to fulfil the VAT related obligations. The entire shift to the ICM is based on the

[34] *RPO* (C-390/15), at para. 54.

assumption that the intermediary is equally, or even better, placed to know this information in comparison to the vendor. However, even the EU legislature itself acknowledges the difficulties that platforms face when trying to collect the required data.[35]

[35] Commission Staff Working Document SWD (2022)393 final of 08 Dec. 2022, Impact Assessment Report, Accompanying the documents Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age, Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes, p. 20 [hereinafter ViDA Impact Assessment (2022/393)]. Although this has been said by the Commission in the context of reporting obligations set in Article 242a of the VAT Directive (in conjunction with Article 54c of the VAT Implementing Regulation) for facilitating platforms, the same information is required to determine the platform's VAT collection obligation (e.g., the Member State of consumption to which the goods or services are supplied, the type of services or the description and quantity of goods supplied, any subsequent increase or reduction of the taxable amount, possible returns etc.).