

Qualitative Assessment of Two Recent EU Commission Proposals to Impose (More) VAT Obligations on Platforms

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The VAT e-commerce package entered into application on 1 July 2021. It imposed new obligations on e-commerce platforms, including VAT liability and record-keeping obligations with respect to underlying transactions. In December 2022 and May 2023, the European Commission adopted a series of proposals that are meant to already adjust or significantly broaden the scope of these obligations. In addition, new obligations are proposed concerning platforms that facilitate short-term accommodation rental and passenger transport services. In this article, the authors seek to assess the expected impact of the proposed rules and to determine to what extent the compliance burden and associated risks would be increased as compared to the situation as it stands since 2021.

1. Research Background, Scope and Structure of the Article

On 8 December 2022, the EU Commission adopted the long-awaited VAT in the digital age proposal (ViDA proposal).^[1] The ViDA proposal is divided into three parts: (1) Digital Reporting Requirements, (2) Platform Economy and (3) Single VAT Registration. New provisions concerning platforms can of course be found in Part 2, but also in Part 3 and indirectly in Part 1. This is not really surprising. The three parts are indeed considered as a “package”,^[2] and the rules proposed in one part do bear consequences for the other and vice versa. The EU Commission sought a swift adoption of this package of proposals, as some of the proposed rules were intended to enter into application already as of 1 January 2024. However, in the meantime it has become clear that there will be a postponement of at least a year, since discussions still have to take place in Council in 2024.

The EU Commission also presented proposals for a customs reform on 17 May 2023 (customs reforms proposals). If adopted, the customs reform proposals will enter into application on 1 March 2028.^[3]

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1. European Commission, (2022), *Proposal for a Council directive amending Directive 2006/112/EC as regards VAT rules for the digital age*, COM (2022) 701 final, *Proposal for a Council Implementing regulation amending Implementing Regulation (EU) No. 282/2011 as regards information requirements for certain VAT schemes*, COM (2022) 704 final and *Proposal for a Council Regulation amending Regulation (EU) No. 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age*, COM (2022) 703 final.
2. For an analysis of the complete ViDA proposals we refer to Merckx, M., et al., (2023), VAT in the Digital Age Package: Viva la ViDA or Livin' la ViDA Loca?, *EC Tax Review* Volume 32, Issue 3, pp. 127-141 and Merckx, M., et al., (2023), VAT in the Digital Age Package: Singling Out the Single VAT Registration, *EC Tax Review*, Volume 32, Issue 4, pp. 172-182.
3. European Commission, (2023), *Proposal for a Council 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*, COM (2023), 262 final.

Building on previous research,^[4] in this article we propose a qualitative impact assessment of these two sets of proposals that are tending towards ever increasing VAT-related obligations for platforms. More specifically, we analyse the compliance burden and potential risks that the concerned platforms are likely to bear if the proposed rules are adopted.^[5] The “administrative burden” under scrutiny consists of costs resulting from the actions to be taken by platforms for meeting their legal obligations under the combination of the existing and proposed rules. These costs include the costs of registration, reporting, monitoring and assessment, together with underlying costs such as the costs for setting up and carrying out the legally required processes (e.g. IT systems).^[6] In contrast, the costs incurred by businesses as part of their regular operations are not considered.^[7]

The impact of the administrative burden is expressed on an ordinal scale. If complying with the proposed VAT rules is expected to align well with regular business processes, and little to no change is needed to business processes in place, the administrative burden is considered *low*. In contrast, when businesses are likely to be unable to provide the required information from regular business operations and/or are likely to need to act and make changes to their operations in a way that enables them to meet the obligations, this translates into a larger administrative burden. If these changes should not affect its business model or value proposition, the impact will be considered as *moderate*. When businesses are likely to be unable to comply with the requirements or if the administrative burden renders the operations loss-making, forcing the business to cease its activities or to make fundamental changes to its business model, which affects its value proposition or its economic position in general, or come at a high cost, the impact is considered *high* (see Table 7. in section 3.6. for an overview).

To develop our analytical framework we assumed, first, that platforms’ business models vary greatly from one sector to another and, second, that the proposed VAT rules may result in different administrative burdens among platform businesses even if they operate in the same sector, due to practical differences among business models. This is why, first, the assessment shall be preceded by a detailed analysis of the concerned sectors. Second, when assessing the impact of the proposed rules, we categorize platforms within each sector by reference to the level of facilitation that they offer to users transacting on their platform.

The article is structured as follows. In section 2. we define the concept of platform and explain the different ways in which platforms involved in the three sectors that would be impacted by the proposed rules, i.e. e-commerce (in goods),^[8] short-term accommodation rental and passenger transport services, can “facilitate” transactions. This is done in quite some detail, because a good understanding of this functional role is crucial to properly assess the rules under scrutiny and – in our view – the analysis performed during the preparatory phase of the ViDA proposal falls short in providing a clear overview of the diversity that can be observed in the platform landscape.^[9] We then identify three “levels of facilitation” that platforms in the selected sectors typically offer. In section 3. we analyse and assess the proposed changes arising from the ViDA and the customs reform proposals as far as it concerns e-commerce platforms specifically. In section 4. we discuss the new deeming provision that would apply to platforms facilitating short-term accommodation (STR) and passenger transport (PT) services (hereafter together referred to as “STR and PT platforms”) specifically. In section 5. we analyse the extended record-keeping obligations that would be imposed on all platforms. Conclusions are offered in section 6.

2. The Concept of Platforms and Their Various Business Models

2.1. What are platforms?

Platforms are environments that facilitate exchanges between otherwise separated entities.^[10] For instance, software platforms facilitate the exchange of data between computers; social media platforms facilitate exchanges of content between people;

4. Lamensch, M., Merckx, M., Lock J., & Janssen, A., (2021), New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment, *World Tax Journal*, Vol. 13, no. 3, pp. 441-479. <https://doi.org/10.59403/15yff24>
5. A recent Council document shows that no compromise could yet be found on many of the proposed rules concerning platforms and that some of them have been removed from the current discussions (see General Secretariat of the Council to the Permanent Representatives Committee/Council, *VAT in the Digital Age – Progress report*, Brussels 24 November 2023, 15877/23). However, since no compromise text is made public, it is unclear to what extent the initial proposals are likely to be altered (and options currently discarded could reappear in future discussions). Therefore, our analysis will be based on the text as initially proposed by the EU Commission.
6. OECD, (2001), *Better Regulation in Europe: An OECD Assessment of Regulatory Capacity in the 15 Original Member States of the EU*, p. 2.
7. For example, businesses need to keep information about their employees for wage payment purposes. Inventory data, sales numbers, prices, transactions, revenue and profit margins are likewise examples of information that most businesses already collect, regardless of the proposed legal (VAT) obligations. The costs associated with administering this information are therefore not considered part of an administrative burden for the assessment conducted in this article. This is done in accordance with: European Commission, (2017), *Better Regulation Toolbox: Toolbox #60 – The Standard Cost Model for Estimating Administrative Costs*, p. 489.
8. Both the commerce package and the ViDA proposals only concern e-commerce in goods. Rules regarding electronically supplied services are not affected.
9. See Commission Staff Working Document 8 December 2022, SWD (2022) 393 final, p. 20. See also Economisti Associati, *VAT in the Digital Age. Final Report. Volume 2. The VAT treatment of the platform economy*, March 2022, pp. 35-36.
10. Lamensch, M., et al. (2021). New EU VAT-related obligations for e-commerce platforms worldwide: A qualitative impact assessment. *World Tax Journal*, 13(3), 441-479. <https://doi.org/10.59403/15yff24>

and (online) trading platforms or marketplaces facilitate exchanges of goods and services. In this article we focus on online trading platforms (hereinafter “platforms”). We use this term broadly, referring to all platforms that bring together people from the supply-demand spectrum.

There are buyers and sellers eager to trade, but unable to find each other. Platforms solve this problem by offering an online environment where they can meet and transact (the “transaction” concept is further discussed in section 2.2.1.). The platform business model thus creates value by connecting buyers and sellers. The network effect plays a crucial role. As a matter of fact, the more buyers and sellers are on the platform, the more value it creates for both sides.^[11] Authors have warned that this may result in a winner-takes-all market, where the (few) “winner(s)” obtains a dominant position and it may become difficult for others to join.^[12] Winner-takes-all dynamics do, however, not always result in a single clear winner (duopolies can also be observed).^[13] Suppliers and customers may use several platforms concurrently. Local biases may also result in different platforms winning in different geographical areas.^[14] Moreover a “long tail effect” may sometimes facilitate viable and lucrative business catered to niche markets.^[15] We therefore argue that a certain diversity could still be preserved, Competition is harsh because of the importance of the network effect, albeit it is not inexistent.

In any case, in order to become attractive, it is clear that a platform needs to attract as many users as possible by creating an environment that offers the most value to them. To that aim, it can employ various facilitation mechanisms, enhancing the chances of successful transactions between users.

2.2. How do platforms facilitate transactions?

2.2.1. The key phases of a transaction

A transaction is a pattern of interrelated actions and responses between actors, culminating in a reciprocal performance.^[16] Three “phases” of a transaction may be identified: order, execution and result.^[17] Each phase has its objective and challenges, which may be summarized as follows.

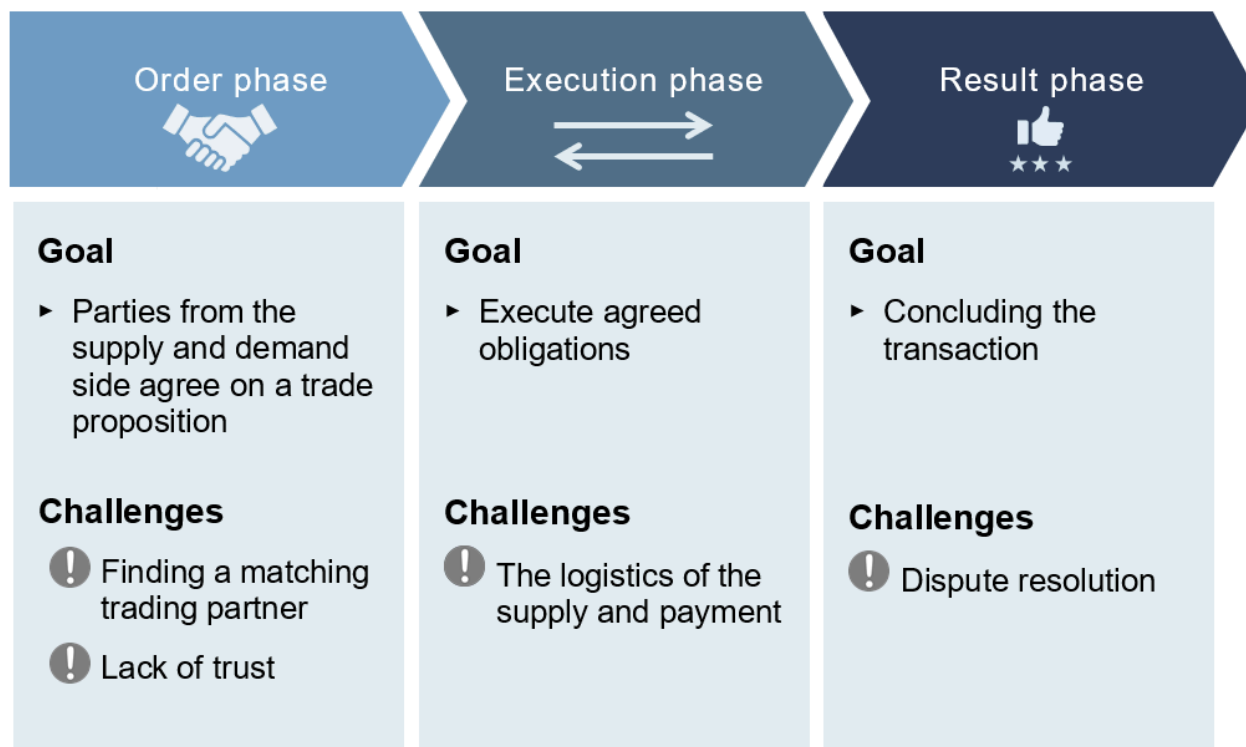
Order phase: The objective of this phase is for two parties to agree on a (trade) proposition. The parties must overcome two challenges. On the one hand, there is the challenge of finding a matching trading partner: each party must have something the other party wants and want something the other party has. The search for a match is as much about finding other parties as it is about effectively communicating one’s proposition. On the other hand, the prospective trading parties must establish trust between them: both parties must believe the other party will honour their obligations.

Execution phase: During this phase the exchange must be executed: the obligations following the agreement must be fulfilled. For example, a seller supplies the agreed goods and a buyer makes the agreed payment. It is foremost a logistic challenge that parties must overcome during this phase. In particular when transacting parties are geographically distinct, they need a method of conveying the supply and the payment. The services provided by logistics suppliers (LSPs) and payment suppliers (PSPs) can overcome this challenge.

Result phase: The goal of this phase is to conclude the transaction. Both parties need to inform their counterparty that the result is satisfactory and the obligation has been fulfilled. When both parties are satisfied, the transaction concludes. Only when there is dissatisfaction about the performance, such as relating to non-performance, non-conformity and secondary damages, a challenge arises in the form of a dispute. Figure 1. provides a graphic overview of the transaction model.

11. OECD, (2019). *An introduction to online platforms and their role in the digital transformation* (p. 23). OECD Publishing. <https://doi.org/10.1787/53e5f593-en>;
- Filistrucchi, L., Geradin, D., & Van Damme, E. (2012). Identifying two-sided markets (TILEC Discussion Paper No. DP 2012-008, p. 2); Katz, M., & Shapiro, C. (1994). Systems competition and network effects. *Journal of Economic Perspectives*, 8(2), 93-115.
12. Evens, T., & Donders, K. (2018). *Platform Power and Policy in Transforming Television Markets*. Palgrave Macmillan. See pp. 243-257.
13. For a study on determinants of a winner-takes-all outcome versus a duopoly outcome specifically in the context of online platforms, see Kuchinke, B. A., & Vidal, M. (2016). Exclusionary strategies and the rise of winner-takes-it-all markets on the Internet. *Telecommunications Policy*, 40(6), 582-592.
14. Huotari, P., Järvi, K., Kortelainen, S., & Huhtamäki, J. (2017). Winner does not take all: Selective attention and local bias in platform-based markets. *Technological Forecasting and Social Change*, 114, 313-326.
15. Kendall, T. D., & Tsui, K. (2011). The economics of the long tail. *The BE Journal of Economic Analysis & Policy*, 11(1); Anderson, C. (2013). *The long tail*. Nieuw Amsterdam. For reasons of completeness, the “long tail effect” was first set out by Anderson in 2006 in Swedish: Anderson, C. (2006). *The Long Tail: Why the Future of Business is Selling Less of More*. Hyperion.
16. Linell, P. (1998). *Approaching dialogue: Talk, interaction and contexts in dialogical perspectives* (Vol. 3). John Benjamins Publishing; Schiffrin, D. (1994). *Approaches to discourse* (Vol. 8). Oxford: Blackwell; Axelsson, K., Melin, U., & Goldkuhl, G. (2002, June). Understanding B2B interaction: A model to accentuate inter-organisational systems design issues. In *Proceedings of the European Conference on Information Systems (ECIS)* (pp. 541-550). See specifically p. 545.
17. Using the DEMO model see Dietz, J. L. G., & Pel, H. (1996). Introductie tot DEMO: van informatietechnologie naar organisatietechnologie. See specifically pp. 22-25; Dietz, J. L. (1999). Understanding and modelling business processes with DEMO. In *Conceptual Modeling—ER’99: Proceedings of the 18th International Conference on Conceptual Modeling* (pp. 188-202). Springer, Berlin Heidelberg.

Figure 1. Transaction model, with goals and challenges per phase



2.2.2. The facilitation mechanisms offered for each stage of the transaction

Platforms can facilitate transactions by addressing the challenges of each phase as defined above. Some challenges will be common for all types of platforms. Some will be specific to the sectors in which they engage.

Common challenges

During the order phase, platforms can bring together parties from the supply-demand spectrum using matching mechanisms. A range of matching mechanisms exist, from plain show and search functions, such as product or service listings, search bars, product or services categorizations and filters, to personalized offers.^[18] Matching can even go as far as users stating their trade propositions while leaving it up to the platform to assign them to a counterparty, as is the case with certain stock trading platforms. For platforms, the choice to position themselves somewhere between offering a “casual browsing” experience and automated matchmaking often depends on the type of market and a platform’s business model. One reason for a platform to be more actively involved in the matching of users could relate to the second challenge during this phase: overcoming a lack of trust.^[19] Platform users may be wary of other users. The type of concerns may again depend on the type of market. Ordering goods from a distant country raises different concerns than ordering a late-night taxi ride, where passengers put their life in the hands of the driver.^[20] To alleviate the concerns of users, platforms can act as a trusted third party and employ various mechanisms to build trust among users.^[21] Again, the exact mechanisms will depend on the market and the platform’s business model, but some examples include, automatic translations, mandatory product descriptions, product reviews, (verified) user

18. Kumar, V., & Raheja, G. (2012). Business to business (B2B) and business to consumer (B2C) management. *International Journal of Computers & Technology*, 3(3), 447-451. See p. 449.

19. Chang, M. K., Cheung, W., & Tang, M. (2013). Building trust online: Interactions among trust building mechanisms. *Information & management*, 50(7), 439-445.

20. Teubner, T., & Dann, D. (2018). How platforms build trust. SSRN. <https://ssrn.com/abstract=3266472>

21. Ba, S., Whinston, A. B., & Zhang, H. (2003). Building trust in online auction markets through an economic incentive mechanism. *Decision Support Systems*, 35(3), 273-286. A typical example of trust-mediation by a platform involves acting as an escrow agent.

profiles, rating systems, terms and conditions set by the platform and standardized check-out forms that clearly articulate the details of the transaction.^[22]

Once transactions enter the execution phase, platforms can facilitate by offering users the means to execute their obligations. As before, the means will depend on the type of market and business model of a platform. When transactions involve a payment, a platform can offer payment methods (they can do this by themselves, or via a third-party payment supplier). Transactions that require the shipping of goods, can be facilitated by offering logistics services such as shipping and warehousing (this too can be done by the platform or via a third party). If transactions are non-monetary or encompass goods without shipping or services, platforms may be able to facilitate through other means, or they may not involve themselves in this phase.

When transactions finally enter the result phase, the involvement of platforms relates to the conclusion of the transaction. Oftentimes, platforms will ask users to submit a product review and rate their counterparty. This information feeds back to the first phase, increasing trust among users. However, in some cases the result of a transaction is not satisfactory to one or both parties. Many things can go wrong in the fulfilment of obligations. In the case of monetary transactions, the payment can be late, short, over or missing. It can be made in the wrong currency, using an unauthorized method, it can bounce and among other things it can come with unagreed transaction fees. The list of possible defects in goods and services is even longer. Legal arbitration exists to deal with such cases, but it may not always be feasible. This may be the case if parties are in different jurisdictions, but also within the same jurisdiction, legal arbitration can be challenging if the name and address of the counterparty are unknown, or simply if the transaction value does not outweigh the costs of legal proceedings. Platforms can overcome such obstacles, for example, by providing free dispute resolution, acting as an escrow agent, offering purchase protection or even insuring users against secondary damages.

Summing up, for each transaction phase there are facilitation mechanisms available to platforms. The selection of mechanisms is somewhat constrained by the market a platform operates in. For example, payment facilitation would be essential to a currency exchange platform, but it makes little sense for a platform hosting a barter market. Low-trust markets may require platforms to assert more control over the performance or provide some form of insurance, whereas in high-trust markets users may not need it, nor be willing to pay for it. International markets usually need mechanisms to convey goods, services and payments at great distance, while users in local markets may prefer to meet up in person to make the exchange.

Besides market constraints, platforms are also limited in the selection of facilitation mechanisms by dependencies between mechanisms. This applies in particular to mechanisms in the result phase. For example, a platform that wants to instil trust by providing free dispute resolution, requires information about the agreement (order phase) and the performance (execution phase). Without this information, platforms cannot settle disputes fairly, which means that the outcome is arbitrary, thereby defeating the purpose of instilling trust. Similarly, for a platform to initiate refunds on behalf of the seller, it must control the payment.^[23] These examples illustrate how facilitation in the result phase depends on information and control arising from facilitation in the preceding phases.

Finally, the priorities will be very different in the B2C as compared to the B2B sector. A platform operating in the stock market (typically a B2B sector even if not exclusively) will for example likely need a different selection of facilitation mechanisms than a platform operating in the market for wearable electronics.

Specific challenges for e-commerce platforms

“E-commerce platforms” provide opportunities for businesses to sell their goods, overcoming the barriers of setting up a physical store. Literature suggests that the B2B e-commerce market differs quite significantly from the B2C e-commerce market due to scale differences. Compared to consumers, businesses purchase higher volumes (often in bulk), representing higher overall values (and financial risks) and (repeatedly) over longer periods of time.^[24] With larger scale comes a higher level of expertise.^[25] Businesses may have specialized personnel, like procurement managers who negotiate the terms of the deal with the seller’s account manager, in-house counsels that review purchase contracts and clerks at the finance department that

22. Teubner, T., & Dann, D. (2018). How platforms build trust. SSRN. <https://ssrn.com/abstract=3266472>

23. To obtain the information necessary for a fair judgment, a platform may facilitate during the order phase by setting the terms and conditions. Information about the performance such as payments or supplies of goods or services can be collected by the platform if it arranges the fulfilment of these obligations during the execution phase. Platforms with mandatory payment methods can adequately assess if buyers pay the agreed sum. In case transactions concern the supply of goods, platforms can monitor the shipment by prescribing a third-party shipping method and tapping into the tracking data from the shipper. Most services, perhaps with the exception of electronic services, are more difficult to monitor, but platforms may nonetheless find ways to involve themselves in ways that allow them to monitor the performance. In particular smartphone apps enable platforms to collect an array of data about their users.

24. Rėklaitis, K., & Pilelienė, L. (2019). Principle differences between B2B and B2C marketing communication processes. *Organizacijų Vadyba: Sisteminių Tyrimų*, 2019(81). <https://doi.org/10.1515/mosr-2019-0005>

25. For the power imbalance between consumers and suppliers we refer to Haupt, S. (2003). An economic analysis of consumer protection in contract law. *German Law Journal*, 4(11), 1137-1164.

organize the payment (which can be from an abroad account using the seller's currency). Some businesses have company drivers and their own fleet of trucks; they might have a network of logistics partners. The higher level of expertise in B2B markets is reflected in trade propositions, which tend to be more technical compared to B2C propositions.^[26] Summing up, the average business is more equipped than the average consumer. The inequality of arms between businesses and consumers is also one of the reasons that many countries have consumer rights, protecting comparatively vulnerable consumers against professional traders.^[27] Trade between two businesses is considered trade on equal footing and does not enjoy the same level of legal protection. As a result, sellers and by extension, platforms, have more freedom as to whether or not they want to facilitate in the result phase through insurance, refunds, cooling-off periods and alike. However, it is important to remember that platforms need to address the needs of users. Because businesses tend to have in-house expertise and organizational capacity to execute transactions, there is simply less of a need for a platform to always facilitate beyond the order phase. The platform's role is primarily to connect the back offices of businesses.^[28] In most cases this concerns trading partners with no prior transactions.^[29] In other words, once businesses establish a trade relation, the need to use the platform diminishes. In the order phase, in particular, businesses tend to have a greater desire for flexibility.^[30]

Specific challenges for STR platforms

People may need STR for various reasons, such as doing business, visiting family, or going on vacation, often in a foreign country. Hotels have historically played an important role in fulfilling this need. Before platforms, the concept of a "bed and breakfast" (B&B) also already existed. These were typically run by private families with a couple of spare rooms. Until the early 2000s, when the Internet was still in its commercial infancy, B&Bs had a small footprint. Due to the small scale, marketing and outreach were limited. Besides a wooden sign in the yard, many B&Bs relied on word of mouth and maybe a mention in a tourist brochure. Without online platforms it can be challenging for the host and guest to transact.

Platforms have disrupted the STR market by providing an environment for guests and hosts to easily find each other and transact. STR platforms address various obstacles, mostly pertaining to matching, trust building, and dispute resolution. As outlined in section 2.2.1., a transaction facilitated by a platform consists of three key phases (i.e. order, execution and result phase). During the order phase, hosts and guests are typically situated at a distance and may not even speak a common language. In particular for guests, certainty about the details of a booking is important, since most people want to make sure they have a place to spend the night when they are away from home. Hosts are likely to seek certainty about the payment, because last-minute cancellations and no-shows can result in empty rooms and thus missed-out revenue. The guest, on the other hand, has not seen the establishment and, unlike most hotels, the average B&B does not enjoy the credibility of a large and reputable business,^[31] nor is it subject to inspection and industry standards. Conversely, the owners of a B&B do not know what kind of person they might be letting into their house and near their family and personal belongings, which is accompanied by significant risks regarding people and property.^[32] Hotels usually have security to deal with violent guests, but a family running a B&B does not. When hosts and guests live in different countries, legal remedies are often infeasible. Consequently, uncertainty and risk of significant damage can refrain potential hosts from participating in the STR market, while uncertainty and risks regarding access to and quality of the accommodation may refrain potential guests from entering the market.

Whilst finding a match and overcoming a lack of trust make for a challenging order phase, the execution phase tends to be straightforward. Hosts and guests usually meet in person, as the host must provide the guest with access to the

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26. Mourtzis, D., Angelopoulos, J., & Panopoulos, N. (2020). A survey of digital B2B platforms and marketplaces for purchasing industrial product service systems: A conceptual framework. *Procedia CIRP*, 97. <https://doi.org/10.1016/j.procir.2020.05.246>, see Table 1, p. 334.
 27. On the topic of legal protection of consumers against unfair commercial practices we refer to Shears, P. (2016). The Consumer Protection Regulations in the UK: The Story So Far. *European Business Law Review*, 27(1).
 28. Kumar, V., & Raheja, G. (2012). Business to business (B2B) and business to consumer (B2C) management. *International Journal of Computers & Technology*, 3(3), 447-451. See p. 450.
 29. Son, J. Y., Tu, L., & Benbasat, I. (2006). A descriptive content analysis of trust-building measures in B2B electronic marketplaces. *Communications of the Association for Information Systems*, 18(1), 99-128. <https://doi.org/10.17705/1CAIS.01806>. See p. 100.
 30. Besides profit margins, there are various hidden variables that can factor into the value of B2B deals, e.g. the prospects of long-term partnerships, predictable revenue streams, exclusive rights, customization options, market access. For businesses, these elements can be more valuable than the ease and certainty of a check-out process controlled by the platform. Businesses may instead prefer the room for negotiation. A mandatory payment method, shipping method, standardized checkout form and fixed prices all limit the room for negotiating deals that include those hidden variables. If the platform nonetheless, imposes such mechanisms, it can be perceived as restrictive or even patronizing, as businesses may have in-house capacity to negotiate the terms and organize the execution themselves. Ultimately, it is a trade-off between ease and certainty, on the one hand, and flexibility and customization, on the other.
 31. Perceived size and reputation were found to be import determinants for trust in online businesses. See Jarvenpaa, S. L., Tractinsky, N., & Saarinen, L. (1999). Consumer trust in an internet store: A cross-cultural validation. *Journal of Computer-Mediated Communication*, 5(2). <https://doi.org/10.1111/j.1083-6101.1999.tb00337.x>
 32. Möhlmann, M. (2016, July 22). Digital trust and peer-to-peer collaborative consumption platforms: A mediation analysis. SSRN. <https://doi.org/10.2139/ssrn.2813367>

accommodation. If they want, the host and guest can make the exchange at the accommodation site: the host hands over the key to the accommodation, symbolizing the supply, and the guest can make the payment.^[33]

The check-out process typically launches the start of the result phase. Discussion may arise if the guest refuses to pay the price that was initially agreed between the parties or if damage has been made to the property or household contents.

Specific challenges for PT platforms

When it comes to platforms facilitating PT, one should refrain from the inclination to define it as “companies like Uber”. PT can indeed mean many things. The term does in fact not specify a modality; thus, it can include anything from a Zeppelin to an ostrich-pulled cart. In this article, we considered PT services with a similar function to taxi rides. On the supply side of the taxi market there are drivers: people with a car, time and a willingness to provide transport in return for a consideration, usually money. On the demand side, there are people who seek transport and who are willing to pay consideration.

The PT market can be divided into two submarkets. On the one hand there is the market for “on-demand rides”, on the other hand, there is the market for “reserved rides”. This distinction is relevant, because these submarkets come with different service requirements.

On-demand rides are all about proximity and immediacy. People decide ad hoc that they want a ride, preferably as soon as possible. The biggest problem is matching. Some cities are known for being swarmed with taxis like New York and London.^[34] In certain areas and at certain times of the day the concentration of taxis is so dense that people who decide in the moment that they want a ride can “hail a cab” relatively easily. Taxis usually have cars that stand out, so people recognize them as taxis. A sign on the roof not only improves findability, but a light in the sign can also be used to signal whether or not the driver is available for service. However, since the reality is that most cities do not have the concentration of taxis like that of New York and London, hailing a taxi could take a long time or might not succeed at all. The problem is that people who seek on-demand rides do not want to wait a long time, they want a ride now and not waste time waiting for a taxi that might never come. Even if a taxi pulls over, it does not automatically mean that the parties match. The fare can still be too high to the passenger’s liking or too low for the driver to be worthwhile, or the destination can be beyond the service area. Failure to come to an agreement again takes up time. Taxi firms solved this problem: a taxi dispatcher (coordinator) keeps track of drivers and assigns the nearest available driver, limiting deadhead miles and optimizing immediacy. A dispatcher can also state the price, saving all parties time.

During the execution phase, parties need to perform their part. If a ride is coordinated through dispatch, the driver and passenger will need to find each other first. Once united, the execution tends to be straightforward: the driver provides the transport service and the passenger pays the fare. Apart from these key tasks the agreement also covers implicit aspects like safety (safe driving, compliance with traffic rules, wearing seatbelts, no substance abuse, no hazardous disruption of the driver, etc.), cleanliness (from both sides), and conduct (respectful communication, fair treatment, honesty in choosing the most efficient route, etc.).^[35] In most countries the taxi sector is regulated, albeit to different extents. In some countries taxi drivers must go through training and pass an exam in order to get a licence. Quality aspects like those above can be secured via training and licensing. It follows from the time-bound nature of the service that neither party has an interest in taking the time to put these terms into a formal agreement.

If all goes well the result phase commences upon arrival. The transaction concludes with the driver letting the passenger safely exit the vehicle. The passenger expresses gratitude signaling satisfaction with the performance. The result phase can start earlier if one or both parties wishes to terminate the ride prematurely. Surely, dropping off a passenger at the wrong location or failing to pay the agreed price are valid reasons for parties to be dissatisfied, but the implicit elements of the agreement should not be underestimated. In particular, if one of the parties perceives safety concerns, that might be a reason to terminate the ride prematurely. Disputes can be problematic. Once the customer leaves, the parties might never meet again. Taking legal action at a later point can therefore be difficult, infusing a desire to settle the dispute on the spot. The preconditions for hostile and even violent situations are reflected in the requirement of licensed UK taxi drivers to know how to defuse such situations.^[36]

In contrast to on-demand rides, the most pressing need for customers of “reserved rides” is not about immediacy but rather about certainty. The passenger needs a ride in the future and does not want to risk not finding one last-minute. Therefore, the passenger reserves a ride, days, weeks or even months ahead. Booking a ride in advance instead offers room for a larger

33. Surely, parties can agree on different terms, but the point here is that there is a window of opportunity to make the supply and payment in person.

34. A quick virtual tour (using Google Street View) through Midtown Manhattan and Central London confirms the ubiquity of taxis.

35. One avenue for trustbuilding by platforms in these markets where users physically meet involves explicating implicit information. See Teubner, T., & Dann, D. (2018). How platforms build trust. SSRN. <https://ssrn.com/abstract=3266472>

36. Driver & Vehicle Agency, Department of Infrastructure. (2019). *All you need to know to be a taxi driver*. (pp. 23, 66). Retrieved from: infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/taxi-manual-2019.pdf

variety of matching mechanisms. If we turn our attention to the facilitation mechanisms that platforms may use to overcome the challenges, it becomes clear that the distinction between on-demand rides and reserved rides is relevant, as it turned out that in the on-demand market only platforms were found that facilitate up to the result phase.^[37]

As pointed out, matching is a key challenge for on-demand rides, due to passengers seeking immediacy. Platforms play a pivotal role during the order phase, by taking on the coordinative function of a taxi dispatcher connecting nearby drivers and passengers. Immediacy is optimized by computer-automating the matching process. Having users setting the parameters of the services they seek to receive or provide, the platform can then use an algorithm to do the matching. When the platform also sets the price, matching can take place almost instantaneously. In addition to matching, trust-building mechanisms were also found to play an important role. These include screening of drivers, reputation systems, reviews and feedback, setting (indirectly) the terms and conditions and using a ride standardized confirmation page.^[38] In order for the dispatch-like coordination to work, the platform must know which riders are available and where. For this purpose, smartphones are used, as they can provide real-time location data. When drivers switch a button in the platform's smartphone app, they tell the algorithm that they are ready for service. Ride requests are sent to available nearby riders. Once a rider accepts the request, the execution phase commences. The app can be used as a navigation system, instructing the driver to a pick-up point. When passengers choose to share their location too, finding each other becomes even easier. The platform may offer additional communication methods to connected riders and passengers, such as messaging and call functionality. As for the payment, it is difficult to see how a platform would not be handling the payment. Handling the payment ensures that the agreed price is charged and there is no room for negotiating, overcharging or refusing to pay.^[39] Facilitating the payment also enables a platform to hold the payment in escrow and financially settle disputes may they arise. Finally, the platform may offer a limited insurance policy to cover secondary damages to the driver's car.

2.3. Organizing platforms by level of facilitation

Three levels of facilitation

For the purpose of our assessment, we sorted platforms into three levels of facilitation. At the lowest level, platforms facilitate in the order phase only. Reflecting on the assertion that the defining characteristic of a platform is its function to connect otherwise separate entities (see section 2.1.), a platform will always be involved in the order phase. At the medium level of facilitation, platforms facilitate during both the order phase and the execution phase. Finally, at the highest level of facilitation, platforms facilitate throughout all three phases. See Table 1. for an illustration.

The model excludes the combination of facilitation in the order phase and result phase (thus skipping the execution phase). As already pointed out above, facilitation in the result phase tends to rely on facilitation in the preceding phases. That is why it is unlikely that a platform would choose to skip facilitation in the execution phase. Furthermore, sometimes third-party suppliers are involved during the execution phase, e.g. logistics suppliers (LSPs) taking care of the shipping in case of sales of goods, Internet suppliers (ISPs) in case of supplies of electronic services, and payment suppliers (PSPs) are often involved for the processing of payments. The same applies to the result phase where insurers and escrow agents may be called in. We exclude these parties from the model, as they are not platforms because they do not derive their value from bringing users together, but instead follow the model of linear value creation.

Table 1. Three levels of facilitation

	Level of platform facilitation		
	Low facilitation	Medium facilitation	High facilitation
Order phase	✓	✓	✓

37. We found Lyft and Uber to facilitate on-demand rides. Both facilitate on the highest level, up until the result phase. During the reviewing process the authors were made aware that the Estonian IT company Bolt and the German FREENOW (a company backed by the BMW Group and Mercedes-Benz Mobility) might be facilitating on-demand rides, whilst not facilitating at the highest level. After examining these cases it was found that Bolt operates an on-demand model similar to that of Lyft and Uber, facilitating at the highest level. The same applies to FREENOW, but according to their website, the latter is the result of a Judgment* from the UK High Court of 6 December 2021, which ruled that Private Hire Vehicle operators (i.e. PT facilitators) must contract directly with passengers. Accordingly, FREENOW changed their business model requiring all payments to be made directly to the platform. This observation demands a cautious understanding of the relation between on-demand rides and facilitation at the highest level.

* United Trade Action Group Ltd v. Transport for London. [2021] EWHC 3290 (Admin). The judgment resulted from a VAT implication, namely the UK VAT Threshold of GBP 85,000, which many drivers did not exceed, resulting in distortion of competition with the conventional taxi market.

38. Setting (indirectly) the terms and conditions may differ between jurisdictions.

39. Additionally, platforms need a source of revenue. It seems unlikely that a platform would charge drivers just for access, unless access would be almost a guarantee for revenue. Guests paying for access to look for a service they might not get seems equally unlikely. Perhaps such a platform could capitalize on advertisements, but these could also get in the way of a swift and user-friendly app.

	Level of platform facilitation		
	Low facilitation	Medium facilitation	High facilitation
Execution phase		✓	✓
Result phase			✓

Note. Three levels of facilitation can be distinguished based on facilitative involvement through the three transaction phases. Adapted from Lamensch, M., et al. (2021). New EU VAT-related obligations for e-commerce platforms worldwide: A qualitative impact assessment. *World Tax Journal*, 13(3), 441-479. <https://doi.org/10.59403/15yff24>

For each phase of the transaction, platforms have the choice to involve themselves through the implementation of facilitation mechanisms. These facilitation mechanisms provide the platform with information and control. For example, if a platform is involved in the payment, it knows the amount of money transferred, payer and beneficiary. If the platform acts as an escrow by withholding the payment until the goods and services are supplied, the platform has control over the payment.

Platform operators can also offer facilitation mechanisms during the execution and result phase on an opt-in basis. At a fee, the platform may offer payment methods, shipping and insurance. This strategy can satisfy a larger audience, as users wanting these facilitation mechanisms can opt in, while others are not obliged to. The implication is that the platform facilitates on multiple levels of facilitation. Consequently, the level of information and control varies.

Finally, we found that markets may emerge on platforms that were never designed to act as marketplaces. Humans are indeed a *Homo Mercator*, economic beings. Trading is in our nature. Even if a platform is designed for an entirely different purpose: as long as people can put things up for sale, they will put things up for sale.^[40] This means that there will be platform operators that do not consider themselves marketplaces but are nonetheless being used as such.^[41] This is what we refer to as “unintended marketplaces” in this article.^[42] For example, collectors and hobbyists that established an online environment to share their devotion may, at some point, want to exchange objects and crafts with others, resulting in a self-organized market. Unintended marketplaces are sometimes embraced by the platform operator. For example, Facebook now has a dedicated marketplace section, but it is widely known that people were already using it to trade long before that.^[43]

E-commerce sector

Table 2. offers an overview of the phases of facilitation by B2C e-commerce platforms.

Table 2. B2C E-commerce platforms – Facilitation mechanisms

Order phase	Execution phase	Result phase
<i>Matching</i>	<i>Seller obligations</i>	<i>Customer services</i>
— Product listings	— Logistics	— Dispute resolution
— Automatic translations	— Shipping	— Insurance (purchase protection)
— Search tools	— Warehousing	— Holding payments in escrow
— Product categories	— Fulfilment	
— Chat/messaging functionality	— (Demand driven) stock transfer	
— Standardized order forms	<i>Buyer obligations</i>	
— Personalized suggestions	— Payment methods	
— Standardized order forms		

40. E.g. X (Twitter), Tinder, or a remote Minecraft server.

41. As likely candidates for unintended marketplaces we considered well-known platforms that met basic requirements for facilitation during the order phase (such as the ability to post pictures or videos of a holiday home, and the presence of a basic means for communication such as message functionality).

42. Lamensch, M., et al. (2021). New EU VAT-related obligations for e-commerce platforms worldwide: A qualitative impact assessment. *World Tax Journal*, 13(1). IBFD. p. 456. <https://doi.org/10.59403/15yff24>

43. Facebook created a marketplace section in 2007, which was more of an advertisement tool and abolished due to a lack of success in 2009. Only in 2016, it launched its new marketplace, which is still in use.

Order phase	Execution phase	Result phase
<i>Trust building</i> — Reputation system — Reviews and feedback — Verification of users		

Note. Adapted from Lamensch, M., et al. (2021). New EU VAT-related obligations for e-commerce platforms worldwide: A qualitative impact assessment. *World Tax Journal*, 13(1), p. 7. <https://doi.org/10.59403/15yff24>

As noted above we found that B2B platforms^[44] tend to offer less facilitation services. We considered a case comparison between the world's most visited generalist B2B platform (Alibaba) and its B2C counterpart (AliExpress),^[45] which support the smaller need for facilitation beyond the order phase in B2B markets.^[46] Both fall within the same corporate group. On its website, Alibaba Group sets out key features for both platforms (see Table 3.).^[47] As regards facilitation, Table 3. shows that both platforms (can) facilitate at the highest level (all three phases). However, for Alibaba (B2B) facilitation beyond the order phase is optional. Overall, Alibaba (B2B) encompasses a higher degree of freedom, which includes requests for quotes, negotiable prices and shipping costs depending on the terms agreed upon by buyers and sellers. Furthermore, AliExpress (B2C) charges a sales commission which is typically only feasible if the platform is involved in the payment. Alibaba (B2B), on the other hand, charges a fixed annual access fee, eliminating its need to be involved in the payment. Regarding customer service, both platforms provide order protection and dispute resolution. However, in the case of AliExpress this is the default option, whereas on Alibaba (B2B) it applies only to selected products and only if all communication and transactions took place on the platform. The money-back policy covers only orders below USD 3,000, which is not much to most businesses.

Table 3. Alibaba and AliExpress key features

Feature	AliExpress	Alibaba
Marketplace type	B2C	B2B
Typical buyers	Consumers, resellers	Businesses
Typical sellers	Retailers	Manufacturers, wholesalers, trading companies, exporters
Fixed annual fee for sellers	No	Yes
Commission per sale for sellers	5%-8%	0% (in most countries)
Auto translation	Yes	Yes
Secure payment portals	Yes	Yes
Request for Quotation (RFQ)	No	Yes
Shipping time	1-4 weeks	15 days to months
Dropshipping support	Yes	No
Product	Ready-made products	Raw materials, customizable products, ready-made products
Pricing	Fixed	Negotiable

44. It should be noted that the distinction between B2B and B2C is imperfect. A platform may focus on B2C or B2B transactions, but this will not stop consumers from visiting B2B platforms, nor businesses from visiting B2C platforms.

45. On a methodological note, the authors consider the comparison between Alibaba and AliExpress not to be an overgeneralization for the broader market, as the global B2B and B2C e-commerce market is dominated by a few platforms (see sec. 2.2. on winner-takes-all market dynamics). The sample (N=1) represents a population of around 15 platforms (N=15; Alibaba, Amazon Business, DHgate, eBay Business supply, EC21, ECPlaza, eWorld Trade, GlobalMarket, Global sources, IndiaMart, Made-in-China, Thomasnet, TradelIndia, Trade Wheel, Zoro). Furthermore, the fact that the Alibaba Group created two separate platforms, one for B2B, the other for B2C makes it remarkably suitable for comparison. Finally, the authors consider Alibaba a "critical case". See Yin, R. K. (2014). *Case study research* (5th ed.). Thousand Oaks, CA: SAGE Publications, Inc.

46. According to Statista, Alibaba was the world's most visited generalist B2B platform in 2023. Statista. (2023). *B2B E-Commerce*. Retrieved from <https://www.statista.com/markets/413/topic/458/b2b-e-commerce/#overview>

47. Alibaba Group. (2020, December 10). Alibaba.com vs AliExpress: What are the differences. Retrieved from <https://seller.alibaba.com/businessblogs/px53308i-alibabacom-vs-aliexpress-what-are-the-differences>

Feature	AliExpress	Alibaba
Shipping cost	Typically free	Vary depending on the shipping terms agreed upon by buyers and sellers
Minimum order quantity	No	Yes
Private labelling	No	Yes
Financing options for buyers	No	Yes
Order protection	Yes	Yes
Dispute resolution	Yes	Yes

Note. From Alibaba Group. (2020, December 10). Alibaba.com vs AliExpress: What are the differences. Retrieved from <https://seller.alibaba.com/businessblogs/px53308i-alibabacom-vs-aliexpress-what-are-the-differences>.

The comparison aligns with the idea that businesses have a greater desire for negotiating tailored terms and conditions, even if this means a trade-off with ease and certainty. The implication would be that B2B platforms are limited in their ability to facilitate at the medium and high level of facilitation.

STR sector

As shown in Table 4., the STR platform landscape is characterized by two clusters: one group of platforms facilitates only during the order phase, providing a hands-off approach, leaving all responsibilities to hosts and guests.^[48] The platforms found within this group are not specialized in accommodation rental but have a more general setup with STR being a small part of a larger market, or dedicating only a small section comparable to a bulletin board. These platforms offer basic show and search functions like space for listings, search tools (e.g. basic filters and search bars) and messaging functionality. Reputation and review mechanisms tend to follow the same general scope.

The other group offers a full-service experience, facilitating up to the result phase, actively assisting users and covering potential risks and damages. This group of platforms is specialized in STR.^[49] Besides show and search functionality being more advanced, platforms are more involved in matching and may offer personalized suggestions and even “dynamic pricing” (a function that, if enabled, allows the platform to set the optimal price). The more extensive involvement during the order phase is also reflected in the platform setting the terms and conditions and using a standardized booking confirmation page. In some cases, platform users have to go through a verification process or background checks.^[50] The full-service experience continues into the execution phase, where platforms can facilitate the payment. This enables them to hold the payment and/or deposit in escrow.

Since the platform cannot provide access to the accommodation, the room for facilitation of host obligations is limited but not absent. Platforms may still support the check-in by providing check-in instructions and they can send reminders to reduce the risk of guests and hosts not showing up for check-in. In the unfortunate event a guest does not show up, the platform may still pay the host (in full or partially, depending on the cancellation and no-show terms). When it is the host that is not showing up, the platform may step in and provide alternative accommodation.

At check-out (marking the start of the result phase) the platform may again provide instructions and ask both parties to evaluate the transaction (i.e. leaving a review on the accommodation and rate the host).

The platform may offer to settle disputes regarding conformity issues or damages. To support their decisions, platforms may instruct users to provide evidence of non-conformity, damages, or other issues. Some platforms have dedicated units tasked to assess evidence and settle disputes.^[51] Facilitating the payment and holding it in escrow may also place platforms in a position where they can compensate guests through full or partial refunds (withheld from the payment to the host). Specific difficulties arise if non-monetary transactions occur in the form of short-term home trading, where two people temporarily swap homes, but also in various forms of “house sitting”, where a “sitter” gets accommodation in return for taking care of the house, plants and/or pets (a small part of the STR market is indeed a barter market).^[52] In these cases, there is no transfer of funds that the platform can hold in escrow. In turn, not holding the funds in escrow, limits a platform’s ability to settle disputes and arrange

48. Cases like Nextdoor and former eBay subsidiary “Marktplaats” fall within this group.

49. Cases include Airbnb, Vrbo, Booking.com (for its B&B offers) and Home Exchange.

50. The use of background checks depends on the jurisdiction. For example, Airbnb performs background checks on hosts and guests in the United States, where criminal records may sometimes be publicly accessible, but not in the European Union.

51. For example, Airbnb.

52. See for example the platform Home Exchange.

refunds (without funds, no refunds are possible). To overcome this limitation, we found that platforms can still provide dispute resolution and insurance by using deposits that users must pay to the platform to be held in escrow. Platforms can use these deposits to compensate primarily hosts; though, guests too can be compensated. This is because, particularly in the case of home swapping, the platform users are simultaneously guests and hosts. In order to use the platform, they must first make a deposit (typically upon subscribing to the platform). Platforms that use this model can therefore still facilitate flows of money between hosts and guests, but these funds must not be mistaken for the transaction value. Although it is technically possible to work deposit free and still facilitate up into the result phase, the question arises whether it makes sense as a business model, as the costs for covering damages would have to come from the platform's own revenue if it does not hold the payment nor a deposit in escrow. The fact that all studied STR-specialized platforms offered some form of insurance or refunds, suggests a desire for risk mitigation among platform users.

Another notable feature on the topic of barter transactions pertains to asynchronous home swapping: one user stays at the home of another user, but not vice versa. This could be for example because of timing or lack of interest. As a form of payment, the platform assigns some form of on-platform credits that can be exchanged for accommodation at a later time.^[53] The platform essentially introduced a payment instrument in the form of a limited currency or perhaps a voucher. These observations illustrate how unforeseen scenarios raise unforeseen questions and further challenge the nature of certain economic activities.^[54]

Finally, we considered the possibility of users self-organizing STR markets on platforms not intended to be used for this purpose, or what we refer to as the phenomenon of “unintended marketplaces”.^[55] A platform to facilitate it requires, at a minimum, to provide a means of communication to prospective hosts and guests. Although technically not a strict necessity, the ability to list photos of the accommodation is likely to be an important factor. This means that virtually all social media platforms can become unintended STR marketplaces.^[56]

Table 4. Short-term accommodation rental – Facilitation mechanisms

Order phase	Execution phase	Result phase
<i>Accommodation listings</i> - Automatic translations - Search tools - Accommodation categories - Chat/messaging functionality - Personalized suggestions^[1] - Optionally setting the price^[1] <i>Trust building</i> - Reputation system - Reviews and feedback - Verification of users^[1] - Setting the terms and conditions^[1] - Booking confirmation page^[1]	<i>Host obligations</i> - Instructions and reminders regarding check-in/out - Alternative accommodation for the guests in case the host does not provide access or if there are substantial non-conformity issues (24/7 support) <i>Guest obligations</i> - Payment methods^[2] - Instructions and reminders regarding check-in/out	- Holding the payment and/or deposit in escrow - Insurance against property damage and theft (for the host) - Dispute resolution

53. See for example the platform Home Exchange.

54. For a critical reflection on the nature of platform services we refer to Beretta, G. (2019, October 31). European VAT and the sharing economy. Amsterdam Centre for Tax Law (ACTL) of the University of Amsterdam; Lund University. <https://kluwertaxblog.com/2019/10/31/european-vat-and-the-sharing-economy/>

55. Lamensch, M., et al. (2021). New EU VAT-related obligations for e-commerce platforms worldwide: A qualitative impact assessment. *World Tax Journal*, 13(1). IBFD. p. 456. <https://doi.org/10.59403/15yff24>

56. A quick search on X (Twitter) and even YouTube confirms that there are users putting accommodations up for rent on these social media platforms:

- Example from X (Twitter): twitter.com/MagoNL/status/1679177550080401409.
- Example from YouTube: youtube.com/watch?v=YL_rIMT5Zss.

Order phase	Execution phase	Result phase
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- 1 These mechanisms are only applied by platforms that facilitate at the highest level.
2 Not all platforms use monetary payments, Home Exchange is an example of an exception.

Note. Identified cases: Nextdoor, Marktplaats, Airbnb, Home Exchange.

PT sector

As shown in [Tables 5. and 6.](#), platform facilitation mechanisms for the reserved rides market are quite similar as compared to the “on-demand” market as far as execution phase and result phases. However, the reserved rides market leaves room for more variation in the order phase.

With on-demand rides, the demand side of the market is the first mover (as is reflected in the name “on-demand”). Carpooling platforms are a subset within the broader ride PT sector. These platforms illustrate that the supply side can also be the first mover. Drivers who drive a specific route to go to work might want to lower their costs by taking on one or two passengers to split the fuel with. The driver can use a carpooling platform to list the route, time and days, leaving it up to prospective passengers to reply on the listing. This does not have to be in the form of a conventional “carpool buddy”. The platform can act as a public agenda, where different people can reserve a seat for upcoming rides. Whereas on-demand platforms fulfil the classic dispatch functionality, carpooling platforms are closer to marketplaces in the sense that they offer listings, search tools and message functionality. See [Table 5.](#) for an overview of the mechanisms.

It is noteworthy that platforms that were found to be operating in the on-demand market all facilitate at the highest level. Within this market, no platforms were identified to facilitate up until the execution phase or only during the order phase. In contrast, in the reserved rides market, we found platforms facilitating at all three levels: low, medium and high (albeit that the high-level facilitating platforms were the same two as in the on-demand market (Uber and Lyft)).

In contrast with the other sectors, it seems unlikely that unintended marketplaces would emerge for on-demand rides, because only a specialized platform would be able to fulfil the needed dispatch functionality. Without this functionality it seems infeasible. Again, the situation changes for reserved rides. It does indeed not seem unlikely that there are people looking to share travel costs and use social media platforms to find a carpool buddy.

Table 5. Passenger transport services: On-demand rides

Order phase	Execution phase	Result phase
<i>Matching</i> — Ride requests (orders) are formulated by passengers. The platform distributes orders among drivers^[1] — Setting the price (non-binding)^[1] <i>Trust building</i> — Strict screening of drivers^[1] — Reputation system^[1] — Reviews and feedback^[1] — Setting indirectly the terms and conditions^[1] — Ride confirmation page^[1]	<i>Driver obligations</i> — Ride monitoring (via smartphone)^[1] <i>Passenger obligations</i> — Payment methods <i>Both</i> — Message function — GPS localization	— Holding the payment in escrow — Insurance: — Vehicle damage (driver only) — Personal injury (driver and passenger) — Dispute resolution — Lost-and-found service

- 1 These mechanisms are only applied by platforms that facilitate at the highest level.

Note. Identified cases: Uber and Lyft.

Table 6. Passenger transport services: Reserved rides

Order phase	Execution phase	Result phase
<i>Matching</i>	<i>Driver obligations</i>	— Holding the payment in escrow

Order phase	Execution phase	Result phase
— Ride requests — Ride listings — Search tools — Message function — Setting the price^[1] <i>Trust building</i> — Strict screening of drivers^[1] — Reputation system — Reviews and feedback — Setting the terms and conditions — Reservation confirmation page	— Ride monitoring (via smartphone)^[1] <i>Passenger obligations</i> — Payment methods^[2] <i>Other</i> — Message function — GPS localization	— Insurance — Vehicle damage (driver only) — Personal injury (driver and passenger) — Dispute resolution — Lost-and-found service

1 These mechanisms are only applied by platforms that facilitate at the highest level.

2 Not all platforms are for-profit, thus monetary payments are not a given.

Note. Identified cases: Pendla, Nabogo, BlaBlaCar, Uber and Lyft.

2.4. Interim conclusion

Platforms create value by facilitating transactions. For each of the three transaction phases, platforms can implement facilitation mechanisms that will be different depending on the sector. More involvement is not always feasible or desirable. A platform operator must devise the winning formula. Each major platform that exists today is a testament to a winning formula.

In the e-commerce sector our comparison of Alibaba (B2B) with AliExpress (B2C) aligns with the literature that suggests that B2B and B2C platforms deal with other user needs. We observe that this translates in a lower level of facilitation for Alibaba (B2B) than its B2C counterpart, AliExpress.^[57] We see no reason to assume that this would be unique to Alibaba-AliExpress. The difference in facilitation level indeed follows from a difference in user needs. In turn, the difference in user needs follows from the fact that the average business has more expertise and organizational capacity than the average consumer, which means there is less of a need for platforms to be involved. The average business also has a greater desire to negotiate custom deals, thus preferring less involvement by the platform. Nevertheless, some B2C platforms may also choose to facilitate transactions at a lower level only, for capacity reasons and to limit their liability. Irrespective of the reasons why platforms choose to offer different levels of facilitation, the legislator should be aware of this variety when imposing new rules and obligations and should make sure that the rules that they enact are fit for purpose.

In the STR and PT sectors, we found that the facilitation mechanisms that can/need to be offered to the customers are of a totally different nature as compared to the e-commerce sector. This confirms that the impact of the proposed “deeming provision” and data collection obligations for STR and PT platforms requires a specific analysis.

In the next section, we summarize the VAT-related obligations that are imposed on e-commerce platforms since July 2021 and analyse those that the EU Commission proposes to add/adjust in the near future. We subsequently discuss expected impact that the latter would have on the three levels of platform facilitation – identified in section 2.3. – in the e-commerce, STR and PT sectors.

57. Rėklaitis, K., & Pilelienė, L. (2019). Principle differences between B2B and B2C marketing communication processes. *Organizacijų Vadyba: Sisteminių Tyrimų*, 2019(81). <https://doi.org/10.1515/mosr-2019-0005>; Mourtzis, D., Angelopoulos, J., & Panopoulos, N. (2020). A survey of digital B2B platforms and marketplaces for purchasing industrial product service systems: A conceptual framework. *Procedia CIRP*, 97. <https://doi.org/10.1016/j.procir.2020.05.246>; Kumar, V., & Raheja, G. (2012). Business to business (B2B) and business to consumer (B2C) management. *International Journal of Computers & Technology*, 3(3), 447-451; Son, J. Y., Tu, L., & Benbasat, I. (2006). A descriptive content analysis of trust-building measures in B2B electronic marketplaces. *Communications of the Association for Information Systems*, 18(1), 99-128. <https://doi.org/10.17705/1CAIS.01806>

3. The Deeming Provision for E-Commerce Platform

3.1. The current deeming provision: Overview of the rules and impact

3.1.1. The current rules, in a nutshell^[58]

Applicable since 1 July 2021, article 14a of the VAT Directive provides that, in specific situations, an electronic platform that facilitates either intra-EU supplies of goods or distance sales from a third country/territory into the European Union,^[59] will be deemed to receive these goods and to supply them onwards to the final customer. The deeming provision thus creates a fictitious chain transaction. There will first be a supply from the initial supplier to the platform (this supply qualifies as a supply without transport that is exempt with a right to deduct if this supply is subject to EU VAT).^[60] Second, there will be a supply from the platform to the customer (this supply qualifies as a supply with transport).^[61] A (rebuttable) presumption has been inserted under article 5d of the VAT Implementing Regulation that the first supply is a B2B supply and that the second supply is a B2C supply. If the underlying supplier is not a taxable person, the supply is in principle out of scope,^[62] and therefore no VAT is due.^[63] If the underlying customer is a taxable person, the deeming provision does not apply.

Currently, the material scope of application of this deeming provision is relatively narrow. It includes the following situations:

- distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 (article 14a(1) of the VAT Directive); and
- the supply of goods within the Community (i.e. intra-EU or domestic supply) by a taxable person not established within the Community to a non-taxable person (article 14a(2) of the VAT Directive).

The provision applies irrespective of whether the goods that are sold are subject to excise duties.

In contrast, the personal scope of application of the deeming provision is already very broad. In accordance with article 5b of the Implementing Regulation, the term “facilitates” primarily requires that the platform allows a buyer and a seller to enter into contact. The same article further clarifies that platforms that perform any of the following actions are in scope: setting either directly or indirectly, any of the terms and conditions of the underlying supply, authorizing either directly or indirectly, the charge to the customer or being involved either directly or indirectly, in the ordering or delivery of the goods. Article 5b of the VAT Implementing Regulation explicitly excludes only three situations from its scope: the processing of payments in relation to the supply of goods, the listing or advertising of goods, the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.^[64] Under article 5c of the VAT Implementing Regulation, a platform will not be liable for underpaid VAT when it has received wrong information from the underlying supplier (or from any third party), and it is “dependent” on this information and “can demonstrate that he did not and could not reasonably know that this information was incorrect”. The burden of the proof is thus placed on the platform.

As discussed elsewhere,^[65] the wording of article 5b of the Implementing Regulation may be interpreted as including e-commerce platforms that only offer basic features to enable buyers and sellers to enter into contact (plain show and search functions) and a means for communication like a chat function. It may also include what we refer to as “unintended

58. For a detailed analysis we refer to Lamensch, M. et al.(2021), A Qualitative Impact Assessment, *World Tax Journal*. Vol. 13, no. 3; pp. 441-479. <https://doi.org/10.59403/15yff24>

59. These concepts are defined at art. 14(4)(1) and (2) VAT Directive.

60. This will only be the case in an intra-EU situation. This includes a situation where a non-EU supplier has stored goods in a warehouse located in an EU Member State and sells them to customers residing in the same Member State. In the import situation the first supply is out of scope.

61. Commission Staff Working Document, *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*, {COM(2022) 701 final} - {COM(2022) 703 final} - {COM(2022) 704 final} - {SEC(2022) 433 final} - {SWD(2022) 394 final}.

62. See, however, Pollak, who argues that nothing in the wording of art. 14a(1) nor art. 14(4)(2) VAT Directive implies that the deeming provisions in case the goods are coming from a third territory or third country are limited only to supplies made by taxable persons. Pollak, Ch., (2022), *Platforms in EU VAT Law: A Legal Analysis of the Supply of Goods*, Kluwer EUCOTAX Series on European Taxation # 70, p. 127.

63. In contrast, and as will be discussed in sec. 4., what are now to be considered as “out of scope supplies” by non-taxable person will be subject to VAT under the proposals made in Part 2 of the ViDA proposal.

64. See the third sentence of art. 5b VAT Implementing Regulation (as amended by Council Regulation 2019/2026). In our view the wording of art. 5b implies that a platform could be performing all three activities and still be out of scope of the deeming supplier obligation. See, however, Pollak, Ch., (2022), *Platforms in EU VAT Law: A Legal Analysis of the Supply of Goods*, Kluwer EUCOTAX Series on European Taxation Series # 70, p. 124 who argues that cumulation is not possible.

65. We refer to Lamensch, M. et al., (2021), *New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment*. *World Tax Journal* Vol. 13, no. 3; pp. 441-479. <https://doi.org/10.59403/15yff24>

marketplaces". The latter include platforms primarily meant for interactions, like Facebook or online forums (with a chat or a private message functionality), while the previous category is primarily meant for transactions. On unintended marketplaces, users might self-organize markets and in our view these platforms also meet the criterion of facilitating, that is, allowing a customer and supplier to enter into contact resulting in a supply through that platform.^[66] In our opinion, it was clearly not the legislator's intention to bring these platforms into the scope of the deeming provision of article 14a of the VAT Directive. However, in view of the broad interpretation given to it in the explanatory notes issued by the EU Commission, which state that "setting the terms and conditions" also means setting the terms and conditions of using the platform, these unintended platforms could be in scope. This is the reason why they are also included in the impact assessment.

3.1.2. Impact analysis, in a nutshell^[67]

The current deeming provision already entails significant operational impact on platforms operating in the B2C sector, including new invoicing obligations, the need to set up new internal processes to determine on a transaction basis whether or not they act as deemed suppliers and, preferably to withhold the VAT on transactions and to organize refunds. All this triggers new costs and risks and is likely to have an impact on platforms' business model.

The deeming provision also results in the obligation to register and pay the VAT, either via the One-Stop-Shop (OSS) or the Import One-Stop-Shop (I-OSS) or by relying on the so-called special arrangements (these schemes are regulated under articles 369a to 369k, articles 369l to 369x and articles 369y to 369zc of the VAT Directive respectively). Again, this comes with new costs and risks, not only of errors but also of fraud. In this respect it is worth highlighting the risk of fraud arising from the abuse of I-OSS numbers. When the I-OSS scheme is used, the VAT must be declared via this dedicated special scheme and the import into the European Union (which is a taxable event in its own right) must be exempt. In practice the exemption is granted if a valid I-OSS number is inserted into the import declaration. Since the entry into application of this special scheme, it is no secret that the I-OSS number of major platforms is known by everyone (it can be found online) and is being (ab)used by dishonest traders. The risk for the platform is that tax authorities seek to recover the VAT from the platform each time their I-OSS number has been used, even when it has been fraudulently used by a dishonest trader. At the moment, there does not seem to be any appropriate means for platforms to prevent the fraud, except the solution consisting in taking care of the delivery and import process itself and to not disclose their I-OSS number to anyone except their customs broker (which does not seem realistic in practice). We also found that the "protection" offered by article 5c of the VAT Implementing Regulation was inappropriate to address these situations. More generally, we were rather critical of this provision, first because the term "dependent" is not defined and it remains unclear to what extent tax administrations could consider that a platform was, in fact, able to obtain information from other sources that should have allowed the platform to uncover the fraud. Second, because requiring from platforms to prove a negative fact (that is, that they did not and should not have known that information provided was incorrect) amounts to having a rebuttable presumption that the platform knew or should have known that the information was correct.

Based on the above, platforms operating in the B2C sector had to take the following actions before July 2021, in order to comply with the obligations arising from the current deeming provisions:

- (1) Consider offering self-billing schemes to deal with the VAT obligations on the supply from the underlying supplier to the platform, in addition to the invoicing obligations related to their own supply to their customers.
- (2) Set up new internal processes to determine for each supply that they facilitate where the goods are located at the time of the supply, where the underlying supplier is located, what the value of the goods is, and what the applicable rate is.
- (3) Set up a procedure to rebut the presumptions in place under article 5d of the VAT Implementing Regulation (i.e. the presumption that the deemed supply from the platform to the final customer is a B2C supply).
- (4) Set up a procedure to organize refunds of VAT and prevent fraud related to reimbursement queries.
- (5) Budget the new costs and risks relating to the payment of VAT. Platforms will either need to register to pay VAT in each EU Member State of destination or need to use the OSS for EU supplies (which is a cost saver) or the I-OSS for supplies of goods coming from non-EU Member States (but not available for excise goods even if the deeming provision also applies

66. A typical example of a platform that could be in scope on the basis of these broad criteria is Facebook: a Facebook user may post photos and descriptions of a good that he or she intends to sell on his or her wall; another Facebook user contacts the first user via the Messenger system and agrees on a price and other terms of the transaction. The first user can send a QR code as payment request via the chat to the second user. The payment is quasi instantaneous; the first user sends the good by mail the next day. In this scenario, Facebook has objectively offered the technical means allowing a customer and supplier to enter into contact resulting in a supply. Another example would be a "self-organized" market in which collectors and hobbyists have established an online environment to share their passion. At some point, they may exchange or sell objects to each other on a regular basis.

67. For a detailed analysis we refer to Lamensch, M. et al., (2021), New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment, *World Tax Journal*, Vol. 13, no. 3; pp. 441-479. <https://doi.org/10.59403/15yff24>

in this case). While the OSS is open to each and every platform, a platform established outside the European Union will need to find an EU representative to use I-OSS. Otherwise, the special arrangements involving the transporter must be used.

(6) Develop strategies to prevent new risks of fraud.

3.2. The ViDA proposal

3.2.1. The proposed changes

In Part 3 of its ViDA proposal ("Single VAT Registration"),^[68] the EU Commission proposes to broaden the material scope of application of the deeming provision quite substantively and to render the use of the I-OSS mandatory for platforms.

3.2.1.1. Broadening the scope of the deeming provision

New article 14a, paragraph 2: Intra-EU supplies of goods

Under an amended version of article 14a, paragraph 2 of the VAT Directive, platforms would become liable for all intra-EU sales of goods that they facilitate, no matter where the supplier is established (as discussed above, at the moment it is only when the supplier is not established in the European Union that the deeming provision applies).

Under this amended paragraph 2, the EU Commission also proposes to apply the deemed supplier liability not only to B2C intra-EU supplies (as is currently the case) but also to B2B intra-EU supplies. In such case, the chain transaction created by the legal fiction would include two subsequent B2B supplies. As is the case now under the current rules, only the second supply would be treated as a supply with transport, which means that the platform would be deemed to make an exempt intra-Community supply, with all the formalities related thereto.

New article 14a, paragraph 3: Transfer of own goods

The EU Commission also proposes to render platforms liable for the VAT in the case where they "facilitate" transfers of own goods (proposed new paragraph 3 of article 14a of the VAT Directive). What the EU Commission proposes more specifically is (i) the broadening of the deeming provision of article 14a of the VAT Directive to include these transfers and (ii) the setting up of a new collection scheme that would be dedicated to these transfers (article 369(xa) ff. of the VAT Directive).

This issue is extremely relevant in practice because there are situations where goods stored in a warehouse have to be moved to a warehouse located in another Member State for logistics and/or commercial purposes (for example, to better serve customers). The decision to move the goods from one warehouse to another may be taken either by the supplier himself, or by the platform if the latter is in charge of the logistics. Under the current rules, the underlying supplier would in both cases need to be registered in the Member State from where the goods are being moved (for the purpose of declaring a deemed intra-Community supply in that Member State) *and* in the Member State to where the goods are being moved (for the purpose of declaring a deemed intra-Community acquisition in that Member State). This need to make multiple registrations is seen as a hindrance, that would be removed if platforms became liable for the VAT on the deemed intra-Community supply and acquisition.

Unfortunately, it is unclear at the moment whether the deeming provision would cover both situations described above (i.e. transfers of the goods decided and organized by the supplier *and* those decided and organized by the platform). The two situations are referred to in the Impact Assessment as situations that would benefit from a change of the rule.^[69] However, there is no specific definition of what "facilitates" means in these specific contexts. The definitions provided under article 5b of the Implementing Regulation only concern facilitation of sales and do not seem to be relevant here. In fact, in the first scenario (supplier decides to move its own goods), we do not see what "facilitation" would refer to as there is no other party with whom a supply should be facilitated since it is the same person who does the intra-Community-supply and the intra-Community acquisition. In the second scenario (platform decides to move the goods), the concept of "facilitation" does not seem appropriate either as in this case it is the platform that actually "does" the transfer without involving anybody else. It would therefore be welcome to receive clarification concerning the exact scope of article 14a paragraph 3, possibly through the adoption of a new definition of "facilitation" in the specific context of transfer of goods. At this stage, we assume that fulfilment

68. As indicated in the introduction, the ViDA proposal is split in three parts: (i) e-invoicing and real-time reporting, (ii) "Platforms" and (iii) single VAT registration (focusing on means to reduce the number of VAT registrations needed in the European Union). The changes discussed in sec. 4. of this article fall under (ii); those discussed in this section fall under (iii).

69. See Table 2. in sec. 2.1. and footnote 108 in *Commission Staff Working Document, 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*, {COM(2022) 701 final} - {COM(2022) 703 final} - {COM(2022) 704 final} - {SEC(2022) 433 final} - {SWD(2022) 394 final}.

houses, suppliers and transport operators are in any case not meant to be in scope of this provision. However, a confirmation would be welcome since they *could* be considered as being in scope based on the wording of proposed article 14a, third paragraph.

New article 14a, paragraph 4: No liability for platforms only operating in one Member State

Finally, a fourth paragraph would be added, which would provide that if a platform operates in one single Member State and only facilitates supplies of goods in that Member State, the deeming provision would not apply. This for example means that platforms facilitating the supply of “food delivery” would not be liable for the VAT due on that supply of goods if it is established in one single Member State and only facilitates supplies in that single Member State.

3.2.1.2. Mandatory use of the I-OSS for platforms

The EU Commission also proposes to render the I-OSS mandatory for platforms (it is currently optional) through the amendment of article 369m of the VAT Directive.

It remains unclear at this moment whether the obligation to have a tax intermediary may be kept if the scheme becomes mandatory.

When a platform persistently fails to comply with the applicable rules, currently the sanction is the exclusion of that taxable person from the system. Under the proposed rules, platforms that are obliged to use the I-OSS cannot be excluded from this scheme. If they persistently fail to comply with their obligations under the scheme, EU Member States would then have to take other measures (proposed amendments to article 369r of the VAT Directive). In contrast, platforms can be excluded from the other schemes within the OSS (see the proposed amendment to article 58b(a) VAT Implementing Regulation), including the new scheme for transfers of own goods.

3.2.1.3. New measures to better monitor the use of I-OSS numbers

The EU Commission further proposes that powers be conferred to it with a view to better secure the correct use and the verification process of IOSS VAT identification numbers (proposed article 143, paragraph (1a) of the VAT Directive). This empowerment should allow the European Commission to adopt an implementing act to introduce special measures to prevent certain forms of tax evasion or avoidance. This might include the linking of a unique consignment number with the I-OSS VAT identification number, access to data for customs, the obligation for Member States to collect information regarding the value of goods imported under I-OSS per I-OSS number per Member State of consumption and to exchange this information (proposed amendment of article 17(1)(e) of Regulation 904/2010).^[70]

3.3. The customs reform proposals

The customs reform proposals include several changes to rules that entered into application in July 2021. If adopted, those changes should enter into application in March 2028. A first change would be the removal of the EUR 150 threshold for both the special arrangement whereby the collection and payment of the VAT can be outsourced to the carrier of the goods (articles 369y to 369zc of the VAT Directive) and the I-OSS. As discussed above, platforms will in any case be obliged to use the I-OSS (so that the change in relation to the special arrangement would not directly impact them). But with this reform, they would become liable for all distance sales of imported goods that they facilitate, no matter their value.

For the sake of completeness, it is noteworthy that the EU Commission also proposes that platforms that facilitate distance sales of imported goods be liable for the collection of both VAT and customs duties, combined with a removal of the exemption threshold for customs duties (currently set at EUR 150). However, as this concerns customs duties specifically, we will not include this change in our impact assessment.

3.4. Analysis

If the Member States adopt both the ViDA and customs proposals, this would undoubtedly have an impact on the associated burden for platforms.

On the one hand, it would no longer be necessary for them to make a distinction between B2C supplies performed by EU established suppliers and B2C supplies performed by non-EU established suppliers, which removes a difficulty and a risk and could therefore be seen as a positive development. Platforms should, however, still determine whether the goods are already in the European Union in order to use the correct declaration system (i.e. the OSS for intra-EU situations and, mandatorily, the

70. European Commission, *Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age*, COM(2022) 701 final, art. 2(14) and *Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age*, COM(2022) 703 final, art. 1(3) and (6).

I-OSS for import situations). It should also be kept in mind that the number of transactions for which platforms would become liable would rocket up, which means that the financial responsibility also increases dramatically.

On the other hand, the potential impact of the extension of the deeming provision to B2B supplies would be enormous. This extension indeed implies that platforms would be deemed to receive goods (domestic supply from the underlying supplier to the platform) and supply them onward to the business customer (intra-Community supply by the platform to the business customer and intra-Community acquisition by the customer). In practice, platforms would thus suddenly have to declare the intra-Community supplies taking place in the Member States where the transport of the goods starts, submit EC sales listing and keep necessary evidence to guarantee the exemption of these supplies (notably concerning the status of the customer and the transport of the goods). Since platforms operating in the B2B sector are typically offering a low level of facilitation (see our analysis in section 2.), most of them are not involved in the transport of the goods. This means that they would have to obtain relevant evidence from the supplier or the customer and would depend on their diligence to provide complete information in due time. Otherwise, they would risk losing the benefit of the exemption of the intra-Community supply. Moreover, Part 1 of the ViDA proposal includes an obligation of real-time e-invoicing and digital reporting requirements to taxable persons making intra-Community transactions as of 2028. This would replace recapitulative statements but would constitute a compliance burden that is hardly bearable for platforms in this scenario, since the proposed reporting should be done within very tight deadlines (within two days of the e-invoice under the original proposal). It is therefore very surprising that the significant practical consequences of this extension are not highlighted in the Explanatory Memorandum and that no specific attention has been drawn to it in the Impact assessment accompanying the ViDA proposal.

Likewise, the broadening of the deeming provision to transfers of own goods within the European Union will certainly be an additional burden for the platforms. If the provision covers situations where the transfer is decided and operated by the supplier (as noted above it will be crucial to have more clarity on that point), it will be particularly crucial to receive information in a timely manner and to manage risks. Moreover, the creation of a dedicated scheme means a specific registration and the obligation to submit periodical declarations.

The proposal to exclude from the deeming provisions those platforms that only facilitate supplies in one Member State could be seen as a way to preserve local (expectedly smaller) platforms. It may, however, also be seen as a measure that, because it applies without any threshold, prevents them from benefiting from the Internal Market. Any supply taxable in another Member State would indeed trigger the liability for all the supplies that they facilitate (the potential risk is therefore enormous). A threshold of cross-border supplies could apply below which the deeming provision shall not apply (for example, the EUR 10,000 threshold that is currently applicable for small businesses under the e-commerce rules). However, this would imply a close scrutiny of the underlying supplies by the platform.

The obligation to register to the I-OSS (since the special arrangements will no longer be available for platforms) will penalize the platforms which thus far have decided to leave it to the transporter to collect the VAT directly from the customer in the case of imports. Those platforms are most probably the smallest ones offering a low level of facilitation. If the obligation to appoint a tax intermediary remains, this could result in an additional cost, in the form of a substantial guarantee that would need to be offered to the tax intermediaries. Smaller platforms will be proportionally more affected by this new obligation.

Finally, the linking of a unique transaction number with the I-OSS number would protect platforms from the abuse of their I-OSS number and would therefore probably be most welcome. On the flip side, allocating a unique transaction number to each transaction may be considered an additional burden. In our opinion, however, the added protection against fraud would exceed the associated compliance burden.

3.5. Actions to be taken: Summary

E-commerce platforms operating in both the B2B and B2C sectors would have to take the following actions in order to comply with the amendments proposed by the EU Commission under their ViDA and customs reform proposals:

- (1) Amend their internal processes to determine the location of the goods for each supply that they facilitate (relevant for platforms operating in the B2C and B2B sectors).
- (2) Make sure they have an EU intermediary to be able to use the I-OSS as there will be no alternative (relevant for non-EU platforms operating in the B2C sector).^[71]
- (3) Register to the new collection scheme that would be dedicated to transfers of own goods (relevant for platforms operating in the B2C and the B2B sectors).

71. Some platforms already have an I-OSS registration and EU intermediary. For those platforms, the amendments proposed by the European Commission do not require any changes in this respect.

If the deeming provision applies in the case of transfer of own goods decided and operated by the suppliers (and not the platform): set up procedure to be informed of transfers of stock as they arise and manage the risks related thereto (relevant for platforms operating in the B2C and the B2B sectors).

- (4) Allocate unique consignment number to all distance sales of imported goods that they facilitate (relevant for platforms operating in the B2C sector).
- (5) Extend self-billing schemes to deal with the B2B transactions that would be in scope of the deeming provision, declare intra-Community supplies, submit recapitulative statements and keep/obtain evidence related to the status of the customer, and the transport of the goods in order to secure the exemption of these supplies (relevant for platforms operating in the B2B sector). As of 2028 comply with e-invoicing and digital reporting requirements.

3.6. Assessment table

In section 3.1.2. we listed the actions that platforms *had to take* to comply with the 2021 EU VAT rules and in section 3.5. we listed the actions that they *would need to take* in order to comply with the ViDA and customs reform proposals. In this section, we assess the expected impact of the latter on four types of platforms: unintended e-commerce platforms, platforms at the lowest level of facilitation, platforms at the medium level of facilitation and platforms at the highest level of facilitation (as defined in section 2.3.) and we compare this anticipated impact to the current situation. As also clarified in section 2.3. and in section 3.1.1., including unintended e-commerce platforms in the provisions' scope was probably not the legislator's intention. However, this possibility may not be ignored based on the broad interpretation provided by the Explanatory Notes.

As indicated in section 1., the impact of the administrative burden is expressed on an ordinal scale. Table 7. lays down the definitions corresponding to a low, moderate or high impact. In short, a low impact is ideal, because it means that the obligations align well with the business processes in place. A moderate impact is also acceptable, while a high impact is considered detrimental to a platform, because it affects the business model or otherwise its economic position (that is, when a platform is compelled to shift to a different level of facilitation). Table 8. presents the results of the assessment of the requirements imposed on e-commerce platforms by the deeming provision.

Table 7. Impact assessment scale

Impact	Definition	Examples
Low	The new obligations align well with regular business processes. Little to no change is needed to business processes in place	– Required information is already collected by the platform, or readily available. For example, users include the required data in their user account – Business processes in place allow the platform to collect the correct amount of VAT from customers – Business processes in place provide sufficient protection against liability arising from fraud by underlying suppliers
Moderate	The obligations require setting up or amending business processes, but these changes do not affect the business model or value proposition	– Required information is currently not available, but through a new procedure users can simply submit the required data in their user profile. For example, registering a nationality or address – With some amendments, the current business processes will allow a platform to collect the correct amount of VAT from customers – New procedures are set up or amended to provide sufficient protection against liability for fraud by underlying suppliers
High	The obligations require setting up new business processes, and these changes fundamentally affect the business model of the platform, affecting the value proposition (its "winning formula") and its economic position or come at a high cost	– A platform is forced to implement a mandatory payment system to collect the (correct) amount of VAT – A platform is obliged to start arranging the shipping to prevent being held liable for fraud by underlying suppliers – Forced to cease (a part of the) activities – The effects of new or amended processes threaten a platform's user base

Table 8. Impact assessment: Deeming provision for e-commerce platforms

Action to be taken	Unintended e-commerce platforms	Level of facilitation		
		Lowest level	Medium level ^[1]	Highest level ^[2]
(1) For both B2B ^[3] and B2C ^[4] platforms: Amend internal processes to determine where the goods are located at the time of the supply	High ^[5]	High	Low/High ^[6]	Low ^[7]
(2) For non-EU platforms operating in the B2C sector: Make sure they have a tax representative to be able to use the I-OSS as there will be no alternative	High	High	High ^[8]	High ^[8]
(3) For both B2B and B2C platforms: Register to the new collection scheme that would be dedicated to transfers of stocks. If the deeming provision applies in the case of transfer of own goods decided and operated by the suppliers (and not the platform): set up procedures to be informed of transfers of stock as they arise and manage the risks related thereto	High	High	Moderate/High ^[9]	Moderate/High ^[9]
(4) For platforms operating in the B2C sector: Allocate unique transaction number to all distance sales of imported goods that they facilitate	High	High	Low/Moderate ^[10]	Low ^[11]
(5) For platforms operating in the B2B sector: Extend self-billing schemes to deal with the B2B transactions that would be in scope of the deeming provision, verify VAT number of customers, declare intra-Community supplies, submit recapitulative statements and keep/obtain evidence related to the transport in order to secure the exemption of these supplies	High	High ^[12]	Moderate/High ^[13]	Moderate ^[14]
(6) For both B2C and B2B platforms only active in one Member State (out of scope of the deeming provision): Monitor the underlying supplies in order to make sure that no-cross border supply is facilitated	High	High	Low/Moderate ^[15]	Low/Moderate ^[15]

- 1 Platforms that facilitate at a medium level are involved in either or both the obligations of the transacting parties (typically shipping and payment). The platform facilitation includes both the situation where the platform executes the payment and/or shipping, and the situation where the platform provides the organization of the payment and/or shipping, but leaves the execution to a third-party (3P) service provider. The latter case generally relies on APIs that connect the platform and the 3P service provider's system, enabling data exchange.
- 2 Platforms involved in the result phase provide services like insurance, dispute resolution and refunds. These services financially affect a platform or its users (which ultimately also affects the platform). Hence, a platform must have sufficient control over transactions to provide fair outcomes and prevent abuse. The required level of control entails that a platform must involve itself in the obligations of both sellers and buyers, thus both in the payment and the shipping.
- 3 For B2B platforms, it is necessary to know where the goods are located at the time of the supply in order to determine whether they are in scope of the deeming provision.
- 4 For B2C platforms, it is necessary to know where the goods are located at the time of the supply in order to use the correct declaration scheme (OSS or the I-OSS).
- 5 General note for this column: the authors assume that unintended marketplaces never intended to collect VAT (and would probably not be able to pass the cost to the customer) so that the impact is always high.
- 6 Whether the impact will be low or high depends on whether the platform is involved in the transport of the goods and/or has reliable information regarding their location at the moment of the supply. A platform needs to be involved in the shipping of the goods, either directly (by carrying out the shipping themselves) or indirectly (through 3P logistics)). The impact will be low if it is already involved in the shipping; or high if not involved in the shipping, as it is forced to involve itself.
- 7 Platforms facilitating at this level will know or be able to query the location of a consignment, as they rely on shipping information for fair dispute resolution, insurance, and refunds (see note 2).
- 8 Even a platform only offering a medium or high level of facilitation is also expected to have high difficulties in finding a tax intermediary that would be liable in case of non-compliance.
- 9 If the platform decides to transfer the goods the impact will be moderate. If the supplier decides to transfer the goods and the deeming provision applies, the impact is high on the platforms who need to declare the transfer in due time and collect data accordingly.
- 10 If the platform facilitates the shipping (see note 1) it has or will be able to query the unique consignment number. Where a platform facilitates the payment but not the shipping, a platform would still be in a position where it could obtain a unique consignment number. Being involved in the payment, the platform can withhold pay-outs until the supplier provides the consignment number. Moreover, the supplier has an incentive to provide the consignment number to get the exempt import. Abuse of a platform's IOSS number is still possible (for example, if a supplier ships more goods in the same consignment, but when this is detected the platform would (at least in theory) be able to connect the abuse to a specific supplier and take action accordingly).
- 11 Platforms facilitating at this level will know or be able to query the unique consignment number, as they rely on shipping information for fair dispute resolution, insurance, and refunds (see note 2).
- 12 This level is probably where the largest share of B2B platform transactions occur. On the one hand they will need to collect and verify the VAT number of the customer. If the VAT number does not exist or is not active, the exemption will be denied. On the other hand, they will have to collect sufficient information regarding the goods, applicable rates, prices, location of the goods and evidence of the transport. Once again this is crucial to secure the exemption of the intra-Community supply. It remains to be seen whether users will accept it, as it interferes with the value proposition.

Action to be taken		Level of facilitation		
	Unintended e-commerce platforms	Lowest level	Medium level ^[1]	Highest level ^[2]

- 13 The platform will need to be involved in the shipping of the goods. The impact will be moderate if it is already involved in the shipping (directly or indirectly); or high if not involved in the shipping, as it is forced to involve itself. Even if the platform is already involved in the transport, the impact cannot be considered as low because of the obligation to verify VAT numbers and to submit declarations and recapitulative statements, and in view of the financial risk due to the volume of goods being traded in the B2B sector.
- 14 Only a small fraction of B2B platforms facilitate transactions at the highest level. And even for them the rules will have a moderate impact, because of the obligation to submit recapitulative statements and because of the financial risk that is likely to be enormous in view of the volume of goods being traded on these platforms.
- 15 Whether the impact will be low or moderate depends on whether the platform is able to enforce its terms and conditions whereby only domestic transactions can take place via the platform. Being involved in the payment and the transport would be helpful, as the on-platform payment methods could be restricted to users with a domestic bank account, while transport can be restricted to domestic addresses.

In the next section we analyse and assess the impact of the new deeming provision that would apply to STR and PT platforms.

4. The New Deeming Provision for STR and PT Platforms

4.1. Scope and definitions

Since new business models have emerged in the platform economy, traditional VAT-registered businesses in the STR and PT sectors have been facing fierce competition from individuals and exempt small businesses who can offer their services via a platform without charging VAT.^[72] The EU Commission seeks to suppress this distortion by introducing a new deeming provision that would apply as of 1 January 2025 and reads as follows.

Article 28a

Notwithstanding Article 28, a taxable person who facilitates, through the use of an electronic interface such as a platform, portal, or similar means, the supply of short-term accommodation rental, as referred to in Article 135(3), or passenger transport, shall be deemed to have received and supplied those services themselves where the person providing those services is one of the following:

- (a) a non-established person who is not identified for VAT purposes in a Member State;
- (b) a non-taxable person;
- (c) a taxable person carrying out only supplies of goods or services in respect of which VAT is not deductible;
- (d) a non-taxable legal person;
- (e) a taxable person subject to the common flat-rate scheme for farmers;
- (f) a taxable person subject to the special scheme for small enterprises.

For the proposed deeming provision to apply, the underlying supplier must thus fall into one of the categories (a) to (f) above. Furthermore, the activity must involve the supply of STR or PT.

The concept of facilitation is defined in the same way as under the existing e-commerce deeming provision.^[73] In contrast, the term “STR” is not defined in article 28a of the VAT Directive. However, a reference is made to a new article 135(3) of the VAT Directive. This provision is not a definition as it simply excludes “the uninterrupted rental of accommodation for a maximum of 45 days with or without the provision of other ancillary services” from the scope of the exemption related to the leasing or letting of immovable property.^[74] Although no proper definition of STR is thus offered,^[75] it seems that for the purpose of the new deeming provision, STR means “any uninterrupted rental for less than 45 days”. As to the term “PT”, it can be found in various articles of the EU VAT Directive,^[76] yet neither the VAT Directive nor the ViDA proposal provide a definition. This leaves the

⁷² European Commission, Proposal for a Council directive amending Directive 2006/112/EC as regards VAT rules for the digital age, COM (2022) 701 final, p. 6.

⁷³ This appears from a comparison between art. 5b Implementing Regulation (the e-commerce deeming provision) and the new art. 9b Implementing Regulation (the proposed deeming provision).

⁷⁴ By aligning the VAT treatment of these services on the VAT treatment applicable to the hotel sector (covered by art. 135(2)).

⁷⁵ In contrast, the concept of “short-term hiring of a means of transport” is for example defined under art. 56(3) VAT Directive.

⁷⁶ It can also be found in the Guidelines of the VAT Committee. See VAT Committee. (2024). *Guidelines resulting from meetings of the VAT Committee, Up until 1 February 2024*. Retrieved from: https://taxation-customs.ec.europa.eu/document/download/474e7e57-7e01-4de0-ac94-e55537e505ae_en

impression that the meaning of PT services is regarded as self-evident. In the absence of a definition, however, there is also a lack of demarcation of scope, and thus the risk that more platforms are in scope than is intended.^[77]

Besides the fact that the proposed deeming provision makes it possible to impose VAT on supplies that are currently untaxed (either because they are out of scope or because the supplier does not have to collect VAT on account of an exemption or a special regime), requiring the platform to collect the VAT, instead of the underlying supplier, also improves sub-optimal VAT collection and control.^[78]

4.2. The legal fiction

The proposed deeming provision applies in B2C, B2B, C2B and C2C situations and creates a fictitious chain transaction: a first supply by the underlying supplier to the platform and a second supply by the platform to the customer.

The supply by the underlying supplier to the platform

The supply of the underlying supplier to the platform would be an exempt supply without the right of deduction (proposed article 136b of the VAT Directive). In C2B and C2C situations (where the underlying supplier is a non-taxable person), it is unclear whether the supply from the underlying supplier to the platform is “out of scope” (because the underlying supplier is not a taxable person) or whether this supply must be considered as a taxable supply (because the platform now receives a (taxable but exempt) service). The distinction is relevant because unless the supply is out of scope, new obligations will arise in terms of VAT registration, filing of VAT returns and invoicing.

Given the scope of this article that focuses on the position of platforms, only the issue of invoicing to the platform is further addressed.^[79] This question arises not only in C2B and C2C situations but also in B2B and B2C situations (where the status of the supplier triggers the deeming provision, but the supplier is still a business). Article 220(1) of the VAT Directive indeed states that an invoice must be issued for supplies of goods or services made to a taxable person or to a non-taxable legal person. The obligation to issue an invoice is waived in the case of certain supplies of exempt financial services, but this exception does not apply to STR or PT services.^[80] At present, several Member States do not require invoices for supplies subject to a VAT exemption, but in some Member States an invoice is always required unless the underlying supplier is an SME applying the special scheme (and unless otherwise stated in the VAT Directive). We would therefore suggest that Member States be encouraged by, for example, explanatory notes or by an amendment to the VAT Directive (the latter provides more legal certainty) to waive the obligation to issue of invoices for services exempt under the new article 136b of the VAT Directive. This would be in line with the objectives of the ViDA proposal. If invoicing obligations exist (that is, are not waived), platforms may then want to set up procedures for self-billing.

The supply by the platform to the customer

The supply of STR services by the platform to the customer would always be taxed. Proposed article 135(3) of the VAT Directive indeed provides that “the uninterrupted rental of accommodation for a maximum of 45 days with or without the provision of other ancillary services shall be regarded as having a similar function to the hotel sector”. As a result, from 1 January 2025, it would no longer be possible for a Member State to rely on article 135(2) of the VAT Directive to apply a VAT exemption to STR services.^[81]

In contrast, the supply of PT services by the platform to the customer may be exempt in some cases. Article 371 of the VAT Directive indeed provides that Member States, which on 1 January 1978 exempted PT services – which act is listed in Annex X, Part B – may continue to apply this exemption.

77. In that sense, see also Cicin-Sain, N., (2024), VAT Treatment of Sharing and Gig Economy in the EU, in *CJEU Recent Developments in Value-Added-Tax*, Lang, M., et al. (eds.), Linde Verlag, p. 94.

78. European Commission, Proposal for a Council directive amending Directive 2006/112/EC as regards VAT rules for the digital age, COM (2022) 701 final, pp. 2, 3, 11 and 12.

79. The issue of registration and filing VAT returns is only relevant for the underlying suppliers.

80. Art. 220(2) VAT Directive provides that the issuance of an invoice shall not be required in respect of supplies of services exempted under points (a) to (g) of art. 135(1) VAT Directive. Supplies of STR and PT services are neither included in art. 135(1) a-g VAT Directive nor in the proposed amendments to the VAT Directive.

81. See also European Commission, *Proposal for a Council directive amending Directive 2006/112/EC as regards VAT rules for the digital age*, COM (2022) 701 final, preamble section 25.

4.3. Analysis

4.3.1. Need to determine and monitor the status of underlying suppliers

In order to determine whether they are in scope of the deeming provision, platforms will have to assess whether they are dealing with qualifying underlying suppliers, i.e. suppliers that fall under one of the following categories:

- (a) a non-established person who is not identified for VAT purposes in a Member State;
- (b) a non-taxable person;
- (c) a taxable person carrying out only supplies of goods or services in respect of which VAT is not deductible;
- (d) a non-taxable legal person;
- (e) a taxable person subject to the common flat-rate scheme for farmers; or
- (f) a taxable person subject to the special scheme for small enterprises.

What actions the platform actually need to take depends on the interpretation of the proposed article 28a of the VAT Directive in conjunction with proposed article 9c of the VAT Implementing Regulation, which states that:

Article 28a of Directive [2006/112/EC](#) shall apply where the person providing the short-term accommodation rental or passenger transport service does not provide the taxable person facilitating the service through the use of an electronic interface such as a platform, portal, or similar means, with a valid VAT identification number. Where the person providing the underlying service has a VAT identification number and falls under any of the categories listed in Article 28a, points (c) to (f), of Directive [2006/112/EC](#), that VAT identification number shall not be communicated to the taxable person facilitating the service.

In a first scenario, no valid VAT number has been provided to the platform. Since article 9c of the VAT Implementing Regulation is not formulated as a rebuttable presumption, one could conclude that the deeming provision is meant to apply in *all* situations where no valid VAT number has been communicated. However, we assume that the platform – using other information, for example information provided by the underlying supplier – can waive the application of the deeming provision, if it has established through other means that the underlying supplier is not a supplier mentioned under (a)-(f) above.

Article 9c of the VAT Implementing Regulation could, however, also be interpreted as meaning that the deeming provision applies (and can be lawfully applied) in all situations where the platform has not received a valid VAT number, even if the underlying supplier does not fall within the scope of one of the categories mentioned under (a)-(f) above. This could happen, for example, if a taxable person wishes that the platform deals with its VAT obligations and accepts the fact that it loses the right to deduct VAT.^[82] This interpretation would be easier to implement for the platforms, but in our view would not be compatible with the proposed text of article 28a of the VAT Directive that requires the underlying supplier to be in one of the categories (a)-(f) mentioned above. Should this more practicable interpretation be the correct one, it should then be clarified in article 28a of the VAT Directive because provisions in the VAT implementing Regulation can only “explain” how to interpret the provisions in the VAT Directive. Should this more practicable interpretation *not* be the correct one, article 9c of the VAT Implementing Regulation should then be clarified by including that article 28a of the VAT Directive only applies where the person providing the STR or PT service *listed in article 28a of the VAT Directive* does not provide the platform with a valid VAT identification number.

In a second scenario, a valid VAT number has been communicated to the platform. The legal text of article 28a of the VAT Directive does not state that the deeming provision applies *only* when no VAT identification number is provided to the platform. Hence, even if a VAT identification number is provided to a platform, the platform will still have to verify whether the underlying supplier falls under categories (c)-(f). In this regard, the proposed amendments to the VAT Directive do not mention a penalty if a valid VAT identification number is nevertheless communicated to the platform, although it shouldn’t have. Merx et al.^[83] indicate that Member States might include such a penalty provision in their national legislation.

In our view – looking at the way article 28a of the VAT Directive is drafted, and regardless of article 9c of the VAT Implementing Regulation, the platform will likely need to establish the status of the underlying supplier both in cases where it does and does not receive a VAT identification number, because the incorrect application or non-application of the provision can have serious consequences (i.e. incorrectly charged VAT that cannot be deducted by the customer and assessments for VAT that should have been charged respectively). The problem is that each of the categories under (a)-(f) are different and can create different burdens for the platform.

^{82.} There is no situation of “incorrectly charged VAT” in that situation. See sec. 3.3. about incorrectly charged VAT.

^{83.} Merx, M., et al., (2023), VAT in the Digital Age Package: Viva la ViDA or Livin’ la ViDA Loca?, *EC Tax Review* 2023-3, p. 134.

To assess whether the underlying supplier falls within category (a), a platform may use information available on the Internet, information from a foreign tax authority or chamber of commerce, in order to determine whether there is an establishment and/or VAT registration in the EU. To establish the status of a non-taxable (legal) person (category (b) and (d)), the fact that a valid VAT identification number has or has not been provided to the platform is certainly relevant. However, as explained above, for category (d), it is not enough that a VAT identification number is provided. The platform will need to check whether that person is not in fact a non-taxable person that shouldn't have provided its VAT identification number. The validity of the VAT identification number can be tested via VIES-On-the-Web (also known as VOW). However, both assessments still require manual verification.

With regard to the other categories (i.e. (c), (e) and (f)), a platform must assess whether the underlying supplier is a taxable person (i) who only supplies goods or services for which VAT is not deductible, (ii) who is subject to the common flat-rate scheme for farmers, or (iii) who is subject to the special scheme for small enterprises. In the same way as for category (d), suppliers in categories (c), (e) and (f) also need to be checked by the platform, even if a valid VAT identification number is provided. For these assessments the platform may rely on the information provided to the platform. However, in order to make this possible, the platform will have to arrange to receive this information in advance from the supplier and will have to be able to verify this information to the extent possible. The platform could, for example, ask the supplier for invoices issued to one of its customers demonstrating that VAT is charged or a VAT return demonstrating its VAT liability. However, this is sensitive information as it involves business information concerning other third parties. In theory, this is thus feasible. However, the associated burden is very significant.

A particular difficulty with the way the proposed article 28a of the VAT Directive is designed is that platforms will have to keep monitoring whether the underlying supplier is still or becomes a qualifying person. For non-established persons that fall within category (a), a platform must keep monitoring whether those persons have VAT registered or established themselves somewhere in the European Union. With regard to categories (b) and (d), they will have to check if a non-taxable (legal) person may have become a taxable person in the meantime. Subsequently, in case the underlying supplier is a taxable person who only supplies goods or services for which VAT is not deductible (i.e. category (c)), a platform will have to check with some regularity whether that supplier does not nevertheless (incidentally) make a supply of goods or services for which VAT is deductible. In that case, the proposed deeming provision would not apply, and the platform would not be liable to pay the VAT.

Merkx et al.^[84] rightly note that it is still unclear how long the deeming provision will not apply if that is the case. Furthermore, regarding categories (e)-(f), a platform should check with some regularity whether small businesses under the SME scheme or the flat-rate farmer scheme do not opt out^[85] or breach the SME threshold. The other way around, if the platform has established that the underlying supplier is not a qualifying supplier, it will need to monitor whether there are changes (for example, winding up an EU establishment and deregistering for VAT for the supplier under category (a), opting into the SME or flat-rate farmer scheme or stopping a taxable activity with only an exempt activity remaining).

4.3.2. New administrative obligations

If the proposed deeming provision applies, platforms will have to account for the VAT due on STR and PT services. This implies the obligation to register for VAT in the Member States where the VAT is due (i.e. the Member State where the accommodation is located or the PT takes place). The administrative obligations differ for B2B and B2C situations. In the previous situation (i.e. B2B situations), the platform may be able to reverse charge (zero-rate) the VAT due on the supply (i.e. STR or PT services) to the customer. The platform will have to check whether this is possible. For example, reverse charge is not applicable if the customer is not identified for VAT in that Member State (proposed article 194 of the VAT Directive).^[86] This might push platforms to change their business model. In the latter situation (i.e. B2C situations), the platform can use the OSS scheme to avoid various local registrations.

4.3.3. Safeguard clause

If the platform initially assessed that the deeming provision does not apply, but it eventually appears that the deeming provision was in fact applicable, the platform will not be liable to pay the VAT due if all the following conditions are met (proposed article 9d of the VAT Implementing Regulation):

⁸⁴. Merkx, M., et al. (2023), VAT in the Digital Age Package: Viva la ViDA or Livin' la ViDA Loca?, *EC Tax Review* 2023-3, p. 135.

⁸⁵. Id., pp. 134 and 135.

⁸⁶. For example, a French doctor, who carries out only exempt supplies of services with no other VAT registration in the European Union, books an STR in Spain via a platform (e.g. Airbnb) to attend a seminar in Spain. Airbnb is established in Ireland. The proposed deeming provision applies. Hence, Airbnb is deemed to have received and supplied the supply of the STR. The supply of the STR by Airbnb is taxed in Spain. Hence, Airbnb needs to register for VAT purposes in Spain. In this example, Airbnb cannot reverse charge the VAT because the French doctor does not have a VAT registration in Spain. Furthermore, Airbnb cannot use the OSS because the customer is a taxable person.

- (a) the taxable person is solely dependent on information provided by the supplier of the services;
- (b) the information so provided is erroneous;
- (c) the taxable person can prove that he or she did not and could not reasonably have known that that information was erroneous.

Article 9d of the VAT Implementing Regulation is worded differently compared to article 5c of the VAT Implementing Regulation (which is the safeguard clause that applies for e-commerce platforms), and it seems to be more challenging to apply.

Under the proposed article 9d of the VAT Implementing Regulation, the platform must indeed depend *solely* on the information provided by the underlying supplier, whereas under current article 5c of the VAT Implementing Regulation, it is sufficient that the platform depends on the information provided by underlying suppliers or by other third parties.

Furthermore, proposed article 9d of the VAT Implementing Regulation only applies to a platform that, based on incorrect information, wrongly assumed that the proposed deeming provision does not apply when it subsequently turns out that it did, while article 5c of the VAT Implementing Regulation only applies to platforms that are in scope of the deeming provision to cover situations where the underlying supplier provided wrong information regarding the supply (e.g. price or applicable rate). Accordingly, where the STR or PT platform correctly applies the proposed deeming provision but underpays VAT (for example, because the underlying supplier has reported the wrong taxable amount and the platform could not verify the payment flows), there does not seem to be any protection (while there is such protection for e-commerce platforms under article 5c).

There is also no legal protection for the platform when it incorrectly did not apply the deeming provision because the underlying supplier has provided a VAT identification number while it should not have (see the proposed article 9c of the VAT Implementing Regulation as discussed in section 4.3.1.). In that case, there is no protection because the underlying supplier did not provide “incorrect information”.^[87]

It is unclear why the two safeguard clauses have been drafted differently. As far as article 9d of the VAT Implementing Regulation is concerned, we would recommend that in case the platform wrongly applies the proposed deeming provision, there is incorrectly charged VAT, and this can be corrected (keeping in mind that to correct the incorrectly charged VAT, the platform will have to eliminate the risk of loss of tax revenue in a timely and complete manner).^[88]

Then again, we are still critical of the fact that under both safeguard clauses, the platforms would still need to demonstrate a negative fact (which is a legally disputable concept as discussed in section 3.1.2.).

4.3.4. Need to determine the place of supply and taxable amount

Platforms acting as deemed suppliers will also have to determine the place of supply and the taxable amount of the underlying supplies.

With regard to the place of supply, platforms will likely know the location of the accommodation or the route of the transport, at least in case it takes place in one Member State (it might be more difficult if the journey covers several Member States, which may happen in border regions).

Determining the taxable amount will be rather straightforward in most cases in which the counterparty consists exclusively in money. It will be much more complex in barter transactions (which, due to the lack of further explanation in the VAT Directive, also seem to fall under the term STR).^[89] However, this is of great importance given the limited protection under the new article 9d of the VAT Implementing Regulation.

If there are specific conditions for the application of a reduced rate or an exemption, the platform may have to require more information from the users.

4.4. Actions to be taken: Summary

- (1) Set up procedures to check the status of the underlying supplier (to determine whether it is a qualified supplier) and monitor it.
- (2) Set up procedures to determine the place of supply, taxable amount, VAT rate and, if applicable, exemption.

87. See also Merkkx, M., et al, (2023), VAT in the Digital Age Package: Viva la ViDA or Livin' la ViDA Loca?, *EC Tax Review* 2023-3, p. 137.

88. CJEU, 19 September 2000, C-454/98 (Schmeink & Cofreth and Strobel), ECLI:EU:C:2000:469. Here, Member States may determine the conditions for incorrectly charged VAT to be corrected.

89. See also Merkkx, M., (2023), VAT in the Digital Age Package: Viva la ViDA or Livin' la ViDA Loca?, *EC Tax Review* 2023-3, p. 135.

- (3) Check whether the VAT can be reversed charged to the customer or if the OSS scheme can be used; If not: register for VAT purposes in the Member State where the accommodation is located, or the PT takes place, and account for the VAT due there.
- (4) Set up procedures to correct unrightfully charged VAT.
- (5) Set up procedures to charge VAT at a later stage (if the platform presumed that the deeming provision does not apply, and it is not protected by the new article 9d of the VAT Implementing Regulation) or has underpaid VAT.
- (6) Set up procedures for self-billing by the platform in case there is an obligation to issue invoices.

4.5. Assessment table

In section 4.4. we listed the actions that *STR and PT platforms* need to take to comply with the deeming provision proposed under the ViDA proposal. Table 9. outlines the expected impact on the concerned platforms, depending on the level of facilitation that they offer.

Table 9. Impact assessment: Deeming provision for STR and PT platforms

Action to be taken	Unintended marketplaces ^[1]	Level of facilitation		
		Lowest level	Medium level ^[2]	Highest level
(1) Set up procedures to check the status of the underlying supplier and monitor it	High ^[3]	High ^[3]	High ^[3]	High ^[3]
(2) Set up procedures to determine the place of supply, taxable amount, VAT rate and, if applicable, exemption				
— Short-term accommodation	High ^[4]	Moderate/High ^[5]	N/a ^[2]	Low/High ^[6]
— Passenger transport	High ^[4]	High ^[5]	Low/Moderate/High ^[7]	Low/Moderate/High ^[7]
(3) Check if the VAT due can be reversed charged to the customer or if the OSS can be used	Moderate ^[8]	Low ^[9]	Low ^[9]	Low ^[9]
(4) Set up procedures to correct unrightfully charged VAT	Low/Moderate ^[10]	Low/Moderate ^[10]	Low/Moderate ^[10]	Low/Moderate ^[10]
(5) Set up procedures to charge VAT at a later stage (if the platform presumed that the deeming provision does not apply, and it is not protected by the new Article 9d of the VAT Implementing Regulation) or has underpaid VAT	High ^[10]	High ^[10]	High ^[10]	High ^[10]
(6) Set up procedures for self-billing by the platform in case there is an obligation to issue invoices	Moderate ^[11]	Moderate ^[11]	Moderate ^[11]	Moderate ^[11]

- 1 Note on all boxes in this column: For unintended marketplaces, an alternative to taking the listed measures is to adopt rules to prevent users from self-organizing a market. For instance, a platform could sanction users that put goods or services up for sale on their platform, and use software to detect illegal listings.
- 2 The authors note that there is no medium level for short-term accommodation as the short-term accommodation platform landscape is characterized by two clusters (i.e. only facilitation during the order phase versus facilitation up to the result phase), as discussed in sec. 2.
- 3 Although the unintended marketplaces record user information and can obtain the required information, those platforms are focused on facilitating mainly interactions. Hence, the information will most likely not be sufficient at the moment. For the intended platforms the impact is also high. Both unintended marketplaces and intended platforms will need to verify the information obtained, which is difficult with regard to categories (3) and (6), and monitor the status of the underlying supplier, which comes at a cost. Furthermore, it is most likely that procedures need to be set up or amended to provide sufficient protection against liability in case the platform/marketplace has initially assessed that the proposed deeming provision does not apply, but later the opposite is proved to be accurate. Even in an alternative reading of art. 9c VAT Implementing Regulation the impact is still high because the platform will need to demonstrate a negative fact under art. 9d VAT Implementing Regulation which is virtually impossible.
- 4 The platform will have some (but not all the required) information to determine the place of supply because of the listing posted on the platform. However, it will most likely have no information to determine the taxable amount, since the platform is focused on facilitating mainly interactions. In the case of cross-border PT services the platform will likely not have information distances covered and cannot determine the place of supply. In the case of barter transactions the impact will also be high because it will be difficult to determine the taxable amount if it is made in kind.
- 5 The platform will have some information because of the listing posted on the platform, but not all the required information (high). For short-term accommodation, the impact could, in the authors' view, be moderate, if the listing includes the location of the

Action to be taken	Level of facilitation			
	Unintended marketplaces ^[1]	Lowest level	Medium level ^[2]	Highest level

property and in case the seller lists a fixed price on the platform, albeit with limited certainty about the accuracy of the data (being uninvolved in the payment, the platform cannot know for sure if the listed price is the actual price paid by the customer). However, in the case of barter transactions the impact is high, because of the difficulty to determine the taxable amount if it is made in kind.

- 6 High in case the platform is only involved in supporting activities with regard to host and guest obligations and is not involved in the payment (difficult to establish taxable amount). Note that a platform facilitating on this level will typically be involved in the payment, as this enables guarantees and refunds. Platforms that work with a barter model are an exception, as there are no monetary payments to facilitate. Such platforms may instead use a deposit system, but this will not provide them with a transaction price/value. Hence, a barter platform will likely be unequipped to establish the taxable amount high). Low in case both supporting activities for host and guest obligations and payment are provided or in case the seller lists a fixed price on the platform. High in the case of barter transactions because of the difficulty to determine the taxable amount if it is made in kind.
- 7 Low if transport is restricted to the territory of a single Member State and involved in the payment. High if it is not restricted to a territory of a single country because this means the platform will need to be able to track the route of each vehicle to determine where the transport is carried out. High when not involved in the payment, unless the seller lists a fixed price on the platform (low). Moderate in the case of transport in multiple countries and the platform is already able to track the vehicles during the service. It will only – different from the current situation – need to record and keep the data.
- 8 Assuming these platforms record user information and can obtain the required information from them. However, since the platform is focused on facilitating mainly interactions, the information will be most likely not sufficient at the moment and/ or certainty about the accuracy of this information will be most likely not sufficient at the moment. E.g. customers that create an account on an e-commerce platform typically have the intention to receive the goods they order, which means they will provide a correct address. Whereas users that sign up for a social media account lack the incentive to provide full and correct information.
- 9 The platform will likely have the information necessary or this information can easily be obtained on request.
- 10 When a marketplace/platform is not involved in the payment, the impact is high. With regard to the medium and highest level, a platform is involved in the payment. The impact for these platforms is also high because the payment has already been processed. Hence, it will be difficult to collect the additional VAT from the customer.
- 11 According to the authors, it is not likely that procedures are in place already because the deeming provision does not yet apply.

In the next section we analyse the proposed record-keeping obligations that would apply to all platforms.

5. Record-Keeping Obligations for All Platforms

5.1. The current requirements: Overview and impact

Under article 242a of the VAT Directive^[90] (e-commerce) platforms have an obligation to keep records when they facilitate supplies of goods and/or services supplied to non-taxable persons in the European Union. These records must be made available electronically if this is requested by a Member State and must be sufficiently detailed to enable tax authorities of Member States to verify that VAT has been accounted for correctly.

The record-keeping obligation applies both when the platform is a deemed supplier under article 14a of the VAT Directive (see section 3.) or article 9a of the VAT Implementing Regulation (rebuttable presumption that platforms act as undisclosed agent for electronically supplied services) and when it is not. Article 54c VAT Implementing Regulation lists the information that must be kept.

If article 14a of the VAT Directive or article 9a of the VAT Implementing Regulation applies and the platform has opted to use one of the special schemes (OSS or I-OSS), the platform must keep the records set out in article 63c of the VAT Implementing Regulation (these are the records that any supplier making distance sales or providing electronically supplied services is required to keep).

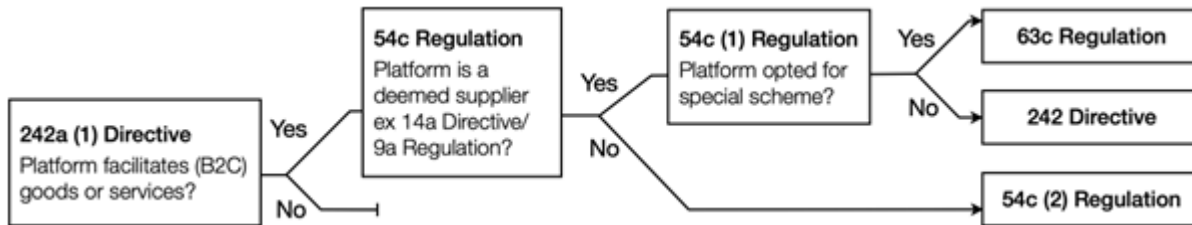
If article 14a of the VAT Directive or article 9a of the VAT Implementing Regulation applies and the platform does not use one of the special schemes, the records as set out by article 242 of the VAT Directive should be kept (these are the records laid down in the VAT legislation of the Member State where the supplies are subject to VAT). In case article 14a of the VAT Directive and article 9a of the VAT Implementing Regulation do not apply, the platform must – first of all – keep records regarding the identity of the supplier: the name, postal address and electronic address or website of the supplier whose supplies are facilitated through the use of the electronic interface and, if available, the VAT identification number or national tax number of the supplier and the bank account number or number of virtual account of the supplier. Secondly it must keep information to determine where the supply is taxed: (i) in the case of a supply of goods: a description of the goods, their value, the place where the dispatch or transport of the goods ends, together with the time of supply and, if available, the order number or unique

⁹⁰. Introduced by Directive 2017/2455 (Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods OJ L 348, 29.12.2017, pp. 7-22).

transaction number or (ii) in the case of services: a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number.^[91]

The above is described schematically in Figure 2.

Figure 2. Flowchart of applicable legislation



Directive refers to VAT Directive [2006/112/EC](#); Regulation refers to VAT Implementing Regulation 282/2011.

It should be stressed that a platform could be in scope of two or three of these obligations. For example, because the platform facilitates sales for which it is the deemed supplier and sales for which it is not. The platform facilitating intra-Community distance sales and distance sales of goods coming from outside the European Union could opt to use the OSS and not the I-OSS or vice versa.

5.2. Proposed changes

Article 242a of the VAT Directive would be amended, as follows:

The following paragraph 1a is inserted:

1a. Where a taxable person facilitates, through the use of an electronic interface such as a platform, portal or similar means, the supply of short-term accommodation rental or passenger transport services, and that person is not considered to have received and supplied those services themselves under Article 28a, the taxable person who facilitates the supply shall be obliged to keep records of those supplies.

Paragraph 2 is replaced by the following:

2. The records referred to in paragraphs 1 and 1a must be made available electronically on request to the Member States concerned.

Those records must be kept for a period of 10 years from the end of the year during which the transaction was carried out.

The proposed amendment thus consists of an additional obligation to keep records in case the platform facilitates the supply of STR or PT services and it is not a deemed supplier under article 28a of the VAT Directive (see section 4.). According to the explanatory memorandum, record-keeping obligations are broadened to B2B supplies to facilitate the operation of the deemed supplier model introduced in the STR and PT sectors.^[92]

Articles 54b and 54c of the VAT Implementing Regulation remain unchanged under the proposal. This means that the records to be kept for the added situation are those mentioned in article 54c(2) of the VAT Implementing Regulation, discussed in section 5.1. It is, however, proposed that article 63c of the VAT Implementing Regulation is amended as of 1 January 2025. This means that where the platform is in scope of the deeming provision of article 14a of the VAT Directive and it uses one of the special schemes it will also need to keep records related to the identity of the underlying supplier: the name, postal address and electronic address or website of the supplier whose supplies are facilitated through the use of the electronic interface, and, if available, (i) the VAT identification number or national tax number of the supplier and (ii) the bank account number or number of the virtual account of the supplier.

It is also proposed that a new paragraph 2a will be added to article 63c of the VAT Implementing Regulation. This provision deals with record-keeping obligations in case the special scheme for transfers of own goods is used. Platforms that are a deemed supplier for transfer of own goods under the proposed article 14a(3) of the VAT Directive will need to keep records that identify the underlying supplier, i.e. the name, postal address and electronic address or website of the supplier whose transfers

91. Art. 54c VAT Implementing Regulation.

92. European Commission, *Proposal for a Council regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age*, COM (2022) 703 final, p. 9.

of goods are facilitated through the use of the electronic interface, and, if available, the VAT identification number or national tax number of the supplier and the bank account number or number of virtual account of the supplier. Article 63c of the VAT Implementing Regulation applies in the situation where the platform uses one of the special schemes. If the platform is the deemed supplier and it does not use the special schemes it will be subject to record-keeping requirements as set by the EU Member State where the supplies are subject to VAT. Depending on the legislation of that EU Member State it will need to keep records about the identity of the underlying supplier too.^[93]

With respect to the record-keeping obligations under article 242a of the VAT Directive, a proposed amendment to Regulation 904/2010 regarding the administrative cooperation is also relevant (new Chapter XIa is proposed with new article 471a). The proposed provision provides details on how EU Member States should obtain records from platforms. It also usefully provides for the option for platforms to use a standard form which must be accepted by the EU Member States. article 471b of the VAT Implementing Regulation further stipulates that the technical details for the standard form as referred to in article 471a(3) of the VAT Implementing Regulation, the technical details – including a common electronic message – for providing the information referred to in article 471a(1), (2) and (4) and the technical means for the transmission of this information shall be specified by the EU Commission by means of implementing acts following the examination procedure. As yet, these details are unknown.

5.3. Analysis

5.3.1. Scope of the obligations – Comparison

Currently, the scope of the record-keeping obligation under article 242a of the VAT Directive in conjunction with article 54c(2) of the VAT Implementing Regulation applies in the following cases:

- all B2C supplies of services within the European Union except for services falling within the scope of article 9a of the VAT Implementing Regulation;
- B2C supplies of goods within the European Union by a taxable person established in the European Union, including local supplies and distance sales; and
- distance sales of goods imported from third territories or third countries in consignments with an intrinsic value exceeding EUR 150.^[94]

Because of the proposed extensions of the deeming provision of article 14a of the VAT Directive in both ViDA and the Customs Reform proposals, the number of situations where article 242a of the VAT Directive in conjunction with article 54c(2) of the VAT Implementing Regulation (i.e. record-keeping obligation in situations where the platform is not a deemed supplier) applies will be limited to two situations as of 1 March 2028:

- all B2C supplies of services within the European Union except for services falling within the scope of article 9a of the VAT Implementing Regulation; and
- B2B supplies of STR and PT services (because of the new article 242a(1a) of the VAT Directive) in case the platform is not a deemed supplier under article 28a of the VAT Directive.

For B2C STR and PT services, the records mentioned in article 54c(2) of the VAT Implementing Regulation should be collected regardless of whether the platform is a deemed supplier under the proposed article 28a of the VAT Directive, because article 242a(1) of the VAT Directive and article 54c of the VAT Implementing Regulation remain unchanged. Based on these provisions, the platform will need to collect the information regarding the B2C STR or PT services. Article 242a(1) of the VAT Directive does not exclude the situation where the platform is a deemed supplier under the proposed article 28a of the VAT Directive. The proposed article 242a(1a) of the VAT Directive could, however, be considered a *lex specialis* making article 242a(1) of the VAT Directive not applicable in the case of STR and PT services. This should in our view be clarified.

From 1 January 2025 until 28 February 2028 distance sales of goods imported from third territories or third countries in consignments with an intrinsic value exceeding EUR 150 will be in scope of the record-keeping provisions, because the deeming provision is only extended for these type of supplies as of 1 March 2028 under the proposed Customs Reform – if adopted.

93. The additional requirement to keep records about the supplier's identity could potentially be waived by platforms by not opting to use the special schemes. However, I-OSS will be mandatory and not opting for the OSS or transfer of own goods scheme means that platforms will need to register in multiple EU Member States to file VAT returns. They will also be subject to local record-keeping requirements. We therefore do not consider it a risk for EU Member States that platforms will massively waive the new obligation by not opting for special schemes.

94. Bendlinger, V., Ecker, T., (2020), „Die Rolle von Plattformen im E-Commerce – Plattformen und ihre mehrwertsteuerlichen Pflichten“, in *Neuerungen bei innergemeinschaftlichen Umsätzen*, sec. 2.2.2.2.4 (Achatz/Tumpel/Bieber eds., Linde Verlag).

In our view, B2C STR and PT services where the customer is not living or established in the European Union are already covered by the current record-keeping provisions. Article 242a of the VAT Directive refers to “services to a non-taxable person within the Community in accordance with the provisions of Title V” where Title V deals with the place of supply. In our view, for example an STR service in Austria to a Swiss resident is covered by the current record-keeping provisions.

Last but not least, it is important to note that pursuant to the proposed article 14a(4) of the VAT Directive a taxable person established only in one Member State who facilitates supplies of goods only in that Member State (without dispatch or transport or with dispatch or transport within the territory of one EU Member State) the deeming provision will not apply. For those persons that means that they will be in scope of article 242a of the VAT Directive in conjunction with article 54c(2) of the VAT Implementing Regulation for:

- all local B2C supplies of goods;
- all B2C supplies of services within the European Union except for services falling within the scope of article 9a of the VAT Implementing Regulation; and
- B2B STR and PT services where the platform is not a deemed supplier. It should be noted that platforms operating in a single Member State where they are established are not excluded from the proposed deeming provision of article 28a of the VAT Directive.

Article 242a of the VAT Directive does not refer to any taxable status of the supplier. Therefore, it may be argued that it has a broad scope of application and also includes situations where the supplier is not a taxable person for VAT purposes or is not registered as such (for example, because he applies the exemption for small entrepreneurs). However, another position can be taken, that article 242a of the VAT Directive only applies when supplies of goods and services are made by a taxable person (because only a taxable person can make taxable supplies). In our view, article 242a of the VAT Directive should also cover supplies by non-taxable persons (i.e. out-of-scope supplies), because the wording of article 242a of the VAT Directive is very general and does not specify that the supplies should be “taxable” to be reported. Moreover, tax authorities most likely want the information about C2C supplies (and this is in line with the objective of the provision because a supplier that is not registered as a taxable person might not be registered out of ignorance or because it intends to be non-compliant). Although this is not decisive on the correct interpretation of the provision, we also note that such a broad interpretation is also more practicable for platforms, which should otherwise differentiate between supplies made by non-taxable persons and taxable persons not registered for VAT, for example because they apply the exemption for small businesses. This will in our view be virtually impossible for platforms which need to determine whether sellers operating on their platform are taxable persons.^[95] If the seller operates only on a single platform this might be possible, but the platform has no knowledge of the seller operating on a different platform or making direct sales (i.e. sales not taking place on a platform).

Article 242a of the VAT Directive also includes purely local transactions (e.g. local services between a taxable person and a private individual established in the same Member State carried out via the platform), where it will likely be easier for tax authorities to carry out the necessary controls. On the one hand, such a broad scope can be welcomed, as the platform will only have to distinguish between transactions for which it is obliged to account for VAT itself under one of the deeming provisions and transactions for which it is not obliged to do so but which are nevertheless subject to a record-keeping obligation because the platform facilitates those transactions. On the other hand, it is questionable whether such a broad record-keeping obligation is proportionate. We also note that the proposed article 242a(1a) of the VAT Directive does not limit the scope of the obligation to services within the European Union in accordance with the provisions of Title V. This in our view therefore means that platforms facilitating STR and PT are obliged to also keep records of services subject to VAT outside the European Union. Again we question the proportionality of such a measure. We even wonder whether there is not an omission and the provision should be limited to those supplies subject to VAT in the European Union.

Another issue is the risk of information mismatches. When looking at the data that platforms must collect based on article 242a of the VAT Directive in conjunction with article 54c(2) of the VAT Implementing Regulation, it appears that information about price adjustments (up and down) or returned goods or cancelled services do not have to be administered. In our opinion this can easily lead to mismatches between the VAT declaration of the supplier and the platform's information, as a result of which the supplier will probably have to provide an explanation. It would be preferable for the information about price adjustments and returned goods and cancelled services to also be administered by platforms, provided they have that information. In any case, in our opinion, information that platforms do not obtain in their regular processes should not be collected and retained by them. Otherwise, platforms may have to change their business model or registration procedure, which may result in them losing customers.

95. See Commission Staff Working Document 8 December 2022, SWD (2022) 393 final, p. 20. See also Economisti Associati, *VAT in the Digital Age. Final Report. Volume 2. The VAT treatment of the platform economy*, March 2022, p. 95.

5.3.2. Lack of clarity

At the time of its adoption, the *rationale* of article 242a of the VAT Directive was unclear. No explanation could be found in the recitals of the preamble from Directive 2017/2455 that introduced this record-keeping obligation. We assumed that the purpose of the provision is to verify the accuracy of the VAT returns filed by the taxpayer whose transactions the platform has facilitated. The explanatory memorandum accompanying the ViDA proposal provides further clarity. It mentions that platforms are faced with a number of different requirements from Member States regarding the timeframe and format for this information, and that harmonization will remove this burden. According to the explanatory memorandum, the extension of article 242a(1a) of the VAT Directive is needed to keep and collect information for B2B and B2C supplies in order to combat fraud.^[96]

Proposed article 471a of the Regulation Administrative Cooperation in our view usefully clarifies that:

- records are kept for and should be provided to the Member State in which the supplies are taxable (article 471a(1)); and
- information should be requested from the taxable person by the Member State in which a taxable person is identified (article 471a(1) and (2)). Hence, article 242a of the VAT Directive seems to apply to non-EU platforms as well. In the case of multiple VAT registrations, it, however, raises the question which Member State should be approached for collecting the information. Likewise, if the platform is not VAT registered in any EU Member State, article 471a of the Regulation on Administrative Cooperation does not seem to apply. Platforms can be approached by each EU Member State to provide records.

It is, however, still unclear whether due diligence procedures apply. It also seems up to the Member States to provide for sanctions. In the absence of clear sanctions (at the EU level), it is therefore still questionable whether platforms established outside the European Union will also be aware of their obligations and comply with them. The absence of clear and enforceable sanctions could lead to fraudsters trading through non-EU platforms and distortion of competition. The OECD mentions this issue in the context of its recommendations for information obligations of platforms within the sharing economy. The OECD's recommended solutions include joint and several liability, leverage local licensing requirements and a tax incentive for sellers, i.e. a lower tax when trading through a platform that complies with the disclosure requirements.^[97]

Though information can be provided through a standard form and through the EU Member State where the platform is identified for VAT purposes, it should be noted that this does not eliminate the possibility that 27 information requests are made by 27 EU Member States to the platform (including the EU Member State(s) where the platform is registered for VAT). The proposed article 471a of the Regulation on Administrative Cooperation does indeed not require the EU Member State where the platform is registered for VAT to inquire with other EU Member States whether they need information from that platform and subsequently make an aggregated request to the platform to avoid multiple requests at different times. We consider that the absence of a provision for information sharing with and between Member States is a major shortcoming in the record-keeping obligation for platforms.^[98]

It should also be noted that neither article 242a of the VAT Directive nor article 54c(2) of the VAT Implementing Regulation provides for an obligation to obtain the information regarding transactions within a certain period of time (that is, should a platform obtain the information in real time, within a week, two weeks, a month, etc.) although article 242a(2) of the VAT Directive determines that records should be kept for ten years. Platforms could thus be faced with different requirements imposed on them by different EU Member States. Exchange of information between tax authorities could in this respect also help reduce the burden for platforms to provide information to the EU Member State's tax authorities. Information exchanges will currently only take place on request or spontaneously.

The record-keeping provision also lacks concrete rules on how platforms should determine whether a customer is a non-taxable person located within the European Union. Article 18(2) of the VAT Implementing Regulation, which deals with this in the case of a service provided by the taxable person himself, does not seem to be written for this purpose while article 5d of the VAT Implementing Regulation does not apply here. Nevertheless, we argue that it should be decisive whether the customer has provided a VAT identification number to the platform. We also doubt that all platforms actually register the VAT identification number of their customers in the registration process because there are plenty of examples where platforms offer their services free of charge to one of the parties (usually the customer because the supplier is the one who wants to sell his products via the platform). Also, many websites authorize purchases with so-called "guest accounts" that only require limited information from the buyer.

96. European Commission, *Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age*, COM (2022) 701, p. 7. See also p. 17.

97. OECD, (2020), *Model Rules for Reporting by Platforms Operators with respect to Sellers in the Sharing and Gig Economy*, p. 39 (OECD Publishing).

98. For an extensive analysis of this question we refer to Lamensch, M., et al., (2021), *New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment*, World Tax Journal, Vol. 13, no. 3; pp. 441-479, sec. 4.4. <https://doi.org/10.59403/15yff24>

The information collected based on article 242a of the VAT Directive and article 54c of the VAT Implementing Regulation is not mentioned in article 17 of Regulation 904/2010/EC. There is no proposed amendment of article 17 of the Regulation on Administrative Cooperation under ViDA. The same is true for the information about the suppliers' identity that platforms need to collect when they are a deemed supplier.

Finally, it is noteworthy that in the meantime, DAC7^[99] has been adopted by the EU Member States requiring platforms to collect, retain and provide information on platform sellers to EU tax authorities. They should also perform due diligence on the information collected. As already discussed elsewhere, information collected under DAC7 and article 242a of the VAT Directive overlap.^[100] This question would require further research, albeit will not be further discussed in this article.

5.4. Actions to be taken: Summary

Pursuant to article 242a of the VAT Directive, platforms will be confronted with different record-keeping requirements because of different situations. More precisely, a platform may fall within the scope of three types of record-keeping obligations because of the scope of the deeming provisions and the obligation for platforms under ViDA to use the I-OSS, but not OSS. The provision's wide scope imposes a significant burden on platforms to collect and retain data, including supplies from non-taxable persons or well-known taxable persons operating through such platforms. This obligation will fall mainly on platforms that are established in a single EU Member State and facilitate domestic supplies of goods (because of the extension of the deeming provision under ViDA and the customs reform) and platforms facilitating supplies of services. Information may need to be collected and retained that is not collected in the platforms' regular business processes. As a side effect, the obligations can have effectively imposed a change on a platform's business model. This is because platforms that facilitate at the lowest level have limited and less reliable information about the transactions that their users conclude. In order to obtain the required information, a shift from the lowest level of facilitation to the medium level of facilitation seems inevitable.

In order to meet their obligations under Article 242a of the VAT Directive, platforms must:

- (1) determine whether the underlying supply is an STR or PT service;
- (2) set up or amend the customer verification process to:
 - (a) determine the taxable status of the customer^[101] (i) and the location of the supply (European Union or non-EU) (ii). Determining the status of the customer is not necessary in the case of STR and PT services facilitated by the platform, because the obligation to keep records applies to B2B supplies as well. However, the proposed provision would require to retain and provide information on virtually all STR services and PT services regardless of the location of the service and the customer; and
 - (b) collect the name, postal address, electronic address or website from the supplier. Under ViDA this obligation is extended to platforms that are a deemed supplier under article 14a of the VAT Directive in case they use one of the special schemes. Note that the VAT identification number/national tax number and bank account do not have to be collected because this information only needs to be recorded "if available". However, according to the explanatory notes, "if available" should be interpreted as referring to information collected, or which can be collected within the usual course of business of electronic interfaces.^[102] In that respect, it seems that a platform cannot simply state that it does not have information available. It must demonstrate that the information cannot be collected within the usual course of its business. In the authors' opinion, this interpretation is not in line with the actual wording of article 54c(2) of the VAT Implementing Regulation; and
- (3) set up or amend procedures and conditions for traders to operate on the platform to collect information on the goods and services that are put up for sale on the platform.^[103] This information includes a description of the goods, their value, the place where the dispatch of the goods ends and the time of the supply. It should be noted that because of the proposed extension of the deeming provision for sales within the European Union under ViDA and the customs reform only local supplies of goods facilitated by a platform established in the Member State where the supplies take place, will be covered, so the place where the dispatch of the goods ends should be clear after the assessment of whether the deeming provision

99. Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L 104, 25.3.2021, pp. 1-26.

100. Merx, M. et al. (2022), a Convenient Source of Information Under DAC7 and the VAT Directive: A Proposal for More Alignment and Efficiency, *EC Tax Review*. Vol. 31, no. 4, pp. 202-218.

101. Customer in this respect refers to the customer of the supplier operating on the platform not to the supplier as a customer of the services of the platform.

102. European Commission, *Explanatory Notes on VAT e-commerce rules*, September 2020, p. 30.

103. Bendlinger, V. & Ecker, Th., Die Rolle von Plattformen im E-Commerce – Plattformen und ihre mehrwertsteuerlichen Pflichten, in *Neuerungen bei innergemeinschaftlichen Umsätzen*, sec. 4 (Achatz/Tumpel/Bieber eds., Linde Verlag 2020), which refers to this as extensive adjustments.

does or does not apply (see section 3.2.). Until 1 March 2028 for supplies of goods from outside the European Union with an Intrinsic value of more than EUR 150 the place where the dispatch of the goods ends should also be recorded under article 242a of the VAT Directive and article 54c(2) of the VAT Implementing Regulation. As discussed, it remains unclear whether this information needs to be verified. The order number or unique transaction number does not have to be collected. It only needs to be recorded by the platform “if available”. Similar procedures and conditions for traders will need to be set up or amended to record information on services. This includes a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number. To give an example, platforms will need to be able to determine the route for each vehicle carrying out PT (if it covers the territory of more than one single EU Member State) either because they are the deemed supplier and need to account for VAT or they need to record information about the place of supply under the record-keeping obligations. Whether they will be able to do so remains to be seen.

5.5. Assessment table

Table 10. outlines the expected impact of the new data collection obligations imposed on all platforms depending on the sector and the level of facilitation.

Table 10. Impact assessment: Record-keeping obligation

Action to be taken	Level of facilitation			
	Unintended marketplaces ^[1]	Lowest level	Medium level ^[2]	Highest level
(1) Determine whether underlying supply qualifies as short-term accommodation rental or passenger transport:				
— Short-term accommodation	Moderate/High ^[3]	Low/High ^[4]	N/a ^[2]	Low ^[5]
— Passenger transport	Moderate ^[3]	Low ^[4]	Low ^[5]	Low ^[5]
(2a) (1) Determine the taxable status of the customer ^[6]	Moderate ^[7]	Low/Moderate ^[8]	Low/Moderate ^[8]	Low/Moderate ^[8]
(2a) (2) Determine the location of the supply				
— Supply of goods	High ^[9]	High ^[9]	Moderate/High ^[10]	Moderate/High ^[10]
— Short-term accommodation	Moderate ^[9]	Moderate ^[9]	N/a ^[2]	Low ^[11]
— Passenger transport	High ^[9]	High ^[9]	Low/High ^[12]	Moderate ^[12]
(2b) Collect name, postal address, electronic address or website from the supplier ^[13]	Moderate ^[7]	Low/Moderate ^[8]	Low/Moderate ^[8]	Low/Moderate ^[8]
(3) Collect information about the goods or services that have been put up for sale on the platform				
— Supply of goods	High ^[14]	High ^[14]	Low/Moderate/High ^[15]	Low/Moderate/High ^[15]
— Short-term accommodation	High ^[14]	High ^[14]	N/a ^[2]	Low/High ^[16]
— Passenger transport	High ^[14]	High ^[14]	Low/Moderate/High ^[17]	Low/Moderate/High ^[17]

- 1 Note on all boxes in this column: For unintended marketplaces, an alternative to taking the listed measures is to take alternative measure in order to prevent users from self-organising a market. For instance, a platform could sanction users that put goods or services up for sale on their platform, and use software to detect illegal listings.
- 2 The authors note that there is no medium level for short-term accommodation as the short-term accommodation platform landscape is characterized by two clusters (i.e. only facilitation during the order phase versus facilitation up to the result phase), as discussed in sec. 2.
- 3 Considering that an unintended e-commerce platform facilitates interactions instead of transactions it will not be part of its regular processes to determine the nature of the services advertised on the platform. Depending on the accuracy of the description of the goods or services offered, the platform, may however be able to determine whether a service qualifies as short-term

Action to be taken	Level of facilitation			
	Unintended marketplaces ^[1]	Lowest level	Medium level ^[2]	Highest level

accommodation rental or passenger transport. However, when the 45-days criterion is relevant here too the impact is in our view high, because it will be virtually impossible for the platform to determine whether the rental takes place for 45 days or for more than 45 days.

- 4 For a platform that focuses on facilitating passenger transport or short-term accommodation rentals it will be clear that those services take place and the impact is low. However, when the 45 days criterion is relevant here too, the impact is in our view high. Because the platform only facilitates in the order phase after the agreement is concluded it will not be clear to the platform – even if it asks the users on the platform for information about the number of days of the initial rental – whether lessor and lessee have not agreed differently when they meet at the location of the property, e.g. when at the location of the property the lessee ask the owner if it can book some additional days or if he can leave early.
- 5 For a platform that focuses on facilitating passenger transport or short-term accommodation rentals it will be clear that those services take place and the impact is low. When the platform also facilitates host obligations, such as reminders regarding check-in/check-out and providing alternative accommodation in situations where the host does not provide access the platform will also be aware of the number of days the accommodation is rented. The impact will be low in the situation where the 45-days criterion is relevant as well. From our evaluation of the business models of the platforms in the STR sector it has become clear that it is no platform facilitates the payment only.
- 6 Note on all boxes in this row: In the authors' view, platforms can ask the customer that uses the platform to provide information on their VAT status and location. In the authors' view, this is not information that will result in customers not wanting to buy something on the platform anymore but is basic information that customers are accustomed to providing. Platforms might already have this information, or they can obtain it without much effort.
- 7 Assuming these platforms record user information and could obtain this information from them. However, since the platform is focused on facilitating mainly interactions, the information will be most likely not sufficient at the moment.
- 8 Low or moderate, depending on whether the platform already requires customers to provide this information.
- 9 The platform will have some information because of the listing posted on the platform, but not all the required information. For short-term accommodation the impact is in our view moderate, because the listing will likely include the location of the property.
- 10 High when the platform is only involved in the payment. Moderate if the platform is also involved in the shipment.
- 11 From our evaluation of the business models of the platforms in the STR sector it has become clear that it is no platform facilitates the payment only.
- 12 Low if transport is restricted to the territory of a single Member State. High if it is not, because this means the platform will need to be able to track the route of each vehicle to determine where the transport is carried out. Platforms that facilitate on demand rides are always in the highest level of facilitation. This therefore regards reserved rides only. For platforms facilitating on demand rides the impact is moderate, because these platforms can already track rides. They will need to implement procedures to record and keep this data.
- 13 Note on all boxes in this row: In the authors' view, platforms can ask the supplier that uses the platform to provide information as regards their name, postal address and electronic address or website. In the authors' view, this is not information that will result in suppliers not wanting to sell something on the platform anymore but is basic information that suppliers are accustomed to providing. Platforms might already have this information or they can obtain it without many efforts. However, information should be updated.
- 14 The platform will have some information because of the listing posted on the platform, but not all the required information. In the case of barter transaction the impact will be even higher because of the need to establish the taxable amount for a transaction that is paid for in kind.
- 15 High in case the platform is not involved in the shipment. Low, moderate or high, in case the platform is involved in the shipment but not in the payment and the seller lists a fixed price on the platform, because it is unclear whether due diligence is required and what the consequences are of erroneous information recorded, the impact is unclear. If it is just required that a price is listed, the platform will not need to do further checks and the impact will be low. If due diligence will need to be carried out the impact will be at least moderate and if the platform will need to be involved in the payment to make sure that it meets its obligations in this respect the impact will be high. Low, in the case of involvement in both the payment and the shipment.
- 16 From our evaluation of the business models of the platforms in the STR sector it has become clear that no platform facilitates the payment only. In case the platform facilitates the payment and takes care of host and guest obligations the impact will be low, because the platform will already have the required information available. In the case of barter transactions there will be the difficulty of determining the taxable amount and the impact is high.
- 17 Low if transport is restricted to the territory of a single Member State and only involved in the payment. High if it is not restricted to a territory of a single country, because this means the platform will need to be able to track the route of each vehicle to determine where the transport is carried out. Platforms that facilitate on demand rides are always in the highest level of facilitation. This therefore regards reserved rides only. For platforms facilitating on demand rides the impact is moderate, because these platforms can already track rides. They will need to implement procedures to record and keep this data. Our analysis of platform business models has shown that platforms that facilitate at these levels are always involved in the payment.

6. Conclusions

The ViDA and customs reform proposals were published in December 2022 and May 2023, respectively, and discussions in Council are well under way. In this article we sought to assess the expected impact of the proposed rules and to determine to what extent it might force (some) platforms to reconsider their business model – a potential consequence that was already identified pursuant to the adoption of the e-commerce package in 2021.

Our assessment shows that the proposals made with respect to platforms are not as simple and straightforward as it may seem at first sight and that several (legal) questions remain unsolved. It further shows that the pressure is stronger than ever for e-commerce platforms to increase their level of facilitation, both in the B2C and the B2B sectors. Offering a low level of

facilitation would indeed not spare them from the obligation to collect the VAT on underlying transactions, which is precisely something they cannot do unless they have access to reliable and controllable data. This means that platforms will simply no longer be able to limit themselves to a low level of facilitation. Either these platforms will change their business models, or they will disappear.

Concerning B2B e-commerce platforms more specifically, we find it absolutely baffling that the burden associated with the declaration of intra-EU supplies has not been analysed, let alone, evaluated in the preparatory phase of the ViDA proposal. Businesses engaged in intra-Community trade know how difficult it is to always satisfy all requirements for the application of the exemption of intra-Community supplies. Platforms would have to satisfy the same requirements, but in respect of supplies in which they are only “artificially” engaged through the deemed supplier rule. For these platforms it seems that the only solution to maintain the VAT risk would be to impose a medium or a high level of facilitation on their clients, which is not what typical business customers want. We thus see a real clash between the envisaged tax obligations and economic reality. At the moment, B2B e-commerce platforms indeed typically offer a low level of facilitation. This will simply no longer be possible if the proposed rules are adopted. Very few platforms hosting B2B trade currently are able to cope with the related obligations. Those who can cope might thus gain a monopoly position on the market.

As to the new deeming provision for STR and PT platforms, it is being presented as a simple means to collect VAT in situations where no VAT is currently being due or collected. The concept of the deeming provision is well-known, since it has been applied in e-commerce transactions for several years, and it is supposedly easy to transpose it to other sectors. However, our analysis shows that behind an apparent simplicity, the proposed rules hide a myriad of complex technical and practical issues that will have to be dealt with by the concerned platforms. STR and PT platforms will have to move to a higher level of facilitation if they want to comply with the new rules. In our view, the need to check and constantly monitor the status of the underlying supplier and the setting up of procedures to charge VAT at a later stage if the platform wrongly presumed that the deeming provision does not apply, will have a high impact on all STR and PT platforms, even on those facilitating at the highest level. In the STR sector, we also noted that the impact is high even for platforms facilitating at the highest level in the case of barter transactions. In view of all the questions that remain open, it is even unclear whether the EU Commission and/or the Member States are aware of the numerous difficulties that arise when trying to apply a deeming provision in these sectors (for example: how to make sure that an underlying supplier that communicates a valid VAT number is not an exempt taxable person? How to collect VAT on barter STR transactions?). Once again, it is likely that only the largest platforms facilitating in the highest level will be equipped to comply with the rules and/or to mitigate the risks of an incorrect application thereof.

Finally, the spelling and deciphering of the record-keeping obligations imposed on all platforms finish convincing us that only the strongest will survive on the market.

The final conclusion of this article is therefore that the platform landscape might become even more concentrated than it is now because of VAT-related obligations. The proposed rules would promote only a couple of “happy few”, i.e. the few that are able to offer the highest level of facilitation to their users. Only a handful of operators will survive. For these platforms some of the proposed changes would also have an impact. However, if this guarantees that most competitors will disappear, it will be worth it.

The proposed rules would also hinder market entry since it will be almost impossible for small operators and start-ups to immediately offer the highest levels of facilitation (an incremental approach is no longer an option).

In the absence of competition, existing large platforms will then be able to impose their terms and conditions on the millions of businesses that they host – and it may be expected that platforms’ margins will significantly increase. For the millions of SMEs who rely on them, the great opportunities offered by the Internet and the Internal Market altogether might therefore rapidly shrink.