



MEANS OF PROOF OF INTRA-COMMUNITY SUPPLIES



1) As of 01.01.2020, the proof of intra-community supplies is governed by the new Article 45-a of Regulation (EU) No 282/2011, which introduces some rebuttable presumptions regarding proof of intra-community supplies of goods.

The new Article 45-a also identifies the documents necessary to satisfy the proof that goods have been transported from one Member State to another and, consequently, to apply the VAT exemption regime to intra-community supplies.

In essence, Article 45-a governs the proof of intra-community transport of goods in the following cases:

- a) goods dispatched or transported by the seller or by third parties on his behalf; or
- b) goods dispatched or transported by the buyer or by third parties on his behalf.

2) If the goods are transported or dispatched by the seller, the goods are deemed to have been sent to the Member State of destination if the seller is in possession of:

2.1) at least two of the following documents relating to the dispatch or transport of the goods: such as a signed CMR, a bill of lading, an air freight invoice, or an invoice issued by the carrier; or

2.2) at least one of the above-mentioned documents, together with one of the following additional supporting documents:

- an insurance policy relating to the dispatch or transport of the goods;
- bank documents proving payment for the dispatch or transport of the goods;
- official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
- a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.

The supporting documents must in any case be issued by two different parties that are independent of each other, as well as of the seller and of the buyer.



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3) Where goods are transported or dispatched by the buyer, Article 45-a requires that the seller, in addition to the documents referred to in points 2.1) and 2.2) above, also obtain a written declaration from the buyer which certifies that the goods have been transported or dispatched by the buyer and identifies the Member State of destination of the goods; such written declaration shall indicate:

- the date of issue;
- the name and address of the buyer;
- the quantity and nature of the goods;
- the date and place of arrival of the goods (in the case of supply of means of transport, the identification number of the means of transport);
- the identification of the individual accepting the goods on behalf of the buyer.

The rule states that the said written declaration must be provided by the buyer to the supplier by the tenth day of the month following that in which the intra-community supply took place.

4) Since these are rebuttable presumptions, the Tax Authorities of the Member States are always entitled to overcome the presumption by providing evidence to the contrary, that is to say by demonstrating that the intra-community transport of goods to the Member State of destination did not actually take place.

5) The EU Commission has specified, through its Explanatory Notes (available in Italian at the following link https://ec.europa.eu/taxation_customs/sites/taxation/files/explanatory_notes_2020_quick_fixes_it.pdf), that the new presumptions regarding proof of the transport of goods in intra-community supplies does not apply where the transport or dispatch is carried out directly by the seller or by the buyer with his own means of transport, without the intervention of a shipper or a carrier.

6) The Italian Revenue Agency, with circular no. 12 of May 13, 2020, provided some clarifications on the application of the new EU regulation on the proof of intra-community supplies of goods, clarifying that:

- 6.1) the transmission to the seller of the buyer's written declaration after the tenth day of the month following that of the supply does not preclude the seller from benefitting from the presumption that the goods have been transported and, therefore, from exempting from VAT the intra-EU supply, if all the additional conditions provided for by Article 45-a are met;
- 6.2) the presumptions regarding proof of intra-community transport of goods, provided for by Article 45-a, shall also apply to intra-community supplies carried out before 01.01.2020, if the company has a set of document fully coinciding with the requirements of the aforementioned rule;
- 6.3) if the company does not possess the documentation specifically required by the EU regulations for the application of the presumption in question, it will still have the right to demonstrate that the transport of the goods to the other Member State has actually taken place, by producing for example the additional documents identified by the Italian Revenue Agency's notes of praxis (see resolutions of 24 July 2014, n. 71 / E; of 25 March 2013, n. 19 / E; of 15 December 2008, n. 477 / E; of 28 November 2007, no. 345 / E).