November Newsletter

EU VAT Kick-Off 2026 #4

3 important documents from the CJEU: in preparation for our January seminar in Copenhagen

In this newsletter we would like to summarize the most recent CJEU case law developments from October - one opinion of the Advocate General and two cases decided by the Court.

A digital platform operating an app store is treated as the supplier of services provided by app developers

(C-101/24, XYRALITY, Judgment of the Court of 9 October 2025)

A German mobile game developer (XYRALITY GmbH) distributed applications through an app store operated by an Irish company between 2012 and 2014. Players could download games for free but could make paid in-app purchases. All purchases were processed, confirmed, and billed by the Irish platform, which displayed its own logo throughout the transaction. The platform deducted a 30% commission and transferred the remainder to the developer. Initially, the developer declared VAT in Germany, but in January 2016, it submitted amended VAT returns arguing that Article 28 of the VAT Directive applied and the Irish platform should be treated as the deemed supplier. The questions were whether Article 28 applied to electronic services before 2015 and whether the identification of the developer in order confirmations precluded its application.

The Court held that Article 28 of the VAT Directive applied. The Court's reasoning was based on three main arguments:

First, Article 28, which treats intermediaries acting in their own name but on behalf of another as deemed suppliers, applied to electronic services even before the 2015 introduction of Article 9a of the Implementing Regulation. The Court confirmed that Article 9a of the Implementing Regulation, which entered into force on 1 January 2015, explains and clarifies a concept appearing in the VAT Directive and applicable since its inception, following the reasoning established in the Fenix International case (C-695/20, judgment of 28 February 2023). In that judgment, the Court held that Article 9a cannot be regarded as supplementing or amending Article 28 of the VAT Directive but merely gives specific expression to the normative content already established by Article 28. This confirms continuity in the legal framework and ensures that the deemed supplier treatment applied consistently before and after 2015.

Second, the fact that customers may be aware of who the actual service provider is (through order confirmations received after the purchase) does not automatically preclude the application of Article 28. What matters is the actual powers and control that the intermediary has over the transaction. The Court emphasized that even if the end customer becomes aware of the identity of the principal through order confirmations received after the conclusion of the purchase process, this does not preclude the applicability of Article 28 if it follows from the other relevant factors that the conditions for the application of that provision are satisfied. It is above all the powers enjoyed by the platform in the context of the supply of services which matter.

Third, when Article 28 applies, the place of supply for the deemed transaction between the developer and the platform must be determined in accordance with Article 44 of the VAT Directive, which means the place is at the platform's place of business (Ireland), not in Germany. Article 203 of the VAT Directive (which makes VAT payable by any person who enters VAT on an invoice) does not apply because the services were supplied to non-taxable persons, and therefore there is no risk of loss of tax revenue associated with the right to deduct VAT. Consequently, the developer is not liable for VAT in Germany under Article 203 when the platform acts as the deemed supplier.

The XYRALITY case illustrates the increasing role of platforms as deemed suppliers under EU VAT law. Beyond Article 28, platforms may also be deemed suppliers under Article 14a (for facilitating supplies of goods within the EU) and the newly introduced Article 28a under the VAT in the Digital Age (ViDA) package, which extends deemed supplier treatment to platforms facilitating short-term accommodation and passenger transport services.

Factoring services are taxable debt collection services, not VAT-exempt credit services

(*C-232/24, Kosmiro (A Oy), Judgment of the Court of 23 October 2025)*

Finnish company (A Oy) provides factoring services to business clients in two forms: trade factoring (where the factor purchases receivables and assumes insolvency risk) and invoice factoring (where the factor grants credit secured by receivables but retains responsibility for debt recovery and collection). In both arrangements, the company charges a factoring commission (a percentage of each debt that varies based on credit rating and payment term) and arrangement fees. The Finnish tax authority (Central Tax Authority) treated these fees as partly VAT-exempt (as credit granting) and partly taxable (as debt collection). The question was whether these fees constitute consideration for VAT-exempt credit services or taxable debt collection services.

The Court held that factoring fees are taxable services constituting debt collection. The Court's reasoning was based on three main arguments:

First, both forms of factoring constitute services for consideration falling within the scope of VAT. The factoring commission represents a percentage of the amount of the debts, the level of which depends not on the assessment of the economic value of those debts but on the credit, rating attributed to them and the length of the remaining payment term. It does not correspond to an adjustment of the purchase price of the debts to their real economic value. Rather, that commission must be regarded as consideration for the debt collection service provided by the factor to the client. The arrangement fees correspond to a flat-rate fee paid by the client for setting up the factoring process, covering, inter alia, the cost of procedures relating to compliance with obligations arising from applicable legislation on money laundering. This distinguishes the case from GFKL (C-93/10), which concerned the purchase of mature but defaulted debts at their reduced economic value without any genuine service element.

Second, in both trade factoring and invoice factoring, there is a single, indivisible service whose main feature and essential purpose is the collection of debts. From the point of view of both the client and the factor, a supply of factoring services constitutes, in principle, a single economic transaction, the main purpose of which is to enable the client to transfer responsibility to a third party for the recovery and collection of its debts, which it would be artificial to split. The Court emphasized that the essential purpose of factoring is the recovery and collection of debts, and there is no reason to justify different treatment for VAT purposes between 'true' factoring (trade factoring) and 'quasi-factoring' (invoice factoring). Where a financing element exists in invoice factoring, it is accompanied by the debt collection service and does not appear to be provided independently of it.

Third, debt collection is specifically excluded from the VAT exemption under Article 135(1)(d) of the VAT Directive. The concept of 'debt collection' must be interpreted broadly, as an exception to a provision derogating from the application of VAT. All forms of factoring fall within this concept, irrespective of the manner in which they are carried out. The factoring commission and arrangement fees paid by the client in the context of both trade factoring and invoice factoring constitute consideration for a single and indivisible service of 'debt collection' subject to VAT, rather than remuneration for a separate supply of credit covered by the VAT exemption in Article 135(1)(b).

Additionally, the Court held that the exception relating to debt collection provided for in Article 135(1)(d) is unconditional and sufficiently precise to have direct effect and therefore may be relied on by individuals before national courts against the State.

This judgment requires factoring companies throughout the EU to treat their services as VAT-taxable rather than exempt, with significant positive implications for input VAT recovery. Companies offering similar financing arrangements must reassess their VAT treatment based on the principle that the essential purpose is debt collection.

Article 203 liability for incorrectly invoiced VAT does not preclude Article 41 taxation of intra-Community acquisitions

(C-638/24, Finanzamt Österreich, Opinion of the Advocate General of 29 October 2025)

An Austrian case concerns the VAT treatment of intra-Community acquisitions and the interaction with Article 203 VAT liability. The case involves D GmbH, an Austrian company that purchased goods from Austrian suppliers using its Austrian VAT identification number, with the goods then dispatched to another Member State. The invoices mentioned VAT that would have been due if the transactions had taken place exclusively within Austrian territory. The Austrian tax authority found that these were intra-Community acquisitions taxable in Austria under Article 41 of the VAT Directive (because D used its Austrian VAT identification number and had not demonstrated that VAT had been applied in the destination Member State). The authority also considered that the corresponding intra-Community supplies were exempt from VAT, but that the suppliers were liable for the incorrectly invoiced VAT under Article 203 of the VAT Directive. The central question was whether the Article 203 liability for incorrectly invoiced VAT on exempt intra-Community supplies precludes the simultaneous taxation of the corresponding intra-Community acquisitions under Article 41.

In his opinion, the Advocate General addressed the proper treatment of such situations. The reasoning focuses on three main aspects:

First, Article 41 of the VAT Directive applies to determine the place of intra-Community acquisitions when the customer uses the VAT identification number of the Member State where dispatch or transport began, unless the customer establishes that VAT has been applied to the acquisition in the Member State where dispatch or transport ends. This follows from the judgment in Dyrektor Izby Skarbowej (C-696/20, judgment of 7 July 2022). However, the taxation of intra-Community acquisitions under Article 41 should be subject to the exemption of the corresponding supplies to avoid double taxation.

Second, Article 203 of the VAT Directive creates a liability for any person who enters VAT on an invoice, but this liability is not "any real tax liability" but rather a strict liability mechanism designed to mitigate the risk of loss of tax revenue linked to the possibility for the recipient to make an unjustified deduction of input VAT. The amount owed under Article 203 serves as a kind of guarantee against loss of tax revenue. The liability is not final, as the issuer is entitled to a refund of incorrectly invoiced and paid VAT when acting in good faith or when the risk of any loss of tax revenue has been wholly eliminated in sufficient time.

Third, the application of Article 203 by reason of the invoicing, in error, of VAT for exempt intra-Community supplies does not equate to the taxation of those supplies. The incurrence of a liability by the supplier who has incorrectly invoiced VAT does not affect the exemption of the supplies under Article 138 of the VAT Directive. Consequently, the application of Article 203 does not prevent the Member State that, under Article 41, is responsible for the taxation of intra-Community acquisitions from exercising its tax jurisdiction. The Advocate General concluded that there is no double taxation when Articles 203 and 41 are applied simultaneously, as Article 203 creates a guarantee mechanism rather than actual taxation of the supply.

Regarding the second question on invoice adjustments, the Advocate General noted that the chargeable event for VAT on intra-Community acquisitions must be determined solely on the basis of Articles 68 and 69 of the VAT Directive, which are separate from Article 41. The chargeable event occurs when the acquisition is made (when the supply of similar goods is considered to have been made), regardless of questions about the applicability of Article 41 or adjustments to invoices.

As this is an Advocate General Opinion, the final judgment is pending.