POSITION PAPER 5 July 2021

UPEI Position
On ECJ decisions concerning fuel cards in road transport business

Introduction

UPEI, the voice of Europe's Independent Fuel Suppliers, would like to react to recent developments at national level following the European Court of Justice (ECJ) decision on the Case C-235/18 Vega International Car Transport and Logistic (the "Vega case").

Generally, while the ECJ decisions on the Case C-185/01 Auto Lease Holland, Case C-48/20 UAB "P" and the "Vega case" refer to fuel cards, they relate to a specific set of facts.

The general relationship (or more precisely the whole set of legal relationships) between the fuel station operator, the fuel card issuer and the freight carrier using the fuel card has not been addressed by the ECJ and differs substantially from the situation under consideration in each of the above-mentioned cases.

Given the specific nature of the facts at play, the ECJ rulings should be applied only to the specific situations described in these cases, and any broad interpretation should be carried out very cautiously, as it could lead to a large loss of competitiveness of fuel card issuers and small fuel station operators and negatively affect the road transportation sector in the European Union.

Situation described in the "Vega case"

The ECJ points out several times in the context of the ruling that Vega International provided its subsidiaries with a fuel card administration service. Vega International was never in the position of the fuel card issuer, as it merely organised and managed the supply of fuel cards to its daughter companies. Vega International (having its seat in Austria) has applied for a reimbursement of input tax in Poland for refuelling operations in Poland.

The case addressed the chain of fuel trade consisting from petrol station – fuel card issuer – Vega International "mother company" – Vega Poland "daughter company". When a driver of Vega Poland refuels using a fuel car at the petrol station, the fuel is purchased by Vega Poland directly from suppliers (choosing the service station, quality, quantity and type of fuel, as well as when to purchase and how to use it). Vega International never actually disposed of the fuel as the owner, and had very limited control over the whole fuel trade. Under such circumstances the provision of fuel cards by a parent company to its subsidiaries may be classified as a service granting credit.

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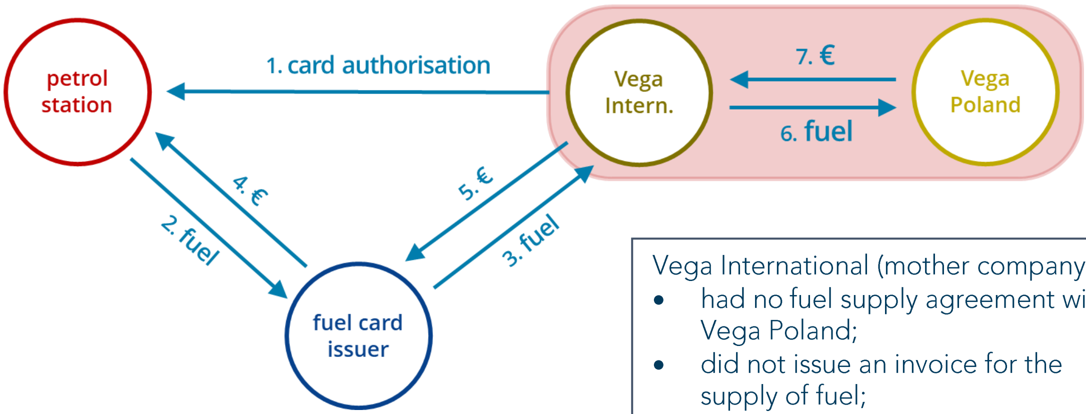
Vega case (showing different steps in the transaction chain)

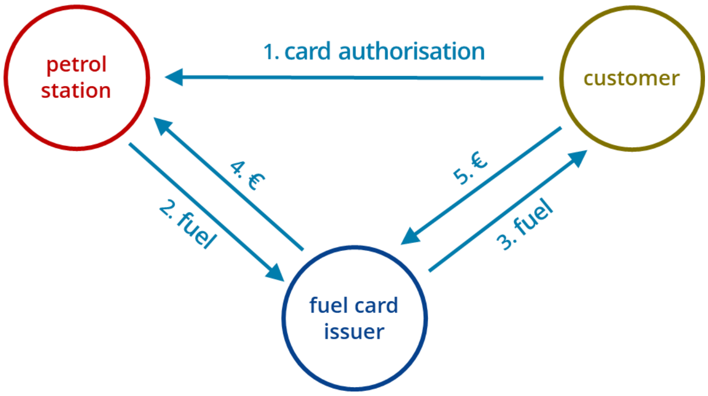


Vega International (mother company):

- had no fuel supply agreement with Vega Poland;
- did not issue an invoice for the supply of fuel;
- was not in a position to sell fuel in Poland (no fuel trading licence);
- was not registered for VAT in Poland.

However, the situation described in the "Vega case" is fundamentally different from the typical business model of fuel card issuers.

Standard fuel card business model (showing different steps in the transaction chain)



Typical business model of fuel card issuers

As shown in the previous graphs, the typical business model of fuel card issuers is different from the set up described in the "Vega case" in many important aspects.

The fuel card does not act as means of payment, but only as an identifier and transaction authorisation tool, which enables sale of fuel in freight transport and subsequently issuance of (usually) monthly invoices to the freight carrier in relation to specific vehicles. Fuel cards thus offer major benefits to businesses in terms of efficiency, reconciling and simplifying on-the-road costs, which represent a significant expense for most enterprises. Fuel card issuers own the fuel they sell, meaning they also have the right to dispose of VAT. A general description of how fuel cards operate can be found in the UPEI factsheet *Fuel cards: facts and figures*.

The issuer of the fuel card does not set a fixed margin. The price is typically different to the prices that ordinary customers would get without using a fuel card.

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The issuer of the fuel card sets one selling price, while fuel prices change from day to day, at different times and in different amounts depending of fuel suppliers. Depending on the degree of changes in purchase prices between individual suppliers in the price group, the fuel card issuer faces margin risks directly proportional to the volatility. Furthermore, the issuer of the fuel card generally purchases fuel from its suppliers in the currency corresponding to the currency of the state on whose territory the relevant filling station is operated.

At all times, it is the issuer of the fuel card who controls and sets the terms of the business, including how the fuel will be handled. It also controls the customers, activating certain functions and availability of services, but also blocking services, customers or taking appropriate reaction in case of theft. The standard business model brings many benefits to both customers and governmental authorities, as tax collection is secure, and potential fraud is addressed.

The business model of fuel card issuers is not different from standard chain stores, but is fundamentally different from the situation described in the "Vega case", as the fuel card issuer bears a large number of risks and keeps control over the transaction chain.

Summary of the main differences between the "Vega case" and the standard fuel card business model

	Fuel card issuer	Vega Int./Poland
Who bears the price risk?	Fuel card issuer	Fixed margin 2% Price risk born by the fuel card issuer, not Vega
Who holds the license for sale of fuel?	Fuel card issuer	Fuel card issuer, not Vega
To whom is the fuel sold?	Out of group to the end customers	Sale of the fuel only to the daughter companies
Who issues the card?	Fuel card issuer	Fuel card issuer (3rd party), Vega is a fuel card redistributor
How does the invoicing work?	Depends on the contract, different models	3-month invoices
Who is responsible for the fuel quantity/quality?	Fuel card issuer	Fuel card issuer, not Vega
Who authorises the payment/blocks the customer?	Fuel card issuer	Fuel card issuer, not Vega
Who bears the currency risk?	Fuel card issuer	Fuel card issuer, not Vega
Who holds the contract with the fuel station?	Fuel card issuer	Fuel card issuer, not Vega

For these reasons, UPEI and its members believe that the ECJ decision reached in the "Vega case" cannot be interpreted broadly and generally applied to all fuel card issuers. Several countries, such as Poland or Austria[1], have already updated their guidelines reflecting this. Such a change to the status quo would significantly affect the fuel card issuers business model, and lead to negative consequences for all players involved.

[1] https://findok.bmf.gv.at/findok?execution=e1s1

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Potential impact of a broad application of the ECJ decision

In the event of a general application of the ECJ rulings to all chains of fuel supply using fuel cards, we would like to warn against the following consequences:

- Reduced competition in the fuel supply market

Many fuel card issuers are not large companies, but small and medium enterprises, often family run businesses operating in a single EU country. If they were considered as providers of credit, or "credit card companies", the costs related to obtaining the appropriate payment licenses and changes to the business model would be unbearable and therefore force the smallest and independent companies out of the market, reducing the competitive environment.

- Higher price of fuel for transporters and competitiveness loss for small hauliers

Small hauliers (who make up the majority of the hauling companies in the EU) would lose competitiveness compared to large companies. Individually they do not have the purchasing power to negotiate prices with large petrol stations networks, and without a fuel card they will refuel at significantly worse prices than large trucking companies. Higher fuel costs for transport will then be passed onto consumers.

SME enterprises are backbone of the EU economy. Limiting their ability to operate would be in direct contradiction with Commissions SME Strategy for a sustainable and digital Europe.

- Competitiveness loss for independent retail stations

Fuel card issuers purchasing large quantities of fuel support independent retail stations and small networks by bringing additional turnovers and revenue streams. For example, retail stations can offer additional products and services to drivers refuelling at their station (food, drinks, parking…) in addition to the fuels and the strictly limited range of auxiliary products they can directly purchase with their fuel card.

- Negative impact on the deployment of alternative fuels

While we refer to "fuels" in general, the business model explained in this paper applies in the exact same way to the sales of alternative fuels and electricity for electric vehicles. In fact, it is often fuel card issuers which support the development of alternative fuels refueling or charging points and connect them into functional and practicable pan-European networks. Any change to the current business model could complicate the deployment of alternative fuels and electric charging infrastructure, thus jeopardizing the achievement of EU climate objectives.

- Additional administrative burden for market players and member states authorities

Truck drivers would face a significant administrative burden, having to ensure they receive a correct invoice which includes all relevant information, and that the original invoice arrives at the haulage company's accounting department on time. Transport companies would also have to book hundreds of invoices per month, rather than only a couple of consolidated invoices, as at present. Small hauliers transiting between countries would have to check the local VAT regime, as they would get VAT refund in some countries, and not in others.

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Retail stations operators would also have to train their cashiers to manually issue comprehensive invoices for the purpose of VAT refunds, creating inefficiencies and slowing down the payment process and turnover at the cash desk.

Such multiplication of invoices would also engender additional administrative burden for governmental authorities, and increase the risk of fraud.

For more information

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UPEI represents nearly 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers. They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers, including those in remote areas.

Since 1962 UPEI has been advocating for a level playing field and fair competition to ensure an affordable, sustainable, and secure energy supply for Europe's consumers. Today, in the context of the transition to a low carbon economy, UPEI and its members are also addressing the challenges of adapting the product range and meeting consumer demand through market-oriented solutions.

With its strong track record in pioneering the supply of renewable fuels in the EU, UPEI's members remain committed to delivering and embracing new, cost effective solutions which further promote energy efficiency and reduce pollutants and emissions.