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2026/0318 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2021/1778 as regards an extension of the authorisation for Germany to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1), first subparagraph, of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (hereafter 'the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 31 March 2026, Germany requested authorisation to continue to apply the special measure regarding the person liable for payment of VAT in case of transfer of emission allowances traded in the national system under the Fuel Emission Allowance Trading Act (Brennstoffemissionshandelsgesetz (BEHG)) of 12 December 2019, by extending again the application of the special measure granted by Council Implementing Decision (EU) 2021/1778 of 5 October 2021[2], as extended for the first time until 31 December 2026 by Council Implementing Decision (EU) 2024/2680 of 8 October 2024[3].

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 21 August 2026 of the request made by Germany. By letter dated 25 August 2026, the Commission notified Germany that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 193 of the VAT Directive stipulates that, as a rule, the taxable person supplying goods or services is liable to pay the VAT due.

Pursuant to Article 395(1), first subparagraph, of the VAT Directive, Member States may apply measures derogating from the provisions of the VAT Directive to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance if they have been authorised by the Council.

Germany obtained a derogation in 2021 in order to designate taxable persons, to whom emission allowances under the BEHG are supplied, as liable for the payment of the VAT (the so-called reverse charge mechanism). This derogation, which was set to expire on 31 December 2024, was extended in 2024 until 31 December 2026.

Directive 2003/87/EC[4] governs the greenhouse gas emission allowance trading scheme at EU level (EU ETS) but does not prevent Member States to maintain their own national trading system in parallel. Under the BEHG, Germany has created a legal framework for a national

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision (EU) 2021/1778 of 5 October 2021 authorising the Federal Republic of Germany to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 117–119).

3 Council Implementing Decision (EU) 2024/2680 of 8 October 2024 amending Implementing Decision (EU) 2021/1778 authorising Germany to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L, 2024/2680, 11.10.2024, ELI: http://data.europa.eu/eli/dec_impl/2024/2680/oj)

4 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, pp. 32–46, ELI: http://data.europa.eu/eli/dir/2003/87/oj).

emissions trading scheme of greenhouse gas emissions from fossil fuels, which do not fall under the EU ETS. In this context, Germany points out that, even after the introduction of EU ETS2, which will cover emissions from fuel combustion in buildings, road transport and other additional sectors, the BEHG will continue to operate at national level for amounts of emissions remaining in the national system that are not covered by EU ETS2.

Experience in emission allowance trading has shown that this sector is highly vulnerable to VAT fraud as allowances can easily and quickly be exchanged. For this reason, the VAT Directive provides in Article 199a(1) the possibility to apply the reverse charge mechanism in relation to the transfer of allowances to emit greenhouse gases under the EU ETS system; Germany makes currently use of this possibility. Similarly, and as mentioned, Germany applies the reverse charge mechanism in relation to their national trading system.

Under the reverse charge mechanism, the VAT is not actually charged but accounted for by the business client in his own VAT return (and subsequently deducted). This avoids the 'missing trader' scheme whereby the supplier disappears with the VAT amount received but whereby the business client is in position of an invoice that allows him to deduct the VAT paid to this supplier.

As provided by Article 2 of Council Implementing Decision (EU) 2021/1778, Germany submitted, together with the extension request, a report on the impact of the measure. According to the German authorities, the special measure helped to prevent tax evasion and avoidance in the national sector of emissions allowances trading and is considered an important building block in the fight against fraud.

Given the similarity and coherence with the application of the reverse charge mechanism in relation to the EU ETS system, it is appropriate to authorise Germany to continue to apply the derogating measure, under similar conditions, for another limited period. This should allow for a continued and regular assessment of this derogating measure in the light of possible future developments in the field of the EU ETS, the BEHG or the EU VAT legislation on this point.

- **Consistency with existing policy provisions in the policy area**

Articles 199a(1)(a) and (b) of the VAT Directive allow Member States to apply the reverse charge mechanism to the transfer of allowances to emit greenhouse gases, as defined in Article 3 of Directive 2003/87/EC, and to the transfer of other units that may be used by operators for compliance with the same Directive.

The extension of a special measure, allowing to apply the reverse charge mechanism to the transmission of allowances referring to emissions that do not fall within the EU ETS system regulated by the above-mentioned Directive, is therefore aligned and consistent with the existing policy provisions.

However, it has to be noted that Articles 199a and 199b of the VAT Directive are set to expire on 31 December 2026. In this context, the Commission announced its intention to further extend these articles. In addition, as from July 2030, the so-called Digital Reporting Requirements (DRR), as part of the VAT in the Digital Age package (ViDA)[5], will enter into force. Under this DDR, all EU cross-border transactions will, by July 2030, require near real-time digital reporting by businesses on the basis of EU structured electronic invoices, which will be combined with Member States' existing, or soon to be introduced, domestic digital

[5] See: VAT in the Digital Age (ViDA) - Taxation and Customs Union

real-time transaction reporting obligations on the basis of domestic e-invoicing. This transactional data, to which authorities will have access, should allow Member States to step up against fraud. Against this background, it will have to be reassessed in 2030 whether a specific measure, such as the reverse charge mechanism, would still be needed. It is therefore logic and consistent to extend the derogating measure for Germany's national emission trade sector for the same foreseen period.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 395(1), first subparagraph, of the VAT Directive.

• Subsidiarity (for non-exclusive competence)

Considering the provision of the VAT Directive on which the proposal is based, the subsidiarity principle does not apply.

• Proportionality

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to combat tax evasion. It does not go beyond what is required to fulfil these aims.

• Choice of the instrument

The instrument proposed is a Council Implementing Decision.

Under Article 395(1), first subparagraph, of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

No stakeholder consultation has been conducted. The present proposal is based on a request made by Germany and concerns only this particular Member State.

• Collection and use of expertise

There was no need for external expertise.

• Impact assessment

The proposal for a Council Implementing Decision aims at continuing to prevent certain forms of tax evasion or avoidance in the German national sector of emission allowances, which is especially vulnerable to VAT fraud.

Germany reported that 2 290 persons with trading accounts were registered with the German Emissions Trading Authority in 2025 of which 2 249 were resident in Germany and within the scope of the special derogating measure. Further, Germany reported that no cases of VAT

evasion were ascertained in the relevant period due to the special measure in the national trade of emission allowances.

Consequently, the special measure is likely to have a potential positive impact.

Furthermore, because of the narrow scope of the special measure and the limited application in time, its impact will in any case be limited.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implications for the EU budget.

5. OTHER ELEMENTS

The proposal includes a sunset clause set at 30 June 2030.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[6], and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Implementing Decision (EU) 2021/1778[7], as extended by Council Implementing Decision (EU) 2024/2680 of 8 October 2024[8] authorised Germany to apply, until 31 December 2026, a special measure derogating from Article 193 of Directive 2006/112/EC in order to use the so-called reverse charge mechanism for transfers of emission allowances under the Fuels Emissions Trading Act (BEHG). Under this mechanism, the person receiving transfers of emission allowances will be liable for the payment of the VAT instead of the supplier ('the special measure').

(2) By letter registered with the Commission on 31 March 2026, Germany requested the extension of the special measure granted by Implementing Decision (EU) 2021/1778 and thereby an authorisation to continue to apply the special measure beyond 31 December 2026 ('the request').

(3) In accordance with Article 395(2), second subparagraph of Directive 2006/112/EC, the Commission transmitted the request to the other Member States by letters dated 21 August 2026 and, by letter dated 25 August 2026, it notified Germany that it had all the information necessary to consider the request.

(4) According to the information provided by Germany in its request, the factual situation justifying the application of the special measure has not changed. Together with the request, Germany submitted to the Commission a report, reviewing the practical experience gained, that shows that the use of the reverse charge mechanism in relation to the transfer of emission allowances under the BEHG has proven to be an effective measure and has contributed to combating tax fraud.

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6 OJ L 347, 11.12.2006, p. 1.

7 Council Implementing Decision (EU) 2021/1778 authorising the Federal Republic of Germany to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 117, ELI: http://data.europa.eu/eli/dec_impl/2021/1778/oj).

8 Council Implementing Decision (EU) 2024/2680 of 8 October 2024 amending Implementing Decision (EU) 2021/1778 authorising Germany to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L, 2024/2680, 11.10.2024, ELI: http://data.europa.eu/eli/dec_impl/2024/2680/oj)

(5) It is therefore appropriate to extend the authorisation granted in Implementing Decision (EU) 2021/1778. The extension of the authorisation should however be limited and linked to the possible use of the reverse charge mechanism in relation to, among other sectors, the EU greenhouse gas emission allowance trading scheme (ETS) as laid down in Article 199a(1)(a) and (b) of Directive 2006/112/EC as well as to the entry into force of the Digital Reporting Requirements (DRR), as part of the VAT in the Digital Age package (ViDA)[9] on 1 July 2030. This should allow for an assessment of the effectiveness and appropriateness of the special measure in the light of an overall evaluation of the reverse charge mechanism in the emission trade at EU and national level.

(6) The special measure will have no adverse impact on the Union's own resources accruing from VAT.

(7) Implementing Decision (EU) 2021/1778 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision (EU) 2021/1778 is replaced by the following:

'*Article 2*

This Decision shall expire on 30 June 2030.'.

Article 2

This Decision shall take effect on the day of its notification.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
The President

[9] See: VAT in the Digital Age (ViDA) - Taxation and Customs Union