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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

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 ([1]), and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 193 of Directive 2006/112/EC, a taxable person carrying out a taxable supply of goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) Council Implementing Decision (EU) 2021/1778 ([2]) authorised Germany to apply, until 31 December 2024, a special measure derogating from Article 193 of Directive 2006/112/EC to designate the taxable person receiving transfers of emission allowances under the Fuels Emissions Trading Act (BEHG) as liable for the payment of VAT (the 'special measure').

(3) By letter registered with the Commission on 19 February 2024, Germany requested the extension of the special measure and thereby an authorisation to continue to apply the special measure beyond 31 December 2024 ('the request').

(4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request to the other Member States by letter dated 27 March 2024. By letter dated 2 April 2024, the Commission notified Germany that it had all the information necessary to consider the request.

(5) According to the information provided by Germany, the factual situation which justified the application of the special measure has not changed. Germany submitted to the Commission, together with the request, a report on the overall positive experience in applying the special measure that shows that the use of the reverse charge mechanism in the transfer of emission allowances under the BEHG has proven its worth in practice. The special measure is an important component of the fight against VAT fraud, the importance of which is expected to grow even further in the coming years due to changing market conditions.

(6) It is therefore appropriate to extend the special measure. The extension of the special measure should be limited in time to allow the Commission to evaluate its effectiveness and appropriateness. The special measure should therefore expire on 31 December 2026.

(7) If Germany wishes to extend the special measure beyond 2026, it should submit a report to the Commission, including a review of the special measure together with the extension request by 31 March 2026 at the latest. That report should include an assessment of the impact of the special measure on the fight against VAT fraud and the number of traders and transactions affected by that measure.

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

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

HAS ADOPTED THIS DECISION:

([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).

Article 1

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

'*Article 2*

This Decision shall expire on 31 December 2026.

Any request for an extension of the special measure provided for in this Decision shall be submitted to the Commission by 31 March 2026 and shall be accompanied by a report which includes an assessment of the special measure and of its impact on the fight against VAT fraud and the number of traders and transactions affected by that measure.'.

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 Luxembourg, 8 October 2024.

For the Council

The President

VARGA M.