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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMUNICATION FROM THE COMMISSION TO THE COUNCIL in accordance with Article 395 of Council Directive 2006/112/EC

Delegations will find attached document COM(2026) 64 final.

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EUROPEAN
COMMISSION

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

in accordance with Article 395 of Council Directive 2006/112/EC

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1. BACKGROUND

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (the VAT Directive), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. As this procedure provides for derogation from the general principles of VAT, in accordance with the case-law of the Court of Justice of the European Union (CJEU), the national derogating measures referred to in Article 395 of the VAT Directive which are allowed 'in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance', must be interpreted strictly and those measures must also be necessary and appropriate for realising the specific objective which they pursue and have as little effect as possible on the objectives and principles of the VAT Directive[2].

By letter registered at the Commission on 27 May 2024, the Republic of Austria ('Austria') requested an authorisation to apply a measure derogating from Article 193 of the VAT Directive. The Commission sent a letter on 17 July 2024 requesting additional information. By letter registered at the Commission on 27 September 2024, Austria provided further information. However, since not enough information was provided regarding, in particular, the fraud situation and the amounts involved, the Commission sent an additional letter on 3 December 2024. By letter registered with the Commission on 18 June 2025, Austria provided further information in reply to this additional request.

In accordance with the second paragraph of Article 395 of the VAT Directive, the Commission informed the other Member States by letter dated 16 December 2025 of the request made by Austria. By letter dated 17 December 2025, the Commission notified Austria that it had all the information it considered necessary for appraisal of the request.

2. REVERSE CHARGE

The person liable for the payment of VAT pursuant to Article 193 of the VAT Directive is the taxable person supplying the goods or services. The purpose of the reverse charge mechanism is to shift that liability onto the taxable person to whom the supplies are made.

Missing trader fraud occurs when traders evade paying VAT to tax authorities after selling their goods and collecting the VAT from the customer. Their customers however, in case they are taxable persons, are, as a rule, entitled to tax deduction when in possession of a valid invoice. By designating the person to whom the goods are supplied as the person liable for the payment of VAT in such cases, the reverse charge

[1] OJ L 347, 11.12.2006, p. 1

[2] See judgment of 27 January 2011 in case *Vandoorne* C-489/09, EU:C:2011:33, paragraph 27.

mechanism has been found to eliminate the opportunity to engage in that form of tax evasion.

3. THE REQUEST

Austria requests, under Article 395 of the VAT Directive, that the Council, acting upon a proposal of the Commission, would authorise the application of a special measure derogating from Article 193 of the VAT Directive as regards the application of the reverse charge mechanism in relation to supplies of immovable property by real estate developers, insofar not already covered by Article 199(1)(c) of the VAT Directive. Article 199(1)(c) of the VAT Directive allows Member States to use the reverse charge mechanism for supplies of immovable property as referred to in Article 135(1)(j) and (k) of the VAT Directive, where the supplier has opted for taxation pursuant to Article 137 of the VAT Directive. This entails that, pursuant to Article 199(1)(c) of the VAT Directive (where the supplier has opted for taxation), the supply of immovable property after first occupation or the supply of land other than building land can be covered by the reverse charge mechanism. In essence, Austria requests that, on the basis of a derogation, supplies of immovable property prior to first occupation and the supply of building land can be brought under the reverse charge mechanism.

The main aim of the requested derogation is to fight against fraud as, according to the Austrian request, purchasers of immovable property for business use from real estate developers, claim the input tax deduction where, at the same time, these real estate developers fail to pay the VAT received on their supplies to the tax authorities.

4. THE COMMISSION'S VIEW

When the Commission receives requests in accordance with Article 395 of the VAT Directive, these are examined with a view to ensure that the basic conditions for granting a derogation are fulfilled, i.e. whether the proposed specific measure simplifies procedures for taxable persons and/or the tax administration or whether the proposal aims to prevent certain types of tax evasion or avoidance. In this context, the Commission has always taken a restrictive, cautious approach to ensure that derogations do not undermine the operation of the general VAT system, are limited in scope, necessary and proportionate. Any derogation from the system of fractioned payment can, therefore, not be more than a last resort and an emergency measure and must offer guarantees as to the necessity and exceptional nature of the derogation granted.

It is the Commission's view that the type of supplies in question, namely of immovable property, via the intervention of notaries and lawyers, should make a follow-up and auditing possible through conventional means, also taking into account that, as stated by Austria, the identified fraud cases mainly are linked to real estate developers that are undertakings resident in Austria.

Further, figures on the estimated number or share of transactions under the requested measure as well as the perceived fraud exposure remain somewhat unclear. On the basis of the information provided by Austria, calculations seem to indicate that the potentially fraudulent operations represent around 3,33% of the total turnover of B2B immovable property transactions which are subject to VAT in Austria. Also, an annual estimated exposure of €100 million is calculated on the basis of an estimated 50 transactions of €10 million at a 20% VAT rate. Based again on the data provided by the Austrian authorities, which show a rather limited number of transactions, conventional control measures should be sufficient to tackle the specific VAT fraud risk. For instance, the national authorities could envisage an obligation for notaries to notify the tax authorities immediately/ex ante on the conclusion of such transactions. This could also assist Austria in addressing the issue of insolvencies as mentioned in their second letter.

5. CONCLUSION

Given the limited scope and the above-mentioned arguments, Austria's request does **not convincingly demonstrate** that the measure is necessary and proportionate.

Therefore, the Commission objects to the request made by Austria.