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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

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

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 a 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 22 August 2025, Romania requested an authorisation to apply, by derogation of Article 193 of the VAT Directive, the reverse charge mechanism in relation to certain supplies of vegetables, fruit, clothing and footwear.

By a letter registered at the Commission on 18 November 2025, Romania modified its initial request by withdrawing its request for a derogation concerning the reverse charge mechanism for the supply of clothing and footwear. Instead, Romania opted to request for a derogation to apply the reverse charge mechanism solely on the supply of vegetables and fruits, citing the increased risk of fraud and the high perishability of these goods, which notably affects VAT collection.

In accordance with the second paragraph of Article 395 of the VAT Directive, the Commission informed the other Member States by letter dated 15 December 2025 of the request made by Romania. By letter dated 17 December 2025, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.

2. THE REQUEST

Romania requests, under Article 395 of the VAT Directive, that the Council, acting upon a proposal of the Commission, decide to 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 certain supplies of vegetables and fruits, for a period of two years.

As a rule, 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 in order to avoid that the supplier would have the possibility to disappear with the VAT received (missing trader fraud).

[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.

3. 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 ensuring 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 and time, and necessary and proportionate. Any derogation from the system of fractioned payment can, therefore, not be more than a last resort and an emergency measure for a limited time and must offer guarantees as to the necessity and exceptional nature of the derogation granted.

Vegetables and fruits, due to their tangible and high-volume nature, can effectively be monitored and tracked using existing systems. These goods are typically subject to physical transport across borders or domestically, making them ideal candidates for e-transport and e-invoicing systems. These systems can provide real-time tracking and data analysis capabilities that allow for targeted control, thereby ensuring VAT compliance without applying the reverse charge mechanism.

Romania has already implemented advanced systems like RO e-Invoice (a mandatory and generalised electronic invoicing system), RO e-Transport (national system for monitoring road transport), RO e -Sigiliu (national system of electronic seals introduced to monitor road shipments of goods) and SAF-T (Standard Audit File for Tax). These systems are designed to enhance traceability and to provide detailed transaction data.

This data-driven approach should enable Romania to pinpoint high-risk transactions and to act more accurately, enhancing the efficiency of VAT fraud prevention. Targeted interventions can be more effectively executed without disrupting the entire trading sector through the reverse charge mechanism.

Although perishability is noted as a concern that impacts VAT collection, the electronic systems applied in Romania can be used to handle and trace perishable goods effectively. These systems can account for the specific challenges of high turnover rates and ensure timely compliance checks that reduce opportunities for VAT fraud.

By using these tools, Romania can conduct detailed risk analyses and effectively combat VAT fraud within the domestic distribution chain of vegetables and fruits.

The adoption of reverse charge mechanisms for vegetables and fruits may undermine the transparency and functioning of the conventional VAT system, where VAT is collected incrementally along the supply chain. It might set a precedent that complicates future VAT enforcement efforts, through conventional measures, rather than enhancing transparency through established technological means.

The reverse charge mechanism is proposed as a temporary solution until other systems become fully operational. However, most of the systems listed before are already operational since quite some years and the use of these existing systems presents a more sustainable solution for Romania. This approach would allow further developing and integrating mature technologies and provide for a sustainable solution which cannot be provided by the requested temporary derogation.

4. CONCLUSION

Based on the above-mentioned arguments, the Commission objects to the request made by Romania.