European Association of CCP Clearing Houses

EACH Position on VAT – Extension of "optional reverse charge" and "quick reaction mechanisms"

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1. Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

This note summarises the EACH position about the VAT reverse charge mechanism and the suggestion to either extend its application beyond 31 December 2026, or to completely delete its sunset date for the following reasons:

- **Avoiding VAT fraud** – Thanks to better transparency and traceability provided by the reverse charge mechanism, opportunities for fraud are limited.
- **Unnecessary costs for CCPs** – When it comes to domestic transactions, the absence of a VAT reverse charge mechanism causes unnecessary costs because the CCP needs to finance the VAT payments from its own liquidity resources until they are able to be recovered from the authorities.
- **Unnecessary costs for clearing members** – For certain portion of market participants who are already trading in the spot market for 2027 to secure a physical delivery of energy or gas, the clearing house needs to add a VAT payment parameter, therefore increasing the cost of clearing.

2. The VAT reverse charge mechanism

What is the reverse charge mechanism?

The reverse charge mechanism is an instrument whose goal is to reduce the risk of VAT tax fraud by shifting the liability to pay VAT from the seller (as per Art. 193 of the Directive 2006/112/EC[1] on VAT) to the customer. The mechanism is particularly useful to combat Missing Trader Intra-Community fraud, which occurs when a trader acquires goods from another EU Member State through a VAT-exempt transaction, then sells them domestically charging VAT to its customers, disappearing afterwards without remitting the collected VAT to the tax authorities. This fraudulent scheme often involves multiple transactions of high-value goods, causing significant revenue loss.

Under the reverse charge mechanism, VAT is accounted for by the customer, with the added benefit that it can simultaneously report the input VAT (i.e. paid on the purchases of goods and services, to be reclaimed from the tax authorities) and output VAT (i.e. charged on the sales of goods and services, to be paid to tax authorities), often resulting in a nil VAT liability.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0112

Extension of the Reverse Charge Mechanism

Originally, the reverse charge mechanism was to expire 30 June 2022. An extension of the mechanism was adopted by the Council of the EU through the Directive (EU) 2022/890[2] amending Directive 2006/112/EC, which entered into force on 11 June 2022. The possibility to apply the reverse charge mechanism was thus extended until 31 December 2026.

This extension applies also to the Quick Reaction Mechanism (QRM), which allows Member States to introduce a temporary reverse charge mechanism in a quick way if a sudden, massive fraud occurs in particular sectors.

Why is the reverse charge mechanism important for CCPs/clearing houses ?

CCPs/clearing houses, as customers of certain goods or services that may be subject to VAT, are often liable to account for VAT under the reverse charge mechanism. The fact that CCPs/clearing houses clear transactions in commodities makes them vulnerable to tax fraud because of their high value and the volume of transactions. This is particularly relevant in the energy sector, in which CCPs/clearing houses clear transactions involving high-value commodities such as electricity and gas, as well as EU emission allowances. These products are especially exposed to VAT fraud due to the following reasons:

- Their high value makes it possible to extract significant sums.
- The intangible nature of the products makes it easier to create false invoices or transaction records.
- The ease and rapidity of cross-border trade facilitates the multiple transactions often performed in fraudulent schemes.

3. Problems with not extending the VAT reverse charge mechanism

Unnecessary costs of financing VAT

In some Member States, VAT applies to domestic transactions (i.e. transactions between a buyer and seller within the same country), while in case the transaction occurs **cross-border within the EU (i.e. buyer in one EU country and seller in another), the VAT is not charged**. This leads to a series of both operational and financial issues.

EMIR-compliant CCPs stand between the seller and the buyer in all exchange-traded transactions, legally becoming the counterparty to both sides of the trade. This means that in theory the CCP should be VAT-neutral as both buyer and seller are subject to VAT. However,

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L0890

this is not the case when the seller and the buyer are based in two different EU countries. As an example, we can consider the case in which the CCP interposes itself between a seller in the country where the CCP is located and a buyer in a different EU country. The CCP buys the commodity products from the seller with VAT but when selling them cross-border to the buyer, the CCP cannot charge VAT. However, if the CCP sells the commodity product to a buyer based in the same country as the CCP, it generates a domestic transaction that implies VAT payments.

The above leads to unnecessary costs because the CCP needs to finance the VAT payments from its own liquidity resources until they are able to be recovered from the authorities, which can take up to several months. In occasion of the energy crisis, because of the intense volume of transactions occurring during the high volatility period, the cost of financing VAT payments was so considerable to lead some CCPs to request loans.

To avoid the VAT financing issues related to domestic transactions described above, some CCPs have established companies in other EU countries with the objective of clearing trades that would therefore mostly result as cross-border. On the one hand, this solution lowers the risk for the CCP to finance VAT from its own resources, on the other hand setting up a company nevertheless implies costs and risks from e.g. the operational side.

Unnecessary costs of adding VAT to margins

Due to the uncertainty about whether the VAT reverse charge mechanism will be extended beyond 31 December 2026, clearing houses have already started adding VAT to the future margin payments. For a certain portion of market participants who are already trading in the spot market for 2027 to secure a physical delivery of energy or gas (e.g. forward contracts on futures derivatives), the clearing house needs to add a VAT payment parameter[3], which can be brought down to 0% only after the VAT reverse charge mechanism will be extended. This unnecessarily increases the cost of using the risk management features of clearing houses.

VAT fraud

In light of the above, the reverse charge mechanism provides benefits for CCPs/clearing houses because not only it contributes to prevent tax fraud, but it also often produces nil VAT liability, and allows for a simplification of VAT reporting. By shifting the liability to pay VAT from the seller to the buyer, the CCP sees a reduced cash flow burden and avoids liquidity-related stress in high-volume trading environments. In addition, because of better transparency and traceability provided by the reverse charge mechanism, opportunities for fraud are limited. Examples of recent VAT fraud in the energy sector can be found in the Appendix to this document.

[3] 23% in Poland

4. Our proposal: call for further extension

EACH Members very much appreciate that Directive (EU) 2022/890 gives Member States the possibility to extend until 31 December 2026 the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud as well as of the Quick Reaction Mechanism against VAT fraud margin.

As the operators of CCPs and clearing houses managing risks in energy markets, EACH Members are concerned about the potential frauds faced in the wholesale electricity and gas sectors. In the interest of orderly markets where prices can be formed in a transparent manner and risk can be adequately hedged by users, **EACH strongly supports the extension of the reverse charge mechanism beyond 31 December 2026, until EU Authorities will be able to find a definitive solution to this issue, by introducing a definitive VAT system to provide a comprehensive response to VAT fraud and reduce unnecessary that may prevent users from benefiting from the high risk management standards of CCPs.**

To avoid the need of regular extensions to the mechanism, which require time and resources by both institutional as well as industry stakeholders, we would prefer a complete **deletion of a sunset date**.

Appendix – Cases of VAT fraud in the EU

1. Italy: €149 Million VAT Fraud in Fuel Imports (2023)

Involves petroleum products (fuel) imported from Slovenia and Croatia. Product type: Fossil fuels (gasoline/diesel-like products).

In March 2023, the European Public Prosecutor's Office (EPPO) and the Italian Financial Police uncovered a complex VAT fraud scheme involving imported fuels. Shell companies imported petroleum products from Slovenia and Croatia into Italy, reselling them at low prices without paying VAT. The operation caused over €92 million in tax losses, with €1.5 million in cash seized during the investigation.

2. Italy: 'Fuel Family' Criminal Gang Dismantled (€300 Million Fraud, 2024)

Involves cross-border fuel imports. Product type: Liquid fuel (likely diesel/gasoline).

In March 2024, a coordinated operation by the EPPO and Italian authorities dismantled a criminal network dubbed 'Fuel Family.' The gang imported fuel from Croatia and Slovenia, using over 40 shell companies in Italy to evade VAT payments. The scheme generated fake invoices totalling over €1 billion, resulting in approximately €260 million in unpaid VAT. Authorities seized assets worth €300 million and uncovered €35 million laundered through bank accounts in Hungary and Romania.

3. Denmark: VAT and Energy Tax Fraud Conviction (2022)

Involves electricity, gas, and mineral oil tax. Product type: Electricity, gas, and oil products.

In 2022, a Danish individual was convicted of VAT and energy tax fraud, involving incorrect VAT returns and false declarations related to electricity, gas, and mineral oil taxes. The fraud amounted to DKK 176,374 in VAT and DKK 50,499 in energy taxes. The individual received a 15-month prison sentence and a fine of DKK 325,000.

4. Hungary: VAT fraud (2025)

In January 2025, investigators from the National Tax and Customs Administration uncovered a chain of more than a hundred companies whose goal was to reduce the amount of general sales tax paid on natural gas coming from the EU.

The statement from the Hungarian Tax and Customs Administration (NAV) states, without naming specific companies, that the suspected perpetrators defrauded approximately 10 billion forints of VAT after trading natural gas worth tens of billions of forints, and fictitiously traded electronic products worth the same amount.

During these operations, important evidence related to natural gas trading activities and fictitious electronic trading was seized at the headquarters, offices, accountants and residences of law firms registering business entities and companies accounting for multi-billion-dollar turnover.

5. **Poland: Indictment in case concerning VAT extortion in electricity trading (2023)**

A charge was been submitted to the District Court in Katowice against a person residing in Estonia (without citizenship of any country), accused of, among other things, tax offenses related to electricity trading. The case was investigated by the Internal Security Agency. The proceedings against the accused were excluded from the multi-threaded and extensive investigation. It involved the unravelling of an international criminal group that carried out VAT fraud in 2013-2014, using related Polish and foreign business entities involved in electricity trading. The group's actions, through intra-Community supplies of goods taxed at zero rates, led to undue VAT refunds.

Among other things, an analysis of one of the international exchanges of the electricity market through which the trade was conducted contributed to the uncovering of the crimes. The analysis revealed an economically unjustified repetition of the international transaction chain, which resulted in the manipulation of the energy price on the market. Some of the entities involved were non-professional or unrecognized companies in the industry. In addition, the actual trading of energy took place through foreign transmission networks. Through movements on stock exchanges in France, Germany and the Czech Republic, the electricity did not enter the Polish territory or come from companies based in Poland.

In 2019-2022, charges were submitted to the court against three Danish citizens and another person without citizenship of any country. At the end of February 2023, a woman wanted under a European Arrest Warrant, residing in Estonia, was indicted. She served as president of a Polish company through which unreliable VAT invoices were issued. They were used by subsequent Polish companies to mislead the tax authorities, resulting in losses to the State Treasury of about PLN 68 million.