



- Common energy sector statement -

Keeping EU energy and emissions markets protected from VAT fraud beyond 2018

Urgent need to confirm the extension of the derogation for a domestic reverse charge mechanism for electricity, gas and emission allowances in Art. 199a of the VAT Directive

Brussels, 4 September 2018 | Missing Trader Intra-Community Value Added Tax fraud remains a persistent threat to the integrity and well-functioning of electricity, gas and emission allowance markets in Europe¹. Billions of euros had been defrauded from European Exchequers before the Council of the EU decided on the introduction of a derogation from the VAT Directive² for electricity, gas and emission allowance transactions. The derogation enables Member States to apply the Domestic Reverse Charge Mechanism (DRCM) to these goods and services. Should the existing derogation not be proactively prolonged by the Council before the end of the year, it will automatically expire at midnight on 31 December 2018 as stipulated in the built-in sunset clause in Article 199a³ of the VAT Directive.

¹ The significance of the threat and the importance of the derogation for the European energy sector have also been recognised in a report from the European Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on combatting fraud which was published on 8 March 2018: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A0118%3AFIN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112> (hereafter: the VAT Directive)

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0043>

As eighteen representative associations of the energy sector, we therefore call on the Council, and in particular the Austrian Council Presidency, to prioritise the decision on the European Commission's legislative proposal of 25 May 2018⁴ on a prolongation of the derogation in Article 199a of the VAT Directive. This will prevent fraudsters from again successfully implementing large-scale VAT fraud carousels in highly liquid energy and emissions markets in Europe. It will also ensure that market participants can maintain trust in the integrity and safety of electricity, gas and emission allowance markets as an essential part of the economic value chain in Europe.

In this context, and in order to keep the EU's energy and emissions markets protected from VAT fraud beyond 2018, we would like to recommend the following four measures:

1. Adopt the extension in timely fashion

A timely adoption of the prolongation is essential to help tax administrations and businesses in the concerned Member States to continue with the current practice without a need to prepare for a possible change by the beginning of next year. The Commission proposal of 25 May 2018 is a good basis for this.

2. Extend the end of the derogation by at least five years

The proposed prolongation of Article 199a by only three and a half years until 30 June 2022 is very short. While there is indeed an ongoing legislative process for the introduction of a Definitive Reverse Charge Mechanism for Goods, it would be preferable to define at least another five-year term, meaning a prolongation until 31 December 2023.

3. Explicitly include Guarantees of Origin

In addition, it should be specified that Guarantees of Origin⁵, which are very similar in nature to emission allowances, can also benefit from the derogation in Article 199a of the VAT Directive which is currently interpreted differently in different Member States. Austria and Ireland, for instance, have already specified in their national tax guidance that Guarantees of Origin indeed fall under the domestic reverse charge mechanism as stipulated in Article 199a of the VAT Directive. Hence, for the sake of clarity and to foster the harmonisation of VAT rules across Europe, Article 199a should be amended accordingly and Guarantees of Origin should be explicitly mentioned.

4. Apply comprehensively the DRCM across all Member States

Importantly, as not all Member States are currently making use of the derogation, the decision on a prolongation should be used to call for a comprehensive application of Article 199a (a) (b) (f) across all Member States and equally for electricity, gas, emissions and guarantees of origin. In order to eradicate the possibility of VAT fraud under the current VAT system, it is important that the protective shield is applied comprehensively. Otherwise, the risk of fraud in non-protected markets will increase significantly.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0298&from=EN>

⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0028>

The eighteen participating European associations are:



About AIB – the Association of Issuing Bodies

The AIB represents European certificate system administrators and is the leading enabler of international energy certificate schemes throughout Europe, and in particular those relating to guarantees of origin under Directives 2009/28/EC and 2012/28/EC. The AIB has developed, uses and promotes a standardised system: the European Energy Certificate System - EECS - which ensures the reliable operation of international certificate schemes. These schemes satisfy the criteria of objectivity, non-discrimination, transparency and cost effectiveness in order to facilitate the international exchange of certificates. In order to further facilitate the international exchange of energy certificates, the AIB operates an inter-registry telecommunications hub. The AIB also provides a knowledge centre for energy certificate authorities across Europe, providing and sharing advice and guidance.

www.aib-net.org



About CEDEC – The European Federation of Local Energy Companies

CEDEC represents the interests of more than 1,500 local and regional energy companies, mostly in public hands. These predominantly medium-sized local and regional energy companies have developed activities as electricity and heat generators, electricity and gas distribution grid & metering operators and energy (services) suppliers. Local energy companies provide services which are reliable, sustainable and close to the consumer.

www.cedec.com



About CEER – The Council of European Energy Regulators

CEER is the voice of Europe's national energy regulators. Its members and observers are the independent statutory bodies responsible for energy regulation in 36 European countries. CEER, based in Brussels, deals with a broad range of energy issues, including retail markets and consumers, distribution networks, smart grids, flexibility, sustainability and international cooperation.

www.ceer.eu



About EACH - 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 19 members from 15 different European countries.

www.eachccp.eu



About EFET – The European Federation of Energy Traders

EFET promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 28 European countries.

www.efet.org



About ENTSOG – The European Network of Transmission System Operators for Gas

ENTSOG was founded on 1 December 2009 in line with Regulation (EC) 715/2009 (Regulation) and currently comprises 45 TSO Members and 3 Associated Partners from 27 European countries, and 8 Observers from EU affiliate countries. ENTSOG works to promote the completion and functioning of the internal market and cross-border trade for gas and to ensure the optimal management, coordinated operation and sound technical evolution of the European natural gas transmission network.

www.entsog.eu



About EUGINE – the European Engine Power Plants Association

EUGINE is the voice of the European engine power plants industry, representing the leading European manufacturers of this flexible, energy-efficient, reliable and environmentally sound technology. Engine power plants are an optimal solution for backing-up and generating renewable energy (e.g. biogas), cogeneration and security of supply.

www.eugine.eu



About Eurelectric

Eurelectric represents the interests of the European electricity industry. Eurelectric represents the power sector in over 30 European countries, speaking for more than 3,500 companies in power generation, distribution and supply. Eurelectric seeks to contribute to the competitiveness of the electricity industry, provide effective representation in public affairs and promote the role of electricity to help provide solutions to the challenges of sustainable development. Eurelectric's opinions, papers and reports are formulated in working groups composed of experts from the electricity industry. This structure of expertise ensures that Eurelectric's publications are based on high-quality input with up-to-date information.

www.eurelectric.org



About Eurogas

Eurogas is an association representing the European gas wholesale, retail and distribution sectors towards the EU institutions. Eurogas was founded in 1990 and currently includes 44 companies and associations from 22 countries. Eurogas aims to strengthen the role of gas in the energy mix in an ongoing dialogue with European industry players, global gas producers, and relevant institutions and organisations. Eurogas promotes the smooth functioning of the European internal gas market, supports the EU's climate goals, and provides structured support to its members on EU policy issues.

www.eurogas.org



About Europex – the Association of European Energy Exchanges

Europex is a not-for-profit association of European energy exchanges with currently 26 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

www.europex.org



About FIA

FIA is the leading global trade organisation for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C.. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry.

www.fia.org



About GIE – Gas Infrastructure Europe

GIE is a representative organisation towards the European Institutions (European Commission, European Parliament, Council of the European Union) as well as the European bodies of regulators (ACER, CEER) and other stakeholders. GIE was formally established on 10 March 2005 as a legally independent and non-profit association. GIE - Gas Infrastructure Europe - is representing 68 member companies from 25 countries, gathering operators of gas infrastructures across Europe: transmission pipelines, storage facilities and LNG terminals.

www.gie.eu



About IETA – the International Emissions Trading Association

IETA is the leading voice of the business community on carbon markets around the world. Established in 1999, IETA's member companies include some of the world's leading corporations, including global leaders in oil, electricity, cement, aluminium, chemical, and other industrial sectors; as well as leading firms in the data verification and certification, broking and trading, legal, finance, and consulting industries.

www.ieta.org



About LEBA

The London Energy Brokers' Association ['LEBA'], under the European Venues and Intermediaries' Association ['EVIA'] promotes and enhances the value and competitiveness of Wholesale Market Venues, Platforms and Arranging Intermediaries by providing members with co-ordination and a common voice to foster and promote liquid, transparent and fair energy and commodity markets.

www.leba.org.uk



About RECS International

RECS International is a non-profit members' organisation with the mission to create transparent and reliable renewable energy markets, facilitated by commonly accepted energy attribute tracking systems. Members of RECS International represent the whole chain of the electricity market – from producers to consumers – who all endorse the principles of cost-efficient, consumer driven growth in renewable electricity. RECS International believes that the future of the electricity market will be driven by consumers and that energy attribute certificates (EACs), suitable policies and best practices must be in place to enable bottom-up growth in that market.

www.recs.org



About smartEN

smartEn is the European business association for digital and decentralised energy solutions. smartEn's members include innovators in services and technology for energy and data management, finance and research. By taking an integrated perspective on the interaction of demand and supply, smartEn's mission is to promote system efficiency, encourage innovation and diversity, empower energy consumers and drive the decarbonisation of the energy sector.

www.smarten.eu



About SolarPower Europe

SolarPower Europe is a member-led association representing organisations active along the whole value chain. Its aim is to shape the regulatory environment and enhance business opportunities for solar power in Europe.

www.solarpowereurope.org



About WindEurope

WindEurope is the association for wind energy in Europe. It represents the entire value chain: utilities/developers, manufacturers, banks, insurance companies and research institutes. Its members also include the national wind energy associations of all the countries in Europe.

www.windeurope.org

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