

# GUIDELINES ON VAT EXEMPTION

For EDA ad hoc  
projects and  
programmes

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# Incentivising defence cooperation – a foreword by the Chief Executive

The 2016 EU Global Strategy calls for investment in security and defence, with defence cooperation becoming the norm. Over the past few years, the European Union (EU) has stepped up its efforts to systematically encourage defence cooperation as **a prerequisite** for a more coherent European defence landscape with a more capable, deployable, interoperable and sustainable set of capabilities and forces, responding to the EU Level of Ambition.

Against this political background and based on its mandate provided by the Treaty on European Union, the European Defence Agency (EDA) has continued to participate in defining a European capabilities and armaments policy, supporting the Council and the Member States in their effort to improve their defence capabilities. Within its mandate, the Agency also acts as the preferred cooperation forum and management support structure at EU level for participating Member States to engage in technology and capability development activities.

The setting-up of cooperative projects can be incentivised by both financial or fiscal means and EDA has endeavoured to provide such incentives from an early stage. Since its establishment in 2004, the Agency has been enjoying VAT exemption for purchases of goods and services made for its own official use. Heads of State and Government further highlighted the need for **innovative incentives** for defence cooperation at the European Council meeting in December 2013. Following the adoption of the EDA revised Council Decision in 2015, EDA, in cooperation with Member States, the relevant European Commission services, and Belgium as its host nation, ensured that cooperative programmes run in EDA and benefiting from EDA added-value activities are eligible for **VAT exemption**. This includes the possibility of

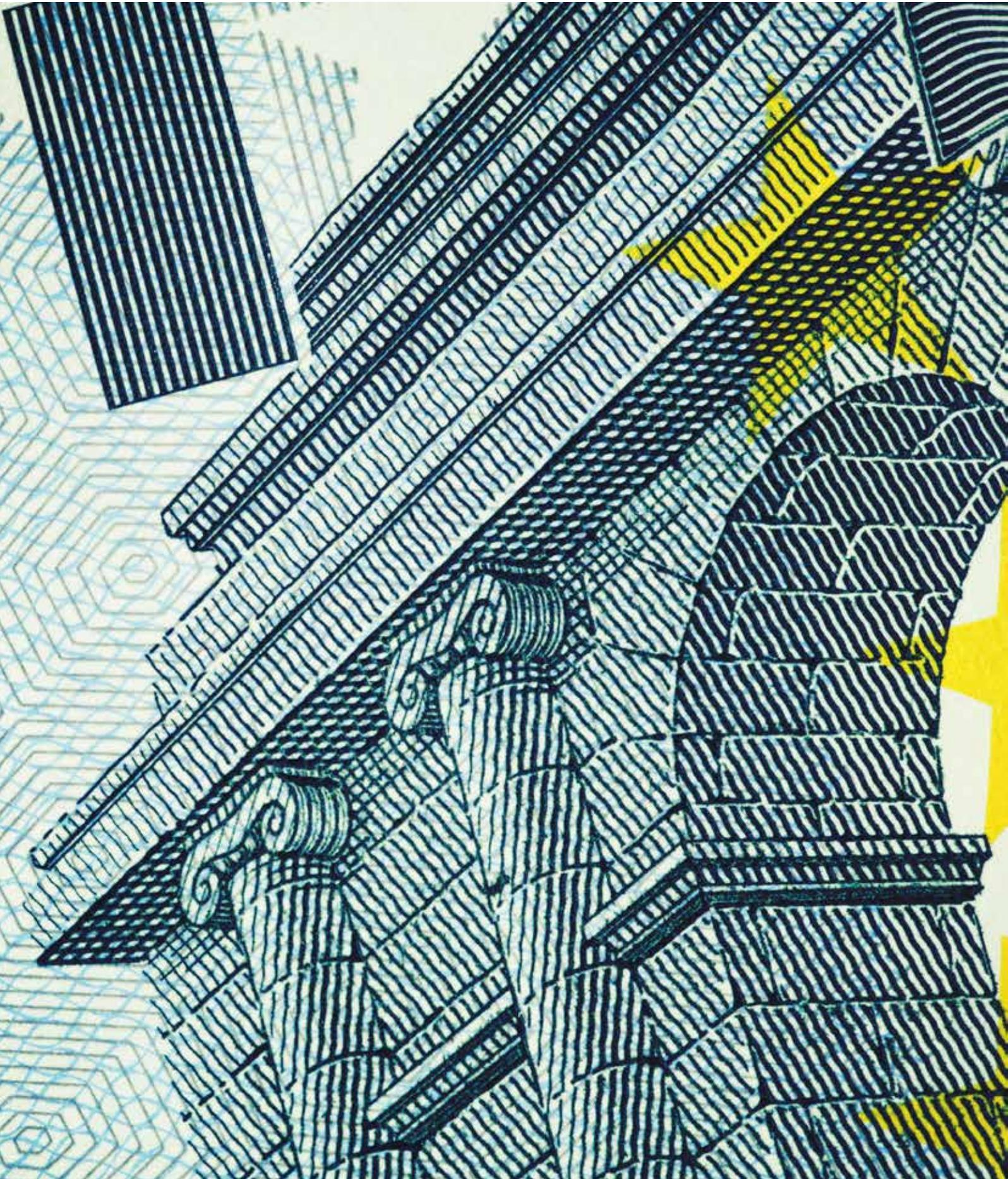
exemption also for purchases of goods and services made by EDA in the frame of ad hoc projects and programmes. I wish to thank the Belgian Ministry of Finance and the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD) for their continued advice to assist EDA in the use of this defence cooperation incentive.

The VAT exemption further adds to the advantage of implementing cooperative projects and programmes in the framework of EDA, including PESCO projects or projects receiving funding under the European Defence Fund. As its ad hoc programmes and projects are increasingly implemented in the context of the recent EU defence initiatives, the Agency stands ready to provide its tailored advice to Ministries of Defence and their counterparts within the Ministries of Finance and/or the competent national fiscal authorities, on how **to make best use of the VAT exemption** in this evolving context **in compliance with the applicable legal framework**.

With a view to providing national decision-makers and project managers with an easy-to-read document, and drawing from the experience gained during previous years, the present guidelines provide practical insight into how to benefit from VAT exemption for purchases of goods and services made by EDA in the frame of ad hoc projects and programmes. The guidelines are however not intended to be used as legal reference or interpretation of the applicable VAT-related legal provisions.

I am confident that these guidelines will serve as a useful tool towards making full use of the VAT exemption for the purpose of establishing defence cooperation as the norm.

**Jorge Domecq**  
*Chief Executive, European Defence Agency*



# 1. VAT exemptions for EDA activities and programmes

## LEGAL FRAMEWORK

The legal framework for VAT exemption applicable to EDA, as explicitly set out in Council Decision (CFSP) 2015/1835, entails a twofold tax privilege in relation to **purchases** of goods and services made by EDA:

- › for its **own** official use;
- › for its official use **in the frame of Category A and B ad hoc Programme/Project Arrangements (PAs)**.

MAIN FEATURES OF THE TWO TYPES OF TAX PRIVILEGES			
Purpose of the purchase	EDA budget involved	Legal provisions referred to in Council Decision (CFSP) 2015/1835	Conditions for the exemption established by those provisions
› EDA's own official use: e.g. supplies and services to EDA offices; studies and other operational activities directly performed by EDA	EDA General Budget (Title I and Title II Administrative Budget and Title III Operational Budget) and Additional Revenues.	Art. 27(2) of Council Decision (CFSP) 2015/1835 which, in turn, refers to: Art. 3 of Protocol No 7 on the privileges and immunities of the European Union annexed to the TEU and the TFEU ('Protocol 7') <sup>1</sup>	The privilege shall not be applied as to have the effect of distorting competition within the EU (Art. 3, para 2 of Protocol 7)
› EDA's official use when implementing Category A and B ad hoc Programme/Project Arrangements (PAs) in favour of contributing Member States: e.g. supplies and services to support the attainment of the PA objectives by the concerned contributing Member States	Ad Hoc Budgets + EDA General Budget (the latter funding the EDA added value activities).	a) Art. 151(1) (aa) of Council Directive 2006/112/EC on the common system of value added tax ('VAT Directive') <sup>2</sup> ; b) Art. 3 of Protocol 7; c) Council Decision 2015/1835	Purchases must stem from an EDA ad hoc Programme/Project Arrangements <b>AND</b> EDA's role in administering the PA in support of Member States must bring an added value <b>AND</b> EDA's role must not just entail goods or services being procured for the Member States

1. The original legal provision was Art. 3 of Decision of the representatives of the Governments of the Member States, meeting within the Council, of 10/11/2004, on the Privileges and Immunities granted to the European Defence Agency and its staff members, in turn based on Art. 26 of Council Joint Action 2004/551/CFSP. Subsequently, the relevant legal provision was enshrined in Art. 25 of Council Decision 2011/411/CFSP (repealing Council Joint Action 2004/551/CFSP) and, finally, in Art. 27(2) Council Decision (CFSP) 2015/1835 (repealing Council Decision 2011/411/CFSP).

2. Two technical clarifications are hereby provided:

- a) Art. 151(1) (aa) is explicitly referred to only in recital (18) of Council Decision (CFSP) 2015/1835. Reference to this legal provision is critical to establish the legal bases and the scope of application of the EDA's exemption under the EU VAT Directive, as interpreted by the European Court of Justice (ECJ). Art. 3 of Protocol 7 does not establish an entitlement to exemption from VAT but only an entitlement for VAT to be remitted (or refunded) in relation to "movable and immovable property". Art. 151(1) (aa) establishes an entitlement to the exemption for "the supply of goods or services" (i.e. a wider scope than the one of the recalled provision of the Protocol).
- b) Though not expressly referred to in Council Decision (CFSP) 2015/1835, also the exemption set out in Article 143(1)(fa) of the VAT Directive (for the text, see section 4 of the Guidelines) could be applicable to EDA, in case the Agency imports goods as part of added-value activities implementing an ad hoc PA. Art. 143(1)(fa) complements the scope of application of Art. 151(1) (aa) which refers only to intra-community acquisitions.

## CONDITIONS FOR APPLYING VAT EXEMPTION TO EDA'S PURCHASES IN THE FRAME OF AD HOC PROJECT OR PROGRAMME ARRANGEMENTS

Three main conditions are specifically established by Council Decision (CFSP) 2015/1835, and must be cumulatively met:

### 1. PURCHASES MUST STEM FROM AN EDA AD HOC PA

The first condition entails that the PA is established following the approval of the Steering Board<sup>3</sup>. This approval is a formal guarantee that the activities carried out by EDA in the scope of the PA are inherently linked to EDA's institutional missions, functions and tasks, as defined in Arts. 2 and 5 of Council Decision 2015/1835 and, therefore, that EDA acts "as public authority" under the meaning of Art. 13 of the VAT Directive<sup>4</sup> (provided that this does not lead to "significant distortions of competition"). It must be emphasised that purchases made by EDA for the fulfilment of its mission, functions and tasks, such as those implementing ad hoc PAs, are, in principle, to be regarded as acquisitions made for EDA's official use.

### 2. EDA'S ROLE IN ADMINISTERING THE PA IN SUPPORT OF MEMBER STATES MUST BRING AN ADDED VALUE

The second condition is twofold since it entails that EDA plays an administrative role in the PA and that this role brings an added value to the Member States.

#### A) Administrative role

The PA must foresee a key role for EDA in the administrative management of the project cycle, in activities, such as:

- > Procurement
- > Contracting
- > Managing an ad hoc bank account where contributing Member States transfer their contributions to the project/programme
- > Acceptance of deliverables
- > Approval of invoices from contractors
- > Payment of invoices to contractors<sup>5</sup>.

#### B) Added value

EDA's role must take the form of a substantive input enabling the attainment of a level of effectiveness higher than the one that could be achieved if, by hypothesis, the concerned activities were carried out by Member States individually and/or outside the EDA frame. This could be the case, for instance, for PAs aiming at one or more of the following statutory objectives of EDA: harmonisation of operational needs and/or military requirements; development of a common defence capability; contribution to wider standardisation and interoperability; support to defence technology research (R&T); strengthening of the defence industrial and technological base; improvement of the effectiveness of military expenditure.

Concretely, EDA added value activities may include: assessment of contributing Member States' needs, translation of needs into common or harmonised requirements and ultimately satisfaction of those needs through an end-to-end solution comprising, but not limited to, inputs sourced from private contractors.

<sup>3</sup>. For Cat. A PAs, cf. Art. 19.3 of Council decision No. 2015/1835; for Cat. B PAs, cf. Art. 20.3 of Council decision No. 2015/1835.

<sup>4</sup>. As interpreted by the ECJ in Case C-72/13, Gmina Wrocław according to which the activities performed as public authorities according to Art. 13, para. 1, are those carried out by public bodies within the framework of the legal regime which is peculiar to them, excluding the activities they carry out under the same legal conditions as private economic operators (see paragraph 19 and case-law cited: Case C-276/97 Commission v France, paragraph 40, Case C-358/97 Commission v Ireland, paragraph 38, Case C-359/97 Commission v United Kingdom, paragraph 50, Case C-408/97 Commission v Netherlands, paragraph 35, and Case C-260/98 Commission v Greece, paragraph 35).

<sup>5</sup>. Among the above-listed administrative tasks, contracting and payment of invoices are the ones that contribute the most to characterise, from a formal viewpoint, the key administrative role by EDA. As a matter of fact, these two administrative tasks entail that VAT-exempt invoices can be issued to EDA by the concerned economic operators.

In principle, there is no symmetry and, more importantly, no direct link (reciprocal performance or consideration) between the financial contributions transferred by contributing Member States to EDA's ad hoc budget and the overall value delivered by EDA to those contributing Member States because:

- 1) What contributing Member States demand and EDA provides in the scope of a PA is an indivisible whole (a "bundle") which comprises EDA's added value activities and the inputs from private contractors; and
- 2) EDA's added value activities are not funded by the ad hoc budget but by the general budget of the Agency to which all EDA participating Member States previously contributed based on their Gross National Income.

### **3. EDA'S ROLE MUST NOT JUST ENTAIL GOODS OR SERVICES BEING PROCURED FOR THE MEMBER STATES**

The third condition entails that EDA's role under the PA is not the one of a mere central purchasing body which procures commercial supplies and/or services from a private contractor to the benefit of the contributing Member States.

In fact, it must be demonstrated that, beyond the procuring role, EDA carries out substantive institutional activities (as described under criterion No. 2) directly performed by its staff members.

Wherever, on the contrary, the role of EDA is effectively limited to that of a mere central purchasing body (i.e. with the supply of goods or services made by the contractor directly to the contributing Member States), this will result in a triangular transaction. In such case, according to the European Court of Justice (ECJ) settled case-law<sup>6</sup>, the VAT exemption on EDA output activities will only be available if the mandating PA member is VAT exempt on an autonomous legal basis (e.g., ex Article 151(1)(c and d) of VAT Directive), because it is like EDA had acted "by proxy" which means it never had the right to dispose of the good or services which, actually, are directly destined to the contributing Member States from the outset.

The compliance check is ensured by EDA through an ex ante verification process in parallel, and therefore without creating an additional bureaucratic layer, to the workflow for the approval of the concerned PA.

<sup>6</sup>. See the ECJ decision in Case C-526/13, *Fast Bunkering Klaipėda*.



## 2. How to apply VAT exemption

### **PRACTICAL STEPS TO FOLLOW TO APPLY THE EXEMPTION IN FAVOUR OF EDA**

The process leading to VAT exemption for an EDA ad hoc activity relies on three steps followed by EDA in the following chronological order:

1. First, the qualification of an ad hoc activity as an Agency project or programme (from the outset, i.e. from the "outline description" of the concerned PA).
2. Second, EDA's added-value role in support of the project or programme has to be clearly stated in the PA underpinning the ad hoc PA and concretely performed by EDA.
3. Third, the project or programme is "administered" by EDA, including the relevant implementing contracts.

#### **STEP 1: THE AD HOC ACTIVITY IS QUALIFIED AS AN AGENCY PROJECT OR PROGRAMME**

This requirement entails that the project/programme is established following the approval of the Steering Board, which means that the exempted activities fall within the statutory competences and prerogatives of the Agency (Articles 19 and 20 of EDA Council Decision).

The objective of step 1 is to have an Agency's programme or project (condition 1): EDA will elaborate with contributing Member States the outline description of the ad hoc activity.

For the ad hoc activity to be regarded as an Agency project or programme, the following is required:

For Cat A (opt out): The Steering Board is required to approve the establishment of the ad hoc project or programme (Art 19.3 of EDA Council Decision).

For Cat B (opt in): The ad hoc project or programme shall be regarded as an Agency project or programme unless the Steering Board decides otherwise within one month of receiving the information about the ad hoc project (Art 20.3 of EDA Council Decision).

The potential for VAT exemption will be subject to a first assessment by EDA at this early stage (i.e. drafting of the Outline Description).

#### **STEP 2: PROGRAMME OR PROJECT ARRANGEMENT (PA) TO INCLUDE EDA'S ADDED-VALUE**

The objective of the second step is to address the administrative role and added value of the Agency. Contributing Member States will be invited to use EDA templates and provisions for the programme and project arrangements as a basis. EDA will share these templates and provisions with contributing Member States and provide support and advice.

These templates and provisions will then be the subject of adaptations between EDA and contributing Member States. For VAT exemption to apply, the following should be defined in the relevant arrangement to be concluded between the contributing Member States and EDA:

- > The role of the Agency (EDA's added-value activities);
- > The fact that EDA is contractually and financially managing the project and that the supplier will invoice EDA;
- > Any relevant clause(s) defining the obligations and rights of EDA.

EDA will verify that the conditions for VAT exemption are met throughout the adaptations. Where this is not the case, contributing Member States will be informed accordingly.

### STEP 3: PROGRAMME MANAGEMENT

After the signing of the ad hoc PAs, EDA will launch the relevant procurement procedure(s) and conclude the contract(s) with the supplier(s). EDA will issue a VAT exemption certificate for the company(ies) to which the contract is awarded, at their request and no later than at the moment of the issuing of the invoice(s). Where requested and with the agreement of the supplier(s), copies of the certificate(s) will be made available to the project/programme management board.

### WHAT TO UNDERSTAND BY "EDA'S ADDED-VALUE"?

As outlined above, EDA's added-value is a **key condition** for VAT exemption to apply on EDA's purchases. EDA's added-value in support of an ad hoc activity should be defined between contributing Member States and EDA and be properly reflected in the PA.

Beyond EDA's administrative role in support of Member States, EDA should clearly bring a **substantive input** to the ad hoc activities, in line with its mission and tasks. This can take different ways as outlined below:

#### DEVELOPMENT OF COOPERATIVE RESEARCH & TECHNOLOGY & DEVELOPMENT (R&T&D)

EDA designs and manages cooperative R&T&D projects on behalf of Member States. EDA's added-value is to identify critical technologies, consolidate the requirements of interested Member States, elaborate the cooperative investment plan with a view to developing cutting-edge technologies in a

cooperative manner, and prepare the capabilities of tomorrow including in support of CSDP. Through its arrangements with the European Commission, EDA also facilitates synergies with Horizon 2020 or with defence research funded by the European Union (Pilot Project or Preparatory Action related to CSDP). It also contributes to enhancing the competitiveness of the security & defence industry in Europe.

#### DEVELOPMENT OF MULTINATIONAL CAPABILITIES

EDA supports Member States in the establishment of multinational capabilities, from the identification of requirements to the development of through-life cycle solutions. EDA's added-value is to consolidate the requirements among interested Member States, to develop relevant R&T&D, to coordinate the relevant cooperative framework (Memorandum of Understanding, legal arrangements, etc.), to design the procurement model, and/or to facilitate solutions for operating the multinational capability.

#### DEVELOPMENT OF POOLED AND SHARED SERVICES

EDA elaborates, manages and administers framework contracts to facilitate access to certain services. EDA's added-value is to undertake the market survey in support of contributing Member States and on the basis of consolidated requirements, to offer an efficient European solution including in support of CSDP missions and operations, to facilitate the access to this capacity to all Member States and/or to other EU bodies (so requesting) and to ensure interoperability among interested Member States/CSDP missions and operations. VAT exemption cannot apply to cases where EDA's role only relates to goods or services being procured for the Member States: in such cases, EDA does not add value.

### DEVELOPMENT OF COMMON THROUGH-LIFE CAPABILITY SOLUTIONS

EDA acts as a central purchasing body in compliance with the Defence & Security Procurement Directive and develops common solutions for the through-life cycle of a certain capability, for instance: common basing/storage, common maintenance, common logistics solutions, common training, etc. In such cases, the added-value of EDA is to build common solutions in support of the capability in order to facilitate cooperation among Member States, to avoid duplication and to enhance interoperability. EDA consolidates the requirements, establishes the business case and defines the appropriate political and/or legal arrangements (including security of supply arrangements). In such instances, EDA's role goes beyond the purchase of goods or services for the Member States.

### REPORTING MECHANISM

EDA is delegated by the Belgian Ministry of Finance to issue VAT exemption certificates to its suppliers; this delegation waives EDA the obligation to obtain a written prior approval by the competent authorities of Belgium. However, EDA **is required to communicate on a quarterly basis** to the Belgian Ministry of Finance **the list of VAT exempted invoices** issued by EDA' suppliers.

### PROCEDURE FOR REIMBURSEMENT OF VAT ALREADY PAID

Direct suppliers to EDA will invoice EDA VAT free<sup>7</sup>. Other intermediate suppliers in the supply chain – which dispose of the goods as owners – will have the right to deduct input VAT or will be reimbursed by the respective national fiscal authorities subject to the applicable national VAT legislation.

<sup>7</sup>. In some cases, some suppliers may opt for the procedure of Article 151(2) of the VAT Directive in agreement with EDA.



## 3. Frequently asked questions

### **DOES VAT EXEMPTION APPLY TO PURCHASES MADE BY EDA IN SUPPORT OF CSDP MISSIONS AND OPERATIONS OR MEMBER STATES' ARMED FORCES OPERATING OUTSIDE OF THE EU?**

In the scope of PAs, purchases of services or supplies made by EDA for CSDP missions and operations or for Member States' national forces deployed in theatres of operations outside of the EU are not subject to VAT in the EU because they are accounted for as "export". In principle, for such purchases, VAT applies in the country of destination, unless, as it is usually the case, a special fiscal exemption exists pursuant to a different international legal instrument concluded by the concerned CSDP entity/Member State and the host country (e.g. SOMA, SOFA).

### **DOES EDA VAT EXEMPTION IN FAVOUR OF MEMBER STATES DISTORT COMPETITION IN THE EU MARKET?**

In principle, the activities carried out by EDA in the scope of a PA cannot be regarded as a taxable provision of services or supplies under the meaning of the VAT Directive. EDA's activities under the PA, by virtue of their intrinsic nature of exclusively public endeavours (i.e. development of defence capabilities) under a special legal regime (i.e. Council Decision 2015/1835 as further defined in the ad hoc PA), do not distort in a significant way a market where other economic operators can freely compete.

### **WILL VAT EXEMPTION HAVE AN IMPACT ON THE ROLE AND RIGHTS OF MEMBER STATES?**

EDA's added value role does not call into question the fact that participating Member States are the **beneficiaries** of any EDA project or programme. Member States remain the end-users of any capability benefiting from the non-applicability of VAT by EDA.

EDA's added value activities do not put into question the fact that the beneficiaries are ultimately the participating Member States as the execution by the Agency of such projects and programmes is part of its functions and tasks. Furthermore, EDA's added value role does not change the possible role of a designated lead nation in a given PA.

Application of VAT exemption in favour of EDA will have no impact on the usual initialisation process of the projects: outline Description, programme/project arrangement, and contract. Nor will it have an impact on the duration of negotiations.

### **WILL ALL MEMBER STATES CONTRIBUTING TO AN AD HOC PROJECT OR PROGRAMME BENEFIT FROM THE NON-APPLICATION OF VAT?**

As a general rule, once the criteria for VAT exemption are deemed to be met, VAT exemption should be applied to EDA's purchases in the scope of a PA. Subsequently EDA, acting as a public authority, does not charge VAT on its supplies to contributing Member States, with the understanding that there is no significant distortions of competition.

The PA will define the specific needs of each Member State, including provisions on VAT aspects; and the contract(s) implementing the PA will reflect the necessary arrangements.

### **WHO AND WHEN WILL THE APPLICATION OF VAT EXEMPTIONS IN FAVOUR OF EDA BE CONFIRMED?**

The potential for VAT exemption will be assessed by EDA and approved by contributing Member States at an early stage (Outline Description of the project/programme).

Once the negotiation of the programme or project arrangement is completed, EDA will re-assess, on the basis of the final text of the PA, whether the conditions for the exemption are still met.

EDA will issue a certificate for VAT exemption to the supplier(s) in accordance with legislation on the matter, at their request and no later than the moment of the issuing of invoice(s).

Where this is the case: EDA will confirm that the requirements for VAT exemption are in line with the guidance given by DG TAXUD and the Belgian fiscal authorities.

Where this is not the case: EDA will propose changes to the arrangement if so desired by the contributing Member States.

### **WILL EDA CHECK VAT EXEMPTION WITH THE BELGIAN FISCAL AUTHORITIES OR THE COMMISSION ON A CASE-BY-CASE BASIS?**

Art. 27.3 of the EDA Council Decision, and the legal bases referred therein, are directly applicable by EDA, upon its internal verification procedure.

As stated in "Reporting Mechanism", EDA will submit reports to the Belgian fiscal authorities on a quarterly basis and provide, as and when requested, access to

relevant information to the Belgian fiscal authorities or to the European Commission (DG TAXUD).

### **WHO WILL BE THE OWNER OF THE RESULTS OF AN EDA AD HOC PA THAT BENEFITTED FROM VAT EXEMPTION?**

VAT exemption has no impact on the ownership of the results of ad hoc projects and programmes. Each arrangement underpinning an ad hoc activity will duly reflect the needs of the contributing Member States in terms of ownership of results, use, co-ownership and any other relevant form.

### **ARE SUPPLIERS INVOICING EDA VAT FREE?**

It should be noted that VAT exemption will be applied to EDA direct purchases. Suppliers will therefore submit VAT-free invoices to EDA. Intermediate suppliers which are established in Member States and dispose of the goods as owners will have to conform to their respective national legislation to have the right to deduct input VAT or to have it refunded from their national fiscal authorities in line with national legislation.

## 4. Legal references

### VAT DIRECTIVE 2006/112

#### Art. 151

*1. Member States shall exempt the following transactions:*

(...)

**(aa) the supply of goods or services** to the European Community, the European Atomic Energy Community, the European Central Bank or the European Investment Bank, or **to the bodies set up by the Communities to which the Protocol of 8 April 1965 on the privileges and immunities of the European Communities applies**, within the limits and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, **in so far as it does not lead to distortion of competition.**

#### Article 143

*1. Member States shall exempt the following transactions:*

(...)

**(fa) the importation of goods** by the European Community, the European Atomic Energy Community, the European Central Bank or the European Investment Bank, or **by the bodies set up by the Communities to which the Protocol of 8 April 1965 on the privileges and immunities of the European Communities applies**, within the limits and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition;

### PROTOCOL NO 7 ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

#### Art. 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

**The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or**

**sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.**

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

### COUNCIL DECISION 2015/1835

#### Preamble - recital (18)

The fact that **these ad hoc projects and programmes fall within the functions and tasks attributed to the Agency** is underpinned by the efforts made to clarify the status of these activities as integral components of the Agency's budget. It should ensure that only activities where **the role of the Agency in administering projects or programmes in support of Member States brings an added value can benefit from the exemption in Article 3 of Protocol No 7 on the privileges and immunities of the European Union ('Protocol No 7'), annexed to the TEU and the TFEU, and point (aa) of Article 151(1) of Council Directive 2006/112/EC (1).** For such exemption to apply, the Agency has to have an added-value role. The exemption would therefore **not extend to cases where that role merely entails goods or services being procured for the Member States.**

#### Art. 27 Privileges and immunities

(...)

2. The privileges and immunities of the Agency are those provided for in Protocol No 7.

3. In particular, **the second paragraph of Article 3 of Protocol No 7 applies to activities where the role of the Agency in administering projects or programmes in support of Member States brings an added value, and not to cases where that role merely entails goods or services being procured for the Member States.**



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