

# VAT Exemption

**Cooperation in defence leads to greater interoperability, more operational effect on the ground as well as to concrete savings throughout the life-cycle of a capability.**

The decision to launch new cooperative defence programmes in the framework of the European Defence Agency (EDA) lies with Member States. In order to incentivise cooperation, the EDA set-up different solutions and instruments:

- At **policy level**, to mainstream defence cooperation in strategic documents (Policy Framework for systematic and long-term cooperation);
- at **planning level**, to ensure that core priorities are reflected in national defence planning (Capability Development Plan);
- at **project level**, to support the development and implementation of projects.

Heads of State and Government further highlighted the need for **innovative incentives** for defence cooperation during the European Council in December 2013.

Consequently, the EDA in cooperation with the Member States, the relevant European Commission services as well as the Belgian authorities worked on provisions for VAT exemption for EDA projects and programmes. This was adopted through the **revised Council Decision** defining the statute, seat and operational rules of the EDA (Council Decision (CFSP) 2015/1835) on 12 October 2015.

## VAT Exemption

The revised Council Decision includes the clause that cooperative defence projects and programmes are exempt from VAT as long as the Agency has an **added value role**.

EDA's adding value does not put into question the fact that the participating Member States are the **beneficiaries** of any EDA project or programme. Member States remain the end-users of a capability benefiting from VAT exemption.

The applicability of the VAT exemption is not linked to the **nature of the activity** (research, services, capability programmes, etc.): it is linked to the role EDA is playing in **support** of this activity.

EDA together with the Member States contributing to a project will define this added-value on a case by case basis. More practically, the support may range from technical expertise, pooling demand, building a multinational capability or synergies with EU wider policies, promoting interoperability to full administrative and contractual management of a cooperative initiative.

## Conditions

For the VAT exemption to apply, the three following conditions need to be met:

- VAT exemptions will only apply to activities that qualify as an Agency project or programme in accordance with the adoption process included respectively in Articles 19 and 20 of the Decision;
- The added value role of EDA's in the project or programme;
- EDA should administer the project/programme in support of Member States. EDA has to put in place the necessary procurement and contractual arrangements, manage the financial resources, pay the supplier(s); it implies the management of the financial transactions associated with the project (bank account); and the supplier(s) will need to invoice the Agency (VAT free).

VAT exemption cannot apply to cases where that EDA's role merely entails goods or services being procured for the Member States: indeed, it should not have the effect of distorting competition. Nor should it be used with a view to circumventing the 2006 VAT Directive.

## Legal basis

The Council Decision defining the statute, seat and operational rules of the EDA (Council Decision (CFSP) 2015/1835) was adopted by the Foreign Affairs Council on 12 October 2015. The legal basis for VAT exemption are Protocol No 7 of the EU Treaties on the privileges and immunities of the European Union and Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The VAT exemption is compliant with EU law; and is not market distorting.

## Examples

VAT exemption applies to projects of different nature, for example:

- **Development of shared services:** with the EU SatCom Market, the Agency engaged in a framework contract to facilitate access to satellite communication services for Member States as well as CSDP missions and operations through the Athena mechanism. They profit from pooled

demand, easy access, and limited administrative burden. Currently eleven Member States plus the Athena mechanism participate in the initiative.

- **Development of multinational capabilities:** the Agency elaborated in cooperation with Member States an initial roadmap for a potential Biological Joint Deployable Exploitation and Analysis Laboratory (Bio-JDEAL). This laboratory would provide Member States with a training and deployable capability.

For both projects, the Agency is or will be responsible for procurement and contract tasks, manages orders as well as payments and provides technical advice as needed and thus adds clear technical and administrative value to the project.

## How does it work?

Application of the VAT exemption will have no impact on the usual initialisation process of EDA projects ranging from an outline description, to programme/project arrangement and contract. It will neither impact the duration of the negotiation. The VAT exemption is thus a quick win for Member States as only a few provisions have to be included in the programme arrangement and the contract.