

# 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 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. In line with its functions and tasks set out in article 5 of the the Council Decision, EDA can bring **added-value to ad hoc activities in different ways**.

Some examples: EDA can support the development of multinational **capabilities** (establishment of a multinational fleet); EDA can support **interoperability** of armed forces, build **synergies** with EU wider policies, **pool the demand** to support the European Defence Technological and industrial base, support **cooperative programmes**, design cooperative frameworks, support **security of supply**, etc.

## Conditions

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

- Exemption will apply to activities that qualify as **Agency projects or programmes** (Cat A or B EDA projects and programmes) in accordance with the adoption process included respectively in Articles 19 and 20 of the EDA Council Decision.
- EDA's role shall **add value** to the project or programme in support of Member States.
- EDA shall **administer the project/programme** in support of Member States. EDA in that case will have 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 (EDA 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.

## VAT exemption applied to EDA ad hoc activities - a few scenarios

**Development of cooperative R&T&D:** EDA's added-value is to maximise cooperative defence R&T in critical technologies, ensure the development of cutting-edge technologies in a cooperative manner and prepare the capabilities of tomorrow in support of CSDP. EDA also contributes to enhancing the competitiveness of the security & defence industry in Europe. Through its arrangements with the European Commission, EDA also facilitates synergies with Horizon 2020 or with defence research funded by the EU (Pilot Project or Preparatory Action related to CSDP).

**Development of a multinational capability:** EDA builds multinational capabilities, from the identification of requirements to life-cycle support. EDA's added-value is to consolidate the requirements among interested

Member States, develop relevant R&T&D, coordinate the relevant cooperative framework (memorandum of understanding, legal arrangements, etc), design the procurement model, facilitate solutions for operating the multinational capability.

**Development of pooled and shared services:** EDA builds and operates framework contracts to facilitate access to services. The added-value of EDA is to conduct the market survey in support of Member States, offer an efficient European solution including in support of CSDP missions and operations, facilitate the access to this capacity to all Member States and/or to other EU bodies willing to do so and depending on their requirements, and to ensure interoperability among interested Member States. VAT exemption cannot apply to cases where that EDA's role merely entails goods or services being procured for the Member States: in such a case, EDA does not add value.

**Development of common through-life capability solutions:** EDA acts as a central purchasing body in compliance with the Security & Defence Procurement Directive and also develops common solutions for the through life-cycle of a certain capability, for instance: common basing/storage, common maintenance, common logistics solutions, common training center, 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, avoid duplication and increase interoperability. EDA's role is going beyond goods or services for the Member States.

## How does it work?

Application of the VAT exemption will have no impact on the usual initialisation process of EDA projects: outline description, programme/project arrangement, 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.