



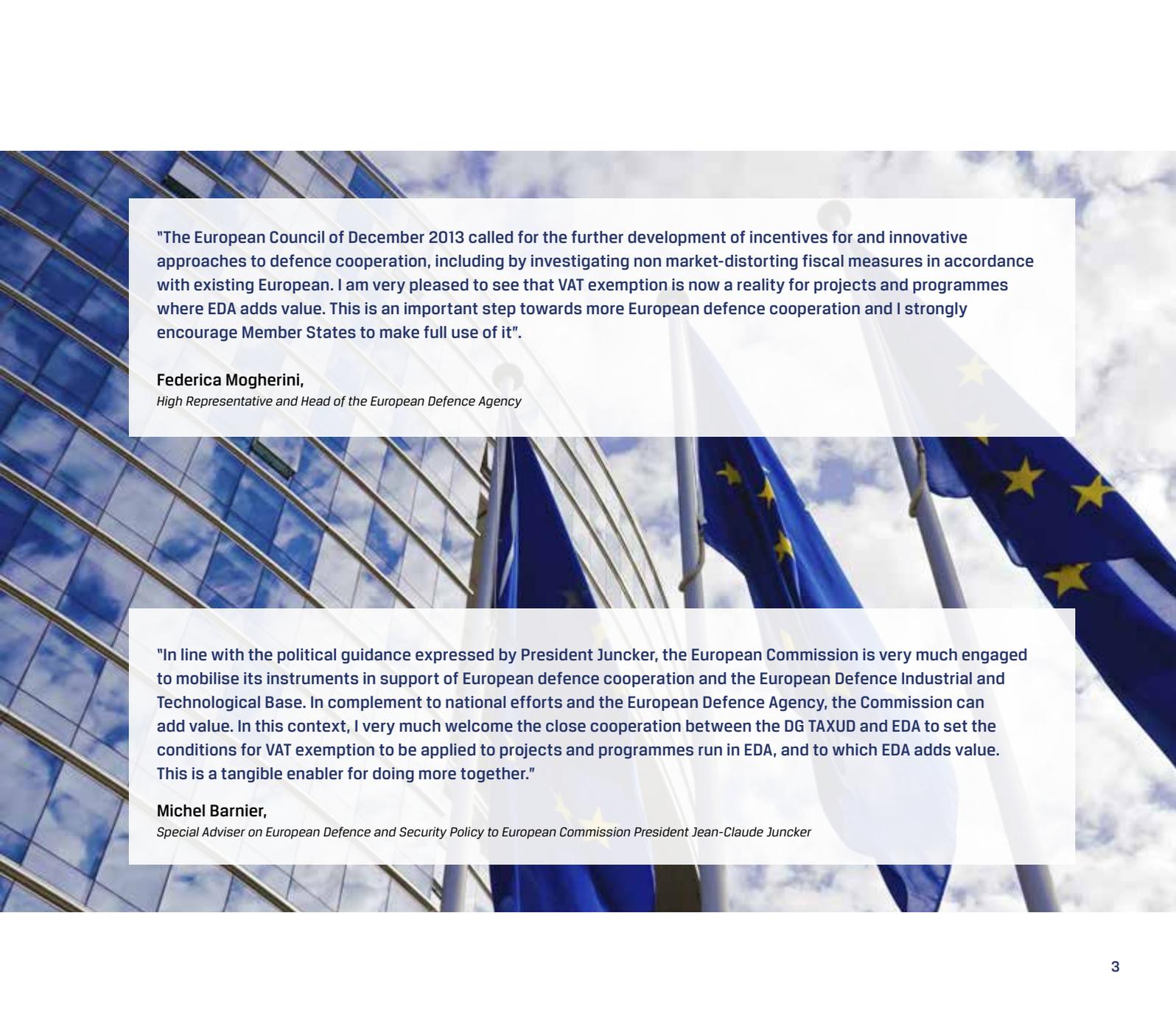
GUIDE TO VAT EXEMPTION

FOR EDA AD HOC PROJECTS
AND PROGRAMMES



Foreword by Jorge Domecq	5
1. Incentives for defence cooperation	6
2. VAT exemption	7
3. Guide: how to apply VAT exemption	9
4. Frequently Asked Questions	13
5. VAT exemption: from idea to reality	15

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"The European Council of December 2013 called for the further development of incentives for and innovative approaches to defence cooperation, including by investigating non market-distorting fiscal measures in accordance with existing European. I am very pleased to see that VAT exemption is now a reality for projects and programmes where EDA adds value. This is an important step towards more European defence cooperation and I strongly encourage Member States to make full use of it".

Federica Mogherini,

High Representative and Head of the European Defence Agency

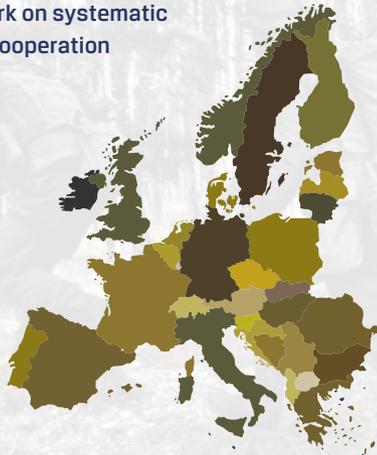
"In line with the political guidance expressed by President Juncker, the European Commission is very much engaged to mobilise its instruments in support of European defence cooperation and the European Defence Industrial and Technological Base. In complement to national efforts and the European Defence Agency, the Commission can add value. In this context, I very much welcome the close cooperation between the DG TAXUD and EDA to set the conditions for VAT exemption to be applied to projects and programmes run in EDA, and to which EDA adds value. This is a tangible enabler for doing more together."

Michel Barnier,

Special Adviser on European Defence and Security Policy to European Commission President Jean-Claude Juncker

"Defence cooperation does not limit Member States' freedom of national action; rather it makes their collective efforts overall more sustainable and credible."

Policy Framework on systematic
and long-term cooperation



FOREWORD BY JORGE DOMECCQ

Following the adoption of the European Defence Agency (EDA) revised Council Decision in October 2015, cooperative programmes run in EDA and benefiting from EDA added-value are eligible for VAT exemption.

This is a major achievement.

First, it can act as an important incentive for defence cooperation, without being an end in itself. It generates an attractive business case for cooperative projects and programmes in the framework of EDA, something which is very much needed to foster European defence cooperation.

Second, it reinforces the role of the Agency as the European body for generating defence cooperation, as defined in the Treaty of the European Union. For VAT exemption to be applicable, EDA should add value to the cooperative programmes and projects. Maximising EDA's potential will lead to an increase in cooperative R&T projects, more multinational capabilities and greater interoperability. We have unique expertise and instruments in support of Ministries of Defence.

Third, this is also a clear demonstration of the benefits to be gained from closer cooperation with the European Commission. VAT exemption would not have been achieved without such cooperation with DG TAXUD. At the European level, we can provide incentives to facilitate defence cooperation. VAT exemption is one such incentive.

This measure will strengthen the EU's ability to act on the global stage and contribute to reinforcing the Common Security and Defence Policy. And, ultimately, the more we do at a European level, the better it is for NATO.

At a time of increasing threats in Europe and its near neighbourhood, I see this as a tangible outcome that should lead to more and better cooperative capabilities in Europe: Member States are in the driving seat; the EU, and EDA in particular, can help, support and facilitate.

Jorge Domeccq

Chief Executive, European Defence Agency

1. INCENTIVES FOR DEFENCE COOPERATION

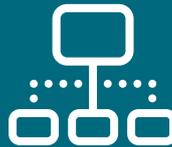
Cooperation in defence leads to greater interoperability, improved operational effectiveness as well as concrete savings throughout the life-cycle of a capability.

The decision to launch new cooperative defence programmes in the framework of EDA lies with its Member States. The Agency has established a variety of solutions and instruments to **incentivise cooperative efforts and to improve the conditions for a more cooperation-friendly environment:**

At the *policy level*, to mainstream defence cooperation in strategic documents (Policy Framework for systematic and long-term cooperation) to ensure the necessary political commitment.



At the *planning level*, to ensure that core priorities are reflected in national defence planning (Capability Development Plan).



At the *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 at the European Council meeting in December 2013.

Consequently EDA, in cooperation with Member States, the relevant European Commission services, and the Belgian authorities, worked on provisions for **VAT exemption** for EDA projects and programmes which were adopted in October 2015 through the revised Council Decision.

2. VAT EXEMPTION¹

LEGAL BASIS

The **Council Decision** defining the statute, seat and operational rules of the EDA (Council Decision (CFSP) 2015/1835, hereinafter EDA Council Decision) was adopted by the Council on 12 October 2015: it sets out the **legal framework for VAT exemption applicable to ad hoc projects and programmes run in EDA**. Exemption is granted in accordance with the 2006 VAT Directive.

Article 27(3) of the Council Decision states: "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". Recital 18 of EDA Council Decision indicates that "for such an exemption to apply, the Agency has to have an added-value role."



PROVISION

VAT exemption applies to activities where the role of the Agency in administering projects or programmes in support of Member States brings added-value.

VAT exemption derives from the Agency being subject to the Provisions of Protocol 7 of the Treaties, as established in Article 27 of EDA Council Decision.

¹ VAT exemption applies to goods and services in the context of the direct activities performed by the Agency in the execution of the general budget and/or additional revenues. This documents focuses only on VAT exemption for EDA ad hoc projects and programmes.

CONDITIONS

With regard to cooperative programmes or projects, VAT exemption applies exclusively to those **run in the framework of EDA**. In this specific context, and for VAT exemption to apply, **the following three conditions need to be met:**

Activities will qualify as *Agency project or programme, ad hoc category A or B*, in accordance with the process to adopt such projects/programmes, established respectively, in Articles 19 and 20 of EDA Council Decision.



EDA's role will *add value* to the project or programme in support of Member States.



EDA will administer the project/programme *in support of Member States*. In that event EDA should put in place the necessary procurement and contractual arrangements, manage the financial resources, pay the supplier(s), and manage the financial transactions associated with the project (EDA bank account). Furthermore, supplier(s) should invoice the Agency.



The applicability of VAT exemption **is not linked to the nature of the cooperative activity** (R&T, R&D, services, procurement, etc.): it is linked to the **Agency being an EU body** and the role it plays in support of the project or programme.

Although EDA is exempt from VAT to meet its own requirements in terms of goods or services, the applicability of VAT exemption to ad hoc programmes and projects requires verification to ensure that all of the eligibility criteria have been met. Verification will be done by EDA, in close coordination with contributing Member States from the outset of the activity in question.

VAT exemption cannot apply to those cases where EDA's **role merely entails goods or services being procured for 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.

3. GUIDE: HOW TO APPLY VAT EXEMPTION

PRACTICAL STEPS TO FOLLOW

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

First, the qualification of an ad hoc activity as an Agency project or programme (outline description).

1

Second, EDA's added-value in support of the project or programme has to be clearly stated in the Programme Arrangement underpinning the project or programme.

2

Third, the project or programme is "administered" by EDA, including the relevant implementing contracts, etc.

3

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

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 shall 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 assessed at this early stage between EDA and contributing Member States.



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 (conditions 2 and 3).

Contributing Member States will be invited to use EDA templates and provisions for the programme and project arrangements as a basis. EDA will table these templates and provisions to contributing Member States and provide support and advice.

These templates and provisions will be negotiated between EDA and contributing Member States. For VAT exemption to apply, the following should be defined in the relevant arrangement between the contributing Member States together with EDA:

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

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



STEP 3: PROGRAMME MANAGEMENT

After signature of the ad hoc arrangement, EDA will launch the relevant procurement procedure(s) and conclude the contract(s) with the supplier(s).

EDA will issue a certificate for VAT exemption to the company(ies) to which the contract is awarded in accordance with legislation, 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. 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 arrangement. 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 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, develop relevant R&T&D, coordinate the relevant cooperative framework (Memorandum of Understanding, legal arrangements, etc.), design the procurement model, and/or facilitate solutions for operating the multinational capability.

VAT: A QUICK WIN FOR MEMBER STATES

One of the projects to which VAT exemption has been applied is the EU SatCom Market, an EDA project where the Agency provides for satellite communication services, currently for eleven Member States, the Athena mechanism and EUCAP Sahel Niger. The EDA is responsible for procurement and contract tasks, manages orders as well as payments, and provides technical advice as needed: it thus adds clear technical and administrative value to the project. As a consequence, each order - which comes from individual or groups of Member States- benefits from VAT exemption.

One Member State has for example recently submitted an order worth some €1.3m for services for one year. Due to the VAT exemption, this Member State will not have to pay VAT with a corresponding value of €273k, which represents about three months of free services.



Development of pooled and shared services

EDA elaborates, manages and administers framework contracts to facilitate access to certain services. The added-value of EDA is to undertake the market survey in support of contributing Member States and on the basis of consolidated requirements, 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 the EDA's role merely entails 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 Security & Defence 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, avoid duplication and enhance interoperability. EDA consolidates the requirements, establishes the business case and defines the appropriate political and/or legal arrangements (including security of supply arrangements). EDA's role here goes beyond the purchase of goods or services for the Member States.

REPORTING MECHANISM

EDA communicates on a **quarterly basis the list of VAT exempted invoices** to the Belgian fiscal authorities.

PROCEDURE FOR REIMBURSEMENT OF VAT PAID

Suppliers will invoice EDA VAT free². Intermediate suppliers in the supply chain will have to be reimbursed on a national basis by the national fiscal authorities and will be subject to their national VAT legislation.

EDA is delegated by the Belgian Ministry of Finance to issue VAT exemption certificates. This delegation can be provided at the request of any of EU Member States if so required.



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

4. FREQUENTLY ASKED QUESTIONS

WILL VAT EXEMPTION HAVE AN IMPACT ON THE ROLE 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 VAT exemption.

Application of VAT exemption will have no impact on the usual initialisation process of EDA projects: outline description, programme/project arrangement, and contract. Nor will it have an impact on the duration of negotiations. VAT exemption will thus be a **quick win** for Member States because of the small number of provisions that need to be included in the programme arrangement and contract.

As set out in the Commission Services' VAT Working Paper 853 dated 29 April 2015, "EDA's adding value does 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". Nor does VAT exemption change the role of a lead nation. Member States remain the end-users of a capability benefiting from VAT exemption.

WILL VAT EXEMPTION APPLY TO ALL MEMBER STATES CONTRIBUTING TO AN AD HOC ACTIVITY?

As a general rule, once the criteria for VAT exemption are deemed to be met, VAT exemption should apply to the EDA ad hoc project or programme. The PA will define the specific needs of each Member State, including on VAT aspects; and the contract(s) implementing the PA will reflect the necessary arrangements.

WHO AND WHEN WILL THE APPLICATION OF VAT EXEMPTION TO AN EDA AD HOC ACTIVITY BE CONFIRMED?

The potential for VAT exemption will be assessed between EDA and 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 assess, on the basis of the draft arrangement, whether the requirements are met:

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.



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

IS EDA CHECKING VAT EXEMPTION WITH THE BELGIAN FISCAL AUTHORITIES OR THE COMMISSION ON A CASE-BY-CASE BASIS?

No. The conditions for VAT exemption to apply to EDA ad hoc activities have been clarified with the Belgian fiscal authorities and DG TAXUD. The EDA Council Decision has been amended in order to reflect the relevant provisions: through its adoption, the EDA Council Decision constitutes the framework for VAT exemption to apply.

EDA will report to the Belgian fiscal authorities on a quarterly basis and provide access to relevant information when required by the Belgian fiscal authorities or by DG TAXUD.

WHO WILL BE THE OWNER OF THE RESULTS OF AN EDA AD HOC ACTIVITY BENEFITING 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 apply to **direct** suppliers to EDA. Unless opting for refund in line with art.151(2) of the VAT directive, suppliers will therefore submit VAT-free invoices to EDA. Intermediate suppliers located in Member States will have to conform to their national legislation and to have the VAT refunded from their national fiscal authorities in line with national legislation.

5. VAT EXEMPTION: FROM IDEA TO REALITY

VAT exemption applicable to EDA ad hoc programmes and projects was achieved after a number of years of negotiations and discussions, involving Member States, Belgium as the host nation of EDA (Belgian fiscal authorities) and Commission services (DG TAXUD).

First, the conditions for VAT exemption had to be clarified with the Belgian authorities and DG TAXUD in 2011-2012, to secure the legal base and provide a sound framework. From the outset, the shared understanding was that EDA must not become a vehicle for circumventing the VAT directive. VAT exemption should reinforce the mission of EDA as defined by the Treaty.



Discussion took place on identifying the legal framework for setting out the conditions: it was clear that the Council Decision, as the legal act defining EDA, would be the best way to articulate this. Relevant changes to the Council Decision were then elaborated with the Belgian fiscal authorities and DG TAXUD in 2012-2013.



Pending the launch of the process for the review of the Council Decision (which started in July 2014), the Belgian authorities decided in 2013 to grant EDA VAT exemption for some ad hoc projects on an interim basis. This was an important step to test VAT exemption on some pilot cases.



The specific provisions to cover VAT exemption proposed by the Agency were discussed in the Relex Working Group late 2014 and in 2015. Once Relex agreed on the final text of the Council Decision it was submitted to the Council, which adopted the revised Council Decision in October 2015.





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