

ISSUE OF VAT COSTS

I. NON ELIGIBILITY OF VAT COSTS WITHIN DCI THEMATIC PROGRAMMES AND EIDHR INSTRUMENT

The Development Cooperation Instrument Regulation No 1905/2006 governs the 5 thematic following programmes:

- Non State Actors and Local Authorities in Development,
- Investing in People,
- Food Security,
- Environment,
- Asylum and Migrations.

The Regulation No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide rules all the human rights projects funded since the 2007 budget.

These 2 Regulations refuse the eligibility of all taxes, incl. VAT:

- Article 25.2 of the DCI Regulation state: "*Community assistance shall not be used for paying taxes, duties or charges in beneficiary countries.*"
- Article 13.6 of the EIDHR Regulation includes the same provision: "*Community assistance shall not be used for paying taxes, duties or charges in beneficiary countries.*"

One should know that the Financial Regulation and its implementing rules (that on the contrary allows the eligibility of VAT costs when they can not be reclaimed), and consequently the EuropeAid practical guide and its annexes do not prevail over the DCI or the EIDHR regulations.

This issue of non eligibility of VAT costs did not exist within previous funding instruments (for the period 2000-2006), for which different regulations were applicable. Beforehand, the rule was actually that VAT costs can be eligible when the grant beneficiary can prove that it can not reclaim them.

So the problem of non eligibility of VAT cost is applicable for all new contracts signed within the DCI and EIDHR instruments as of 2007 budget, that is to say all grants that in majority have been signed in 2008 onwards.

We may also notice that the guidelines of calls for proposals now state that :

"The following costs are not eligible:

- (...) *taxes, including VAT, unless the Beneficiary (or the Beneficiary's partners) cannot reclaim them **and the applicable regulations do not forbid coverage of taxes.***"

EuropeAid G7 unit in charge of rules and procedures is well informed about this very annoying issue for grant beneficiaries, and the only solution for now is to revise the DCI and EIDHR regulations. A mid-term review of these regulations is foreseen in 2009/2010. CONCORD through its FDR working group will lobby all relevant stakeholders to remove these provisions.

In the mean time, grant beneficiaries have two options:

- either, as EuropeAid G7 unit recommends it, discuss this issue with the contracting authority (EuropeAid Brussels or Delegation) before the signature of the contract and have a derogation reg. the eligibility of VAT costs included in the specific conditions. This option does not however seem really manageable, as there is little chance that the contracting authority will grant waivers to the DCI or EIDHR legal basis.
- or go on working as we used to, without mentioning detailing explicitly the VAT share in the budget presented in the projects and approved by the EC. We can reasonably hope to be able to change article 25.2 of the DCI regulation and 13.6 of the EIDHR Regulation and lobby for a retroactive application of the revised procedures.

But there is no guarantee, and **all grant signatories must keep in mind that all the VAT costs included in their agreed projects may be one day considered as ineligible by the EC (audit of project can happen up to 7 years after the date of the last payment !).**

II. **POTENTIAL ELIGIBILITY OF VAT COSTS WITHIN THE 10TH EUROPEAN DEVELOPMENT FUND**

Article 172.a of the Rules for implementing the Financial Regulation applicable to the general budget of the European Communities that apply *mutatis mutandis* to the Financial Regulation applicable to the 10th EDF¹ states that :

“... the following costs may be considered as eligible by the authorising officer responsible: (...) (c) value added tax paid, and which cannot be refunded to the beneficiary according to the applicable national legislation”.

¹http://ec.europa.eu/europeaid/work/procedures/legislation/financial_regulation/documents/articles_mox_dex_applicables_au_rf_fed10_en.pdf)