



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY

The Director-General

Brussels
REGIO.B4/

Subject: Eligibility of VAT in the 2014-2020 and 2021-2027 programming periods

Ref.: Judgment of the General Court of 22 June 2022 in Case T-357/19 *Italy v Commission*

Guidance note Conditions for eligibility of VAT under Cohesion policy rules in the 2014-2020 programming period (SWD(2018) 459 final)

Your Excellency

Some national authorities have asked questions on the interpretation of the judgment of the General Court of 22 June 2022 in Case T-357/19 *Italy v Commission* ('the Judgment') with respect to the eligibility of VAT for operations implemented under the 2014-2020 programming period.

While acknowledging that it is the exclusive prerogative of the Union Courts to provide an interpretation of their judgment, the aim of the present letter is to illustrate how the Commission intends to assess the eligibility of VAT in those circumstances.

The Judgment annulled Commission Implementing Decision C(2019)2652 of 3 April 2019 approving the financial contribution to the major project '*Grand national very high speed broadband – white areas*' relative to the 2014-2020 programming period, as addressed to Italy. The reason for the annulment was the exclusion of VAT from the costs eligible for Union co-financing.

Prior to the Judgment, the Commission had been following the line set out in its Guidance note *Conditions for eligibility of VAT under Cohesion policy rules in the 2014-2020 programming period*' (SWD(2018) 459 final). The Guidance note was based on the understanding that the rules on VAT eligibility for the 2014-2020 period had not changed from the ones applicable in the 2007-2013 period, and that accordingly VAT is not eligible when "recoverable by any means".

In light of the Judgment, the Commission understands that the regime on VAT eligibility changed for the 2014-2020 period in comparison with the previous programming period. As emphasised in point 61 of the Judgment, VAT is not eligible where it is 'recoverable under national VAT legislation' by the beneficiary, in accordance with Article 69(3)(c) Regulation (EU) 1303/2013. The General Court therefore dismissed the interpretation of the Guidance note that VAT is not eligible when it is "recoverable by any means".

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The Judgment has also made it clear that the assessment of VAT recoverability under the VAT legislation should be carried out specifically with respect to each individual beneficiary (points 68 to 74).

As regards the term ‘recoverable under the VAT legislation’, the Judgment held that the deductibility of VAT is a form of recoverability of VAT and it includes other forms of recoverability under national VAT legislation (point 67).

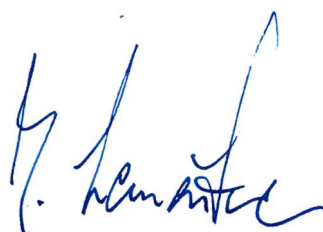
In conclusion, the Commission considers that there are three main consequences to be drawn from the Judgment as to the eligibility of VAT.

First, the interpretation of the VAT eligibility rules for the 2007-2013 period is not affected by the Judgment.

Second, for the 2014-2020 period VAT is ineligible exclusively when recoverable by the beneficiary under national VAT legislation. As a result, the assessment in the Guidance note has become obsolete.

Third, operations implemented under the 2021-2027 legal framework, with total cost of at least EUR 5 000 000 (including VAT) are subject to the same VAT eligibility rules as those applicable for the 2014-2020 period¹. Therefore, the principles outlined by the Judgment also apply to those operations with respect to the 2021-2027 period.

Yours faithfully



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¹ See in particular Article 64(1)(c)(ii) of Regulation (EU) 2021/1060