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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 991

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**Greece**
REFERENCES:	**Articles 1, 2 and 73**
SUBJECT:	**Treatment of payments under the Rural Development Programme**

1. INTRODUCTION

The Greek delegation has asked the opinion of the VAT Committee on the appropriate VAT treatment of payments made in the context of the EU Rural Development Programme by the European Agricultural Fund for Rural Development (EAFRD). In particular, with regard to the sums retained by Local Action Groups (LAGs), in charge of the management and implementation of the Community-Led Local Development Strategy, the question is whether these payments are to be regarded as grants which are outside the scope of VAT or if they constitute the consideration for a supply of services.

The text of that request appears as an Annex.

2. SUBJECT MATTER

Launched in 2010, the Strategy for Smart, Sustainable and Inclusive Growth ("the Europe 2020 Strategy")[1] sets ambitious targets covering employment, research and development, climate change and energy sustainability, education, and the fight against poverty and social exclusion in order to improve Europe's competitiveness and productivity and underpin a sustainable social market economy.

For the 2014-20 programming period, these targets and objectives were translated by the Common Strategic Framework[2] into eleven investment priorities[3], also known as thematic objectives, to be financed by four European Structural and Investment Funds ("the ESI Funds"): the European Regional Development Fund, the European Social Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. The aim of the Common Strategic Framework was to improve coordination between these rural, fisheries, regional and social Funds so as to maximise

[1] Brussels, 3.3.2010 - COM(2010) 2020 final – Communication from the Commission Europe 2020 *A strategy for smart, sustainable and inclusive growth.*

[2] Annex I of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, pp. 320-469), as amended.

[3] The eleven thematic objectives (Article 9 of the Regulation):
1. strengthening research, technological development and innovation;
2. enhancing access to, and use and quality of, ICT;
3. enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF);
4. supporting the shift towards a low-carbon economy in all sectors;
5. promoting climate change adaptation, risk prevention and management;
6. preserving and protecting the environment and promoting resource efficiency;
7. promoting sustainable transport and removing bottlenecks in key network infrastructures;
8. promoting sustainable and quality employment and supporting labour mobility;
9. promoting social inclusion, combating poverty and any discrimination;
10. investing in education, training and vocational training for skills and lifelong learning;
11. enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

the impact of the European interventions and their contribution to the European objectives. Each of the four ESI Funds had, in turn, their own specific priorities, set out in the Fund-specific Regulations, which translate these eleven major thematic objectives.

Among the ESI Funds, the European Agricultural Fund for Rural Development (EAFRD) supports the European policy on rural development[4]. To this end, it finances Rural Development Programmes across the Member States and the regions of the Union. Programmes are designed in cooperation between the European Commission and the Member States, taking into account the strategic guidelines for rural development policy adopted by the Council and the priorities laid down by national strategy plans[5]. For the 2014-20 programming period, the EAFRD budget is distributed according to six priorities[6], each of them contributing to the cross-cutting objectives of the Europe 2020 Strategy of innovation, environment and climate change mitigation and adaptation.

In order to implement the ESI Funds, Member States, in cooperation with the competent regional and local authorities and in dialogue with the Commission, draw up a Partnership Agreement and the relating programmes.

The Partnership Agreement sets out arrangements to ensure alignment with the Europe 2020 Strategy goals as well as with the Fund-specific missions, arrangements to guarantee effective and efficient implementation of the ESI Funds and arrangements for the partnership principle and an integrated approach to territorial development.

In turn, each programme sets out the strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources for the programme's contribution to the Europe 2020 Strategy consistent with Regulation (EU) No 1303/2013 laying down common provisions for all the ESI Funds ("the Regulation"), the Fund-specific rules, and with the content of the Partnership Agreement. Both the Partnership Agreement and the programmes have to be approved by the Commission.

Once approved, Member States/their Managing Authorities[7] select the so-called "Community-Led Local Development Strategies" through calls for proposals or calls for expression of interest and set out the allocations of each of the ESI Funds. These strategies are sets of operations/projects the purpose of which is to establish specific objectives at

[4] The Fund specific Regulation is the Regulation (EU) No 1305/2013 ("the EAFRD Regulation").

[5] https://ec.europa.eu/regional_policy/en/policy/what/glossary/e/european-agricultural-fund-for-rural-development.

[6] The six priorities of the EAFRD:
1. fostering knowledge transfer and innovation in agriculture, forestry and rural areas;
2. enhancing the viability and competitiveness of all types of agriculture, and promoting innovative farm technologies and sustainable forest management;
3. promoting food chain organisation, animal welfare and risk management in agriculture;
4. promoting resource efficiency and supporting the shift toward a low-carbon and climate resilient economy in the agriculture, food and forestry sectors;
5. restoring, preserving and enhancing ecosystems related to agriculture and forestry;
6. promoting social inclusion, poverty reduction and economic development in rural areas.

[7] Either a public or private body acting at national or regional level, or the Member State itself, in charge of the management of the programme concerned (Article 65, EAFRD Regulation).

local level to respond to local needs, designed and implemented by Local Action Groups (LAGs)[8].

These strategies result from a bottom-up approach called LEADER ("*Liaison Entre Actions de Développement de l'Économie Rurale*"), the French acronym for "Links between the rural economy and development actions", allowing local actors to develop an area by using its endogenous development potential. In a multi-fund context, where the Local Development Strategies have an integrated and multi-sectoral character and are supported by multiple EU funds, the LEADER approach is referred to as CLLD ("Community-Led Local Development")[9].

As for the EAFRD, CLLD (LEADER local development) should be programmed under focus area "Fostering local development in rural areas". Due to the integrated and multi-sectoral character of CLLD/LEADER, it is highly recommended that it also contributes to other focus areas. In that case, Member States/regions should indicate in the Rural Development Programmes to which other focus areas local development strategies might contribute. In the 2014-20 programming period, CLLD (LEADER) is a mandatory part of the Rural Development Programmes funded by the EAFRD and a possible option under the other ESI Funds.

This bottom-up approach benefits from the fact that Local Action Groups have a better knowledge of the local challenges, are most suited to mobilise local resources and show a greater sense of ownership and commitment to the projects being entrusted with a decision-making power concerning the elaboration and implementation of local development strategies.

2.1. Local Action Groups (LAGs)

LAGs are partnerships composed of representatives of public and private local socio-economic interests, such as farmers, rural businesses, local organisations, public authorities and individuals from different sectors. The partnership among local actors can result either from the creation of a completely new legal entity broadly representative of the local stakeholders or from the appointment of an experienced partner as the accountable body of the partnership for legal and administrative purposes, while the other members remain part of the decision making group. In any case, at the decision-making level, neither public authorities, nor any single interest group represents more than 49 % of the voting rights. This ensures that the partnerships are real partnerships, where every member has a chance to influence decisions, rather than appendices of existing structures and organisations.

LAGs participate to the call for proposals by preparing their own Local Development Strategies based on what the community wants to change, who can help to achieve this and the area of intervention, and then they manage their own respective budgets.

8 Article 2(19) of the Regulation.

9 Although setting specific objectives at local level to respond to local needs, the strategies have also to be consistent with the policy goals set out in the above-mentioned programmes in order to be selected.

Their main tasks of the Local Action Groups are the following[10]:

- The capacity building of local actors to develop and implement operations, including:
  - Information sessions and outreach work in the community;
  - Support for bringing people together and community organisation;
  - One to one or collective advice and support for developing projects;
  - Training.

Preparatory support can be used to finance the capacity building during the launch of the programmes.

- The setting/management of the selection procedure of operations/projects within the strategy

  Based on the consistency of the project with the strategy, the respect of criteria fixed at national/regional level, and its viability, the LAGs run a preliminary eligibility check on the project deciding on its "opportunity", before passing it to the Managing Authority of the programme, in charge of the final approval.
  All partners should declare their interest in projects and should not participate in decisions that concern them directly. LAGs are permitted to fund own projects, where the partnership itself is the project promoter, but there must be a clear, transparent procedure that demonstrates that these projects contribute to the local development strategy and have the general support of the community.
  At least 50% of the votes in selection decisions are cast by partners which are not public authorities in order to avoid that public institutions could undermine the bottom-up principles of CLLD.

  Therefore, the LAGs not only design the strategy but they also organise the project selection process and criteria to choose projects which are coherent with the agreed strategic direction. They are able to complement these tasks with active project promotion activities such as capacity building, community organising and direct project development.

- The management of the applications for support, fixing the amount of support for the projects

  It is the LAG that decides which projects will be financed and how much funding they are to receive. The Managing Authority is responsible for ensuring a transparent selection of LAGs and verifying that the LAG and beneficiary have fulfilled all the mandatory requirements. Nevertheless, whether the Managing Authority delegates to the local partnership the functions of formal project approval (signing the grant agreement) and/or payment, on the basis of the specific agreement signed between the parties and the specific features of the programme, the Managing Authority remains ultimately responsible for any errors or misuse of funds.

- The monitoring and evaluation of the implementation of the strategy and the operations.

[10] Article 34 of the Regulation and Guidance for Local Actors on Community-Led Local Development-EGESIF_18-0034-00 17/09/2018.

2.2. Financing

The ESI funds financially support the following costs with regard to the community-led local development[11]:

- The costs for the preparation of the strategy (e.g. capacity-building, training for local stakeholders, studies of the area concerned, networking, consultancy, the administrative costs (operating and personnel costs) of the organisation that is applying for preparatory support during the preparatory phase), regardless of whether the strategy finally receives funding for implementation.

- The costs related to the implementation of operations within the strategy.

- This support covers all the actions in the strategy except preparatory support, running costs and animation and cooperation. There are no pre-defined sub-measures or types of action for implementation. In principle, therefore, LAGs are free to define the types of action in their local development strategies and these can be different for LAGs in the same country or region.

- The cooperation activities of the LAGs, at both national and EU level, shown to be a vital channel for exchanging and transferring good practice, and for helping to define successful project ideas.

- The running costs linked to the management of the implementation of the strategy and the animation of the strategy.

  Running costs can involve:
  - The personnel costs and operating costs of the selected partnership;
  - Training for partnership staff (not project promoters);
  - Costs linked to public relations (including networking costs, such as participation in national and European network meetings);
  - Financial costs;
  - The costs of monitoring and evaluation;

  Animation can involve:
  - Information campaigns – e.g. events, meetings, leaflets, websites, social media, press;
  - Exchanges with stakeholders, community groups and potential project promoters to generate ideas and build trust and confidence;
  - Support for community organisations and the creation or strengthening of community structures;
  - Promotion and support for the preparation of projects and applications;
  - Post-start-up project support.

  Under the Regulation, the support for running costs and animation cannot exceed 25% of the total public expenditure incurred within the strategy.

[11] Article 35 of the Regulation and Guidance for Local Actors on Community-Led Local Development-EGESIF_18-0034-00 17/09/2018.

The Regulation explicitly excludes from the costs eligible for a contribution VAT, except where it is non-recoverable under national VAT legislation.

Summary of the Community Led Local Development delivery system:

- the European institutions establish common objectives and principles of each ESI fund;
- the national or regional Managing Authority designs the basic rules for implementing the programme;
- the Managing Authority launches a call to select the Local Action Groups;
- the Local Action Group publishes a call for proposals and receives, assesses and selects operations which will be supported to meet the objectives of the local strategy;
- the beneficiaries (often NGOs, SMEs or informal bodies) implement the projects and receive the funding[12].

Each of the ESI Funds has its own structure, culture and practice for managing the fund. The Regulation sets out the basic framework, but many different systems are used in the Member States. Managing Authorities may be at national or regional level depending on the size of the country, the fund concerned and on other factors such as the level of decentralisation or federalism. The Managing Authority designs the delivery system and defines who does what: the way the delivery system is designed has a strong impact on the functioning of the LAG and the types of projects which are ultimately financed.

LAGs are often private bodies (in the form of associations, non-profit companies, or without any legal entity), charged with a responsibility to deliver a public service. The relevant mechanisms for public funding of Community Led Local Development should be adapted to take this into account. This should also take account of the specific characteristics of many of the local beneficiaries whose projects are supported by the LAG. The partnership should know in advance its total budget including the national public co-financing in order to animate and select projects of highest priority from the strategic point of view. Many beneficiaries have limited finance and cash flow. They can therefore have difficulties waiting until the project is completed and accounted for to receive the grant. This can also be true for some LAGs in the case of running and animation costs. Such problems can be addressed by interim or advance payments which should be covered by guarantees, if required.

[12] Guidance for Local Actors on Community-Led Local Development- EGESIF_18-0034-00 17/09/2018.

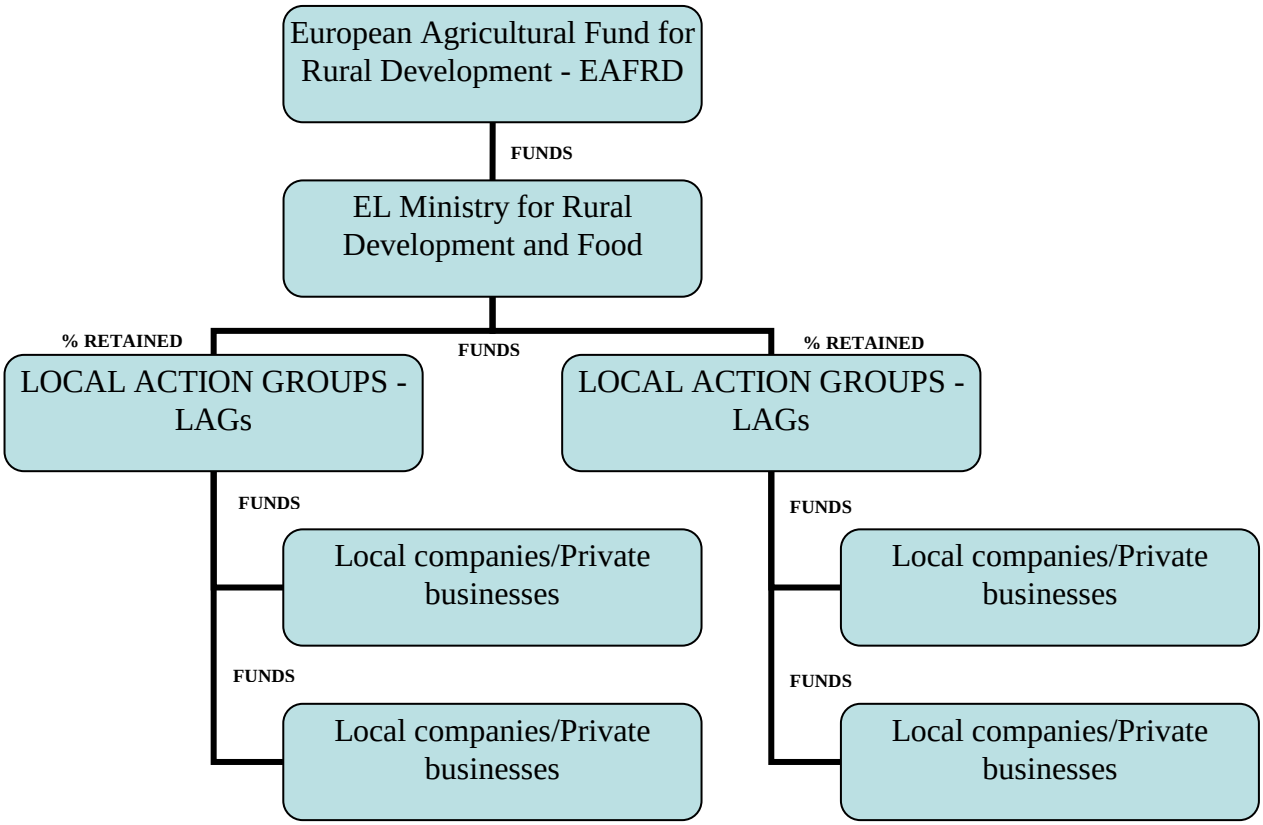
Advance payments are a way to enable LAGs and other beneficiaries to obtain funding as soon as the project has been approved in order to start implementation. In funds covered by the Regulation, each programme receives pre-financing from the Commission, followed by interim payments based on declarations of expenditure and completed by a final payment. Member States may choose to use the flexibility that these pre-financing payments offer e.g. to make advance payments with national funds for running costs to LAGs delivering CLLD strategies. In particular, advances of up to 50% of the public support related to running costs and animation are explicitly envisaged in the EAFRD. To apply for advance payments, LAGs and beneficiaries may have to provide an adequate form of guarantee.

Sometimes LAGs can make use of so-called Umbrella schemes to disburse small grants (for instance below EUR 3 000) to a specific type of beneficiaries (e.g. small NGOs or enterprises, a particular sector or enterprise type). In such cases, the LAG acts as the project promoter, applying for a certain package of funding, and then allocates it in the form of small grants to beneficiaries from its area. The LAG in this case plays the role of applicant and the recipient of the grant as far as Managing Authorities are concerned for the purpose of payments, audit and control.

2.3. Question from Greece

In Greece, LAGs are companies governed by private law, owned and controlled by municipalities (Government). They receive certain amounts of money for the financing of projects performed by private businesses that will contribute to the local development of their area, and they withhold a certain percentage of these amounts in order to cover their operational expenses (e.g. salaries, consumables) for the coordination and the implementation of the programme.

In this context, the Greek delegation wonders whether the sums retained by the LAGs are to be qualified as consideration for the supply of services subject to VAT or as a subsidy out of scope of VAT.



2.4. VAT Committee – payments made under EU Framework Programmes

The VAT treatment of payments made under EU Framework Programmes has previously been the subject of discussions[13], most recently in regard to Horizon 2020[14], leading to the guidelines being agreed[15].

In that context, the VAT Committee almost unanimously agreed that in the case of funding, other than public procurement, provided to participants for their research and innovation activities under EU Framework Programmes (Horizon 2020 or previously FP7[16]) and where no transfer of ownership to the Commission is envisaged, the grant received by the participant shall be regarded as a subsidy not linked to the price of a supply of goods or services.

In the event that exceptionally the Commission assumes ownership of results generated by activities funded under the said EU Framework Programmes, the VAT Committee almost unanimously agreed that the link between the transfer of ownership of results by a participant having received a grant and the grant provided to that participant shall not be

[13] Working papers No 553 (TAXUD/2152/07) - *Treatment of payments under Framework Programmes* – and No 808 (taxud.c.1(2014)2265889) - *Treatment of payments under EU Framework Programmes – follow-up*.

[14] Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

[15] Guidelines resulting from the 101st meeting of 20 October 2014, Document I – taxud.c.1(2015)1778402 – 848 (p. 189).

[16] Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011).

regarded as sufficiently direct for payment of that grant to be regarded as consideration for that transfer.

During previous discussions, indeed, the VAT Committee had dealt with payments under FP7 at its 82nd meeting in 2007 and, although there had been consensus that, contrary to previous Framework Programmes, the payments made by the Commission to contractors had to be qualified as subsidies not linked to the price of a supply, no guidelines had been drawn up.

That followed earlier discussions on the Fourth Framework Programme (FP4) during which it had been concluded that the subsidies granted under that programme constituted payment for services rendered by the beneficiaries of such grants to the Commission, given that the right of property persisted to the Commission if results of the project funded were not exploited. With a supply being made to the Commission, the payment received was exempted from VAT pursuant to Article 15(10) of the Sixth VAT Directive[17] provided, however, that a VAT exemption certificate had been issued.

3. THE COMMISSION SERVICES' OPINION

3.1. Introduction

The Commission services note that, although Member States may submit to the VAT Committee questions arising from concrete cases, the VAT Committee is not the appropriate forum to decide on individual cases. Therefore, any discussion performed at this level should only take place where it can provide some guidance at EU level for a harmonised interpretation of the VAT Directive.

The VAT treatment of payments made under EU Framework Programmes has previously been the subject of discussions, most recently in regard to Horizon 2020 which replaced the Seventh Framework Programme (FP7) as of 1 January 2014[18]. The VAT treatment of grants given under EU Framework Programmes depends on the features of each programme. Accordingly, it is appropriate to examine the programme at stake and to consider the VAT implications. This provides the Commission services with the opportunity to shed light on how these rules should be interpreted. In this regard, the views of the Commission services and the opinion of the VAT Committee should be seen merely as aiming to provide general guidance on the application of VAT rules through a concrete case.

3.2. Supply of services

A supply of services is subject to VAT when made for consideration by a taxable person acting as such, pursuant to Article 2(1)(c) of the VAT Directive. In turn, a taxable person

[17] Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (77/388/EEC) (OJ L 145, 13.6.1977, p. 1). This exemption can now be found in Article 151 of the VAT Directive.

[18] Guidelines resulting from the 101st meeting of 20 October 2014, Document I – taxud.c.1(2015)1778402 – 848 (p. 189).

is defined as any person carrying out an economic activity, whatever the purpose or results of that activity under Article 9 of the VAT Directive.

From the settled case-law of the Court of Justice of the European Union (CJEU), it is clear that a supply of services is only taxable under the VAT Directive if there is a direct link between the services supplied and the consideration received[19]. Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration given in return for the service supplied to the recipient[20].

It should also be recalled that VAT is first of all a general tax on the consumption of goods and services, pursuant to Article 1 of the VAT Directive. In Case C-215/94[21], the CJEU ruled that an undertaking to discontinue milk production given by a farmer under a Regulation fixing compensation for the definitive discontinuation of milk production did not constitute a supply for services as there was no consumption. Consequently, any compensation received for that purpose was not subject to turnover tax. Therefore, "*[w]here it grants such compensation, the Community is not in the situation of a consumer who remunerates a service supplied by a farmer who gives such an undertaking, but is acting in the common interest of promoting the proper functioning of the Community milk market*". Similarly, in Case C-384/95[22], the CJEU ruled that the undertaking to reduce production of potatoes was not a supply of services since it did not give rise to any consumption. The farmer did not provide services to any identifiable consumer or any benefit which could be regarded as a cost component of an activity within the commercial chain of supplies.

3.3. Subsidies

Article 73 of the VAT Directive provides that, in respect of the supply of goods or services, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

Although the VAT Directive does not contain a definition of subsidy, the CJEU in its judgment in Case 30/59[23] has provided one. The CJEU stated that a subsidy is *a payment in cash or in kind made [by the State] in support of an undertaking other than the payment by the purchaser or consumer for the goods or services which it produces*. In case of subsidies paid by public authorities, therefore, a distinction must be made: subsidies in support of a taxable person not made subject to the condition that a reciprocal supply is

[19] Amongst others, CJEU, judgment of 7 October 2010, *Loyalty Management UK*, C-53/09, EU:C:2010:590, paragraph 51; and judgment of 8 March 1988, *Apple and Pear Development Council*, C-102/86, EU:C:1988:120, paragraph 12.

[20] Amongst others, CJEU, judgment of 27 March 2014, *Le Rayon d'Or*, C-151/13, EU:C:2014:185, paragraph 29; and judgment of 3 March 1994, *Tolsma*, C-16/93, EU:C:1994:80, paragraph 14.

[21] Judgment of 29 February 1996, *Jürgen Mohr*, C-215/94, EU:C:1996:72.

[22] Judgment of 18 December 1997, *Landboden-Agrardienste*, C-384/95, EU:C:1997:627.

[23] Judgment of 23 February 1961, *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community*, Case 30-59, EU:C:1961:2.

provided (not part of the taxable amount), and subsidies linked to the supplies of goods or services (included in the taxable amount).

In Working Paper No 74[24], discussed at the 18th meeting, the Commission services recalled that a subsidy was to be included in the taxable amount only if three conditions were met:

a. it constituted the consideration (or part of the consideration)
b. it was paid to the supplier;
c. it was paid by a third party.

On that occasion, the question was whether the Community's contribution to expenditure incurred in carrying out publicity in respect of milk products had to be taxed as payment for a service that the 'organisations concerned' (producers/traders of milk products) were supplying to the Community through a 'government agency' responsible for distributing the aid.

The Commission services took the view that the second of the three conditions specified above was not met as neither the Community nor the government agency could be regarded as a customer for any service whatsoever and the subsidy was designed solely to reimburse some of the expenditure incurred by other taxable persons (e.g. advertising agencies). The grant was therefore qualified as a purchasing subsidy and not as remuneration for any supply of service[25].

In Case C-184/00[26], in a dispute between the Office des Produits Wallons ASBL (OPW) and the Belgian State, questions were raised as to whether operating subsidies covering part of OPW's running costs had to be included in the taxable amount for the purposes of calculating VAT. OPW was a private non-profit-making association which carried out advertising and the sale of Walloon agricultural and horticultural products and agricultural foodstuffs, an activity in respect of which it was subject to VAT.

Under a framework subsidy agreement, it enjoyed an annual subsidy from the Walloon Region being responsible for different types of activity, namely the publication of a catalogue and a magazine, the running of local offices and participation in local events. The framework agreement provided that "permitted expenditure shall include in particular the remuneration of staff, the cost of renting and fitting out premises if necessary, the cost of obtaining necessary equipment and supplies, purchases of goods and services and any other costs, direct or indirect, relating to the activity of OPW, concerned by this agreement".

In its reasoning, the CJEU first noted that it was immaterial whether or not there was a distinct service by a taxpayer such as OPW to the body paying the subsidy. That was (and is) so since Article 11(A) of the Sixth Directive (now Article 73 of the VAT Directive) deals with situations where three parties are involved: the authority which grants the subsidy, the body which benefits from it and the purchaser of the goods or services

[24] Working Paper XV/152/84 - *VAT arrangements applicable to certain subsidies paid by the Community under the common agricultural policy.*
[25] Guidelines resulting from the 19th meeting of 12 November 1985 (XV/32/86).
[26] Judgment of 22 November 2001, *Office des produits wallons*, Case C-184/00, EU:C:2001:629.

delivered or supplied by the subsidized body. Thus, transactions covered by Article 11(A) of the Sixth VAT Directive are not those carried out for the benefit of the authority granting the subsidy.

The CJEU then noted that subsidies, such as operating subsidies covering a part of running costs, nearly always affect the cost price of the goods and services supplied by the subsidised body. In so far as it offers specific goods or services, that body can normally do so at prices which it would be unable to offer if it were obliged at the same time both to pass on its costs and make a profit.

However, the CJEU pointed out that the mere fact that a subsidy may affect the price of the goods or services supplied by the subsidised body was not enough to make that subsidy taxable. For the subsidy to be directly linked to the price of such supplies, within the meaning of Article 11(A) of the Sixth VAT Directive (now Article 73 of the VAT Directive), it was also necessary that it be paid specifically to the subsidised body to enable it to provide particular goods or services. Only in that case can the subsidy be regarded as consideration for the supply of goods or services, and therefore be taxable. Also, it was pointed out that the price of the goods or services must, in principle, be determined not later than the time of the triggering event.

The CJEU concluded by saying that it was for the national court to establish the existence of a direct link between the subsidy and the goods or services at issue following a case-by-case analysis of the circumstances underlying the payment, such as:

- objective examination on whether the subsidy paid to the supplier allows it to sell the goods or supply the services at a price lower than he would have in the absence of subsidy; for this purpose the CJEU suggested to either compare the price at which the goods are sold in relation to their normal cost price, or examine whether the amount of the subsidy has been reduced once those goods were no longer produced;

- having the framework agreement set a number of activities to be performed by OPW, the CJEU suggested to verify whether each activity gave rise to a specific and identifiable payment or whether the subsidy was paid globally in order to cover the whole of OPW's running costs. This as only the part of the subsidy identifiable as being the consideration for a taxable supply may, in appropriate cases, be subject to VAT. For this reason, an examination of the annual accounts between OPW and the Walloon Region was suggested as to ascertain whether the amounts of the subsidy to be allocated to each obligation imposed on OPW by that Region were determined by virtue of the framework agreement. If that were the case, a direct link might be established between that subsidy and the sale of the periodicals published by OPW.

The CJEU therefore ruled that "subsidies directly linked to the price" must be interpreted as covering only subsidies which constitute the whole or part of the consideration for a supply of goods or services and which are paid by a third party to the seller or supplier.

Finally, in Case C-353/00[27] where, under certain conditions, an administering agency (the public authority) pays a grant for energy advice to an economic operator, the CJEU held

[27] Judgment of 13 June 2002, *Keeping Newcastle Warm Limited*, Case C-353/00, EU:C:2002:369.

that the sums paid were part of the consideration for the supply of services for the purposes of VAT.

3.4. Conclusion

Against this background, it is the Commission services' opinion that the existence of a direct link between the sums retained by the LAGs and the services provided has to be assessed on a case-by-case basis, as deriving from the specific rules setting the rights and obligations of the parties involved in the programme.

As previously mentioned, each of the ESI Funds has its own structure, culture and practice for managing the funds. The Regulation sets out the basic framework, but many different systems are used in the Member States. Managing Authorities may be at national or regional level depending on the size of the country, the fund concerned and on other factors such as the level of decentralisation or federalism. The Managing Authority designs the delivery system and defines who does what: the way the delivery system is designed has a strong impact on the functioning of the LAG and the types of projects which are ultimately financed.

As set out in Article 34 of the Regulation, Member States shall define the respective roles of the local action group and the authorities responsible for the implementation of the relevant programmes, concerning all implementation tasks relating to the community-led local development strategy.

Within the limits set by the ESI Funds Common Regulation and the Fund specific Regulations, Member States are in fact allowed to design their own internal agreements both with local authorities and between the Managing authorities and the LAGs. Moreover, LAGs can assume a variety of different legal forms and their activities and configurations are defined by their own specific statutes.

Therefore, the assessment of the conditions under which a payment is qualified as consideration for a supply of service derives from the specific features of the agreements between the parties involved. Unlike in the previous cases of Horizon 2020 or FP7 addressed by the VAT Committee, these features are not fixed and detailed by the current legislation.

The main principles laid down in this Working paper should nevertheless allow each Member State within its own specific Partnership agreements and programmes to assess whether a supply of service for consideration subject to VAT has taken place.

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on this matter.

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ANNEX

QUESTION FROM GREECE

Application of VAT provisions to the grants paid to the groups – Local action under the Rural Development Programme 2014-2020

Our department is concerned about the tax treatment, for purposes of VAT, of the aid/funding received by the Local Action Groups (LAGs) under Measure 19 for Local Development under the Local Communities Initiative of the Rural Development Programme 2014-2020 (LEADER/CLLD) for the part of the European Agricultural Fund for Rural Development (EAFRD).The topic was raised both individually by the bodies that are the Local Action Groups (LAGs) in Greece and implement the measure as well as the LEADER/CLLD Local Action Groups.

The Rural Development Programme 2014-2020 (LEADER/CLLD) shall be implemented in accordance with Regulation (EU) No 1303/2013 of the European Parliament and of the Council. In accordance with Articles 32-34 of this Regulation, community-led local development shall be implemented by the LAGs, which shall design and implement the local development strategies, and shall be financed by the EAFRD. The LAGs are composed of representatives of public and private local socio-economic interests, while the Member States define the respective roles of the LAG and the authorities responsible for the implementation of the programmes concerned. The tasks of the LAGs are explicitly defined in Article 34, including the definition of the procedure for the selection of operations, the preparation and publication of calls for proposals, the establishment of the selection criteria, the receipt and assessment of applications for funding and the selection of operations and the amount of support.

Furthermore, Article 35 of the Regulation lists the costs eligible for EAFRD funding of LAGs, including operating costs and coordination costs, which do not exceed 25 % of the total public expenditure incurred under the community-led local development strategy. However, as defined in Article 69 of the same Regulation, VAT is eligible for funding if the beneficiary is not entitled to a deduction under the VAT legislation, in particular, is an eligible cost if the VAT is borne by expenditure used to carry out the activities of the beneficiary exempted VAT, in which case VAT on such expenditure is not deductible.

In Greece, under Decision No 8427/1.8.2017 of the Minister for Rural Development and Food, the framework for sub-measure 19.4 was set.“Support for the running costs and animation” of Measure 19 LEADER/CLLD “Local Development with Local Communities Initiative”, hereinafter referred to as the Local Development Programme, financed by the European Agricultural Fund for Rural Development, the Rural Development Programme 2014-2020. These are rules and procedures aimed at supporting LAGs selected also by decision of the Minister of Rural Development (No 3206/12.12.2016) to implement this programme in rural areas, following a call for proposals.

As the above regulatory framework shows, the majority of LAGs are development limited companies (AE) of local authorities, which are established and operate as private law persons, in accordance with the provisions of the Code of Municipalities and

Communities. They receive a specific amount of funding under their local development programme, most of which is allocated to local companies eligible for funding in their programme, while a part of this amount is retained by the LAGs to cover their operating costs.

The question raised concerns whether or not the amount of funding received by the LAGs is subject to VAT and is intended to cover their operating costs and, subsequently, to withdraw or deny the right to deduct the VAT on such expenditure in order to examine whether the VAT is eligible for financing.

In accordance with the general provisions of Articles 2, 9 and 13 of Directive 2006/112/EC (VAT Directive), as in force, VAT is to be supplied for consideration by a person who independently carries out an economic activity, except in the case of services provided by the State, local authorities and other bodies governed by public law in the context of the performance of their duties as public authorities, which does not fall within the scope of VAT, provided that the activity is not a negligible part of Annex I to the VAT Directive and that the non-imposition of VAT does not distort the conditions of competition.

Given that in Greece the majority of LAGs are public limited companies from local authorities (private law persons), these companies do not fall within the scope of persons not subject to VAT due to the exercise of public authority, but they are in principle taxable persons and their income from supplies of goods and services are subject to VAT, with the right to deduct the VAT on their expenditure.

According to the settled case-law of the Court of Justice of the European Union (CJEU), the supply of services is effected for consideration and therefore taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance and the remuneration received by the provider of the service constitutes the actual consideration for the service supplied to the recipient (for example C-16/93).In that regard, according to the CJEU, taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is fixed. Consequently, the concept of the supply of services effected for consideration requires a direct link between the service provided and the consideration received (C-246/08, paragraphs 43-45).

A contrario, it follows that the aid does not fall within the scope of value added tax – financing which is not consideration in the context of a taxable supply of services, but is paid in financial support to the recipient or, in any event, does not constitute the direct consideration for the provision of any part of the service.

In the present case, it appears that the financing received by the LAGs is paid for a specific purpose in the framework of the obligations assigned to them by Decision No 8427/1.8.2017 of the Minister for Rural Development and Food (Article 4 thereof), which corresponds to Article 34 of Regulation (EC) No 1303/2013. In particular, LAGs are required to implement the approved local programme by issuing calls for expressions of interest with a view to submitting proposals from local undertakings as potential beneficiaries, to provide advisory support to beneficiaries for the preparation, implementation and operation of their investment projects, to evaluate and select the

projects to be included, to prepare and submit the technical fiches of the operations of the local programme, to monitor and ensure the correct and regular implementation of the projects included in the programme, etc.

Taking into account that, as is apparent from the VAT legislation, on the one hand the development AE of local authorities cannot be excluded from the scope of VAT as a public authority, which would be the case if the above obligations were to be carried out by a body governed by public law or by the local authority itself and without any risk of distortion of the conditions of competition, and, on the other hand, the amounts of funding received by them in respect of specific commitments made by the LAGs could reasonably be said to fall within the scope of VAT and, in the absence of any specific exemption, should be subject to that tax. In this context, the right to deduct VAT on the costs incurred by the LAGs is deductible, so that this VAT should not be eligible for funding.

However, we are concerned that although the LAGs are committed to performing specific obligations, i.e. to provide services in the context of the implementation of their local development programmes, it does not appear to be the person who is the recipient (recipient) of the services in question, as the payment of the funds for the procedure is made by the Ministry of Rural Development and Food in Greece, pursuant to a decision (regulatory act) of the competent Minister and not on the basis of contracts (in the context of commercial operations), whereas this is in fact funding from the EAFRD for community-led local development. We therefore wonder whether the amount received by the LAGs to cover their operating costs and up to 25% of the total public expenditure, as set out above, is not directly linked to the provision of services and in which case the VAT will be eligible for VAT, since this is a VAT which is not recoverable due to an exempt activity.

It should be noted that other cases financed by the EuropeanA programme committee has been discussed within the VAT Committee and guidelines have been drawn up regarding their tax treatment. These are the research programmes FP7 and beyond Horizon 2020 (Guidelines resulting from the 101st Meeting of 20/10/2014, Document I — taxud.c.1 (2015) 1778402-848) and for programmes for the promotion of Community dairy products outside the Community to promote exports (Guidelines resulting from the 19th Meeting of 12/11/1985, XV/32/86), for which it is agreed that the financing paid is not the consideration for the provision of services to the European Commission, thus outside the scope of VAT. However, there are different cases of programmes financed and we do not consider it safe to apply the relevant guidelines in the present programme accordingly, without first discussing this issue with the VAT Committee.

In the light of the above, we would ask you to take the view of the VAT Committee in this respect.

Further clarification

As mentioned in our official letter, LAGs in Greece are companies governed by private law, owned and controlled by municipalities (Government). They receive certain amounts of money for the financing of projects performed by private businesses that will contribute to the local development of their area, and they withhold a certain percentage of these amounts in order to cover their operational expenses (salaries, consumables etc) for the

coordination and the implementation of the program. From one point of view, in the absence of a specific VAT exemption provided for such cases, the amounts that the LAGs withhold constitute their payment for supplying coordination and management services in respect of the programs for the local development, and could therefore be subject to VAT. However, having in mind VAT Committee Guidelines (resulting from the 101st Meeting of 20/10/2014, Document I – taxud.C1(2015) 1778402-848) those payments could easily be qualified as subsidies not linked to the price of a supply of goods or services.

Therefore, these subsidies could be VAT exempt.

The activity of the LAGs doesn't actually seem to be a provision of services under the meaning of article 2.1 (c) of the VAT Directive 2006/112/EC and it is therefore out of the scope of VAT, when taking into account the following:

1. In general, if there is not a transaction or if there is not a direct link with the transaction, there cannot be any VAT due on the payment received.

2. Such a direct link requires that there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given for the service supplied to the recipient.

3. The programs for the local development that the LAGs implement according to the Regulation (EE) 1303/2013 are being financed by a European Fund through a national authority, in particular the Greek Ministry for Rural Development and Food. If the activity of the LAGs is considered as taxable provision of services, it is not clear who is actually the recipient of the services, so as to consider that there is a reciprocal performance between the two parties (LAGs and the Ministry or the Fund or even the businesses financed for their projects)

4. The amount of money that the LAGs withhold is not a payment agreed between two contracting parties but is a percentage of the total finance of the programs for the local development. Hense, in our opinion it is not sure that this amount constitutes the value actually given in return for the provision of the services.

Finally bearing in mind the decisions of the Court of Justice of the European Union (i.e. C-37/16) about what constitutes a provision of services for VAT purposes (direct link between the services and the consideration received, legal relationship between the parties pursuant to which there is reciprocal performance), we would like to ask the VAT Committee about it's opinion as regards the VAT treatment of this particular activity of the LAGs.