Council of the European Union
General Secretariat

Brussels, 18 September 2018

WK 10728/2018 INIT

LIMITE

FSTR
REGIO
FC
SOC
PECHE
CADREFIN
CODEC
JAI
SAN

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

From: To:	European Commission Working Party on Structural Measures
N° Cion doc.:	COM(2018) 375 final
Subject:	Common Provisions Regulation 2021-2027: Fiche 6 "VAT provisions in the proposed Common Provisions Regulation 2021-2027 Article 58 (1)(c)"

In view of the Working Party on Structural Measures on 20 September 2018, delegations will find attached Fiche number 6 "VAT provisions in the proposed Common Provisions Regulation 2021-2027 Article 58 (1)(c)", as prepared by the Commission services.

Version 20-9-2018
Sent to Council and European Parliament

EUROPEAN COMMISSION

Structural Measures
2021-2027
Fiche no. 6

20 September 2018

WORKING DOCUMENT OF THE COMMISSION SERVICES

Subject: **VAT provisions in the proposed Common Provisions Regulation 2021-2027[1] Article 58 (1)(c)**

1. Introduction

This fiche describes the Value Added Tax (VAT) provisions in the proposed CPR and explains the rationale behind the proposal by drawing on past experience, in particular on the complications of previous interpretations of VAT provisions. It also outlines possible future implications for the Member States of the proposed new VAT rules. The provision applies to all seven shared management funds under the proposed CPR.

2. Background

Treatment of VAT, in particular for ERDF, ESF and Cohesion Fund operations, has been an area of complexity and disagreement between the Commission and the Member States since the 2000-2006 period. It has been a major source of errors and has led to financial corrections in a number of cases. The main difficulties in interpreting VAT provisions relate to the concept of recoverability, as referred to in Regulation (EU) No 1303/2013. Therefore, to avoid these difficulties, the concept of recoverability is not referred to in the proposal.

3. Basic principles for harmonisation of rules

Two important guiding principles underlying the preparation of the legislative proposals for the 2021-2027 period were to harmonise existing EU rules and to strengthen legal certainty for beneficiaries. That was achieved by:

- minimising the scope for misinterpretation and overlaps of rules, in particular for topics such as eligibility of expenditure, recoverability of amounts, revenue generation, VAT, State aid, etc.
- carefully aligning the proposed CPR provisions with the relevant provisions of the Financial Regulation (e.g. on the forms of Union contribution, on eligibility rules), which limits the scope for negotiations at the expense of inconsistencies;
- thus, establishing clear, unconditional rules that will not lead to requests for guidance notes and subsequent interpretation.

[1] COM(2018) 375 final

It is also necessary to recall that the Omnibus regulation[2] did not result in changes to the VAT rules for the 2014-2020 period under shared management.

The VAT provision in the proposed CPR was therefore simplified: Article 58(1)(c) on non-eligible costs of the proposed CPR states: "*the following costs shall not be eligible*..(c) *VAT, except for operations the total cost of which is below EUR 5 000 000*".

The above Article renders the total cost of an operation, including VAT, eligible if it is below the threshold of EUR 5 000 000. There are three important considerations regarding the above:

(i) the CPR proposal is without prejudice to Member States' own applicable national rules on recoverability of VAT.

(ii) the formulation of Article 58(1)(c) above offers flexibility, leaving a possibility for the Member States to decide themselves whether or not to declare VAT costs to the Commission.

(iii) establishing this threshold limits the maximum amount of eligible VAT per project. For example, in a Member State where VAT is 20%, the maximum eligible VAT amount per project would be less than EUR 1 000 000.

4. Underlying data for establishing the threshold

The Commission conducted a survey into the size of operations financed by the ERDF and Cohesion Fund in early 2018.

Based on detailed categorisation data for January 2018, the Commission's dataset analysed the average operations cost for 48 000 lines of data covering 320 000 reported operations.
Using assumptions of average cost for amounts reported for multiple operations, the following results were obtained:

- The average operation cost was EUR 600 000;
- As regards the split of the number of operations regarding the EUR 5 000 000 threshold:
    - < EUR 5 million = 94%; and
    - > EUR 5 million = 6 %

A one-off snapshot of state of play of Member States' operations in January 2018 is included in the Annex below. More particularly, the number of operations for the analysed funds that are over the EUR 5 000 000 threshold represented 5.68% of the overall number of operations funded.

Moreover, a study on the impact of certain thresholds and limits in Regulation (EU) No 1303/2013 (the 2014-2020 CPR) completed for the operations funded under the ERDF and Cohesion Fund in the programming period 2007-2013[3] and published in June 2016, estimated

[2] REGULATION (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

[3] http://ec.europa.eu/regional_policy/en/information/publications/studies/2016/setting-up-a-database-to-assess-impacts-and-effects-of-certain-thresholds-and-limits-in-regulation-no-1303-2013-cpr

that operations that were above the EUR 5 000 000 threshold represented 4% of the overall number of operations funded.

The above signifies that the implications of the new VAT proposal for post 2020 should be positive for most Member States, as VAT will be eligible for most, if not all of their operations supported by these funds.

5. VAT rules in the context of implementation

The proposed provision is applicable to the total cost of the project irrespective of the fact that the planned total cost may have been below the threshold of EUR 5 000 000 (ie at the time of selection or when support was granted). For operations with a budget close to the EUR 5 000 000 threshold at the time of selection, it may be prudent for Member States and beneficiaries to take into account that the VAT may become ineligible.

The proposed rule on VAT is without prejudice to State aid rules. In other words, the proposal does not bring any change to State aid rules, including those applicable to aid intensities. It should be recalled in this context that the State aid rules would apply to any support that would constitute State resources, regardless of the source and the form of financing.

Therefore, if VAT is eligible and declared to the Commission post 2020, that amount of VAT may constitute State resources. In such cases, the new rule would have an implication on the aid intensity calculation.

In conclusion, the Commission believes that the new Article 58(1)(c) in the proposed CPR would be a major simplification to the beneficiaries operating under the CPR rules in shared management.

In combination with the fact that the proposed CPR also does not prescribe rules for calculating revenue generation for the 2021-2027 period, the administrative burden for the ERDF, ESF+ and the Cohesion Fund beneficiaries in particular should be reduced significantly.

ANNEX – Number of ERDF and Cohesion Fund operations per Member State – January 2018[4]

Member States	Below EUR 5m	Above EUR 5m
AT	89%	11%
BE	84%	16%
BG	95%	5%
CY	78%	22%
CZ	98%	2%
DE	97%	3%
DK	91%	9%
EE	91%	9%
ES	98%	2%
FI	100%	0%
FR	95%	5%
GR	93%	7%
HR	88%	12%
HU	88%	12%
IE	86%	14%
IT	93%	7%
LT	89%	11%
LU	87%	13%
LV	74%	26%
MT	57%	43%
NL	90%	10%
PL	87%	13%
PT	96%	4%
RO	69%	31%
SE	90%	10%
SI	88%	12%
SK	97%	3%
TC	97%	3%
UK	72%	28%
Total	**94%**	**6%**

Source: Open Data Platform

[4] The Annex above is based on data made available to the Commission by 13 Dec 2017 and some variations may be possible based on more detailed or up-to-date data.