EUROPEAN REGIONAL DEVELOPMENT FUND
COHESION FUND
MALTA 2007-2013

OPERATIONAL PROGRAMME I
COHESION POLICY 2007-2013

ELIGIBILITY RULES

Eligibility rules laid down by Malta and applicable to Operational Programme I funded by the European Regional Development Fund/Cohesion Fund

APPLICABLE REGULATIONS OF THE EUROPEAN UNION

The following Regulations are used as the basis for rules on eligibility of expenditure for the implementation of operations under Operational Programme I (OPI) funded through the European Regional Development Fund (ERDF) and Cohesion Fund (CF):

Council Regulation (EC) No. 1083/2006 of 11 July 2006 as amended by Council Regulation (EC) No 1989/2006 of 21 December 2006; No 1341/2008 of 18 December 2008; No 284/2009 of 7 April 2009; and by Regulation (EU) No 539/2010 of the European Parliament and of the Council of 16 June 2010 laying down general provisions on the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF) and repealing Regulation (EC) No. 1260/1999;

Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF as amended by Commission Regulation (EC) No 397/2009 of the European Parliament and of the Council of 6 May 2009; (EC) No 846/2009 of 1 September 2009; and by Regulation (EU) No 437/2010 of the European Parliament and of the Council of 19 May 2010 amending Regulation (EC) No 1080/2006;

Regulation (EC) No 1084/2006 of the European Parliament and of the Council of 5 July 2006 on the Cohesion Fund repealing Regulation (EC) No. 1783/1999 and Regulation (EC) No. 1164/94 respectively;

Commission Regulation (EC) No. 1828/2006 of 8 December 2006 as amended by Commission Regulation (EC) No 846/2009 of 1 September 2009 and Commission Regulation (EU) No 832/2010 of 17 September 2010 setting out rules for the implementation of Council Regulation (EC) No. 1083/2006 laying down general provisions on the ERDF, the ESF and the Cohesion Fund and of Regulation (EC) No. 1080/2006 of the European Parliament and of the Council on the ERDF and of Regulation (EC) No. 1084/2006 of the European Parliament and of the Council on the Cohesion Fund

INTRODUCTION

In general, for expenditure to be eligible it has to be in line with the afore-mentioned Regulations. National eligibility rules have been laid down by the Managing Authority (MA) in accordance with Article 56 (4) of Regulation (EC) No. 1083/2006 and within the parameters of the EC Regulations. Beneficiaries should ensure that proposals are formulated on the basis of these Eligibility Rules. These national eligibility rules shall also be used by the Intermediate Body as the basis for drawing up specific rules with regard to aid schemes implemented under Article 107 of the Treaty of the Functioning of the EU[1].

Stakeholders should also note that the MA may issue revisions to these rules from time to time.

ELIGIBILITY CRITERIA

The eligibility of expenditure will be assessed against main criteria:

1. *Approved Project* – the expenditure was incurred as part of an approved operation for which a Grant Agreement/Commission Decision has subsequently been issued[2];

2. *Date of when the expenditure was incurred* – activity takes place within the eligibility period;

3. *Location* – expenditure incurred must be related to a project implemented within/for the direct benefit of the eligible territory;

4. *Proof of expenditure* – presentation of invoices and supporting documents;

5. *Implementation* – expenditure incurred must be in relation to projects that have been implemented in line with sound financial management and good governance;

6. *Type of expenditure* – items of expenditure incurred in the delivery of project activities.

1. Approved Project

The Structural Funds and the Cohesion Fund are the financial instruments supporting the European Union Cohesion Policy. Cohesion Policy is intended to narrow the development disparities among regions and Member States, therefore, in pursuing the goal of economic, social and territorial cohesion.

The objective of the ***European Regional Development Fund (ERDF)*** is to promote investment and correct the main regional imbalances of the European Union. ERDF contributes to reducing the gap between the levels of development of the various regions and the extent to which the least favoured regions are lagging behind. In turn, the objective of the ***Cohesion Fund (CF)*** is to strengthen the economic and social cohesion in the Community, in the interest of promoting sustainable development, particularly in the domains of trans-European transport networks and the protection of the environment.

For expenditure to be eligible it must be in line with the priorities of *Operational Programme I (OPI)*, entitled *Investing in Competitiveness for a Better Quality of Life*, and must be incurred as part of an operation approved by the MA. Following the letter of approval, a Grant Agreement / Commission Decision[3] is subsequently issued. Expenditure can only be considered eligible for those cost items that have been agreed upon with the Managing Authority.

In line with Article 56(3) of Regulation EC1083/2006 expenditure shall be eligible for a contribution from ERDF/CF only where incurred for operations decided on by a Commission Decision, the MA or in the case of aid schemes by the relevant Intermediate Body, in accordance with criteria fixed by the Monitoring Committee.

In addition, in line with Article 57 of Regulation EC1083/2006 an operation must retain the contribution from the Funds only if that operation does not – within five years from the completion of the operation –

[1] These will also require the endorsement of the MA to ensure that they are compliant with the National Eligibility Rules.
[2] As a clarification, an operation (including scheme) is considered approved at the point that the MA issues a letter of approval following the PSC process. This approval letter is followed up by a formal Grant Agreement (GA) and / or Commission Decision, as the case may be. In case of major projects, the GA follows the Commission Decision.
[3] In the case of major projects Article 40 and 41 of Council Regulation (EC) No: 1083/2006.

undergo a substantial modification: (i) affecting its nature or its implementation conditions or giving to a firm/public body an undue advantage, and (ii) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

2. Eligibility period

For expenditure to be eligible it must be incurred between 1 January 2007 and 31 December 2015. Operations must not have been implemented before the starting date for eligibility. Nonetheless, the Grant Agreement will define the eligibility period of each operation which is generally stricter than 01/01/2007 – 31/12/2015[4]. In the case of Aid Schemes implemented under Article 107 of the Treaty, the date of eligibility cannot precede the date when the call for proposals by the Intermediate Bodies (to Beneficiaries) is issued.

3. Eligibility of operations depending on the location

As a general rule, operations co-financed by the ERDF/CF shall be implemented within/for the direct benefit of the eligible territory. The eligible territory for the Operational Programme is the whole territory of the Republic of Malta.

4. Proof of expenditure

An *invoice* is a *request for payment* indicating the amount due from a customer to pay for delivered goods, services or works. The invoice must include all the information as requested by the applicable national legislation [Value Added Tax Act (Chapter. 406)].

A *receipt* is a *confirmation of payment*, acknowledging that payment for a particular good, service or works has been received. Invoices and receipts must reflect the goods/services/works procured (as per contract) and delivered to the Beneficiary's satisfaction. The relevant provisions of the Value Added Tax Act (Chapter 406) in respect of the issuance of fiscal receipts shall apply.

In the case of aid schemes under Article 107 of the Treaty and other exceptional cases (as approved by the MA), funds may be paid upon presentation of a *reimbursement request*, where a Beneficiary requests reimbursement for expenditure it incurred in the furtherance of a co-financed operation. Reimbursement requests need to be supported by invoices and receipts (or accounting documents of equivalent probative value) and must be within the conditions and objectives of the aid granted.

Documents regarding expenditure need to be kept available for the Commission, the Court of Auditors and the Audit Authority for a period of three years following the closure of an Operational Programme, in accordance with Article 90 of Council Regulation (EC) No. 1083/2006, i.e. at least till 31st December 2020.

According to Article 10 (2) of the National Archives Act (Chapter 477) all documents of a public nature need to be preserved. Documents of a public nature which are to be preserved in the National Archives include administrative and departmental documents of the Government of Malta, including all documents of Ministries, Government Commissions, Authorities or Boards. All the documents must be kept in the relevant Ministry (or Government Entity) and after 30 years can be transferred to the National Archives and must be available for public inspection. In the case of Beneficiaries that are not public organisations (such as Voluntary Organisations and Private Sector Beneficiaries) these are to be kept on the premises of the Beneficiary at least until 31st December 2020.

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[4] Expenditure incurred before the approval letter but after 01/01/2007 is to be considered eligible, unless otherwise stipulated in the approval letter and / or Grant Agreement

5. Implementation

For expenditure to be eligible it must be incurred as part of an approved cost item in the Grant Agreement (or Addendum to the GA, Letter of Acceptance or official correspondence issued by the MA or IB) and implemented in line with the principles of sound financial management. The principles of non-discrimination, equality of treatment, transparency, mutual recognition, proportionality and good governance shall apply in all procurement (public and non-public) and recruitment and selection procedures.

Expenditure that is not included in the Grant Agreement must be approved by the MA in order to be eligible for co-financing.

6. Type of expenditure

Structural Funds aim to contribute towards the achievement of targets as indicated in the Operational Programme as well as the achievement of the priorities established by the European Union, i.e. the promotion of economic growth, competitiveness and job creation. ERDF and Cohesion Fund expenditure has to be of an investment nature.

The rules in the next section outline categories of expenditure eligible for contribution from the ERDF and CF provided that:

a) they have been approved and included in the Grant Agreement/Commission Decision;
b) they are actually incurred during the operation;
c) they are directly linked to the operation and unavoidable;
d) they are determined according to accounting and management principles/rules and used only to achieve the objectives of the operation;
e) they are adequately recorded;
f) they are incurred in accordance with national rules and under the specific conditions provided for below.

It is important to note that the list is comprehensive but not exhaustive of the types of expenditure for ERDF/CF purposes. Clarification on any item not listed should be sought from the MA. Amendments to these rules may be issued from time-to-time.

ELIGIBILITY RULES

Rule No. 1: Project Management

It is important to note that although functions in relation to project management can be contracted out, nonetheless the legal and financial responsibility of the project rests solely with the Beneficiary. The Beneficiary should undertake regular checks itself on contracted management/supervision.

1. Project management costs are eligible for a contribution from ERDF/CF under the following conditions:

    a. The project is sufficiently complex to warrant the services of project management;

    b. Beneficiaries either contract out project management through:

        i. A service tender taking into consideration public procurement procedures[5]; or

[5] or the principles of the public procurement regulations in the case of NGOs.

   ii. A specific employment contract on a definite full/part-time basis where the organisation concerned should follow its official channel of recruitment as long as the procedure applied is in line with national legislation, good governance and is transparent[6].

c. Evidence of time spent on ERDF/CF activity, such as time sheets or regular reports must be maintained.

2. Staff working within the applicant organisation (e.g. project leader, financial controllers, administration officers, etc) will inevitably contribute to the implementation of the project. However, own staff costs related to project management[7] are not eligible and cannot be funded from the ERDF/CF. Therefore, charging an apportionment of the costs relating to the applicant's staff working on the project is not possible.

3. Internal calls for project management restricted only to the Beneficiary organisation's own permanent staff are also not eligible under ERDF/CF funds. Employment procedures need to be competitive and transparent; therefore an open call needs to be issued[8].

4. Payments for unfair dismissal, redundancy payments, golden handshakes, insurances (e.g. health) and payments into private pension schemes are considered ineligible.

5. In line with Rule No. 2, apart from the project management personnel, the Beneficiary may engage a supervisor / supervisory team / technical experts when implementing construction and other infrastructural projects.

6. In principle employment contracts shall be restricted to the specific task and duration of the project.[9]

Rule No. 2: Supervision Costs

In the case of construction and infrastructural projects, apart from the project management staff, the Beneficiary may engage a (technical) supervisor/supervisory team. The engagement of a supervisor/supervisory team is eligible subject to the relevant procurement/employment procedures having been used. Charging staff costs for supervision is not eligible.

Rule No. 3: Staff Costs

1. Unless specifically authorised by the MA[10], own staff costs are not eligible.

2. As already indicated in Rules No. 1 and 2, Project Management/Supervision related staff costs are not considered eligible.

3. Staff costs related to the Project Leader are not eligible.

[6] It is advisable that, prior to publication, the Beneficiary consults with the Department of Contracts and the Department of Industrial and Employment Relations to identify the appropriate procedure to apply in the particular case.
[7] This rule does not apply in cases where Rule 24 is applicable – *Costs incurred in Managing and Implementing Structural and Cohesion Funds*.
[8] Public Sector entities shall follow the procedures outlined in Employment and Training Services Act before issuing an open call.
[9] Advice should be sought from the Public Administration HR Office (PAHRO) within the Office of the Prime Minister. Entities in the Public Service shall be guided by the conditions provided for in Section 1.1.9.3 of the Public Service Management Code and L.N. 51 of 2007 (and any additions/changes) when preparing employment contracts. The Beneficiary must also ensure compliance with relevant legislation.
[10] If included in the Grant Agreement/Aid Scheme approved by the MA.

Rule No. 4: Social Security Contributions

1. In principle, Social Security Contributions and related costs linked to an employee specifically engaged on a co-financed project can be considered eligible expenditure where these are genuinely and definitely borne by the Beneficiary[11]. The employer's social security contributions are also considered eligible as long as proof of payment can be provided[12].

2. The social security contributions related to the Project Leader are not eligible.

Rule No. 5: Purchase and Renting of Land and Real Estate

The cost of purchase and renting of land/real estate is eligible as approved by the Managing Authority in exceptional, well-defined and justified cases, and is subject to the following conditions:

1. It is approved by the MA.

2. There shall be a direct link between the purchase/renting of land/real estate and the objectives of the operation to be funded by the ERDF/CF;

3. The land purchase shall, as a general rule, not represent more than 10% of the total eligible expenditure of the operation unless a higher percentage is approved by the MA and reflected in the Commission Decision[13];

4. An independent, qualified valuer or duly authorised official body[14], confirms that the purchase/rent price does not exceed the market value; and

5. In the case of aid schemes under article 107 of the Treaty, the eligibility of land purchased/rented shall be assessed by the IB in terms of the aid scheme in its entirety and in any case may never exceed the threshold under paragraph 3 of this Rule. In such exceptional cases paragraphs 2 and 4 shall also apply.

Rule No. 6: Travel and Subsistence Allowance

1. Costs related to travel subsistence allowance (inc. utilised contingencies) are considered eligible in cases where projects involve activities which need to be held abroad.

2. Unless otherwise approved by the Managing Authority, travel (economy)[15] and subsistence allowance (inc. utilised contingencies) shall be considered eligible in line with the provisions provided in the Overseas Travel MFIN Circular No. 1/2008 (as amended by MFEI Circular No. 12/2010 and subsequent amendments) and supported by the relevant documentation.

3. In the case of experts coming to Malta, the subsistence allowance established by the European Commission within the Europe Aid Framework[16] is the maximum that can be claimed from the Funds. Fees may also be payable to the expert over and above the subsistence allowance, provided that these are justified and reasonable.

4. In the case of experts coming to Malta, fees may be payable to the expert over and above the subsistence allowance provided that it is justified and reasonable.

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[11] Pay slip and payroll (as applicable) need to be made available as proof of payment.

[12] FS5 (or equivalent) for the relevant month/s, receipt from inland revenue covering the same period/s (or equivalent) and declaration from the financial controller of the Beneficiary that for the employers' share for the NI for the persons claimed is included in the FS5. Other proofs of payment may also be considered as long as they provide sufficient evidence.

[13] In the case of major projects.

[14] MA may require a re-assessment from the Lands Department.

[15] In the case where tickets are not economy class, the Beneficiary may only claim the equivalent of the costs of an economy ticket from the ESF.

[16] http://ec.europa.eu/europeaid/work/procedures/documents/execution/per_diems/perdiem_12_2007.pdf

5. In the case of aid schemes under article 107 of the Treaty, the eligibility of travel and subsistence allowance shall be assessed by the IB in terms of the aid scheme in its entirety.

Rule No. 7: Indirect Costs (Overheads)

Apportionment of the applicant's overheads (including telephone, mobile expenses, electricity expenses, internet connection, etc) is not considered eligible. In the case of aid schemes under article 107 of the Treaty, the eligibility of overheads shall be assessed, in the first instance, in terms of the state aid regulations. The Intermediate Body shall make a request to the MA prior to including such costs as eligible under the scheme.

Rule No. 8: Research/Studies

Research/studies conducted in areas identified within OP I are eligible as long as the research/study contributes towards the objectives of the Priority Axis under which the operation has been submitted.

Rule No. 9: Publicity Costs

1. Publicity costs (such as advertising of project activities), are eligible for funding under ERDF/CF provided that any publicity measures undertaken are operation-specific and are in line with Articles 8 and 9 of Commission Regulation (EC) No. 1828/2006 (and subsequent amendments).

2. Publicity costs must also be justified and <u>in proportion</u> to the operation.

3. Information and publicity measures shall include the following:

   a. The emblem of the EU and Maltese Flag;

   b. The logo of Operational Programme I;

   c. The name of OPI Operational Programme *"Investing in Competitiveness for a Better Quality of Life";*

   d. Reference to the European Regional Development Fund or Cohesion Fund:

   e. The co-financing rate;

   f. The statement chosen by the MA, highlighting the added value of the Community: "*Investing in your future".*

4. Special conditions may apply for small objects.

5. Publication, translation and distribution costs resulting from published and audio-visual material required for the implementation of the operation are also eligible. The MA will retain full rights over publicity measures/actions and published/audio-visual material, however any responsibility for the material produced/published shall rest solely with the body issuing that material. The afore-mentioned can be used by the MA for further ERDF/CF publicity at no costs.

Rule No. 10: Consumables

1. Consumables[17] are defined as tangible items that may be depleted or worn out by use, that have a life expectancy that is shorter than the duration of the project and are not deemed to be fixed assets in accordance with generally accepted accounting principles and rules.

2. Consumables required for the implementation of the project/Programme[18] are eligible for co-financing by the ERDF/CF, subject to the following conditions:

   a. It must be procured specifically for the project;

   b. It must not be apportioned between those items that are used by the Beneficiary in carrying out its normal business (not eligible) and those that are related to the project (implementation of ERDF/CF);

   c. These do not constitute part of the operational costs of the project[19].

3. Eligible consumables[20] include amongst others:

   a. printing of documents necessary for the implementation of the operation;

   b. Stationery necessary for the implementation of the operation;

   c. Where applicable, course material required for delivery of training (in the cases of TA or ESF cross-financing components); and

   d. Postage and mail (supported by appropriate documentation e.g. logbook).

Rule No. 11: Furniture and Equipment

1. The purchase of furniture and equipment, and the adaptation of premises are considered eligible.

2. Equipment is defined as a movable or fixed unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles that meets all of the following conditions:

   a. Under normal conditions of use, including reasonable care and maintenance, has an anticipated useful life of more than three (3) years;

   b. It retains its original shape and appearance with use;

   c. If the article is damaged or some of its parts are lost or worn out, it may be more feasible to repair it than to replace it with an entirely new item; and

   d. It does not lose its identity through incorporation into a different or more complex unit.

3. Fixed assets purchased under the project that are damaged or stolen must be replaced – to the same specifications or better – by the Beneficiary organization, out of its own funds, at no additional cost to the project. Both original and replaced asset shall be included in the Beneficiary's inventory list.

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[17] Where consumables include the need for technical installation/expertise, these costs are also considered as eligible

[18] This also applies to Technical Assistance actions.

[19] This statement excludes consumables for technical assistance (which is operational by nature). It is also clear that a limited number of consumables is necessary for commissioning of equipment procured by the Funds, and this is eligible.

[20] This also applies to Technical Assistance actions.

Rule No. 12: Depreciation

1. Depreciation is not eligible, except when it is duly approved by the MA.

2. In cases where deprecation is approved, such expenditure can only be claimed from the project if there is a direct link with the implementation of the project and provided that the:

    a) Public Funds (including National or Community funds) have not contributed towards the purchase of the same assets;

    b) Assets are directly used by the project;

    c) Cost relates exclusively to the period of co-financing of the operation in question;

    d) Appropriate working papers showing how the depreciation costs have been calculated have been maintained by the Beneficiary. These include the costs, description and location of purchased items, the date of purchase, the method of depreciation, the length of time the item has been used, whether the equipment was used wholly or partly for ERDF/CF purposes, and where relevant, the present estimated residual value of the asset; and

    e) Method of calculating depreciation cost is in accordance with the relevant accountancy rules and with the Beneficiary organisation's accounting policy. The depreciation method should be provided in the Grant Agreement.

Rule No. 13: Mobile Assets

The purchase of mobile assets, such as cars, is, in principle, not eligible unless adequately justified in the project application and specifically approved by the MA.

Rule No. 14: Transport Costs

1. Transport costs for participants/trainers/officers undertaking verification checks may be considered eligible for co-financing under ERDF/CF:

    a) when it is generally made available under similar activities using national/public funds;

    b) in exceptional and justifiable cases and has to be specifically approved by the MA. Acceptance or rejection is at the sole discretion of the MA.

2. Transport costs related to the implementation of one or more aspects of Cohesion Policy (as defined in Rule 24) are considered eligible upon presentation of appropriate supporting documentation.

Rule No. 15: Purchase of Second Hand Equipment

Purchase of second hand equipment is not considered eligible unless it is duly justified and required for the implementation of the project and pre-approved by the MA.

Rule No. 16: Financial and Other Charges and Legal Expenses

1. Bank Charges on Accounts

Where co-financing by the ERDF/CF requires the opening of a separate bank account or accounts for implementing an ERDF/CF operation[21], the bank charges for opening and administering of this account form part of the administrative costs relating to an operation and are therefore eligible expenditure.

2. Financial Charges

- Interest on debt is not eligible[22].

- Charges for financial transactions, foreign exchange commissions and losses, and other purely financial expenses are not eligible, unless incurred within the framework of a financial engineering operation.

3. Legal Fees for Advice, Notary Fees, the Costs of Technical or Financial Expertise and Accountancy or Audit Costs

The cost of legal fees for advice, notary fees, technical or financial expertise and accountancy or audit services are eligible provided that they are directly linked to the operation and are necessary for its preparation or implementation. Costs related to litigation or advice/consultancy related to possible litigation is not eligible (e.g. possible appeals).

4. Fines, Financial Penalties and Expenses of Litigation are not eligible

5. Costs of Guarantees

These costs are eligible only to the extent that the guarantees are required by national or Community legislation or in the Commission Decision approving the assistance.

6. Costs Relating to MEPA Permits and other Regulatory Permitting

- Costs incurred by the Beneficiary for the preparation and/or submission of the necessary documentation relevant to the MEPA application processes can be considered eligible subject to MA approval.
- MEPA or other permit fees shall, as a general rule, not represent more than 2% of the total eligible expenditure of the operation unless a higher percentage is approved by the MA and reflected in Grant Agreement or Commission Decision;
- MEPA guarantees in relation to permits are not considered eligible.

7. Other Related Expenditure

Other expenditure including costs involved in winding up a company, bad debts, losses on exchange of currencies and service charges arising on finance leases, hire purchase and credit arrangements are not considered eligible.

In the case of Financial Engineering instruments, the eligibility of financial and other charges and legal expenses shall be assessed by the MA in terms of the objectives agreed to in the JEREMIE Funds agreement with the Holding Fund Manager.

[21] Particularly relevant in the case of aid schemes
[22] This does not include interest subsidies which are eligible as per Article 3(2)(EC) of Regulation EC 1080/2006

Rule No. 17: Consultancy Fees

1. Consultancy which is necessary for the implementation of the project (e.g. drafting of application form, feasibility studies, cost-benefit analyses) may be considered eligible.

2. Consultancy which provides support in completion of application for funds is an eligible item of expenditure subject to a number of conditions:

   a) Approval of the project

   b) The services of the contractor have been procured in a transparent and competitive way and according to the principle of good governance. In the case of public entities such services need to be procured according to the Public Procurement Regulations.

   c) The appropriate publicity requirements have been used.

Rule No. 18: Leasing

1. Expenditure related to the leasing of PCs as per standing Government policy is eligible in its entirety.

2. Other Expenditure incurred in relation to leasing operations is eligible subject to the rules set out below:

   a) The equipment remains the property of the lessor (i.e. the person leasing out the good);

   b) The lessee (i.e. the person who leases the equipment from someone else) is not responsible for the maintenance, insurance, repairs etc of the equipment;

   c) At the end of the lease the equipment does not become the property of the lessee;

   d) Leasing costs for which Community Aid is paid should be limited (as a maximum) to the duration of the project;

   e) Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the appropriate fund) that part of the Public Aid corresponding to the remainder of the leasing period;

   f) The cost has to be pre-approved by the MA.

3. The acquisition costs of the asset and the cost of leasing equipment under a finance lease which is similar to hire purchase agreements (where at the end of the lease the equipment becomes the property of the lessee) are not eligible.

Rule No. 19: Software

The development/procurement of software and the development or upgrading of IT systems and software is considered eligible.

Rule No. 20: Training Costs

Training that is part of the commissioning of equipment and any introductory training is considered to be part of the investment cost, thus eligible. Any other training is eligible subject to the cross-financing rule as per Rule 25 below.

Rule No. 21: Contributions in Kind

Contributions in kind are not eligible.

Rule No. 22: VAT and other Taxes

1. VAT constitutes eligible expenditure as long as it is genuinely borne by the Beneficiary.

2. VAT which is recoverable, cannot be considered eligible.

Rule No. 23: Housing

1. Expenditure on housing shall be considered eligible where it is programmed within the framework of an integrated urban development operation or for projects targeting areas experiencing or threatened by physical deterioration and social exclusion. Such expenditure is limited to:

   i) multi-family housing; or

   ii) buildings owned by public authorities or non-profit operators for use as housing designated for low-income households or people with special needs.

2. Interventions referred to in Article 7 (2) of Regulation (EC) No 1080/2006 are subject to the conditions outlined in Article 47 of Regulation (EC) No 1828/2006 (as amended by EC846/2009). Such housing investment must be part of an integrated approach in which support to marginalized communities takes place together with other types of interventions including interventions in the areas of education, health, social inclusion and employment.

3. For the purpose of expenditure on energy efficiency improvements and on the use of renewable energy criteria in households, criteria intended for social cohesion need to be defined to determine the eligible housing.

4. Investments for the production and transfer of energy via networks to a defined geographical area, 'network projects', are not considered as housing and therefore can be considered as falling outside the scope of Article 7(2) of Regulation (EC) No 1080/2006 and of Article 47 of Regulation (EC) No 1828/2006. It is recommended that these projects should be part of a plan covering the served geographical zone which has clear objectives and strategy. This could be for instance an integrated urban development plan or an energy saving plan at local level. It is also recommended that the selected areas for this type of investment should primarily be those experiencing or threatened be serious socio-economic difficulties.

As indicated in the COCOF note 08/0034/04 – EN, the term "network projects" refers to projects comprising both the production of energy and its transfer via a network to a given geographical area in order to satisfy the energy needs of the latter.

Rule No. 24: Costs Incurred in Managing and Implementing Structural and Cohesion Funds[23]

1. Technical assistance is critical to the efficient implementation of OPI. The actions under the Priority Axis 7 Technical Assistance will support and accompany the programme implementation, in accordance with Article 46 of Council Regulation 1083/2006. The Technical Assistance supports the main horizontal stakeholders of Malta's implementation system, including the Managing Authority, the Certifying Authority, the Audit Authority, the Intermediate Bodies, and other Bodies relevant to Malta's implementation system, including those related to the goal of enhanced participation by

[23] It is pertinent to note that all other eligibility rules have been and will continue to apply to Technical Assistance

socio-economic partners and NGOs. Activities have to meet the criteria as approved by the Monitoring Committee.

2. The following categories of expenditure are eligible for co-financing through the ERDF assistance:

   a. Expenditure relating to the preparation, project selection, management, monitoring, evaluation, publicity and information, and control activities of the assistance and of operations, including the computerised management system;

   b. Expenditure on meetings of monitoring committees and other committees relating to Cohesion Policy and the implementation of assistance. This expenditure may also include the costs of experts and other participants in these committees, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance;

   c. Each TA request shall address the implementation of one or more aspects of Cohesion Policy. The term *"Cohesion Policy"* includes, amongst others:

      - additional activities regarding the 2004-2006 Programming Period (in the case of OPI, where eligible, as per sub-article 2(h) of this Rule);

      - Regulatory activities including those related to simplification exercises and policy, Future of Cohesion Policy and Territorial Cohesion; and

      - the implementation of Territorial Agenda (in the case of the latter as relevant to Cohesion Policy).

   d. Expenditure relating to controls (including management verifications) and audits;

   e. Expenditure of salaries of public officers involved in the implementation of the Operational Programme.

   f. The payment of overtime work may also be considered eligible if pre-approved by the MA and if the following conditions are met:
      i. for employees engaged by stakeholders within the Public Service – the overtime work performed is approved in accordance with and follows all applicable criteria set in Section 3.2 of the Public Service Management Code[24]
      ii. for employees engaged by other stakeholders within the Public Sector (e.g. Intermediate Bodies) – the overtime work performed may be eligible if it is appropriately approved and if it follows the criteria set by or for the organisation concerned.

   g. Purchase[25] of furniture and equipment in line with the provisions provided in Rule No. 11;

   h. The financing of common activities supporting the implementation of both Operational Programme I and II on the basis of a ratio of 70:30 (OP I:OP II);

   i. Costs (locally and abroad) related to the participation at events linked to Cohesion Policy of stakeholders involved in the implementation of OPI;

   j. Financing costs related to the closure of the 2004-2006 programme after the final date of eligibility[26], provided that:

      a) They are incurred after the final date for the eligibility of expenditure under the 2004-2006 programme;

      b) Their eligibility is assessed on a case-by-case basis, in light of the specific features of the OPI and its overall consistency with the Single Programming Document (SPD)

[24] PSMC Eleventh Edition, published on 7th March 2011 and eventual updates.
[25] Leasing of equipment is also eligible if this is standard Government policy.
[26] COCOF/07/0021/02-EN

(2004-2006 programme). There should therefore be a clear and a demonstrable link between the OPI and the SPD in terms of geographical scope, field of intervention, and/or administrative systems regarding management and control.

3. Expenditure incurred in relation to renting is eligible for contribution under ERDF/CF. In this case the relevant public procurement regulations apply.

4. Charging a fee for the use of one's own premises is not eligible.

Rule No. 25: Cross-financing

Without prejudice to the derogations laid down in the specific regulations of the Funds, the ERDF may finance, in a complementary manner and subject to a limit of 10% of Community funding for each Priority Axis of an Operational Programme, actions falling within the scope of assistance from the European Social Fund (ESF), provided that these actions are necessary for the satisfactory implementation of the operation and are directly linked to it.

Rule No. 26: Revenue Generation

1. Article 55 of Regulation (EC) No 1083/2006 (hereafter Article 55) lays down provisions for revenue generating projects seeking co-funding by the Funds. Article 55 allows designing the Funds' interventions in such a way that normal expected profitability is duly taken into account and no over-financing occurs.

2. Article 55 indicates that for a revenue generating project[27], the *funding-gap method* is the basis for the calculation of EU grant, by determining the eligible expenditure for which contribution from the Funds, deductions and refunds would be made. Eligible expenditure cannot exceed the current value of the investment cost less the current value of the net revenue (including the residual value) from the investment over a specific reference period appropriate to the category of the investment concerned.

3. The COCOF note 07/0074/04-EN (and as subsequently modified) define a *revenue-generating project*[28] as any operation that has cash in-flows which can be:

   a. **Revenues**, that is, cash in-flows directly paid by users for the goods and/or services provided by the project, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services;

   b. Revenues generated through feed-in-tariffs (e.g. from renewable energy);

   c. **Other cash in-flows**, that is, private and public contributions and/or financial gains that do not stem from tariffs, tolls, fees, rents or any other form of charge directly borne by the users;

   d. **Operating cost-savings,** that is, reduction of operating costs as a direct result of the project being implemented.

4. In case of investment in infrastructure, the use of which, is subject to charges borne directly by the users, the beneficiary must ensure to have self-financed or reimbursed part of the investment cost which is equivalent to the net revenue expected to be generated *over a specific reference period* (as suggested by the CBA Guide[29]). This declaration and any subsequent transaction must be submitted to the MA by not later than the submission of the final report or as duly requested by the MA. The MA will monitor project revenues to ensure that this is taken into consideration.

[27] Except projects with a total project value that does not exceed €1,000,000.
[28] It should be noted that operating cost-savings generated by the projects must be considered in the funding-gap calculation. Operating cost-savings can be ignored where it can be demonstrated that they are offset by an equal reduction in operating subsidies.
[29] Alternatively as identified within the project CBA/feasibility study

5. Alternatively, in case of investment in infrastructure which includes the sale or rent of land or buildings or any other provision of services or goods against payment, the beneficiary must ensure to have incurred or reimbursed part of the investment cost which is equivalent to the net revenue *forecasted* to be generated within 5 years from the completion of the operation. This declaration and any subsequent transaction must be submitted to the MA by not later than the submission of the final report or as duly requested by the MA. The MA will monitor project revenues to ensure that this is taken into consideration.

6. Deduction of revenues shall be made in the final payments of the operation: The final payment on the project shall be net of actual and expected revenues declared by the beneficiary at the date.

7. In **ALL** cases where a project generates revenue/cost savings that were not taken into consideration, the Beneficiary should inform the Managing Authority immediately. The Beneficiary will need to take into consideration such revenue/cost savings in the calculation of the funding gap and subsequently the MA will adjust the Grant Value accordingly. The MA may effect adjustments to the public eligible amount of the project up to the deadline set for the submission of Closure Documents to the Commission, currently set at 31 March 2017 (Article 89, EC1083/2006).

Rule No. 27: Pre-financing of Major Projects

1. The MA may, at its discretion, pre-finance expenditure related to Major Projects[30] listed within the Operational Programme even if a Commission decision is still forthcoming. Expenditure incurred on a major project not yet approved by the EC may be verified by the MA for onward transmission to the CA.

2. In the eventuality that the application for the Major project is refused by the Commission, the Beneficiary will be obliged to repay back the amount pre-financed so that the expenditure declaration may be corrected in line with the Commission decision.

Rule No. 28: Service Utility Works

1. In cases where the nature of the project necessitates interventions to utility services these may be considered as eligible based on the following conditions:

   a) the cost must be clearly established (with separate invoicing or equivalent);
   b) works consist of the extraction, shifting or the excavation and backfilling of service culverts owned by third parties.

   It is imperative to note that Service Utility Works may only be considered eligible within the framework of an approved project (and not as a project on its own).

2. Costs linked to repairs or replacement of cables as well as the new cables and service utilities owned by third parties are not eligible.

Rule No. 29: Arrangements for Temporary Structures/Infrastructure

Projects may require the creation of structures/upgrading of alternative infrastructure in order to temporarily provide services which would otherwise be disrupted due the project's planned activities. Such expenditure is eligible as long as it is directly linked to the project, strictly necessary for its implementation and pre-approved by the MA.

Rule No. 30: Maintenance/Repair Costs

[30] As defined in Article 39 of EC Reg. No. 1083/2006 and subsequent amendments.

Maintenance/repair costs – including those related to items procured through an ERDF/CF project – are, in principle, not considered eligible[31]. The costs related to maintenance agreements (including extended guarantees) in tenders should be clearly identifiable in the contract.

Rule No. 31: Hospitality

Hospitality costs are only eligible if pre-approved by the MA. When approved, the following conditions apply:

a) That the scope of the hospitality is linked to the activity and not mere entertainment;
b) That the same hospitality is extended during similar activities organised by the Beneficiary through national (or other) funds; and
c) The costs incurred are reasonable.

Rule No. 32: Renting

1. Expenditure incurred in relation to renting is eligible for contribution under ERDF and Cohesion Fund provided that renting of equipment, mobile assets or venues is necessary for the implementation of the project. In this case, the relevant public procurement regulations and principles[32] apply.

2. Charging a fee for the use of one's own premises is not eligible.

3. Renting of premises of the Beneficiary and renting of premises for project management purposes is not eligible.

Rule No. 33: Financial Engineering

1. Financial Engineering Instruments are regulated by Section 8 of the Implementing Regulation, (EC) Regulation 1828/2006 (and any subsequent amendments).

2. ERDF funds may be used to contribute to the achievement of specific objectives set out under a priority axis/focus area based on an assessment.

3. Financial Engineering Instruments use ERDF contributions as capital to create a fund that is used for investments generating returns that, in turn, can be reused for further investment. In this regard, the Rules above will not directly apply to Financial Engineering Instruments. For Financial Engineering instruments the eligibility shall always be assessed by the MA in terms of the objectives agreed to in the JEREMIE Funds agreement with the Holding Fund manager.

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31 Other than (i) those identified for the maintenance of the Structural Funds Database 2007-13 and (ii) the maintenance costs arising from the lease of equipment needed for the implementation of Operational Programmes (equipment financed/leased through Technical Assistance).

32 Depending on the nature of the Beneficiary.