GOVERNMENT OF MALTA
PARLIAMENTARY SECRETARIAT
FOR EUROPEAN FUNDS

EU funds for Malta 2014-2020

Cohesion Policy 2014-2020

Annex 3

Operational Programme I (2014-2020)
Fostering a competitive and sustainable economy to meet our challenges

Eligibility Rules

European Regional Development Fund - Cohesion Fund (2014-2020)

Planning and Priorities Coordination Division

Version 2: April 2021

European Structural and Investment Funds 2014-2020
Co-financing rate: 80% European Union; 20% National Funds

PREFACE

Effective date: 1st January 2014

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

Common Provision Regulation (CPR) - 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, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund[1];

The ERDF Regulation - Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 [2];

The CF Regulation - Council Regulation (EU) No 1300/2013 of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006;

The Commission Implementing Regulation (EU) No. 215/2014 of 7th March 2014 - laying down rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council 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 with regard to methodologies for climate change support, the determination of milestones and targets in the performance framework and the nomenclature of categories of intervention for the European Structural and Investment Fund.

The Commission Delegated Regulation (EU) N. 480/2014 of 3 March 2014 - supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Councillaying down common provisions on the European Regional Development Fund, the EuropeanSocial Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development andthe 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.

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[1] In the CPR, eligibility provisions can be found under Article 65 – Eligibility; Article 68 - Flat rate financing for indirect costs and staff costs concerning grants and repayable assistance; Article 69 - Specific eligibility rules for grants and repayable assistance; and Article 70 - Eligibility of operations depending on location.

[2] In the ERDF Regulation, eligibility provisions can be found under Article 3 – Scope of support; and Article 5 – Investment Priorities.

The Commission Implementing Regulation (EU) No 184/2014 of 25 February 2014 - laying down pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council 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, the terms and conditions applicable to the electronic data exchange system between the Member States and the Commission and adopting pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, the nomenclature of the categories of intervention for support from the European Regional Development Fund under the European territorial cooperation goal.

INTRODUCTION

Art 65(1) of the CPR provides that rules on eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules. Hence, the national eligibility rules are being established by the Managing Authority in accordance with the CPR and the Fund-specific Regulations.

This document thus forms part of the legal basis for the implementation of projects co-financed by Operational Programme I (ERDF/CF) for the 2014-20 programming period.It should be read together with the Programme and Fund-specific conditions as laid down in Article 69(3) of the CPR and Article 3(3) of the ERDF Regulation and any subsequent amendments that the Commission may lay down from time to time.

Applicants should ensure that project proposals are drafted on the basis of these eligibility rules. Once project proposals are approved, Beneficiaries **must** comply with the said eligibility rules. Failure to do so could lead to financial corrections of up to 100% of the grant allocation.

The Managing Authority may issue revisions and updates to the eligibility rules, as required.

Operations funded under State Aid measures will follow a different set of eligibility rules. The Intermediate Body[3] shall draw up these specific eligibility rules in relation to Aid Schemes implemented under Article 107 and 108 of the Treaty, provided that these are not in conflict with the Regulations governing the Fund. The said eligibility rules shall require the endorsement of the Managing Authority.

In the case of Technical Assistance funded under ERDF/CF Programme, separate specific eligibility provisions are applicable.

[3] In the case of OPI, the Intermediate Body in charge of the implementation of Aid Schemes under Article 107 of the Treaty is the Measures and Support Division.

PART I – GENERAL PROVISIONS

The eligibility of expenditure will be assessed against the following eligibility principles:

1. **Approved Project**: the expenditure is incurred as part of an approved operation for which a Grant Agreement is subsequently drawn up and duly signed;

2. **Date when the expenditure is incurred**: the activity takes place within the eligibility period;

3. **Location – eligible territory**: 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/or deliverables (the latter, more applicable in the case of Simplified Cost Options) and supporting documents, as appropriate;

5. **Availability of documentation - retention period:** all supporting documents, as applicable, regarding expenditure supported by the Fund on approved operations are to be made available to the Managing Authority, the Programme auditors, the European Commission and the European Court of Auditors and any other stakeholders involved in the implementation and control of ESIF funding for a period of not less than three years from 31st December following the submission of the accounts in which the expenditure of the operation is included;

6. **Principles governing use of funding**: expenditure incurred must be in relation to projects that have been implemented in line with the principles of sound financial management and good governance and other general principles applicable to the use of funds;

7. **State Aid**: Operations that are deemed to involve State Aid need to be implemented in line with the applicable State Aid Regulations.

1. Approved Project

The European Regional Development Fund (ERDF) and the Cohesion Fund (CF) are two of the five European Structural and Investment Funds (ESIF)[4]. The ESI Funds provide support, through multi-annual programmes, which complement national intervention, to deliver the Union strategy for smart, sustainable and inclusive growth, as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion.

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[4] During 2014-20 programming period, there is a single set of rules covering the EU's 5 structural and investment funds (ESIF): which are European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD) European Maritime & Fisheries Fund (EMFF). These are the main source of investment at EU level to help Member States to restore and increase growth and ensure a job rich recovery while ensuring sustainable development, in line with the Europe 2020 objectives.

For expenditure to be eligible it must be in line with the priorities of the ERDF/CF Operational Programme I (OPI), entitled *'Fostering a competitive and sustainable economy to meet our challenges'* and effectively contribute to the achievement of the relevant specificobjective and expected results of the relevant Priority Axis.

Expenditure shall be eligible for a contribution from ERDF and CF only when incurred for operations approved by the Managing Authority, or in the case of Aid Schemes, approved by the Intermediate Body, in accordance with criteria approved by the Monitoring Committee. The expenditure must be incurred as part of an approved operation for whichan approval letter has been issued.

2. Date when expenditure is incurred - eligibility period

In accordance with Article 65(2) of the CPR, for expenditure to be considered eligible it must be incurred between 1st January 2014 and 31st December 2023, Moreover, in linewith Article 65(6) of the CPR, operations which have been physically completed or fully implemented before the application for funding is submitted to the Managing Authority, cannot be considered as eligible for funding.

The Grant Agreement will determine the eligibility period of each particular operation. Expenditure incurred before the issue of the approval letter but after the 1st January 2014 can be considered eligible, unless otherwise stipulated in the approval letter.

In the case of Aid Schemes implemented under Article 107 and 108 of the Treaty, the date of eligibility cannot precede the date when the call for proposals by Intermediate Bodies is issued.

3. Location - eligible territory

In accordance with Article 70 of the CPR, operations co-financed by the ERDF shall be implemented within/for the direct benefit of the eligible territory; the eligible territory for Operational Programme I is the whole territory of the Republic of Malta.

However, in line with the same article, the Managing Authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:

i. the operation is for the benefit of the programme area;
ii. the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF or CF;
iii. the Monitoring Committee has given its agreement to the operation or types of operations concerned;
iv. the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

4. Proof of expenditure

In line with Article 67 of the CPR, grants and repayable assistance may take any of the following forms:

i. Reimbursement of eligible costs actually incurred and paid (direct costs);
ii. Standard scales of unit costs (simplified cost options);
iii. Lump sums not exceeding EUR 100,000 of public contribution (simplified cost options);
iv. Flat-rate financing, determined by the application of a percentage to one or more defined categories of costs (simplified cost options).

The proof of expenditure will vary depending on under which of the below categories the expenditure falls.

For **direct costs**, the Beneficiary is to provide the following documentation:

- Invoice: 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.
- Receipt: 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 payments related to contracts of employment, payslips or equivalent supporting documentation shall be provided.

In the case of **Simplified Cost Options (SCOs)**, the amounts referred to in points (ii), (iii) and (iv) above shall be established in line with the CPR and the applicable Commission guidance. The Grant Agreement signed between the Beneficiary and the Managing Authority will set out the method to be applied for determining the eligible costs of the actionand the conditions for the payment.

5. Availability of Documentation – Retention period

Beneficiaries are required to retain documents as indicated for not less than three years from 31st December following the submission of the accounts in which the expenditure of the operation is included. These should be kept in an acceptable format so that they can be made available as required to the Managing Authority, the Programme auditors, the Certifying Authority, the European Commission and the Court of Auditors.

6. Principles governing use of funding

Expenditure incurred must be in relation to projects implemented in line with the principles of sound financial management and good governance as well as other general principles applicable to the use of public funds. The principles of non-discrimination, equality of treatment, transparency, mutual recognition, and proportionality shall apply in all procurement and/or recruitment and selection procedures supported by the public funds.

7. State Aid

In case the Managing Authority approves operations that would are deemed to have State Aid implications, the Beneficiary organization needs to bind itself to implement the said operation in line with the applicable State Aid Rules.

PART II – SPECIFIC PROVISIONS

Rule No. 1: Staff costs

Expenditure related to staff specifically engaged to work on the project, such as project management or supervision costs, is eligible for funding[5].

Staff costs related to the Project Leader are not eligible. However, remuneration of other existing staff within the applicant organisation working on the project (such as financial controller, administration officers, etc) may be deemed eligible, in duly justified cases, if specifically approved by the Managing Authority.

Payments for unfair dismissal, redundancy payments, golden handshakes, and payments into private pension schemes are not considered eligible.

Rule No. 2: Purchase and renting of land and real estate

The cost of purchase and renting of land or real estate is eligible subject to the following conditions:

i. 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;

ii. In line with Article 69(3)(b) of the CPR, the land purchase shall not represent more than 10% of the total eligible expenditure of the operation. However, for derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %. In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation;

iii. An independent, qualified valuer or duly authorised official body[6] confirms that the purchase/rent price does not exceed the market value.

Rule No. 3: Travel and subsistence allowance

Expenditure related to travel is eligible provided that it represents the economy/economy equivalent cost of travel.

[5] Beneficiaries are reminded that although functions in relation to project management and/or supervision can be contracted out, the legal and financial responsibility of the project as well as that of the contractual relationship with the employee/s, rests solely with the Beneficiary.
[6] The Managing Authority may require a re-assessment from the Lands Department or the relevant competent bodies.

Subsistence allowance, including utilised contingency, shall be considered eligible in line with the provisions provided in the Overseas Travel MFIN Circular No. 1/2008 (as amended by MFEI No 5/2012 and subsequent amendments), if supported by the relevant documentation.

Rule No. 4: Publicity costs

Publicity costs are eligible provided that the publicity measures undertaken are in line with Annex XII of Reg. (EU) 1303/2013. The Beneficiary is to be guided by the Visual Identity Guidelines issued by the Managing Authority.

Rule No. 5: Consumables

Expenditure to cover cost of consumables[7] required for the implementation of the project/programme are eligible if needed for commissioning of / training on equipment related to the project. Other expenditure to cover consumables may be deemed eligible, in duly justified cases, if specifically approved by the Managing Authority.

Rule No. 6: Fixed and mobile assets and financing of depreciation

Fixed assets[8] procured as part of a project are eligible in line with the principles outlined above. The purchase of mobile assets, such as cars, is considered eligible in duly justified cases, if specifically approved by the Managing Authority. In the case of Financial Instruments, the assessment of the MA will be done at the level of the instrument.

Purchase of second hand equipment is considered eligible in duly justified cases, if specifically approved by the Managing Authority.

Where it is demonstrated that leasing of equipment and/or mobile assets results in more value for money than the purchasing of the same and it better addresses the scope of the project, the cost of leasing such equipment is eligible for the period of time covered by project's activity.

Projects may also 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 and strictly necessary for its implementation and duly approved by the Managing Authority.

Depreciation is considered eligible in duly justified cases, if specifically approved by the Managing Authority, in which case the depreciation method should be provided in the Grant Agreement. In line with Article 69(2) of the CPR, where depreciation is approved, such expenditure can only be claimed from the project if:

[7] Consumables 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.

[8] In line with Article 71 of the CPR, 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 assets shall be included in the Beneficiary's inventory list.

i. Community funds have not contributed towards the purchase of the same assets;
ii. The assets are directly used by the project;
iii. The cost relates exclusively to the period of co-financing of the operation in question;
iv. Working papers showing how the depreciation costs have been calculated are maintained by the Beneficiary; and
v. The method of calculating depreciation cost is in accordance with the relevant accountancy rules and with the Beneficiary organisation's accounting policy.

Rule No. 7: Financial and other charges and legal expenses

i. Bank Charges on Accounts

Where co-financing requires the opening of a separate bank account/s for the implementation of an ERDF/CF operation, the bank charges for opening and administering of such account/s are eligible.

ii. Financial Charges

Interest on debt is not eligible, except in relation to grants given in the form of an interest rate subsidy or guarantee fee subsidy, which are eligible as per Article 69(3)(a) of the CPR.

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.

In the case of Financial Engineering instruments, the eligibility of financial and other charges shall be assessed by the Managing Authority in terms of the objectives included in the agreement setting up the instrument.

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

The cost of legal fees for advice, notarial 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 and/or implementation. Fees related to litigation are not eligible.

iv. Costs relating to Planning Authority (PA) permits and other Regulatory permits

Costs incurred by the Beneficiary for the preparation and/or submission of the necessary documentation related to the Planning Authority application processes are considered eligible.

v. Other Related Expenditure

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

Rule No. 8: Consultancy fees

Consultancy which is necessary during the preparation and/or implementation of a co-financed project (e.g. drafting of application form, feasibility studies and Cost-Benefit analysis) may be considered eligible, in duly justified cases, if specifically approved by the Managing Authority.

Rule No. 9: Software

Expenses related to the development and/or procurement of software and the development and/or upgrading of IT systems and software may be considered eligible, in duly justified cases, if specifically approved by the Managing Authority.

Rule No. 10: Training Costs

Expenditure related to training which forms part of the commissioning process of equipment and any other introductory training is considered to be part of the investment cost and thus is eligible.

Any other training is eligible subject to the cross-financing rule as per Article 98(2) of the CPR.

Rule No. 11: Cross-financing

In line with Article 98(2) of the CPR, and without prejudice to the derogations laid down in the specific Funds' rules, ERDF may finance, in a complementary manner and subject to a limit of 10% of Union funding for each Priority Axis of an operational programme, actions falling within the scope of assistance of the ESF.

Rule No. 12: Contributions in Kind and Donations

Contributions in kind and donations are not eligible for funding.

Rule No. 13: VAT and other Taxes

In line with Article 69(3)(c) of the CPR, value added tax shall not be eligible, except where it is non-recoverable under national VAT legislation.

Rule No. 14: Housing

Expenditure on housing shall be considered eligible within the framework of the Investment Priority promoting social inclusion, combatting poverty and any discrimination.

Rule No. 15: Revenue generation operations

Operations which generate revenue are eligible. The CPR lays down provisions for revenue generating projects during and after their implementation. Such provisions allow supporting revenue generating operations ensuring that there is no over-financing.

Rule No. 16: Works related to utility services

In cases where the nature of the project necessitates interventions to the utility services, these may be considered as eligible in duly justified cases, if specifically approved by the Managing Authority.

Rule No. 17: Maintenance/repair costs

Maintenance and/or repair costs associated with the funded operation being supported are not considered eligible.

Rule No. 18: Hospitality

Hospitality costs may be considered as eligible in duly justified cases, if specifically approved by the Managing Authority. The scope of the hospitality needs to be linked to the activity and not mere entertainment and the costs incurred are reasonable.

Rule No. 19: Financial Engineering

Financial Instruments approved under OPI are regulated by Articles 37 and 38 of the CPR.

Rule No. 20: Indirect costs (Overheads)

In the case of ERDF/CF, indirect costs can considered eligible as a flat rate of 15% of the eligible direct staff costs.