

MEAIM

GENERAL PROGRAMME SOLIDARITY AND MANAGEMENT OF MIGRATION FLOWS

MANUAL OF PROCEDURES

External Borders Fund (2007 – 2013)
European Refugee Fund (2008 – 2013)
European Return Fund (2008 – 2013)
European Fund for the Integration of Third-Country Nationals (2007 – 2013)

Version 2 – 10th June, 2014

Applicability: This revised Manual of Procedures applies to projects implemented under the SOLID Funds for the Annual Programmes 2012 onwards. Refer to previous versions for projects implemented under preceding Annual Programmes

CONTACT POINTS:	Responsible Authority (MEAIM) Mr. Raphael Scerri , <i>Director General Funds and Programmes</i>
CONTACT PERSON:	Responsible Authority (MEAIM) Mr. Christopher Magri , <i>Director Funds</i>
CONTACT DETAILS:	Email: fpd.meaim@gov.mt Telephone No: (+356) 2200 1116 Fax No: (+356) 2200 1141



General Programme Solidarity and Management of Migration Flows (2007 – 2013)
External Borders Fund (EBF), European Refugee Fund (ERF), European Return Fund (RF), European Fund for the Integration of Third-Country Nationals (IF)

Co-financing rate: 75% EU Fund; 25% Beneficiary's Funds

Sustainable Management of Migration Flows



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Acronyms

- **AA:** Audit Authority
- **AP:** Annual Programme
- **AG:** Accountant General
- **CA:** Certifying Authority
- **CAN:** Contracts Award Notice
- **CBM:** Central Bank of Malta
- **CBP:** Common Basic Principles
- **CfP:** Call for Proposals
- **CION:** European Commission
- **COLA:** Cost of living adjustment
- **CV:** Curriculum Vitae
- **CoE:** Council of Europe
- **DAS:** Departmental Accounting System
- **DCC:** Departmental Contracts Committee
- **DCS:** Department Corporate Services
- **DOA:** Delegation of Authority
- **DoC:** Department of Contracts
- **DG:** Director General
- **DMCS:** Description of the Management and Control Systems
- **DPI:** Director Programme Implementation
- **EBF:** External Borders Fund
- **EC:** European Community
- **ERF:** European Refugee Fund
- **ESF:** European Social Fund
- **EU:** European Union
- **EUFMU:** EU Funds Management Unit
- **FPD:** Funds and Programmes Division
- **GA:** Grant Agreement
- **GCC:** General Contracts Committee
- **IAID:** Internal Audit and Investigations Department
- **IAIB:** Internal Audit Investigations Board
- **ICT:** Information Communication Technology
- **IF:** European Fund for the Integration of Third-Country Nationals
- **ISC:** Invoice Status Certificate
- **KNPD:** National Commission Persons with Disability
- **LN:** Legal Notice
- **LM:** Line Ministry
- **MAP:** Multi-Annual Programme
- **MCS:** Management and Control Systems
- **MEAIM:** Ministry for European Affairs and Implementation of the Electoral Manifesto
- **MEPA:** Malta Environment and Planning Authority
- **MFIN:** Ministry for Finance
- **MoP:** Manual of Procedures
- **MRRA:** Ministry for Resources and Rural Affairs
- **MS:** Member States (EU)
- **MT:** Malta
- **NAO:** National Audit Office
- **NCPE:** Commission for the Promotion of Equality
- **NGO:** Non-Governmental Organisation
- **OJ:** Official Journal
- **OPM:** Office of the Prime Minister

- **OTSL:** On-the-spot check
- **PL:** Project Leader
- **PSC:** Project Selection Committee
- **PSAB:** Project Selection Appeals Board
- **RA:** Responsible Authority
- **RF:** European Return Fund
- **RfC:** Request for Clarifications
- **SAMB:** State Aid Monitoring Board
- **SIS:** SOLID Information System
- **VAT:** Value Added Tax
- **TA:** Technical Assistance
- **ToRs:** Terms of Reference
- **TCN:** Third-Country National

1. Introduction

1.1 Guide to Beneficiaries

This Manual of Procedures (henceforth MoP) is designed to guide the designated authorities (RA, CA and AA), the delegated authority (Treasury Department) and Beneficiary organisations involved in the management and implementation of projects co-financed under the General Programme Solidarity and Management of Migration Flows (2007 – 2013).

The financial instruments of the General Programme Solidarity and Management of Migration Flows (2007 – 2013) are the European Refugee Fund (ERF), European Return Fund (RF), External Borders Fund (EBF) and the European Fund for the Integration of Third-Country Nationals (IF). For the purpose of this document these four financial instruments under this general programme are referred to as 'the four Funds'.

The objective of each of the four Funds can be summarised as follows:

- The **European Refugee Fund (ERF)** aims to support and encourage the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons, taking account of Community legislation on those matters through co-financing of actions.
- The **European Return Fund (RF)** aims to support the efforts made by the Member States to improve the management of return in all its dimensions through the use of the concept of integrated management and by providing for joint actions to be implemented by Member States or national actions that pursue Community objectives under the principle of solidarity, taking account of Community legislation in the field and in full compliance with fundamental rights.
- The **External Borders Fund (EBF)** aims to ensure the efficient organisation of control, covering both checks and surveillance tasks relating to the external borders. This Fund further aims to ensure the efficient management by the Member States of the flows of persons at the external borders in order to ensure a high level of protection at the external borders as well as the smooth crossing of the external borders in conformity with the Schengen Acquis. The Fund also supports actions for building a common EU visa policy in order to facilitate legitimate travel, while tackling irregular border crossings and visa fraud.
- The **European Fund for the Integration of Third-Country Nationals (IF)** aims to support the efforts made by the Member States in enabling third-country nationals of different economic, social, cultural, religious, linguistic and ethnic backgrounds to fulfil the conditions of residence and to facilitate their integration into the European societies.

In Malta the overall co-ordination of the four Funds falls under the direct responsibility of the Funds and Programmes Division within the Ministry for European Affairs and Implementation of the Electoral Manifesto (MEAIM)¹. The Funds and Programmes Division is also the designated Responsible Authority for the four Funds.

It is important to note that projects implemented through the four Funds will always consist of both EU funds and an element of co-financing either from the national public, NGO, international organisations or private sector, except for Technical Assistance.

The main Decisions² which lay down the general provisions for the 2007 – 2013 programming period are:

BASIC ACTS:

- Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the **European Refugee Fund** for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows';
- Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the **External Borders Fund** for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows';

¹ The Funds and Programmes Division assumed responsibility for the four funds as from 31st October 2011. Prior to that date, overall co-ordination as well as the function of the RA were the responsibility of the Ministry for Justice and Home Affairs in the case of the EBF, ERF and RF, and the Ministry of Education, Employment and the Family for the IF.

² These are the main Decisions. The list is not exhaustive nor comprehensive and the decisions are subject to amendments.

- Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the **European Return Fund** for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’;
- Council Decision No. 2007/435/EC of 25 June 2007 establishing the **European Fund for the Integration of third-country nationals** for the period 2007 – 2013 as part of the General Programme Solidarity and Management of Migration Flows.

IMPLEMENTING RULES

- (ERF): Commission Decisions³ laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council establishing the European Refugee Fund.
- (EBF): Commission Decisions⁴ laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund.
- (RF): Commission Decisions⁵ laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund.
- (IF): Commission Decisions⁶ laying down rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the Integration of third-country nationals.

This MoP has been drawn up in accordance with the above legislation, laying down rules for the implementation of the respective Decisions establishing the four Funds. The Regulatory Framework provided for each of the four Funds (the Basic Acts and the Implementing Rules) will remain the legal basis for the implementation of the funding programmes. The MoP also takes into account obligations emanating from national legislation. Should any of the information presented in this Manual appears to be in contradiction with the legal basis, the legal basis will prevail.

This MoP is subject to regular revisions and changes. Should there be changes to the MoP, all project leaders and stakeholders will be informed and an updated version of the MoP (indicating the changes) will be placed on the website of the Responsible Authority.

As of 16th March 2011, the European Commission has issued version 4 of the Manual of the Eligibility Rules⁷. For ERF, RF, EBF, the contents of the revised version will apply for projects selected under annual programmes 2011 onwards whereas in the case of the IF, Version 4 will apply for projects under annual programmes 2010 onwards.

Applicability: This revised Manual of Procedures applies to projects implemented under the SOLID Funds for the Annual Programmes 2012 onwards. Refer to previous versions for projects implemented under preceding Annual Programmes

³ 2008/22/EC; 2009/533/EC; 2010/163/EC; 2011/152/EU

⁴ 2008/456/EC; 2009/538/EC; 2010/69/EC; 2011/148/EU

⁵ 2008/458/EC; 2009/614/EC; 2010/70/EC; 2011/177/EU;; 2012/718/EU

⁶ 2008/457/EC; 2009/534/EC; 2010/173/EC; 2011/151/EU.

⁷ <https://eufunds.gov.mt>

2. Roles, Responsibilities and Channels of Communication

Section A: Key Players

2.1 Responsible Authority (RA)

The Funds and Programmes Division (FPD) within the Ministry for European Affairs and Implementation of the Electoral Manifesto (MEAIM) has been designated as the Responsible Authority for the four Funds as from 31 October 2011.

The RA has the overall responsibility for financial management of the four Funds under the programming period 2007 - 2013. The RA shall ensure that Commission regulations and procedures pertaining to reporting and financial management are respected, and that a proper project reporting and information system is functioning. It shall have the full overall accountability for the Community assistance until the closure of the programme and shall carry out appropriate financial management and control. Furthermore it shall maintain a financial reporting system for the four Funds.

More specifically, the tasks of the RA will be:-

- ❖ Co-ordination of the four (4) multi-annual programmes pertaining to the four Funds under the General Programme Solidarity and Management of Migration Flows. This includes assistance in the preparation of documents, consultation and co-ordination with relevant authorities and stakeholders, including partners and civil society groups, as well as act as the main centre for information on the Programmes in Malta;
- ❖ Co-ordination of the preparation and launching of the four (4) annual programmes pertaining to the four Funds under the General Programme Solidarity and Management of Migration Flows;
- ❖ As per Article 15 (IF), 17 (EBF,RF) and 16 (ERF) of the basic acts, the RA will manage the technical assistance of the four Funds to finance preparatory measures, management, monitoring, evaluation, information and control measures, as well as measures for the reinforcement of the administrative capacity for the implementation of the Funds;
- ❖ As per Articles 25 (IF), 29 (EBF) and 27 (RF, ERF) of the basic acts, the RA shall be responsible for managing and implementing the multi-annual programme in accordance with the principle of sound financial management. It shall in particular:
 - consult partners in accordance with Article 11 (ERF), 12 (RF, EBF) and 10 (IF) of the basic acts;
 - submit to the Commission proposals for multiannual and annual programmes to which Articles 18 and 20 (ERF), 19 and 21 (RF), 21 and 23 (EBF) and 17 and 19 (IF) of the basic acts refer;
 - organise and advertise calls for tenders and proposals where appropriate;
 - organise the selection of projects for co-financing under the Funds in accordance with the criteria set out in Article 14(5) (ERF), 15(5) (RF), 16(5) (EBF) and 13(5) (IF) of the basic acts;
 - receive payments made by the Commission, and make payments to the final beneficiaries⁸ (where applicable);
 - ensure consistency and complementarity between co-financing under the Funds and from other relevant national and Community financial instruments;
 - monitor the delivery of the co-financed products and services and check that the expenditure declared for actions has actually been incurred and complies with Community and national rules;
 - ensure that there is a system for recording and storing in computerised form accounting records of each action under the annual programmes and that the data on implementation necessary for financial management, monitoring, control and evaluation are collected;
 - ensure that final beneficiaries and other bodies involved in the implementation of actions co-financed by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the action without prejudice to national accounting rules;
 - ensure that the evaluations of the Funds referred to in Article 49 (ERF, RF), 51 (EBF) and 47 (IF) of the basic acts, are carried out within the time limits laid down in Article 50(2) (ERF, RF), 52(2) (EBF) and 48(2) (IF) of the basic acts and meet the quality standards agreed between the Commission and the Member State;
 - set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in Article 43 (ERF, RF), 45 (EBF) and 41 (IF) of the basic acts;

⁸ The latter function has been delegated to the Treasury Department.

- ensure that the Audit Authority receives for the purposes of carrying out the audits defined in Article 30(1) (ERF, RF), 32(1) (EBF) and 28(1) (IF) of the basic acts, all necessary information on management procedures operated and the projects co-financed by the Fund;
 - ensure that the Certifying Authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
 - draw up and submit to the Commission progress and final reports on the implementation of the annual programmes, declarations of expenditure certified by the certifying authority and requests for payment or, where appropriate, statements of reimbursement;
 - carry out information and advisory activities and disseminate results of supported actions;
 - cooperate with the Commission and the responsible authorities in the other Member States;
 - verify the implementation by the final beneficiaries of the guidelines referred to in Article 33(6) (ERF, RF), 35(6) (EBF) and 31(6) (IF) of the basic acts pertaining to visibility.
- ❖ As per Article 25 of the IF basic act, the RA shall set up a cooperation mechanism with the managing authority designated to implement actions under the ESF. (This article contemplates also cooperation with the RA for the ERF, but since the RA for the IF is the same RA for the ERF, it is only natural that complementarily between the IF and the ERF is facilitated);
 - ❖ As per Article 34 (IF), 38 (EBF) and 36 (RF, ERF) of the basic acts, the RA ensures that the final beneficiaries receive the total amount of the contribution from public funds as quickly as possible. No eligible amounts shall be deducted or withheld, nor shall any further specific charge or other charge with equivalent effect be levied that would reduce these amounts for the final beneficiaries provided that the final beneficiaries meet all the requirements regarding the eligibility of actions and expenses;
 - ❖ As per Article 41 (IF), 45 (EBF), and 43 (RF, ERF) of the basic acts, the RA shall ensure that all the supporting documents regarding expenditure and audits on the programmes concerned are kept available for the Auditors, including the Commission Auditors, the NAO and the European Court of Auditors for a period of five years following the approval by the European Commission of the final report;
 - ❖ As per Article 48 (1) (IF), 52 (1) (EBF), and 50 (1) (RF, ERF) of the basic acts, the RA shall take the necessary measures to ensure project-monitoring and evaluation;
 - ❖ As per Article 6 of the implementing rules for the four Funds⁹, the RA will establish a manual setting out procedures and practical arrangements as detailed in the same article.
 - ❖ As per Article 10 of the implementing rules of the four Funds, in terms of Grant Agreements with final beneficiaries when the RA acts as an awarding body, the RA shall lay down detailed project management procedures covering, inter alia:
 - signature of Grant Agreements with selected final beneficiaries;
 - follow-up of agreements and any amendment thereto by establishing a system for administrative monitoring of projects (exchange of correspondence, issuing and monitoring amendments and reminder letters, receipt and processing of reports, etc.);
 - As per Article 15 of the implementing rules for the four Funds, the RA shall carry out verifications under Article 25 (1)(h) (IF), 29 (1)(g) (EBF) and 27 (1)(g) (RF, ERF) of the basic acts and shall cover administrative, financial, technical and physical aspects of projects as appropriate;
 - As per Article 20 of the implementing rules for the four Funds, the RA shall submit to the Commission the description of the management and control system with the draft multi-annual programme. The RA must ensure that it validates the description of the systems implemented by any delegated authority. Each of the designated authorities shall confirm the accuracy of the description of the management and control systems which concerns it. In addition, the audit authority shall also confirm the completeness of the description;
 - As per Article 21 of the implementing rules for the four Funds, the RA will notify the Commission by formal letter of any substantial change in the management and control system and shall send a revised description of the management and control system to the Commission as soon as possible and at the latest at the time any such change takes effect;
 - As per Article 27 of the implementing rules for the four Funds, the RA shall report to the Commission any irregularity which has been the subject of a primary administrative or judicial finding in the progress or final reports on implementation of the annual programmes;
 - As per Article 28 of the implementing rules for the four Funds the RA shall inform the Commission, with reference to any previous report made under Article 27, of the procedures instituted with respect to all irregularities previously notified and of significant changes resulting from them in the progress reports or final reports on implementation of the annual programmes.

⁹ EBF Commission Decision 2008/456/EC; IF Commission Decision 2008/457/EC; RF Commission Decision 2008/458/EC; ERF Commission Decision 2008/22/EC

In addition to the above, the Responsible Authority is also tasked with providing the secretariat to the Projects Selection Committee.

The RA may be contacted on:

Tel. no.: 22001114/6/ or 22001476 or 22001116/1109

Fax. no.: 22001141

Email: fpd.meaim@gov.mt

Delegation of Tasks by the RA

2.2 Treasury Department

In line with Article 4 of the implementing rules for the four Funds, the RA has delegated the task of executing payment transactions for the four Funds for the programming period 2007 – 2013 to the EU Funds Management Unit, Treasury Department, within the Ministry for Finance, (MFIN). The general tasks of the Treasury are as follows:

- ❖ Manage individual financial information for the effective functionality of the payment process;
- ❖ Receive requests for payments and ascertain the regularity and financial correctness of such;
- ❖ Manage the Bank account specifically opened by Treasury at the Central Bank of Malta (CBM) for payment execution purposes;
- ❖ Prepare and forward credit transfer instructions to the Central Bank of Malta for payment execution, by not later than 5 working days from ascertaining the regularity and financial correctness or requests for payment;
- ❖ Inform the RA about any unprocessed claims stating reasons or recommendations;
- ❖ Ensure that debts relating to irregularities that are eventually recovered are properly accounted for in full;
- ❖ Effect every quarter bank reconciliation exercises to ascertain the correctness of individual transactions and resolving discrepancies where necessary;
- ❖ Effect every quarter cross-checks between the Departmental Accounting System (DAS), European Union Funds Management Unit's (EUFMU's) operating system and the SOLID Information System (SIS);
- ❖ Set up procedures to ensure that all documents regarding expenditure are maintained at Treasury so as to ensure an adequate audit trail;
- ❖ Provide support, in relation to the payment proper, so that stakeholders operate to a consistent service standard and within the parameters of established procedures.
- ❖ As from Annual Programme 2012 effect payments through the SIS and carry out the necessary checks and updates required accordingly.

The Treasury shall carry out further tasks as agreed with the RA and detailed in the updated Letter of Delegation dated 21st October 2013¹⁰.

The Treasury may be contacted on:

Tel. no.: 2596 7131/7100

Fax. no.: 2596 7203

Email: treasury.malta@gov.mt

¹⁰ Acts of delegation were signed between the Treasury and the Ministry of Justice and Home Affairs on 27 July 2008 and with the Ministry of Education, Employment and the Family on 29 October 2010. A further Act of delegation was signed with the RA (now within the Ministry for European Affairs and Implementation of the Electoral Manifesto) on 21st October 2013

2.3 Audit Authority (AA)

The role of the AA for the four Funds for the programming period 2007-2013 has been designated to the Internal Audit and Investigations Department (IAID) by an updated letter dated 31st October 2011¹¹. The IAID is the executive branch of the Internal Audit and Investigations Board (IAIB) and is a self-contained independent Unit within the Office of the Prime Minister. Its work is overseen by the Internal Audit and Investigations Board whose Chairman is the Secretary to Cabinet. IAID, is regulated by the Internal Audit and Financial Investigations Act 2003 (Chapter 461, Laws of Malta). This authority, which functions independently of the RA and the CA, is responsible for verifying the effective functioning of the management and control systems (MCS).

The IAID shall carry out audits on actions on the basis of an appropriate sample to verify expenditure declared; the sample represents at least 10% of the total eligible expenditure for each Annual Programme (AP). For each AP, the IAID drafts a report comprising:-

- ❖ an annual audit report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the annual programme and reporting any shortcomings found in the systems for the management and control of the programme;
- ❖ an opinion, on the basis of the controls and audits that have been carried out, as to whether the functioning of the management and control system provides reasonable assurance that declarations of expenditure presented to the Commission are correct and that the underlying transactions are legal and regular;
- ❖ a declaration assessing the validity of the request for payment or statement of reimbursement of the final balance and the legality and regularity of the expenditure concerned.

The AA may be contacted on:

Tel. no.: 21 237737

Fax. no.: 21 237681

Email: info.iaid@gov.mt

2.4 Certifying Authority (CA)

The role of the CA for the four Funds for the programming period 2007 – 2013 was designated to the EU Paying Authority Directorate within the Ministry for Finance (MFIN) through a letter of designation dated 31st October, 2011¹².

The CA is entirely responsible for the certification process. It has the responsibility of certifying declarations of expenditure before they are sent to the Commission. The endorsement or otherwise of the declaration of expenditure by the CA will impact on the provision of financial reimbursements. It shall carry out expenditure testing from sample extracted out of the statement of expenditure.

The CA shall carry out the following functions:

- ❖ Certifying that the declaration of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents;
- ❖ Certifying that the expenditure declared complies with applicable Community and national rules and has been incurred in respect of actions selected in accordance with criteria applicable to the programme and complying with Community and national rules;
- ❖ Ensuring, for the purpose of certification, that it has received adequate information from the Responsible Authority on the procedures and verifications carried out in relation to the expenditure included in declarations of expenditure;
- ❖ Take account, for the purposes of certification, of the results of all audits carried out by or under the responsibility of the Audit Authority;

¹¹ Original letters of designation were signed by the Ministry of Justice and Home affairs (21 January 2008) and Ministry of Education, Employment and the Family (26 July 2010).

¹² Original letters of designation in force prior to this final one were one by the Ministry of Justice and Home Affairs (19th February 2008) and one by the Ministry of Education, Employment and the Family (27th May 2011).

- ❖ Maintain accounting records in computerized form of the expenditure declared to the Commission;
- ❖ Verify the recovery of any Community financing found to have been unduly paid as a result of irregularities, together with interest where appropriate;
- ❖ Keep an account of amounts recoverable and amounts recovered under the general budget of the European Union, where possible deducting them from the next declaration of expenditure;
- ❖ Support the Responsible Authority with information in requests for interim payments and the status of debtors' ledger.
- ❖ Ensure that an adequate action plan has been implemented by the RA, following a qualified or an adverse opinion on the functioning of the management and control system expressed by the Audit Authority, to ensure that the RA restores effectively the functioning of the management and control systems. The CA has also to assess the impact of the malfunctioning on the declaration of expenditure. (The CA should verify that the audit opinion on the functioning of the management and control system has been sent to the EU Commission.)

The CA may be contacted on:

Tel. no.: 2599 8259

Fax. no.: 2599 8429

Email: payingauthority.mfin@gov.mt

2.5 Central Bank of Malta (CBM)

The Central Bank of Malta (CBM) is the official banker of the Government of Malta. The CBM will:

- Maintain and operate accounts regarding funds advanced by the EU to finance programme/projects as instructed by the DG Funds and Programmes;
- The CBM will transfer funds into the consolidated' bank account once it receives instructions from the DG Funds and Programmes;
- A double signatory system has been established for authorising transactions from bank accounts withheld by the RA at CBM.

2.6 Line Ministry (LM)

The Line Ministry is primarily responsible for the inter-agency co-ordination for all projects implemented by any Department/public organisation forming part of the Ministry's portfolio. The co-ordination function is applicable from the very start, including providing Ministerial input at programming stage; supporting agencies at the moment of submission of proposals; providing support to Beneficiaries during implementation – including liaison with RA and other horizontal stakeholders; monitoring of projects falling within the Ministry's portfolio and following up any issues arising from management checks and audits.

2.7 Department of Contracts (DoC)

The Department of Contracts (DoC) within MFIN is responsible for the administration of the procurement procedures as laid down in the Public Procurement Regulations (L.N 296 of 2010 [amended by L.N 47, 104, 255 and 312 of 2012 and L.N 11 65 of 2013]) and any other amendment issued after the publication of this MoP. The DoC provides guidance and advice on all issues pertaining to public procurement. Within the legislation, the DoC is known as the Central Purchasing Body whereas the agency procuring the goods/services/works is known as the Contracting Authority.

The DoC ensures that the relevant tenders are launched and published in accordance with the above mentioned regulations and that contracts are awarded in conformity with the principles of free access, transparency and fair competition.

The main functions of the Director of Contracts are outlined in Article 6 of the LN 296 of 2010.

It is the responsibility of the relevant Beneficiaries to seek the advice from the DoC on procurement issues.

The DoC may be contacted on:

Tel. no.: 21 220212

Fax. no.: 21 2247681

Email: info.contracts@gov.mt

2.8 Beneficiary

The Beneficiary is the legal entity responsible for implementing projects such as NGOs, national authorities, other non profit organisations, private or public law companies or international organisations. Partners in the project are any legal entity which implements a project in cooperation with a final beneficiary by providing the project with resources and by receiving part of the Community contribution through the final beneficiary. The Beneficiary signs a Grant Agreement with the Responsible Authority and implements the operation in line with the terms and conditions of the Grant Agreement as well as this Manual of Procedures and the relevant EC Regulations and eligibility rules. The Grant Agreement gives the relevant detail on the objective, targets and financial allocation of the project. The Beneficiary should always be guided by the principles of good governance and sound financial management.

The list of Beneficiaries of the four Funds can be found within each respective Fund on the Funds and Programmes Division website accessible at <https://eufunds.gov.mt> or by sending an e-mail to fpd.meaim@gov.mt

2.9 Contractor

The contractor is the provider of works, supplies or services that has been awarded a contract following the launch and adjudication of a public tender and/or call for quotations. The Beneficiary is responsible for ensuring (through supervision and certification of works, services and/or supplies) that the contractor delivers the works/supplies/services in accordance with the terms and conditions stipulated in the contract and in accordance with Public Procurement Regulations, (if applicable).

2.10 Projects Selection Committee (PSC)

The Project Selection Process is steered by the Responsible Authority (RA) and supported by a Project Selection Committee.

The Project Selection Committee (PSC) is appointed by the Permanent Secretary (MEAIM) to support the RA in the selection of projects. The PSC is chaired by the RA and includes members external to the RA who provide expertise in various areas. The PSC shall draw up its own terms of reference (ToRs), however each member of the PSC, including the Chairperson but excluding the Secretary¹³, shall have voting rights. Its main function shall be to assess all proposals received and determine eligibility as well as assess eligible proposals according to the relevant selection/award criteria. The PSC shall then draw up a list of projects, ranked according to the marks obtained in the selection process. The highest ranking projects shall be funded – according to the budget available under the call. The RA is then responsible to inform Applicants of the result of the selection process and to draw up Grant Agreements with the successful Applicants. The PSC shall record its proceedings in minutes of each meeting.

2.11 Project Selection Appeals Board (PSAB)

The PSAB is chaired by the Principal Permanent Secretary or his/her delegate. The role of the PSAB is to receive, review and evaluate appeals lodged by aggrieved project proponents in case of rejected proposals. The decision of the PSAB is final. The process of the appeal is described in section 4.2.3 of this MoP.

¹³ The RA shall provide the secretariat to the Committee.

2.12 National Audit Office (NAO)

The National Audit Office is the external auditor of the Government of Malta and is completely independent of the executive arm of the Government.

Since projects co-financed through SOLID Funds are considered to be public funds, the NAO may carry out audits on the projects (both on public entities and agencies as well as private ones or projects implemented by voluntary organisations) as the external auditor of Government.

The NAO can be contacted on:

Tel. no.: 2205 5555

Fax no.: 2205 5077

Email: nao.malta@gov.mt

2.13 State Aid Monitoring Board (SAMB)

The SAMB is charged with the monitoring of state aid in Malta. The SAMB provides advice and guidance to Beneficiaries and other stakeholders (including the RA and the PSC) with respect to State Aid in order to ensure that the EU funded projects are in line with Community State Aid Regulations. Prior to the projects going through the assessment stage, the PSC shall consult with the SAMB to determine that these project proposals do not involve state aid. The SAMB can carry out checks on individual projects on issues related to state aid once project implementation is underway.

Reference should be made to Legal Notice 210/2004 (State Aid Monitoring Regulations) to ensure compliance with State Aid requirements¹⁴.

The SAMB can be contacted on:

Contact person: Dr Yana Haber

Tel. no.: 2125 2757

Email: yana.haber@gov.mt

SECTION B: CHANNELS OF COMMUNICATION

2.14 Communication Flows

The following lines of communication must be adhered to:

As per article 25 (1) a (RF,ERF), 27 (1) a (EBF), 23 (1) a (IF) of the basic acts, the RA shall handle all communication with the European Commission. The CA and the AA (in their respective roles) shall directly communicate with the European Commission on issues pertaining to the General Programme Solidarity and Management of Migration Flows.

In terms of project implementation, the RA will communicate with the Beneficiary on issues pertaining to the project.

¹⁴The Legal Notice 210/2004 may be downloaded from: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=16580&l=1>

It is the responsibility of the Beneficiary to consult the relevant national authorities on issues pertaining to project implementation (e.g. DoC on procurement, Treasury on payments, MEPA on planning and environmental permits, SAMB on state aid, KNPD and NCPE on equal opportunities, the VAT department on issues related to VAT, etc).

The Beneficiary shall ensure continuous communication with the RA to ensure that the payment process is moving ahead accordingly and within acceptable timeframes.

Any queries sent to the RA must be sent in writing.

3. Roles and Responsibilities of the Beneficiary/Project Leader

3.1 General Principles

The Project Leader (PL) represents the Beneficiary. The Beneficiary shall be responsible for the implementation of the project, in accordance with National and EU rules and procedures, in particular those pertaining to procurement, requests for payment and reporting. The PL shall also ensure the overall co-ordination and the successful implementation of the project.

The exact obligations and responsibilities of the Beneficiary are set in the Grant Agreement. The PL shall act on behalf of the Beneficiary and shall be primarily responsible for the following:

- The daily implementation of the project and the responsibility for ensuring that the objectives set are reached;
- Ensuring that the contents of invoices/receipts are valid, correct and in line with the regulations and guidelines provided in this Manual;
- Submitting invoices accompanied by requests for payments and other supporting documents;
- Initiate the payment process by uploading the necessary documents on the SOLID Information System;
- Preparing the relative reports relating to the implementation of the project as required;
- Maintaining at all time an appropriate filing system relevant to all aspects of the EU-funded projects;
- Submitting a quarterly report on the irregularities to the RA;
- Making available on demand, all records as directed by the RA, the CA, and the AA;
- Maintaining orderly and updated accounts of the project.

3.2 Grant Agreement (GA)

Once the Beneficiary is notified by the RA of the formal acceptance of the project proposal for co-funding, a Grant Agreement (GA) is signed between the RA and the Beneficiary (and any partners to the project). The GA is the binding document which will regulate the relationship between the RA and the Beneficiary (and any partners) for the purpose of implementing and financing the project.

The GA shall include, as annex, the project description (which is considered to be an integral part of the GA) which includes a breakdown of the approved budget, which must be abided with during the implementation of the project. Any changes to the GA or any of its annexes need to be approved by the RA to be considered valid.

Where applicable a Financial Identification Form (vide Annex 1) of the Beneficiary is also attached to the GA. The Financial Identification Form of service providers, if applicable, shall be provided when submitting the claim for payment (see below for further details on the payment process). Details provided in this form will be utilised to transfer payments to the Beneficiary /service provider during implementation. The Beneficiary is solely responsible for the correctness of these forms. If incorrect bank details are provided, neither the RA nor Treasury shall be liable in any way for payments transferred to incorrect bank accounts.

3.3 Amendments to the Grant Agreement

Changes to the Project Description and/or GA can only be effected in duly substantiated situations in order to formalise significant and major changes to the provisions of such GA, and with the prior approval of the RA. On the other hand, minor changes need not be formalised in a supplementary GA and the Beneficiary needs only to inform the RA in writing prior to effecting the change, providing reasons for the minor changes; in these cases also, the RA has to give its consent. The RA would then limit itself to filing such communication(s) for reference. The RA is not bound with any changes which have not been agreed to.

The request for amendment has to be sent by the PL to the RA in writing, with details of the requested changes, including the reasons behind such a request. In duly justified cases affecting budget allocations, amendments can be made as long as these do not affect the overall allocation and objectives of the project as agreed in the GA. If the requested change is substantial and in general affects the Annual Programme, the RA may carry out consultations with the European Commission.

In determining whether the changes can be accepted, the RA shall consider, amongst other issues, the following:

- The financial allocation has not been exceeded. In cases where additional funds are being requested, the RA shall determine whether additional funds are available under the Programme to cover the increase and whether the requested amount exceeds 10% of the programme budget – in which case it would need to seek the approval from the European Commission;
- There is no change in scope and objectives of the project;
- The eligibility period is not being extended beyond the eligibility period of the respective Annual Programme;
- Whether the change is considered to be reasonable (eg. it would still be reasonable if a Beneficiary purchases 12 laptops instead of a projected 10 especially if 12 persons are recruited instead of 10 – however it would not be considered reasonable if the Beneficiary increases the amount of laptops from 10 to 100);
- In the case of new expenses these would have to be linked to an already approved expense or have to be deemed as necessary to be implemented.

The RA shall inform the Beneficiary in writing of the decision taken in relation to requests for amendment.

Any amendments addressing significant and major changes taking place after the GA has been signed will be formalised through an addendum to the GA to be signed between all parties. The addendum to the GA shall be attached to the original GA as an addendum.

3.4 Implementation with a Partner Organisation

In cases where the project is being implemented by more than one entity/organisation, the Partner Organisation/s shall be indicated at the application stage. A 'partner in the project' is any legal entity which implements a project in cooperation with a final beneficiary by providing the project with resources and by receiving part of the Community contribution through the final beneficiary. The 'partner in the project' has to fill a declaration entitled 'Declaration by Partner Organisation' as per Annex 2 of this MoP.

Another type of partner is a 'contributing partner' who co-finances part of the project being carried out by the final beneficiary but who does not receive Community contribution. In this case the 'contributing partner' has to fill a declaration by co-financing third party organisation as per Annex 3 of this MoP.

A third type of partner is an 'associate partner' who agrees to perform the role allocated to it by the final beneficiary and to abide with the work plan and timetable of the project. In this case also the 'associate partner' does not receive Community contribution. This partner has also to fill a declaration which can be found in Annex 4 of this Manual.

The entity leading the project (Lead Beneficiary) shall be responsible for the actual implementation of the project. The Lead Beneficiary shall ensure that the Partner/s is/are capable of carrying out the relevant role/s and commitment/s in relation to the project.

If a partner is to participate in a project the RA is to know at the outset the role which the partner will assume. The Declarations referred to in this section have to be submitted to the RA at application stage and eventually must also be attached to the GA.

3.5 Termination and Change of Project Leadership

Should there be a change in project leadership, the Beneficiary shall inform the RA in writing preferably before the change takes place and in any case not later than 5 days after the change takes place (in justified cases) by utilising the template provided in Annex 5. Naturally the letter should specify the name and designation of the officer who will be taking over the role of project leader. The letter must be signed by both outgoing (if available) and newly appointed PLs - if the outgoing PL is unavailable the letter must be endorsed by the newly appointed PL and by a legally authorised person within the Beneficiary's organisation¹⁵. This procedure also applies for PLs who will be resigning from their post within the Beneficiary Organisation. The date of the effective handover should also be specified in the letter.

¹⁵ In the case of local councils, the change should be endorsed by the mayor and executive secretary.

3.6 Delegation of Authority by the Project Leader

The Beneficiary organisation is responsible for the whole implementation of the project.

The Project Leader represents the Beneficiary on all matters related to the project.

In cases where the Beneficiary opts for external project management, the Beneficiary must explain to the Responsible Authority the internal checks and balances introduced within the Beneficiary organisation to ensure that the Beneficiary does retain full control and decision making rights on the project. At no time shall the Beneficiary be represented by external project management for any meetings concerning the project.

In order to ensure that the Beneficiary retains full control of the project, it is advisable to nominate a contact person, in addition to the Project Leader. In cases of tight deadlines are involved, e.g. the verification and certification processes, the project leader may delegate authority to the contact person or other officials at the appropriate level. The delegation of authority should only relate to specific events such as when the project leader is:-

- Abroad
- On sick leave
- On vacation leave

In circumstances where the project leader delegates duties to officers within the Beneficiary organisation, the project leader must complete the necessary delegation of authority form authorising the officer/s concerned to carry out specific tasks on his/her behalf (Annex 6). Both parties should sign the delegation of authority letter. If the PL is not in a position to sign the Delegation of Authority Form, this would need to be signed by a legally authorised person within the Beneficiary's organisation. This document has to be forwarded to the RA before the validity of the delegation comes in force.

In the absence of this delegation, no documents that require endorsement by the PL will be accepted or processed further by the RA or the other designated/delegated authorities.

It should be noted that while the function can be delegated, the responsibility cannot.

4. Programming Procedures

4.1 Programme Documents

4.1.1 Multi-Annual Programme (MAP)

The Beneficiary shall ensure that project proposals submitted for co-financing under any of the four Funds target one or more of the priorities and hence are in line with the Multi Annual Programme (MAP)¹⁶ of the respective Fund. Details of the priorities of the relevant Fund can be found in the respective *Guidelines to the Application* which are issued with every call for project proposals.

At the initiative of the RA or the Commission, the Multi-Annual Programmes shall be re-examined and, if necessary, revised for the rest of the programming period in order to take greater or different account of Community priorities or in the light of evaluations and/or following implementation difficulties.

4.1.2 Annual Programme (AP)

The MAPs approved by the Commission shall be implemented by means of Annual Programmes (APs). The AP shall be drafted by the RA for each of the four Funds every year during the programming period (2007-2013).

The APs shall include:

- The general rules for selection of projects to be financed under the APs;
- A description of the actions to be supported under the APs;
- The proposed financial breakdown of the four Fund's contribution between various actions and an indication of the amount requested to cover technical assistance.

The drafted AP shall be submitted to the Commission for approval or otherwise. In this regard, although the RA shall see to undertake the project selection process in parallel with EC's assessment of the AP, financing of projects approved by the RA under a particular AP of any of the Funds remains subject to the formal approval of the respective Annual Programme by the Commission.

The RA shall, as a general rule, act as an awarding body in the selection of projects to be implemented under the APs. In this regard the RA shall issue an open call and a Projects Selection Committee (PSC) supports the RA in the project selection procedure. The RA also retains the right to allocate part or all of the allocation of the four Funds by acting as an executing body. The RA may utilise this method of implementation in cases where the characteristics of the projects leave no other choice for implementation, such as *de jure* monopoly situations or security reasons. In such instances selection of projects for co-funding will not require an open call for proposals, however, the projects selection committee shall nevertheless examine the relevant proposals.

4.1.3 Revision of the Annual Programme and minor amendments

Subject to the availability of financial resources, revisions of the APs can be carried out only in cases of developments which were not foreseen at the time of approval of the AP. In all cases, appropriate information regarding the changes must be included in the progress and/or final reports. When the impact of the changes is significant in financial terms, the basic acts foresee that the AP should be revised i.e. a new decision must be adopted by the Commission.

Thus the following cases require a revision of the AP and a new approval by the Commission Decision:

- i) All changes to the financial breakdown exceeding 10% of the total contribution from the Fund to the AP;
- ii) The introduction of any new action except where linked to the emergency situations;

¹⁶ <https://eufunds.gov.mt>

iii) The changes to the financial breakdown that are not justified by causes beyond the control of the RA;
In the mentioned circumstances, once endorsed by the Commission, the RA may effect changes in the financial breakdown of actions or introduce new actions. On endorsement by the Commission, the RA should proceed to inform the CA of the revisions made in the AP.

Changes exceeding 10% of the amount allocated in the financial breakdown of actions within the APs can be carried out only up to 3 months from the end of the eligibility period.

It is to be noted that shifts in the financial breakdown of actions which do not exceed 10% of the original amount allocated do not require Commission approval.

4.1.4 Management and Control Systems

The description of the management and control systems reflects the obligations under the respective Basic Acts. The RA has drafted one common description of the management and control systems (DMCS) for all four Funds, highlighting where appropriate any specific features. The RA is responsible for the system whilst each of the key players shall support the RA with regard to the role of the specific organisation. Moreover, the AA also confirms the completeness of the system description.

4.2 Selection of Projects

IMPLEMENTATION METHOD A: THE RA ACTING AS AN AWARDING BODY

4.2.1 Call for Proposals (CfP)

The RA shall, as a rule, act as an awarding body¹⁷ in the selection of projects for co-financing. This method foresees the publication of open calls for proposals for projects to be co-financed by each of the four Funds. In order to allow more time for the mobilisation of actors to start preparing proposals, the RA shall seek to issue pre-announcements of upcoming calls. Both the calls and the pre-announcements (where applicable) shall be published in the media. The RA shall seek to use also other means of publicity and communication to reach potential Applicants (e.g. website and e-mails). The RA shall seek to commit all funds in one call (also because of the restricted time-frame for implementation), however will issue subsequent calls where the desired take-up is not reached or when savings are returned to the Programme.

The calls shall be accompanied by a set of Guidance Notes (to guide Applicants in the application process) as well as an application form. The RA shall also organise information sessions to support Applicants in this regard. Upon application submission, the RA shall conduct a completeness check to determine the validity of the application (vide Annex 7). Integral documents and obligatory supporting documents will be indicated in the Guide for Applications which will be uploaded onto the website during the open call for project proposals.

4.2.2 Criteria

The Project Selection Committee assesses the eligibility of the projects (vide Annex 8). Two sets of criteria are drawn up i.e. the eligibility criteria and selection criteria. The eligibility criteria are used to determine whether an application is eligible for funding. Those proposals deemed to be eligible shall proceed to the selection phase. Ineligible projects will not be considered further; however applicants shall be informed at the first instance and also given the right of appeal. Projects that have succeeded the eligibility check are rated (Annex 9) by the PSC. The PSC awards marks according to the criteria and then ranks projects according to the marks obtained (vide Annex 10). In order to qualify for selection, the proposal needs to obtain at least 50% of the marks. Prior to the projects going through the assessment stage, the PSC shall seek clearance from the State Aid Monitoring Board (SAMB) stating that the projects do not entail state aid. The selection of projects may be limited by the available budget, in which case the highest ranking projects shall be offered a grant. The RA shall inform all applicants about the outcome of the selection process. Aggrieved Applicants shall have the right of appeal within ten working days from the date of the letter/email of rejection by the Project Selection Committee. The RA shall proceed to sign a Grant Agreements with the successful Applicants.

4.2.3 Right of Review

¹⁷ Part 2, Chapter 2, Article 9 of each of the Implementing Rules of the four Funds

The project leader (and/or person authorized to sign on his/her behalf) of the applicant organization whose project has been deemed as ineligible shall have the right to appeal to the Projects Selection Appeals Board, presenting a detailed justification as to why the project should be re-considered. The Project Selection Appeals Board (PSAB) shall be specifically set up to review such decisions. The Principal Permanent Secretary shall chair the PSAB. The PSAB shall draw up its own terms of reference (TORs) and shall record its decision in writing. The decision of the PSAB is final.

The appeal must state the grounds and the reasons for the appeal. The appellant must therefore give a detailed explanation/justification supported by relevant documentation/testimonials as to why the appellant does not agree with the decision taken by the PSC. No additional information (other than that produced in the application process) will be considered during the review. Requests for review are received by the secretary to the PSAB within 10 working days from the date of the letter/email of rejection by the Project Selection Committee. Late appeals **WILL NOT** be considered.

IMPLEMENTATION METHOD B: THE RA ACTING AS AN EXECUTING BODY

4.2.4 Implementation of Actions by the Executing Method

In the case of certain actions, the RA has the authority to select projects using the executing method¹⁸. The actions that will be selected through this method are identified in the relevant Annual Programme (AP). This method essentially authorizes the RA to select projects without going through an open call due to the characteristics of the projects, i.e. de jure monopoly situations or for security reasons. The RA shall identify such instances in the relevant AP. In this regard, the RA shall invite the relevant organization to submit an application which will also be assessed by the PSC to ensure good quality proposals. Following an assessment by the PSC, the RA shall proceed to sign a Grant Agreement with the relevant organization. The proposals selected under this method will be bound by all the rules and regulations as other projects selected under an open call.

¹⁸ Part 2, Chapter 2, Article 8 of the Implementing rules of each of the four Funds

5. Procurement

5.1 Introduction

When implementing projects financed under the SOLID Funds, the final Beneficiaries and, where applicable, the partners in the project, shall ensure compliance with the principles of value for money, transparency, non-discrimination, equal treatment, sound financial management and good governance. Care should be taken to avoid any conflicts of interest. This means that award of the contract should be the result of the proper procurement procedure. Beneficiaries should note that EU Funds are public funds. It is to be noted that the Beneficiary is to adhere to the entire spectrum of regulations, circulars, etc. issued in the ambit of procurement and employment. The sections below provide only a glimpse of the existing regulations; in case of difficulty one should refer to explanations from the DoC in the case of procurement/employment and the Department for Industrial and Employment Relations in the case of employment.

As per Article 11 of each of the Implementing Rules of the four Funds a distinction is made between those organisations which are bound by the public procurement regulations, and those that fall outside the remit of these regulations:

'When awarding contracts for the implementation of the projects, the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or several of such bodies governed by public law shall act in accordance with the applicable Union and national public procurement law and principles.

Entities other than those referred to in the previous paragraph shall award contracts for the implementation of the projects following appropriate publicity in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment. Contracts with a value of less than EUR 100 000 may be awarded provided the concerned entity requests at least three offers. Without prejudice to national rules, contracts with a value of less than EUR 5 000 shall not be subject to any procedural obligations.'

In other words, for entities, which are not subject to EU and national public procurement law and principles, the following principles should be followed:

- Contracts expected to be under EUR 5 000 may be awarded on the basis of a single bid without any call for quotations/tender;
- Contracts with a value of less than EUR 100 000 but higher than or equal to € 5 000 may be awarded on the basis of the request of at least three offers (quotations);
- Contract with a value of EUR 100 000 or more shall be awarded following the issuance of a tender with the appropriate publicity in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment.' (Refer to Page 59 of the CION's Manual of the Eligibility Rules – Version 4).

As a further guidance to the above, on reasonableness of expenditure the Manual of Eligibility Rules states that:

'The organisations not subject to public procurement rules should assess the market price by issuing at least three price requests for purchase over € 5,000 to various suppliers prior to incurring any cost (e.g. before the purchase of a good or a service). Price requests may serve as adequate documentation to support the reasonableness of the costs claimed. Best value/quality for money should be selected' (page 11).

The chapter on 'subcontracting' in the Manual of Eligibility Rules (page 59) states that,

'Subcontracts will be awarded in accordance with the usual procedures provided that these rules comply with the national and EU applicable rules on public procurement. As a general rule, final beneficiaries are required to select subcontractors offering the best value for money and to comply with the principles of transparency and equal treatment'.

When procuring and/or preparing the tender dossier, a Public Beneficiary subject to the public procurement regulations must refer to the Public Procurement Regulations 2010 (Subsidiary Legislation 174.04). It is important to note that the following guidelines are not intended to substitute in any way the relevant regulations or guidance issued by the Department of Contracts (DoC). The RA insists that advice should be sought from the DoC on ALL ISSUES pertaining to procurement.

Beneficiaries not bound by the Public Procurement Regulations are encouraged to follow the spirit of these Regulations to ensure that the guiding principles of procurement (vide paragraph 1 of this Section) are upheld.

In accordance with **Contracts Circular No. 13/2010** tenders of EU projects implemented by contracting authorities¹⁹, with an estimated value of €47,000 (exc. VAT) or higher shall continue to be vetted, published and awarded by the Department of Contracts.

For the purpose of EU funds, public contracts with an estimated value of less than €47,000 (exc. VAT) are not administered by the DoC and the responsibility of the tendering process lies with the contracting authority, in compliance with the Public Procurement Regulations.

The relevant tendering templates are available from the EU Unit within the DoC, or they can be downloaded from the following website <https://secure2.gov.mt/eprocurement/templates>. Given that tender drafting is very complex, time consuming and expensive process, it is highly recommended that Beneficiaries check with the DoC whether there are any changes (administrative or legal) planned in the near future **PRIOR** to the commencement of the drafting of the tender so that there is no unnecessary waste of resources and time.

In the case of Local Councils and other schedule 3 entities, these are to ensure that apart from their own tendering procedures (which they should follow), tenders issued for the projects under the General Programme Solidarity and Management of Migration Flows, need also to follow the principles as outlined in this section.

With regard to a documentation checklist (i.e. which documents will be required for the purpose of controls), these organisations should refer to Annex 11 of this manual, and annexes 12a and 12b with regard to the Requests for Payments.

5.2 General Principles

Beneficiaries should note that irregularities in the procurement process may render the project (or parts thereof) ineligible for funding:

The following principles must be observed for **ALL** procurement

General issues:

- Procurement procedures are initiated by the Beneficiary organisation as the Contracting Authority. The Beneficiary organisation is also responsible for the management of the contract.
- The internal approval for procurement is regulated by the organisation's directorate of corporate services (or equivalent in the case of public agencies, NGOs and Local Councils). When initiating a DoC tender, the Beneficiary must present the DoC with a draft version of the tender dossier accompanied by the Commitment Form, Tender Originator's Form and the CVs of the Evaluation Committee.
- Tenders must be evaluated by an evaluation committee. The Evaluation Committee must be composed of 1 Chairperson (non-voting), 1 Secretary (non-voting) and a minimum of 3 evaluators (voting members – must always be an odd number). In the case of DoC tenders, the Evaluation Committee is approved by DoC upon recommendation of the Line Ministry. It is highly recommended that the Boards refer to the *Standard Operating Procedures/Guidelines for Tender Evaluation Committees* (<https://secure2.gov.mt/EPROCUREMENT/templates>).
- **Selection and Award criteria must be stipulated in advance and tenders are to be evaluated only on those pre-established criteria. No other criteria can be used for the evaluation of the tender. Experience cannot be used as an award criteria.**
- Beneficiaries are to ensure that contracting is in line with the approved project proposal and must be in line with the

¹⁹ Contracting Authority is defined in the Public Procurement Regulations (Subsidiary Legislation 174.04) as the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law.

Grant Agreement.

- The call for quotations/tender dossier must stipulate all items in sufficient detail in order to determine eligibility of costs under the General Programme Solidarity and Management of Migration Flows.
- Items which are not included in the approved project proposal and Grant Agreement should either not be included in the same tender lot/call for quotations of the eligible items or be clearly identifiable (also in terms of costs), ideally by having a separate call for quotations or lot within the same tender for the ineligible items. This is particularly important for Beneficiaries issuing works tenders. In addition, extra works which are not paid out of the EU funds, should be settled in a separate contractual arrangement.
- When preparing the call for quotations/tender dossier, the Beneficiary must observe the EU requirements in particular equal opportunities and sustainable development. In executing the contract, the Beneficiary must ensure that the contractor observes EU and national legislation in relation to environment and equal opportunities and may recommend ways in which these requirements are met.
- It is important to ensure transparency and fair competition (e.g. request for quotations from different bidders to choose the best option, issued simultaneously and correctly documented). Quotations and bids should be comparable.
- The Beneficiary should seek to consolidate the number of tenders. In the first instance this reduces administrative burden. Moreover, unjustifiable splitting of tenders is not in line with Public Procurement Regulations and the EU Directives on Public Procurement and splitting of tenders so as to circumvent thresholds may render a whole project ineligible²⁰.
- Works tenders exceeding €5,000,000 (excluding VAT) shall be published on the Official Journal of the European Union via a contract notice which must be compiled by the Beneficiary. The same applies to all services and supplies tenders in excess of €130,000 (excluding VAT)²¹.

Taxes:

- It is important to note that in the case of an international tender, even non EU bidders may bid for the tender. It is important to note that purchases outside the EU may be subject to special procedures. In this regard, it is recommended that clarifications are sought from the relevant tax authorities (eg. Customs and VAT Department).
- VAT and all other taxes must be quoted separately by bidders and be included in the final price that is written in the Tender Form. When a contract is signed, the Beneficiaries must contact the VAT Department to make the necessary arrangements for the payment of VAT. Refer to Section 6.1.8 of this MoP for an explanation of the system to be adopted for the payment of VAT.

Currency and payment schedule:

- Procurement through calls for quotations or other procurement of a value of less than €2,500 may be obtained and issued in the currency of the place where the procurement would be taking place and the budget must be indicated exclusive of VAT, if the latter is applicable. On the other hand procurement of a value equal or greater than €2,500, departmental tenders or open tenders, (the latter in the case of departments and entities – contracting authorities), should be done in euro and the budget must be indicated exclusive of VAT. In addition all contracts must be signed in Euro.

²⁰ Vide Article 16(3) of the Public Procurement Regulations (Subsidiary Legislation 174.04).

²¹ Refer to Article 12 of the Public Procurement Regulations. Refer also to CION Regulation (EU) 1251/2011 of 30 November 2011, amending Directives 2004/17/EC, 2004/18/EC internal_market/publicprocurement/rules/and 2009/81/EC. (Some exceptions apply). The thresholds may change from time to time; therefore It is advisable to consult the relative EU Directives on public procurement or the DoC for any possible revisions to the thresholds. (Vide also http://ec.europa.eu/current/index_en.htm)

- Payments will be disbursed in Euro under the General Programme Solidarity and Management of Migration Flows. The Beneficiary is advised to prepare a payment schedule which must be included in the special conditions of the tender dossier. Any changes to the payment schedule during the implementation of a contract is to be brought to the attention of the RA and where applicable to the DoC. For departmental contracts, changes in payment schedules are to be formally agreed to by all signatories to the contract. When deciding on the payment schedule, Beneficiaries should be guided (where possible) by the disbursement schedule in the Grant Agreement signed with the RA.

Contract requirements:

- The contract shall clearly indicate that the contract is co-financed through 2007 – 2013 General Programme Solidarity and Management of Migration Flows as well as the respective Fund. Information on publicity can be found under Chapter 13 of this MoP and also on the website <https://eufunds.gov.mt>
- It is important that the contractor is not only aware of the source of funding of the contract but also that the contract is bound by the EC regulations and guidelines for the four Funds under the General Programme Solidarity and Management of Migration Flows, applicable national regulations and the requirements of the Grant Agreement.
- The contract shall clearly indicate the contractor's name. The contractor must provide the financial identification form which should contain the name of the contractor's bank and bank address, the account number and any other relevant information, wherein remittance should be affected under the direct method of payment (vide Chapter 6 of this MoP). The Contractor must also provide the relevant Pre-Financing Guarantee where applicable.
- The Beneficiary's relationship/obligations rest solely with the contractor indicated in the contract (and not with any sub-contractors {if there are any}).
- In order to fulfil the principle of mutual recognition, the contract shall be signed by all contracting parties (which may be DG Contracts on behalf of a Contracting Authority), thus implying that all agree with the terms and conditions set in the contract. Each page of the contract shall be initialled by all parties.

Bank Guarantees and Retention Money:

- Safeguards such as bank guarantees must be put in place to recover funds in the case of advance payments. Subject to the applicable threshold, stipulated in the Public Procurement Regulations, a pre-financing guarantee to cover the full amount of the pre-financing payment shall be issued by the contractor.
- It is important to note that Beneficiaries **ARE NOT TO RETAIN MONEY AT THE END OF A CONTRACT**. Retention money throughout the implementation of a contract is allowed, however, all money must be released upon completion of a contract.
- In this regard if Beneficiaries feel the need to have some money retained for specific safeguards, they are to insert a clause in the tender dossier whereby the Contractor will be paid all funds due upon completion of the contract (ie. at provisional acceptance stage) and should retention money be deemed necessary (e.g. if the Beneficiary generally applies 10% retention money until final acceptance), the tender and the contract should stipulate that the 10% will be paid to the Contractor upon completion (i.e. in the last invoice) but against a bank guarantee of an amount equivalent to the value of the retention money. For EU-funded projects, this guarantee is recommendable, so if there is a need for retention money, it must be included as a condition in the special conditions within the tender document. This is necessary to safeguard public funds. Further advice can be sought from the DoC.
- Apart from the retention guarantee the performance guarantee must be kept valid until final acceptance. Payments will not be processed if such guarantees are not retained valid for the duration of the contract.
- Bank guarantees of EU-funded projects whose VAT is an eligible cost must also cover the VAT element

5.3 Procurement by Organisations Subject to Public Procurement Regulations

5.3.1 Contracts below the €47,000 threshold

Beneficiaries should consult their Director Corporate Services/Financial Control Department prior to publishing a departmental tender. Ideally DoC templates and procedures should be adapted for such tenders. With regard to a documentation checklist (ie which documents will be required for the purpose of controls), these organisations should refer to Annex 11 of this manual, and annexes 12a and 12b with regard to the Requests for Payments.

Public contracts with an estimated value that does not exceed €47,000 (exc. VAT) are administered directly by the implementing department and/or the authority (listed under Schedule 2 of the Public Procurement Regulations). It is important to note that although such contracts are not processed by DoC, the Head of the relevant organisation (legal representative) is responsible to ensure that procurement has taken place in line with the Public Procurement Regulations.

In accordance with Contracts Circular 13/2010, each Ministry shall appoint a *Departmental Contracts Committee*. This shall be composed of the Director Corporate Services of the Ministry (who shall act as chairperson), a representative of the Permanent Secretary of the Ministry, and a representative of the Department of Contracts, supported by a secretariat. The DCC shall approve or otherwise the recommendations on tenders submitted by the *Departmental Adjudication Boards* (see next point) appointed by the Ministry, departments, entities, agencies and authorities within its remit.

In the first instance, tender bids (for tenders with an estimated value of more than €6,000 but less than €47,000) shall be evaluated by a *Departmental Adjudication Board* (also known as *Tender Evaluation Committee*) appointed for the specific purpose of evaluating tender bids administratively, technically and financially. It is recommended that where possible, a representative from the finance or the procurement units within the organisation is a member or observer of the Adjudication Board in order to support the Board on procedural issues. This Board shall be composed of a Chairperson, secretary and at least three voting members and shall be guided by the Public Procurement Regulations, particularly Articles 18, 19, 20 and 21. The evaluators are to refer also to the *Standard Operating Procedures/Guidelines for Tender Evaluation Committees*, issued by the DoC and available at <https://secure2.gov.mt/EPROCUREMENT/templates>

The Departmental Adjudication Board submits its recommendations to the Departmental Contracts Committee for approval. The decision of the DCC is final but subject to Article 21 (right of recourse) of the Public Procurement Regulations.

As a contracting authority listed under Schedule 3 of the Public Procurement Regulations, Local Councils are to abide by the requirements set out in L.N.296 of 2010, the Local Councils Act (L.N.255 of 2009) and any subsequent amendments. Local Councils are encouraged to use the procurement templates issued by DoC when carrying out procurement in relation to EU funded projects. These templates may be downloaded from: www.contracts.gov.mt/resources. Moreover, in the case of Local Councils and other schedule 3 entities, these are to ensure that apart from their tendering procedures (which they should follow), tenders issued for SOLID projects also follow the principles as outlined in this section. With regard to a documentation checklist (i.e. which documents will be required for the purpose of controls), Local Councils should refer to Annex 11 of this manual, and annexes 12a and 12b with regard to the Requests for Payments.

Beneficiaries are to ensure that publications of calls for quotations and/or tenders also contain the required publicity notifications and information as specified in Chapter 13 of this MoP.

5.3.2 Procurement procedures for Public Contracts below the €47,000 threshold

a) *Threshold under €2,500 (Exc of VAT) – Section 20(1) (a) of LN. 296/2010*

When the estimated value of the procurement does not exceed €2,500 (exc. VAT), the supplies, works and services may be procured by the contracting authority directly, by obtaining quotations or direct from the open market. If the contracting authority opts for a direct order (i.e. direct from the market), formal approval needs to be sought at the discretion of the Head of Department, taking into consideration the amount involved, the urgency to procure the goods and services and the limitations of choice and availability. In the case the quotations option is chosen, for the purpose of good governance, the three-quotation system is preferred, where the cheapest of three **comparable** quotations is to be selected. Quotations from the market should be requested simultaneously, and the same request should be made to all works or supplies or service providers.

b) Threshold between €2,500 and €6,000 (Excluding VAT) – Section 20(1)(b) of L.N.296/2010

When the estimated value of the procurement exceeds €2,500 but does not exceed €6,000, the supplies, works and services can be procured by the contracting authority by means of a departmental tender, or after obtaining quotations, or direct from the market, taking into consideration the amount involved, the urgency attached to the procurement and restrictions of choice and availability. If one resorts to a departmental tender, the related call should be published in the Government Gazette. If the contracting authority opts for a direct order, formal approval needs to be sought from the Minister responsible for that department, or by such member of the department as may be authorised by that Minister. The same considerations for quotations as noted in 5.3.2 (a) apply.

c) Tender in lots not exceeding the value of €25,000 (Excluding VAT) – Section 20(1)(c) of L.N.296/2010

Same or closely similar supplies, works and services can be procured in lots during a period of six months, as long as the total purchases does not exceed the value of €25,000. Under these conditions, the same provisions and considerations under paragraph 5.3.2 (a) and (b) apply.

d) Threshold between €6,000 and €47,000 (Excluding VAT) – Section 20(1)(d) of L.N.296/2010

When the estimated value of the procurement is between € 6,000 and €47,000, the supplies, works and services can be procured by the contracting authority by means of a departmental tender or call for quotations published in the Government Gazette. The tenders and quotations shall be opened in public by three senior officers of the Department and prices quoted shall be made public.

5.3.3 Contracts that are equal to or exceed the €47,000 threshold

a) Administrative Steps

In the case of public contracts with an estimated value of/exceeding €47,000 the administration of the contract depends on whether the Beneficiary is listed under schedule 2 or 3 of the Public Procurement Regulations²². Contracts are administered through the DoC if the Beneficiary is listed under Schedule 2 of the Public Procurement Regulations. If the Beneficiary is a contracting authority listed under Schedule 3, then the Beneficiary will issue, administer and determine the public contract/s in accordance with the provisions of the Public Procurement Regulations LN 296/2010

The following sections describe the relevant steps to be followed by the relevant Beneficiary falling under Schedule 2. In the case of a Beneficiary falling under Schedule 3, the same procedure applies but the process is administered by the Beneficiary organisation itself rather than the DoC.

As a contracting authority listed under Schedule 3 of the Public Procurement Regulations, Local Councils are to abide by the requirements set out in LN 296/2010, the Local councils Act (LN 255 of 2009) and subsequent amendments.

b) Preparation and Launching of a tender

The Beneficiary must initiate tenders and compile the Tender Dossier in accordance with the Public Procurement Regulations (L.N. 296/2010 and subsequent amendments) and in accordance with the requirements set out in Contracts Circulars, in particular No. 18/2008 and 9/2009. Beneficiaries should note that this process requires considerable resources, knowledge and time, and therefore should ensure that the necessary resources are available (including sufficient time) to ensure an adequate process.

The Beneficiary must ensure that the latest EU tender template is used. Beneficiaries are advised to liaise with DoC on these matters prior to initiating the tender drafting process. The Beneficiary is to download a fresh blank copy of the templates from the DoC website every time before starting to compile a new tender (from www.contracts.gov.mt/resources). The Beneficiary shall compile the relevant EU tender templates if the tender value exceeds the EU thresholds and eventually these are to be published

²² Beneficiaries should consult the latest version on the Department of Contracts website as there could be changes to the schedules from time to time. The Beneficiary is to use the one applicable at the time of launching the tender.

in the EU Official Journal. The forms are available on-line www.contracts.gov.mt or http://simap.europa.eu/index_en.html. Currently the thresholds are €5,000,000 for works and €130,000 for services and supplies²³.

Having compiled these forms, the Beneficiary must forward the tender dossier and the publication forms (if applicable), in soft copy and ideally one hard copy to the Department of Contracts, for vetting. The Beneficiary submits the Funds Commitment Form (Annex 13). It is important to note that the Funds Commitment Form must be submitted immediately as the tender cannot be launched if the Funds Commitment Form is not submitted to DoC. The Beneficiary submits a copy of the Funds Commitment Form to the RA, the Assistant Director (Capital Expenditure) MFIN and the Accounting Office of the respective Line Ministry. The procedure is not applicable to NGOs, private enterprises and Beneficiaries falling under Schedule 3 of the Public Procurement Regulations.

The DoC vets the dossier and advises the Beneficiary on any amendments, if necessary. The Beneficiary will incorporate these amendments and re-submit the tender to DoC for further vetting as early as possible.

Once the tender vetting is completed by DoC and approval on the final text is granted, the Beneficiary sends one hard copy and one soft copy on CD of the tender dossier (including all designs and supportive documentation, if necessary) to the DoC.

The DoC will take the necessary steps to forward the publication forms to the Official Journal (where applicable) and also to publish the tender on the Government Gazette. The Beneficiary is responsible for following up matters with the DoC in this regard to ensure timely publication.

c) Tender Evaluation and Adjudication

Once the tender deadline elapses, the tender bids are opened and scheduled in public by the General Contracts Committee.

The Head of the Beneficiary organisation shall propose a Tender Evaluation Committee (Departmental Adjudication Board). In the case of the relevant public entities, this recommendation, together with CVs, shall be sent to the DoC through the Line Ministry. The tender bids are forwarded to the tender evaluation committee for evaluation. The role of the Evaluation Committee is to appraise the offers received against the pre-established selection and award criteria. No other selection or award criteria other than those mentioned in the tender may be used.

The Evaluation Committee shall be composed of 1 chairperson (non-voting member in charge of organising the meetings, requesting permission to the GCC to seek clarification from bidders and ensuring deadlines are adhered to, etc.), 1 secretary (non-voting member who shall be conversant with the procurement procedures), **and a minimum of 3 evaluators** (voting members who in general should have the technical capacity/experience to evaluate the bids). The number of evaluators must always be an odd number and more than one.

For further guidance on the composition and roles of members on evaluation committees, it is recommended to consult the Standard Operating Procedures /Guidelines for Tender Evaluation Committees issued by the Department of Contracts, that can be downloadable from <https://secure2.gov.mt/EPROCUREMENT/templates>.

The Evaluation Committee adjudicates the tender bids. The Chairperson of the Tender Evaluation committee shall submit an evaluation report, signed by all the evaluators, to the Director General DoC, for the consideration of the General Contracts Committee. The DoC shall vet the report and publishes the results of the adjudication process on the DoC notice board and website.

Upon award of the tender, and where applicable, the DoC publishes the Contract Award Notice (CAN) in the OJ.

The DoC issues a letter to the successful bidder recommended for award. The DoC issues also a letter to non-successful bidders informing them of the outcome of the adjudication of the tender and the deadline for submission of appeals.

²³ Refer to CION Regulation (EU) 1251/2011 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC. (Some exceptions apply). The thresholds may change from time to time; therefore it is advisable to consult the relative EU Directives on public procurement or the DoC for any possible revisions to the thresholds

5.3.4 Evaluation Committees for the evaluation of tenders

In the case of public entities, the members of the Evaluation Committee for tenders above the €47,000 threshold are recommended by the relative Permanent Secretary and approved by the DoC.

In the case of tenders below the €47,000 threshold, the Evaluation Committee is set up by the Beneficiary responsible for the contract. It is highly recommended that the Director Corporate Services/Head of Finance of the public organisation participates in the evaluation committee (as a voting/non-voting member or observer) to ensure that correct procedures are followed in the procurement process.

It is important that the structure of the Evaluation Committee and the procedure followed to evaluate tenders is in line with the procedures established in the Public Procurement Regulations (Part 2, 3 and 4 respectively depending on the threshold of the tender value) of LN 296 of 2010 and subsequent amendments.

An Evaluation Committee should ideally consist of at least five members with a chairperson, a secretary and at least 3 voting evaluators. The chairperson and the secretary will not have voting rights and the number of evaluators must be an odd number.

A Curriculum Vitae on the appropriate template, of all Evaluation Committee members is submitted to the DoC by the Contracting Authority together with the recommendation to approve the members for the committee. Evaluation committees should avoid (where possible) hierarchical relationships between employees.

All documentation related to the evaluation process must be retained as an integral part of the project documentation (refer to Chapter 8 of this MoP for Retention of Documents).

It is important that following the adjudication of a tender, the Evaluation Committee sends all the documentation to the DoC. However, the Beneficiary must also ensure that the Evaluation Committee gives a copy of the evaluation report/s to the Beneficiary organisation so the latter can keep this copy on file in accordance with the retention of documents as indicated in Chapter 8 of this MoP.

5.4 Evaluation of tenders / quotations submitted

Unless duly justified the evaluation of tenders/quotations should be based on the cheapest technically compliant.

In case of quotations, where a set of items are to be procured, it is recommended that in the request for quotations is included whereby the beneficiary reserves the right to procure separate items based on their individual prices. In all cases, the ultimate decision should be based on the cheapest price provided, either for all items requested, or for individual items.

5.5 Payments Schedule and Late Payments (MFEI Circular 8/2012)

Prior to signing of a contract the Beneficiary must comply with MFEI Circular 8/2012 to ensure that payments for procured goods and services are effected within 30 days. Alternatively, the conditions attached to public tenders should explicitly indicate the period of payment, as well as the rate of interest payable in the event of late payments. Therefore the Beneficiary should liaise closely with the DoC for the inclusion of appropriate clauses during the preparation of the tender documents. Penalties arising from late payments are not eligible for co-financing.

As of 14th August 2012, LN 272 of 2012 came into force and provides that in commercial transactions where the debtor is a public authority, unless the period for payment and rate of interest are specified in the contract, the creditor is entitled to interest at the European Central Bank reference plus 8% which shall become payable automatically upon expiry period of the credit period allowed by law which tantamounts to 30 days following receipt of invoice or receipt of goods or services.

5.6 Addenda to a Contract

Some changes in the contract may necessitate an addendum (formal change recorded in a contractual manner) to the original contract. A public sector Beneficiary should seek the advice of the DoC in this regard. In the case of NGOs and other non-public entities the Beneficiary should ensure that all changes are well documented and approved by the legal representative of the organisation, the financial controller of the organisation who is generally responsible for procurement and the Board where applicable. Addenda are generally signed by both the Beneficiary as well as the contractor and should establish clearly the

changes as well as the effective date of the change and any other implications (of the change) on any other part of the contract such as budget, payment schedule and overall validity period of the contract.

5.7 Non-compliance by Contractors with Contractual Obligations

The DoC stresses the importance that has to be placed on the responsibility of the Beneficiary, more specifically of the project leader, to ensure that a contractor is abiding by the obligations stipulated in the contract. Should a contractor fail to meet the contractual obligations, the project leader should bring this to the attention of the contractor, in writing, and should also copy the correspondence to the DoC.

Should the contractor continue to fail to meet the contractual obligations, the Beneficiary may in the first instance, ask the DoC to caution the contractor. Should the contractor persist in failing to abide by the contract despite being cautioned by the DoC, the project leader can initiate the procedure to implement the necessary penalties as stipulated in the contract. It is important to note that it is the Beneficiary organisation and not the DoC that initiates this procedure. Penalty payments notified and recorded are to be deducted accordingly when processing payment claims and the contractor must be notified accordingly of all procedures taken.

5.7.1 Release of Retention Money and Financial Guarantees

It is important to note that the Beneficiary **IS NOT TO RETAIN MONEY AT THE END OF A CONTRACT**, but ensure that any retention monies are transformed into bank guarantees (by the contractor in favour of the Beneficiary/Director of Contracts – as the case may be) at the end of the contract. Retention money throughout the implementation of a contract is allowed, however all invoices must be paid upon completion of a contract. In order to safeguard public funds and also ensure that the necessary safeguards are in place, the Beneficiary is to insert in the tender dossier a clause whereby the contractor is paid all funds due upon satisfactory completion of the contract but the contractor must undertake to transform any retention monies (as deemed by the Beneficiary) into an equivalent bank guarantee upon completion of the contract (substituting the money to be retained). This instruction is to ensure that no funds are left to be paid beyond the eligibility period.

5.7.2 Release of Financial Guarantees

In the case of the financial performance guarantee, it is important to note that such a guarantee can only be released following confirmation that all contractual obligations have been fulfilled and the project leader submits the contract completion report to the DoC²⁴, unless otherwise stipulated in the contract. In the case of contracts below the €47,000 threshold, the Beneficiary organisation, is responsible for the release of any financial guarantees (where applicable).

In the case of tenders above the threshold of €47,000 and which fall within the responsibility of the DoC, the financial guarantee is made payable to the DoC and is retained by the DoC throughout the implementation of the contract and until a contract completion report is submitted by the Beneficiary to the DoC.

Upon completion of a contract, the Beneficiary organisation informs the DoC that the contract has been completed and that all obligations have been fulfilled accordingly. The Beneficiary cannot undertake any other arrangements with the contractor on the release of a bank guarantee without the authorisation of the DoC. The bank guarantee is released by the DoC in accordance with the conditions stipulated in the contract and only if it results that all contractual obligations have been fulfilled.

NGOs and other Beneficiaries not falling within the remit of the DoC are to ensure that similar procedures are adopted by the organisation when implementing projects under the four Funds.

5.8 Direct orders

As per Public Procurement Regulations (Regulation 20 (4) of Legal Notice 296 of 2010), requests for direct order in excess of EUR 6,000 should be made in writing for approval, supported by proper justifications and lodged with the Ministry for Finance through the Direct Orders Office for processing before any actual commitment for the procurement of goods and/or services.

In line with MFIN Circular 3/2013, Heads of departments and public organisations are to ensure that requests for direct orders are resorted to on an exceptional basis. Such procurement procedures are to be resorted to only in the following circumstances:

²⁴ The contract completion template is obtained from the DoC

- a) When no tenders or no suitable tenders or no applications have been submitted in response to an open procedure;
- b) When for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services may be provided only by a particular economic operator;
- c) Where the contract concerned is awarded subsequent to a design contest and must be awarded to the successful candidate or to one of the successful candidates;
- d) In so far as is strictly necessary, when the time-limits for open, restricted or negotiated procedures referred to in the Public Procurement Regulations cannot be respected for reasons of extreme urgency occasioned by unforeseeable events. The circumstances invoked to justify urgency must not be attributable to the contracting authority;
- e) In so far as is strictly necessary, for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the service or works or supplies described therein, on condition that the award is made to the economic operator executing the contract.

Requests for direct orders must be justified on the basis of any of these five particular circumstances.

5.9 Green Procurement

Public Authorities should also seek to procure goods, services and works with a reduced environmental impact as per Contracts Circular no 21/2011.

5.10 Procurement by Organisations NOT Subject to Public Procurement Regulations

EU Funded projects are subject to audits by various EU and National auditing bodies. Projects should follow clear and open procedures in any procurement undertaken. In this regard, organisations not subject to public procurement regulations are expected to use fair and open practices when awarding contracts for which they intend to claim EU and national funds. Transparency, competition and good governance are key elements of procurement. Despite not governed by national and EU Public Procurement Regulations, EU Treaty principles and the General Financial Regulation require the use of public funds (irrespective of who is using them) to adhere to the afore-referred to principles. The organisations in question are also expected to follow reliable criteria in purchasing; it should be noted that the cheapest technically compliant criterion is the preferred option as it allows a stronger and more objective basis for evaluation. The most economically advantageous tender (MEAT) criterion may only be ideal in cases of complex procurement requiring special technical specifications. Organisations not subject to public procurement regulations are encouraged to consult with the RA to discuss the procurement processes and methodologies that will be adopted.

For these organisations to uphold the above-mentioned principles, they need to have strong internal controls²⁵.

Organisations not subject to public procurement regulations should always ensure adequate publicity of tenders such as on local newspapers, on news portals and/or on popular websites (where necessary). Such costs, as long as they are reasonable and proportionate to the activity, can be funded through the project, if approved in the Grant Agreement. Such organisations are also encouraged to make use of their own media such as their own website.

Final beneficiaries or partners in a project are required to adopt procurement procedures in a way that ensures best value for money. They are also to follow the spirit of the 'Payments Schedule and Late Payments' (MFEI Circular 08/2012).

These bodies should ensure the publication of results and must also inform successful and unsuccessful bidders of the outcome of the adjudication process. Adequate time should be allowed for appeals to be lodged. In case of an appeal, an independent appeals board which is different from the original committee shall be set up and the award of contract suspended until the appeals board communicates its decision.

²⁵ Internal controls are methods put in place by a company/organisation to ensure the integrity of financial and accounting information, meet operational and profitability targets and transmit management policies throughout the organisation.

5.10.1 Procurement with a value of more than € 100 000 (vide section 5.1 of this chapter)

For procurement with an estimated value equal or over € 100 000, organisations not subject to public procurement regulations should emulate the processes described in Section 5.3.3 (above) within the governance structure, taking all the necessary measures to ensure that the process follows the spirit of the Regulations. In such cases, such organisations are highly encouraged to consult and liaise with the RA prior to undertaking such procurement.

In such cases the evaluation committee should be approved by the Legal Representative of the Organisation/or management board/council. The person responsible for finance/procurement within the organisation should form part of the evaluation committee (as a voting/non-voting member or observer) to ensure that correct procedures are followed in the procurement process.

5.11 Procurement of Equipment through the Four Funds

Documentation: When purchasing equipment through the four Funds, it is important that the equipment is used for the specific reasons for which it was bought and in accordance with the conditions in the Grant Agreement. All documentation in relation to purchase and use of the equipment (including guarantees etc.), has to be filed in the project file. It is up to the Project Leader and Beneficiary organisation to ensure that all relevant documents in line with the principle of sound financial management are handed over by the supplier and filed for ease of reference.

Inventory: It is obligatory to keep an inventory of the equipment and its location in file (vide annex 14). The inventory must be signed (and updated when necessary by the Project Leader) and endorsed by the responsible officer within the organisation.

The Beneficiary must keep in mind that:

- When equipment is purchased through four Funds, it is imperative that such equipment is kept in good working order throughout and after the project
- The Beneficiary is to ensure that the equipment comes with the appropriate guarantees.
- If any fault results in the equipment, all documentation in relation to the repair must be kept and in worse case scenario when the equipment needs to be replaced, it is important that all documentation is kept on file.
- If equipment is replaced, both the old and new serial numbers must be retained.
- If equipment is faulty and/or damaged and is replaced by the supplier/Beneficiary – whether under guarantee or not, the replacement must carry out the same function and be of the same or higher specifications as the equipment being replaced.
- Equipment fully co-financed through the General Programme Solidarity and Management of Migration Flows, must be exclusively used for the project implementation ex. Computers must contain files and folders that are related to the project co-financed through the General Programme Solidarity and Management of Migration Flows. Failure to comply with such an obligation may result in funds being recovered.
- The Beneficiary shall ensure that the relevant publicity²⁶ appears on the equipment purchased as well as on the relevant documentation.

5.12 Additional Principles applicable to all beneficiaries

5.12.1 Duration of tender on the market

The duration of the tender on the market depends on the nature of the goods/services being procured, the complexity of the tender specifications and the level and intensity of preparations needed by the potential bidders to finalise the tender document. The ultimate aim should always be to maximize competition as much as possible. However, when the estimated value of the tender does not exceed €120,000 it is best practice to allow for a minimum of three weeks. On the other hand if the value exceeds €120,000 it is best practice to allow for a minimum of 52 days.

²⁶ Consult with the RA in case of difficulties/particular cases.

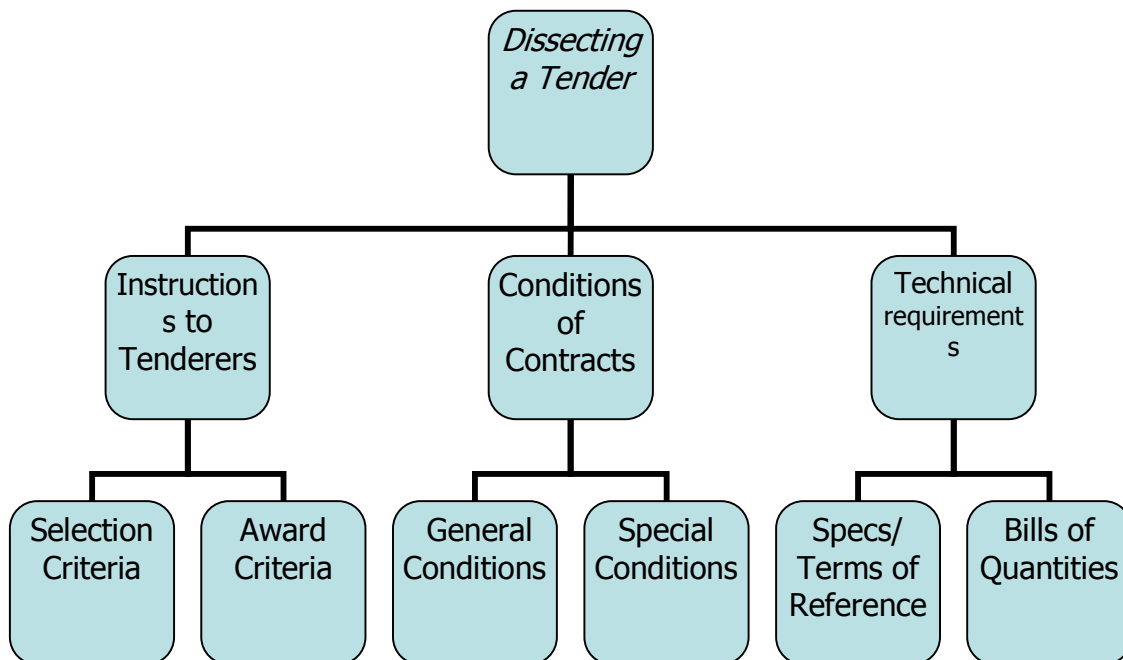
5.12.2 Charging for collection of the tender document

In line with the Department of Contracts (DoC) policy it is recommended that tender documents are put online to ensure greater opportunities for economic operators to participate in tenders. If all services related to a call for tenders are provided online, apart from having the document available 24 x 7, the bidders would not need to physically call at the beneficiaries' offices in order to obtain the tender document. The same applies to the specifications for calls for quotations.

So it is recommended that there should not be any fee for accessing a tender document (either through online means or by physically collecting it).

5.12.3 Items included in the tender document

What is included in the tender document depends on the nature and magnitude of the activity. One reiterates that the beneficiary is encouraged to make use of the Department of Contract's Public Procurement Templates and adapt them to their needs. Basic elements of the tender document should include (not exhaustive) the objective of the tender (i.e. why it is being issued), who can apply followed by eligibility and selection criteria, duration of the contract, expected output and results, award criteria and other contractual obligations such as payment schedule, guarantees, variations, etc.



In relation to the selection and contract award criteria, failure to state all of these criteria in the tender documents or tender notice, or applying unlawful contract selection and award criteria, may lead to a 25% recovery of the value of the contract. In the most serious cases, this may go up to 100% especially when there is deliberate intention to exclude certain bidders.

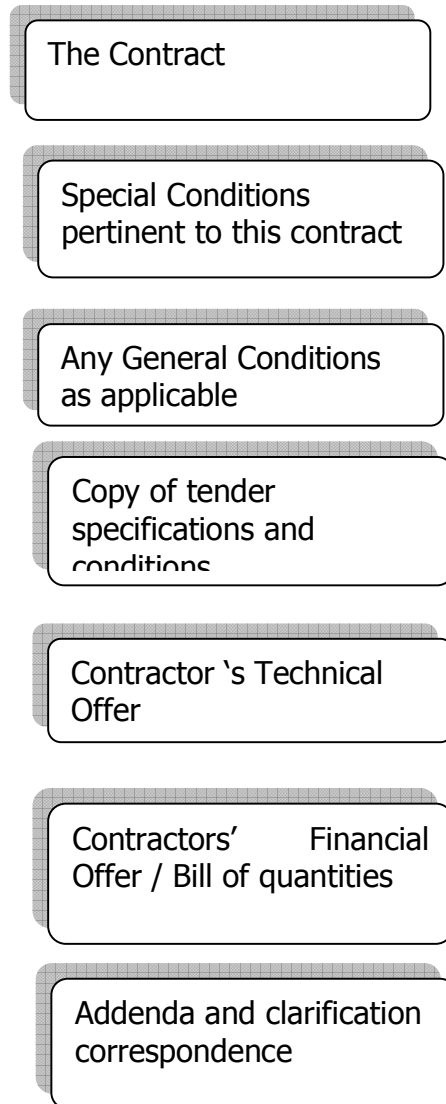
Any replies to clarifications sought from interested bidders during the tendering process are to be considered as part and parcel of the tender document and communicated to all interested bidders.

5.12.4 Additional points related to Evaluation

Any clarifications sought from bidders and replies received during the evaluation process are to be attached to the evaluation report. Clarifications may be sought on points of a technical nature on submitted information to enable a proper evaluation of any tender, which, however, would at that stage have already been declared to be basically compliant. Clarifications are NOT construed to allow for missing/incomplete technical/financial documentation to be submitted, nor to permit a reconsideration or renegotiation of the original tender submission. The beneficiaries should ensure a level playing field for everyone.

The evaluation report is sufficiently detailed and provides a clear picture of how the recommendation for award was reached. It should also be signed (by all Evaluation Committee members) and dated. Each page should also be endorsed. The Evaluation Report and its findings must be justifiable, defensible and supported by demonstrable evidence: it is auditable at various internal and external levels. The minutes of the meeting/s where the decision for award is taken, are signed, properly filed and attached to the evaluation report;

5.12.5 Basic Contract Form



It is important that the contract establishes the order of priority of the above documents; this is to be made in the first document which is the highest ranking. The documents in the above Chart are listed in the order of priority.

5.12.6 What should be avoided

- Brand discrimination: the choice should be based solely on the award criteria irrespective of brand names;

- Prejudice: all offers must be benchmarked against the tender requirements, not one against the other (with an offer being assessed against the one preceding it);
- Assumptions: If there are unclear issues, one cannot assume that the tenderer will deliver/abide with tender requirements and obligations;
- Being circumstantial and vague in one's argumentations/recommendations: these will be subject to scrutiny by the RA, CA, IAID, NAO, Commission, etc.;
- Procrastination: evaluation requires commitment; a proper evaluation should not take longer than required - in any case the tender validity period must be kept in mind;
- Splitting of tenders: As a general rule, the same type of works, services or supplies should be in one tender. Practically speaking, if one tenderer can supply all, it should not be split. This should be treated on a case by case basis taking into consideration the nature of the activity involved;
- Trying to be practical in tight situations: some bids will have to be rejected because of seemingly trivial issues (e.g. a tender guarantee of €2,450 was submitted instead of the required €2,540; a tender being submitted five minutes late) – if it was required in the tender document, it has to be as requested!
- Change in criteria: During evaluation, the evaluators should ensure that the (selection and award) criteria specified in the tender document are the ones used in the adjudication process.

5.12.7 Approval of Additional Costs

In case of variations to contracts, the beneficiary must inform the RA immediately – and before any commitment is taken – in view of budgetary constraints within the allocation to the project as stipulated in the Grant Agreement between the RA and the Beneficiary. The beneficiary must present a detailed report to the RA explaining the additional costs encountered together with a sound justification (if necessary including also those of any technical supervisor engaged for the project) and recommendations. The RA will not consider any requests for variations unless there is an explanation of the causes that led to the variation, the effect on the total cost of the tender and any effect on the recurrent expenditure. In addition, the beneficiary must explain the unforeseeable events that prevailed and specify whether such a variation could have been avoided. Requests for variations must be sent to the attention of the Director General Funds and Programmes, and must be signed by the project leader. The RA reviews the documentation submitted by the beneficiary and makes the necessary recommendations based on the justification presented. It should be made clear that even though the RA may approve a budget change, in doing so it will be relying entirely on the technical assessment and information and relative approval by the beneficiary and this remains the Beneficiary's responsibility.

The approval of additional costs (i.e. new items which are not part of the original contracts) for works and services can never exceed 50% of the original contract value. In the case of supplies, modifications cannot be carried out after the lapse of three years from the signature of the Contract. In all cases, additional costs shall be considered eligible under the General Programme Solidarity and Management of Migration Flows 2007-2013 only if funds are available. The RA reserves the right to refuse awarding further funds, even in justifiable cases.

In the case of beneficiaries subject to the Public Procurement Regulations, when additional costs exceed the thresholds established by Public Procurement Regulations within which a Beneficiary may approve additional costs, the Beneficiary must inform the DoC accordingly in order to initiate procedure for approval (or otherwise) of these additional costs. The Beneficiary must present a detailed report to the DoC explaining the additional costs encountered together with a sound justification (including also those of any technical supervisor engaged for the project) and recommendations. Variations must be supported by justifiable reasons to prove that the additional costs resulted due to unforeseen circumstances. It is important to note that the DoC will not consider any requests for variations unless there is an explanation on the causes that led to the variation, the effect on the total cost of the tender and any effect on the recurrent expenditure. In addition, the Beneficiary must explain the unforeseeable events that prevailed and specify whether such a variation could have been avoided.

Some changes in the contract may necessitate an addendum (formal change recorded in a contractual manner) to the original contract between the beneficiary and contractor. It is recommended that the beneficiary makes sure that any changes to the contract are well documented and approved by the signatory to the original contract. Contracts and subsequent addenda are generally signed by both the beneficiary as well as the contractor and should clearly establish the changes as well as the effective date of the change and any other implications on any other part of the contract such as budget, payment schedule and overall validity period of the contract. The DoC, reviews the documentation submitted by the Beneficiary and makes the necessary recommendations for the General Contracts Committee (GCC) to approve (or otherwise). Should GCC approve the additional costs, the Beneficiary prepares a new cost estimate of the contract based on the rates and quantities approved by the

GCC. This costs estimate, must be submitted to the DoC for the latter to prepare an addendum to the contract. All Beneficiaries should keep the RA informed of the whole process and consult with the RA on all aspects in such cases.

Additional costs will need to be approved by the RA and an addendum to the Grant Agreement may become necessary

5.13 Employment contracts

Services may either be procured through a service tender (procured in accordance with the foregoing sections of Chapter 5) or through an employment contract. Beneficiaries should refer to Legal Notice 44 of 2012 to distinguish between a contract of service and a contract for service.

It is highly advisable that, prior to publication, the Beneficiary consults the Department of Contracts (in the case of public departments, entities or local councils) and the Department of Industrial and Employment Relations (all types of beneficiaries, including public, private and NGOs) to identify which procedure to apply when considering the Beneficiary's particular requirements. The option of a **contract of service** (employment) as opposed to a **contract for service** (outsourcing) may have to be applied depending, amongst others, on the nature of the service required, level of autonomy allowed, the duration and frequency of delivery, and time (office hours or not) and location of delivery requested. Beneficiaries must consult the RA when considering options between going for a contract of service or contract for service, since this may require an addendum to the Grant Agreement since it may affect the cost items of the approved budget.

In the case of Government Departments/public sector entities, the relevant department within OPM (Public Administration Human Resources Office) and ETC (as per Employment and Training Services Act para. 15) should be consulted prior to launching a call for an employment contract, in line with established Government procedures. In the case of public entities that are not subject to the Public Service Commission process, any external call for recruitment should be first approved by the relevant internal procedure (also in conjunction with PAHRO) and the ETC. The ETC permit number should be quoted on all adverts²⁷.

In the case of other non-public entities and NGOs, the applicable national employment procedures shall apply. The ETC shall be consulted at all times. These entities should ensure transparency and publish adverts for calls, include job descriptions and establish eligibility and selection criteria. A Selection Board should also be appointed.

Full-time or part-time employment, with tasks solely related to the project: If a Beneficiary employs a person on an employment contract to work solely on a project funded through the General Programme Solidarity and Management of Migration Flows, the Beneficiary shall ensure that the person being engaged works solely on the project and does not undertake any unrelated work within the Beneficiary organisation. In the case of part-timers the time spent on the project should also be well documented and regular task based reports should be provided (vide Annex 15).

Full-time or part-time trainers/employees: Where an individual is employed on the funded-project but also undertakes other unrelated tasks within the organisation (as part of his/her job description), the Beneficiary shall be entitled to claim only that part of the salary related to tasks carried out on the project. This shall be calculated on the following formula:

<p>Eligible staff costs = hourly rate * number of hours worked on the project</p> <p>where hourly rate = Annual Salary²⁸ / Total number of hours worked in a year²⁹</p>
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The number of hours claimed, should be supported by timesheets fully endorsed by the project leader. In this regard the Project Leader should ensure that he/ she is able to produce regular task-based reports on any person contracted / employed under the project. The retention of these documents applies also if a public entity issues an internal call and engages one of the applicants following duly procedures. The RA has developed staff costs calculators, based on the formula and on different pay periods (e.g.

²⁷ It is advisable, that prior to publication, the Beneficiary also consults the Department of Industrial and Employment Relations to identify the appropriate procedure to apply in the particular case

²⁸ Annual Salary includes the gross wage (before tax) plus the employer's national insurance and statutory bonuses

²⁹ Number of weeks in a year* number of working days in a week – (vacation leave + public and national holidays not falling either on Saturday or Sunday)*number of hours worked each day, eg. (52 weeks * 5 days) – (24 days leave + xx days public holidays) * 8 hours = xxxx hours worked in a year

monthly, four-weekly). These are available upon request from the RA. The eligibility of staff costs shall be determined in the Grant Agreement.

If a Beneficiary employs a person through an employment contract, a clause should be inserted in the contract that the employment of this person is only for a specified period (in line with the completion of the project). The Beneficiary should seek advice from the PAHRO within the Office of the Prime Minister in the drafting of employment contracts. 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). The Beneficiary must also ensure compliance with other relevant legislation. The RA and the European Commission are not responsible for any employment related disputes that may arise during and after project implementation.

Terms and conditions of an employment contract should strictly conform to those issued in the respective Terms of Reference (ToRs) and Call for Applications.

The Beneficiary must follow the established employment procedures adopted by the Beneficiary entity. This must be transparent and based on the principles of good governance and sound financial management. The Beneficiary shall retain the necessary documentation recording the employment procedure utilised by the organisation (including the call, selection criteria, reports of the selection board, evidence of publication of results, etc). Further detail on document retention is available in section 'Retention of Documents' in chapter 8.

The Beneficiary must provide a 'Letter of Assignment' to the engaged person in which details of what he has to perform should be listed. The Beneficiary must ensure that relevant documentation, such as selection criteria, interview reports, time sheets, progress/ performance reports and lesson/course plans (in case of trainers) are retained in file. Time sheets should be kept for all staff recruited under a Project, which are also validated by the Project Leader. The timesheets need to show time in and out (not just record of the total hours worked) and a concise description of tasks carried out.

6. Financial Management and Payment Process

6.1 Financial Management

6.1.1 Currency

Malta's currency is the € (EURO) and therefore all transactions shall be undertaken in € (unless otherwise authorised by the MFIN).

6.1.2 Receipt of Funds from the Commission

Once having obtained the relevant authorisation from MFIN, the Responsible Authority will open a separate bank account with the Central Bank of Malta for each annual programme for each fund; the RA will be responsible for such accounts. The European Commission will transmit the pre-financing payment, second pre-financing (where applicable) and final payments of the four Funds in these bank accounts.

6.1.3 General Principles

Eligible expenditure refers to the expenditure incurred by the Beneficiary when implementing the actions of the project and that can be charged to the project. Expenditure cannot be considered eligible under a project if it has not been approved by the RA. Expenditure shall be eligible only if it falls within the time-frame and descriptions of eligible costs indicated in the guidelines relating to the call of applications in question and approved in the GA. A set of CION eligibility rules is available on the RA's website³⁰ (https://secure2.gov.mt/fpd/manual_procedures) (vide also following paragraph). Eligible expenditure shall result in payments, justified by receipted invoices or accounting documents of equivalent value.

In the case of projects awarded from the 2011 Annual Programmes onwards for ERF, RF and EBF and for projects awarded as from 2010 Annual Programme onwards for IF, CION eligibility rules v4 (Annex 17) are applicable. For Annual Programmes prior to these dates for the respective funds, CION eligibility rules v3 (Annex 16) are applicable.

As from the present programming period (2007-2013 for EBF and IF and 2008 – 2013 for ERF and RF), the financial assistance from the Funds will be effected on an invoice/receipt basis, as described below. The agreed assistance shall be given in form of reimbursements to the Beneficiary or payments to service provider. In cases where payment is to be effected directly by the RA (or its delegated paymaster) to the service provider (vide Figure 1), the Beneficiary will need to forward all relevant documentation, required for the payment to be carried out. *Reimbursements of expenditure* (vide Figure 2) incurred by the Beneficiary shall be accepted in cases when it is deemed more feasible, for the implementation of the project that the Beneficiary carries out immediate payment from the organisation's funds. This is mostly applicable to the payment of salaries. **In cases where depreciation applies it is strongly recommended that payments are made through the reimbursement method.**

³⁰ Beneficiaries should ensure that they have the latest version as the list is reviewed from time to time. Information can be obtained from the RA.

Figure 1 Financial Flow Chart – (Direct Transfer Process)

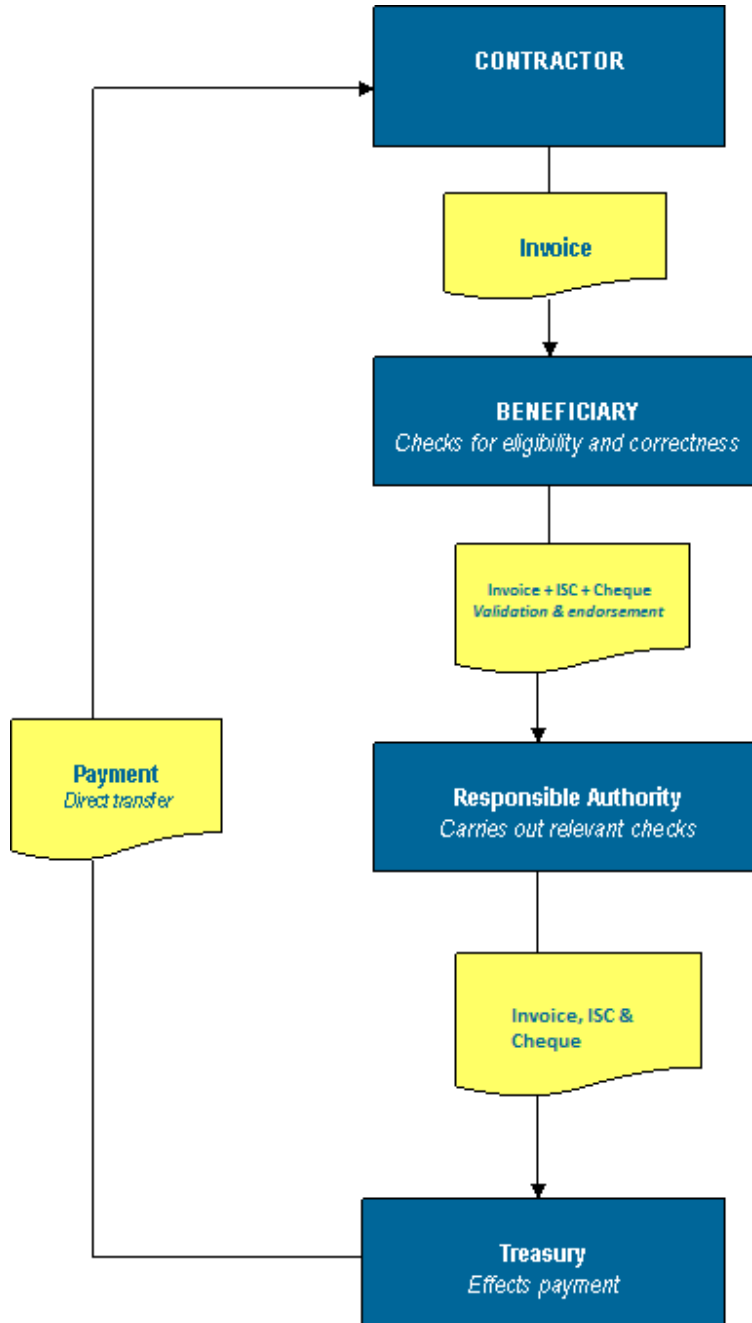
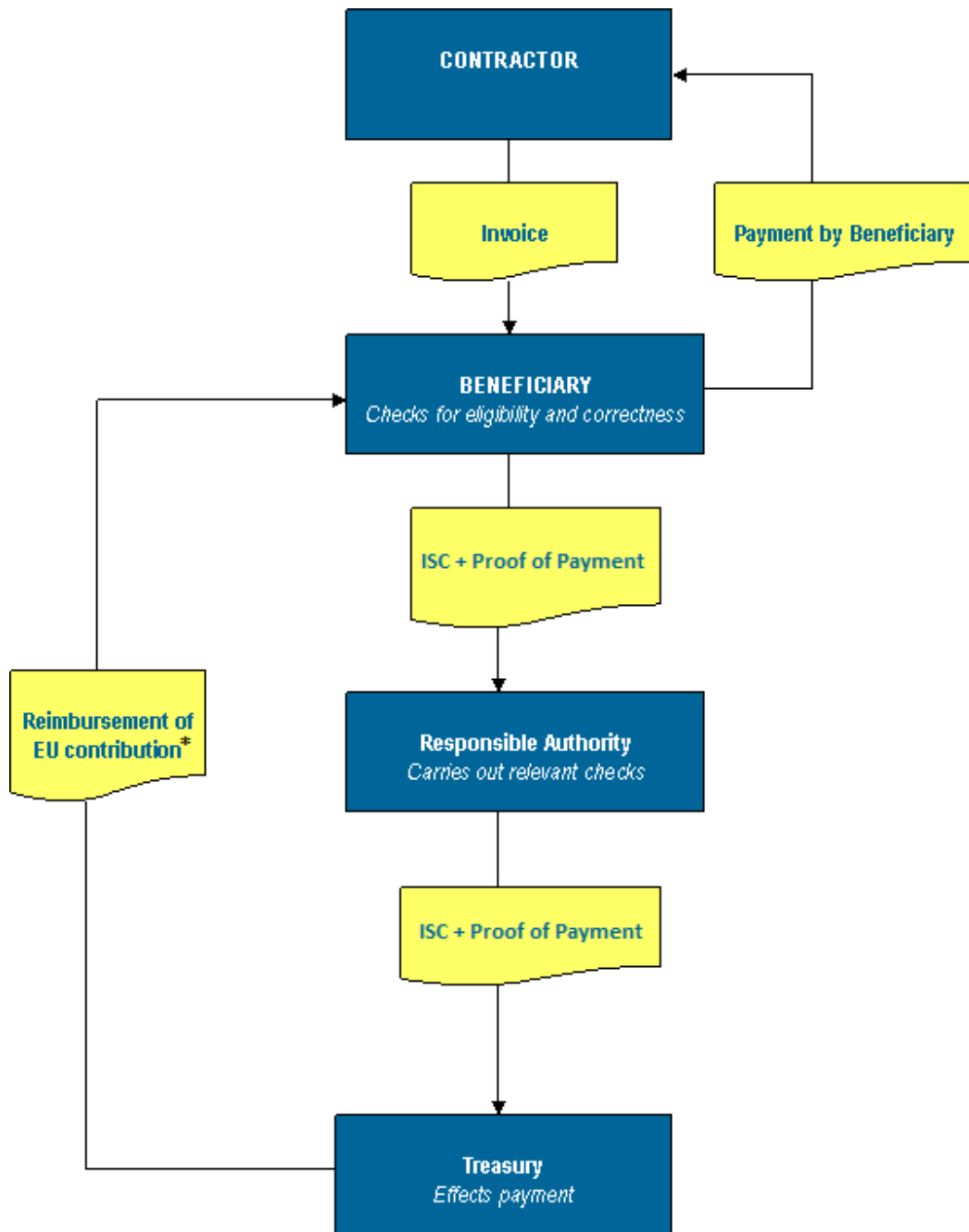


Figure 2: Financial Flow Chart (Reimbursement process)



* In case of NGOs, only 75% of the cost will be reimbursed.

6.1.4 Payment Process for Salaries

In the case of payments consisting of salaries (e.g. for persons engaged for project management through an employment contract or trainers), salaries may be processed directly through any of the procedures described above. However, in order to ensure that payment is issued within the stipulated timeframes, it is advisable that salaries payable to contracted staff are processed in the normal manner (from the salaries vote/allocation of the organisation's own budget) which is then followed by a request for reimbursement every quarter (or more often if the Beneficiary so wishes) from the relative Fund to the organisation's salaries expenditure item so that ultimately the financial impact is on the relevant Fund.

The Beneficiary should then prepare an ISC (Annex 18) together with proof of payment of salary, for reimbursement from the Treasury. The Beneficiary should refer to Annex 12a – Guide for ISC for the correct compilation of the ISC. The RA shall process the ISC according to the ISC validity checklist (Annex 12b).

6.1.5 Solid Information System

The RA for the SOLID Funds has commissioned a management information system entitled Solid Information System (SIS) to capture all relevant operational and financial data for all projects implemented under the relevant Annual Programme. Specific documents are to be uploaded on this system and some processes are effected through this system as well. As an aside, this shall ensure consistency of information required in the conduct of controls, provide clear guidance to eliminate unnecessary duplication of work and reduce administrative burdens. This system is a very useful device in the payment process.

Beneficiaries, line ministries and heads of organisations should inform the RA immediately in case of Solid Information System users who are transferred to another organisation or have left the project.

6.1.6 Payment Process

The payment process is regulated by the CION Manual of Eligibility Rules V3 (Annex 16) for 2008, 2009 and 2010 for EBF, ERF and RF and CION Manual of Eligibility Rules V4 (Annex 17) as from 2011 onwards for EBF, ERF, RF and IF and 2010 onwards for IF.

Stakeholders involved in the payment process (Beneficiary, RA, Accounting Officers, Treasury and the Central Bank of Malta) are to ensure that the payment process moves in the shortest time possible since Malta will only be able to draw funds from the European Commission on the basis of payments effected to contractors. It is the responsibility of the project leader to ensure that invoices and the relevant documentation are sent in time and correctly (i.e. first time round) in order not to slow down the process.

6.1.7 Difference between a fiscal receipt and a tax invoice

In general a tax invoice must be issued when a person registered under Article 10 makes a supply to another registered person, whilst a fiscal receipt must be issued when a registered person makes a supply to a non-registered person.

Every person registered under article 10 of the VAT Act (Chapter 406 of the Laws of Malta) who makes a supply, other than an exempt without credit supply, to another person who identifies himself for the purpose of that supply by means of a Vat number shall provide that person with a tax invoice within 30 days from the earlier of:

- (i) the date when the goods are delivered or the services are performed;
- (ii) the date on which a payment for that supply is received.

Every person (article 10 or article 11 of the VAT Act) who makes a supply, other than an exempt without credit supply, and except where he is required to issue a tax invoice in respect of that supply, shall

- Issue a fiscal receipt in accordance with the 13th Schedule to the VAT Act for the consideration paid to him for that supply, and
- Such fiscal receipt shall, unless issued before the payment is made, be issued and delivered to the person who effects the payment or to the person to whom the supply is made immediately after payment has been effected, to the extent covered by that payment.

6.1.8 Treatment of VAT

Before finalising a contract, the Beneficiary should refer to the VAT Regulations to see under which section of the VAT legislation the contract falls. Guidance notes on VAT issues can be downloaded from the VAT Department website www.vat.gov.mt. It is highly recommended that the Beneficiary contacts the VAT Department to seek clarifications on issues related to VAT and to make the necessary arrangements for the payment of VAT.

As a general rule VAT is not considered as an eligible cost, if it can be claimed back from the VAT Department. If the VAT is borne by the Beneficiary, then it can be considered as an eligible cost. In such cases, the Beneficiary has to provide the RA with proof of this from the VAT Department.

In the case of Government departments, except where it can be proven otherwise, VAT is **not** considered to be an eligible cost.

When VAT is not an eligible cost, the Beneficiary should note that the VAT component of every payment should be charged to the Malta Funds sub-item in the case of a public service/sector Beneficiary. In the case of private bodies, NGOs and Voluntary organisations, where the VAT is not deemed to be eligible, the organisation shall provide for the VAT element from the entity's own funds and has to be included in the cheque sent to the Treasury together with the co-financing element.

6.1.9 Main categories of eligible expenditure

6.1.9.1 Staff Costs

Staff costs relating to projects are eligible and may be considered part of the expenditure incurred in connection with a project if these are included in the project's approved budget as determined in the Grant Agreement. In the case where an organization has staff members who have a normal employment contract with the organization and who dedicate a number of their normal working hours to the project, the organization may claim such contribution from the project. However, internal staff costs are not eligible if they are not specifically related to the project. The Beneficiary should bear in mind that staff (including internal staff) whose cost is charged to the project will have to be seconded or assigned to the project by a written decision.

Staff costs consist of what is considered to be part of the usual remuneration and related contributions from an accounting and tax perspective borne by the employer and really incurred by the final beneficiary. Provisions for potential future liabilities are ineligible (refer to chapter 12 on ineligible expenditure of the EC Manual of Eligibility Rules in Annex 17). Staff costs are made up of the following:

1. Gross salary;
2. Statutory additional entitlements such as:
 - 13th month salary or holiday entitlements, as defined in the employment contract
 - post adjustment allowance: increase of salary because of living abroad
 - hardship allowance: compensation granted on a regular basis (i.e. monthly) for living in difficult countries
3. Bonuses if not linked to performance (e.g. additional end-of-year bonus defined in the employment contract as a maximum percentage of monthly salary);
4. Provisions for pro rata entitlements/terminal emoluments paid at the end of a contract only if statutory or stipulated in the employment contract and provided the amount is reasonable (can be demonstrated by a calculation in every case) and are applicable to all comparable staff;
5. Statutory sick leave allowances borne by the employer and not paid back by a social security scheme;
6. Maternity leave compensations if borne by the final beneficiary and not paid back by a social security scheme;
7. Employer's contributions;
8. Social security contributions;
9. Social charges;
10. Direct taxes and other statutory charges paid by the employer.

The following are not eligible and should not be included in the calculation of staff costs:

11. Performance bonuses;
12. Dismissal allowances not covered by point 4;

13. Sick leave allowances not borne by the final beneficiary (social security scheme);
14. Maternity leave compensation not borne by the final beneficiary (social security scheme);
15. Pension leave allowances;
16. Other relief pay;
17. End of contract compensation; except as covered by point 4 above;
18. Advantages in kind (cars, housing).

Calculating the hourly rate

Internal staff costs are calculated on the basis of the following formula:

$$\text{Eligible staff costs} = \text{hourly rate} * \text{number of hours worked on the project}$$

Where hourly rate =
$$\frac{\text{Annual Salary}}{\text{Total number of hours worked in a year}}$$

and where the number of hours worked on project must be supported by detailed time sheets and periodical reports.

Annual salary may include the employer's national insurance, statutory bonuses as well as fixed allowances. Documentary evidence in support of such fixed allowances must accompany each claim. In addition the Cost Of Living Adjustment (COLA) for that year needs to be taken into account.

The total number of hours worked in a year is calculated as follows:

{(The number of weeks in a year number of working days in a week) – (vacation leave + public and national holidays not falling either on Saturday or Sunday)} * number of hours worked each day*

*Eg. [(52 weeks * 40 hours) – (192 hours vacation leave + xx hours public holidays)] = xxxx hours worked in a year*

Project Leaders should be guided with the staff costs calculators (obtained from the RA) when generating the ISC claims for reimbursement.

The Project Leader must ensure that the following documentation is attached to the claim:

- Letter of Assignment;
- The Beneficiary's policy on remuneration;
- Detailed Timesheets, filled directly and signed by those who perform the work which should include the tasks carried out related to the project. These timesheets must be reviewed and approved by direct superiors;
- A pay slip in connection with period of claim;
- Staff costs calculator;
- Documentary evidence of fixed allowances if these are being included in the calculation of hourly rate;
- Proof of payment to the employee e.g. A copy of the relevant documentation showing the transfer of funds from the Treasury in case of public entities and bank statements in case of non-public organizations or a declaration from the persons issuing the salary and a counter declaration by the employee confirming that s/he has received the salary;
- Report on the relative staff contribution to the project.

6.1.9.2 External Expertise

This consists of experts, controllers or other service providers who are contracted or employed to carry out certain tasks on the project (e.g. Project coordination, website design, event organization and interpretation). These are generally paid on the basis of definite contracts and are contracted/recruited solely for the project. The principles of transparency, competition, good governance and sound financial management are overriding.

Thus all parties including non-public entities should adhere to the principles of transparency, equal treatment and non-discrimination in case of the procurement of commercial services and national employment regulations in case of employment contracts.

The documentation requested for the verification of external staff/expertise costs should include the following documents related to procurement/recruitment process:

- Contracts/Letters of Offer and Letters of Acceptance;
- Timesheets filled and signed by the expert and including the list of duties carried out during the respective timeframe; these timesheets must be endorsed and approved by the project leader;
- Invoices and receipts or pay slips;
- Proof of transparency in the selection of the company/individual (eg. of the newspaper adverts, quotations, tenders depending on the thresholds);
- Proof of payment to the expert/external company;
- Report on the relative staff contribution to the project.

6.1.9.3 Travel

Due to the nature of the four Funds, travel is considered an important component, particularly in the case of networking and sharing of expertise as well as training. Travel costs are eligible only if they are needed for the project and incurred by persons performing the relevant tasks as part of the project activities. Beneficiaries are to ensure that travel costs are calculated correctly and that the Funds are spent as economically as possible. As a general rule, the most economical means of transport must be used. In this regard, it is important to note that in the case of air travel, only the amount **equivalent to economy tickets** may be claimed. Therefore, officers/persons entitled to and travelling in business class are requested to submit a quotation for an economy ticket clearly indicating the amount which may be claimed. Furthermore, it is essential to make sure that the amount allocated to travel in the project's budget is not exceeded. It is important that the boarding passes or any other evidence of travel are retained and presented with the ISC.

Travel expenses (including fuel and airport surcharges), are eligible only if they are incurred by persons performing tasks directly related to the project activities as detailed in the Grant Agreement. Service charges by the travel agency are not eligible. Any travel should also be directly related to the implementation of the project. As a general rule, travel costs of external speakers/external experts should be financed under the external expertise budget. Transportation costs for Maltese nationals for events to be carried out in Malta are not eligible. Additionally commuting costs are not eligible as travel (or as subsistence costs).

6.1.9.4 Per Diem

In the case of duty abroad, a fixed subsistence or per diem allowance should be issued. All partners (including non-public entities) should refer to and follow the appropriate circulars by the ministry responsible for finance for detailed information on per diem rates. Beneficiaries/partners should contact the RA for the latest rates applicable for travel abroad³¹. In the case of foreign speakers participating in local activities held in connection with the project, the per diem amounts that are granted in the regard should correspond to the rates established by the European Commission within the Europe Aid Framework³².

The Per diem rate should be subdivided in the following manner:

- a. 60% should be allocated to accommodation costs inclusive of breakfast (50% if breakfast is not included)
- b. 20% for two meals (10% each)
- c. 20% for sundry expenses

6.1.9.5 Organisation of conferences/workshops

Expenditure related to the organization of conferences or workshops are eligible so long as they are provided for by the project budget and are necessary for the attainment of the project's objective and results. It is essential that public procurement regulations are followed with regard to the selection of the venue, caterers or service-providers. Catering costs, coffee breaks, meals (including standup meals and lunches) or refreshments are eligible only as long as they form part of a conference or

³¹ <https://intra.gov.mt/circulars-1/mfin/2013/letter-circular-per-diem-allowance-applicable-as-from-1-june-2013>

³² The Circulars in force at the time of publication of this Manual of Procedures are MFIN Circular 1/2008 and MFEI Circular 6/2009, MFEI Circular 4/2010, MFEI Circular 12/2010, Letter Circular MF 201/92/A, MFEI Circular 4/2011 and MFEI Circular 5/2012., MFIN Letter Circular 201/92/B. Beneficiaries should note that these circulars may be revised, updated or replaced

³² http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/documents/perdiems_201207.pdf

meeting. Alcoholic beverages or tips or any meals or events which are not listed in the respective agenda cannot be verified as part of the eligible cost. In this regard Beneficiaries should also be cautious when ordering catering, keeping in mind the issue of costs as well as maintaining the principle that often *stand up events* are more conducive to networking and discussion during break times. It is advisable that a registration form is sent to potential attendees so that the actual number of participants can be determined before the actual order. It is also advisable that the order for catering should reflect as far as possible the actual attendees for the conference, This should be backed up by an attendance sheet.

6.1.9.6 Administration costs

Administration costs may be classified into two categories:-

- a) Direct general costs e.g. rent of an office, equipment rental, postage, mail, fax, telephone, copying costs, consumables incurred solely in connection with the project
- b) Indirect general costs (overheads) e.g. rent, equipment rental, telephone/fax bills, copying costs, consumables which are only part related to the project.

It is the responsibility of the RA to determine, in the grant agreement signed with the beneficiary, the level of indirect eligible costs, provided that they do not exceed 7% of the eligible direct costs for projects supported under the ERF,IF and RF and 2.5% for projects supported under the EBF. The level of indirect costs must be clearly indicated in the agreed forward budget annexed to the grant agreement.

6.1.9.7 Financial charges

The opening of a separate bank account for each project is required, given that bank records must be accessible to the bodies carrying out financial checks on the projects. In this regard, bank charges for the opening and administering the project's account are eligible under indirect costs.

Charges for transnational financial transactions and the cost of guarantees provided by a bank or other financial institution to the extent to which the guarantees are required by national or Community legislation are also eligible. However, charges related to the distribution of the funding among project partners, charges for national financial transactions, debt interest and losses are not eligible. Similarly, fines and financial penalties are not eligible.

6.1.9.8 Legal fees

Legal consultancy fees and notarial fees are eligible, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation. However, expenditure of legal fees linked to legal disputes (even in initial stages) and litigation fees are not eligible.

6.1.10. Real Estate and Equipment

It is important for Beneficiaries to note that during the design and budgeting of their project, as a general rule, costs for purchase, construction and renovation of real estate as well as for the purchase of equipment are only eligible on the basis of depreciation, subject to the following exceptions:

- This rule does not apply to the EBF where the full cost of purchase, construction and renovation of real estate and the purchase of equipment is eligible throughout if the following criteria in relation to the continued use of the assets are satisfied:
 - i) *The Acquisition or Renovation of Real Estate* – real estate shall be used solely for the purpose stated in the project for a period of at least 10 years after the completion of the project.
 - ii) *Purchasing of Equipment* – the equipment will continue to be used for the same objectives pursued by the project for the following specified periods:
 - a) A minimum duration of 3 years or more after the project has been completed for ICT equipment;
 - b) 5 years or more for other types of equipment such as operating equipment and means of transport excluding;
 - c) Helicopters, vessels and aircrafts which have to be used for a further 10 years after the completion of the projects

In the case of projects awarded under the 2008, 2009 and 2010 Calls the indicated period becomes effective as from the termination date of the project. For projects awarded as from the 2011 Call onwards the indicated period becomes effective as from the day of purchase.

For EBF, ERF and RF, in the case of projects awarded under the 2008, 2009 and 2010 Calls the full amount is eligible for individual items costing less than €1,000 and purchased during the first three months of the project lifetime. For the IF this applies for the years 2008 and 2009. Costs exceeding this amount are only eligible on the basis of depreciation.

For ERF and RF in the case of projects awarded as from the 2011 Call onwards and for IF for 2010 Call onwards, the full amount is eligible for individual items costing less than €20,000 and purchased before the last three months of the project lifetime. Costs exceeding this amount, are only eligible on the basis of depreciation.

With regards to renovation costs however, depreciation may not apply if such costs are determined to be minor costs (in which case they would be reported under 'Consumables, Supplies and General Services'. In order to be classified as 'minor', renovation must not have an impact on the infrastructure and therefore not increase the value of the infrastructure. Accordingly Beneficiaries will be required to obtain a declaration from an independent architect (selected through existing public procurement regulations) stating that the renovation to be carried out is minor, will not impact on the infrastructure and therefore not increase the value of the same infrastructure.

In the case of ERF and RF, where the real estate is to be used solely for the purpose stated in the project (for RF for a period of at least five years after the end date of the project), the full cost of refurbishment, modernisation or renovating works to buildings is eligible up to a maximum value of €100,000. Above this threshold, only the portion of the depreciation of buildings corresponding to the duration of use for the project and the rate of actual use for the project is eligible; depreciation shall be calculated according to national accounting rules.

With regards to projects funded by the ERF, IF, RF and EBF, the choice between renting, leasing or purchasing should be based upon the choice of the least expensive option. However, in the case of rapid depreciation in value (ERF, IF and RF) or short project duration (ERF, IF, RF and EBF), which circumstances preclude the choice of renting and leasing, the option to purchase the equipment is permitted.

Equipment which has been fully purchased or fully depreciated under a previously EU funded project as well as depreciation costs for equipment purchased through EU grants before the lifetime of the project will not be eligible. In the case of leasing of equipment the interest component is to be reported separately.

6.1.11 Calculation of Depreciation Rate

Depreciation rate of an item of property or equipment shall be calculated with the straight-line method, in relation to the standard duration of its useful life. The depreciation method shall reflect the pattern in which the asset's economic benefits or service potential is consumed by the entity. This means that only the portion of equipment depreciated according to the duration of use for the project and the rate of actual use for the project is eligible.

The following table shall serve as a guide for the calculation of the depreciation of the items for co-funding under ERF, RF and IF, when depreciation is applicable. It reflects the minimum number of years over which items are to be depreciated³³.

Category of items	Years
Computers and electronic equipment	4
Computer Software	4
Motor vehicles	5
Furniture, Fixtures, Fittings and Soft Furnishings	10
Catering equipment	6
Electrical and Plumbing Installation and Sanitary Fittings	15
Cable Infrastructure	20
Pipeline Infrastructure	20
Communication and Broadcasting Equipment	6

³³ The legal basis of this information is Subsidiary Legislation 123.01 (Deduction for Wear and Tear of Plant and Machinery. The list is not exhaustive. For items not listed, the Beneficiary shall contact the RA which will provide further guidance.

Medical Equipment	6
Lifts and escalators	10
Other machinery	5

With regards to the cost of premises, in line with the provisions of Article 14 (f) (i) of the Income Tax Act (Chapter 123 of the Laws of Malta), the general practice is to apply an annual depreciation rate of 2% on the cost of the premises, ie. the cost of the premises is fully depreciated over a period of 50 years.

The below example clarifies the method that shall be used to calculate the eligible and non-eligible part of the expenditure:

In May 2009, a Beneficiary purchases furniture costing €10,000 as part of an ERF 2009 project – the invoice is dated 30th May 2009. As per provisions of the Grant Agreement the project start date is established to be 1st January 2009 and the end date is indicated as 30th June 2011. The percentage use for the project is determined at 80%.

Step 1 – deduct VAT (this example assumes that VAT is not an eligible item of expenditure) $€10,000 * 100/118 = €8,474.58$

Step 2 – Divide eligible amount by the depreciation number of months over which equipment is to be depreciated (as per national rules). In the case of this example, the number of months applicable to furniture amounts to 120 (10 years).

$€8,474.58/120 = €70.62$

Step 3 – Calculate the Depreciation Period

May 2009 -> Dec 2009	8 months
Jan 2010 -> Dec 2010	12 months
Jan 2011 -> Jun 2011	6 months
TOTAL	26 months

Step 4 – Multiply the Eligible Amount (as calculated in Step 2) with the Depreciation Period
 $€70.62 * 26 = €1,836.12$

Step 5 – Multiply the Eligible Amount (as calculated in Step 4) with the percentage use for project
 $€1,836.12 * 80\% = €1,468.90$

For payment purposes the beneficiary would attach the invoice (indicating the full amount of €10,000). However, on the FO2, the transaction would be recorded as follows:

Full Amount:	€1,468.90
VAT:	€0.00
Full Amount (excl. VAT):	€1,468.90
EU Part 75%:	€1,101.68
Malta Part 25%:	€367.22

The remaining costs will have to be borne by the Beneficiary. In this regard, at Grant Agreement stage, the applicant will be asked to provide confirmation attesting to the fact that ineligible costs (including ineligible depreciation amounts, ineligible VAT, overspending, non-budgeted items and local co-financing) will be covered from the Beneficiary's end.

At application stage, the beneficiaries shall present the total amount for the items being purchased as well as the eligible part of the cost (calculated by the method indicated above).

It is important to note that the actual reimbursement/payment made by the RA in relation to a particular item on which depreciation applies, may however amount to less than the amount approved in the forward budget. This is due to the fact that actual eligible depreciated value is calculated from the date of purchase, i.e. from the month of the date of invoice and not on the total duration of the project.

6.1.12 Indirect Eligible Costs

A portion of indirect costs incurred by the Beneficiary and/or partner(s) can be covered out of the respective funds. The Responsible Authority shall be responsible for determining the level of indirect eligible costs – this will be inserted in the Grant Agreement.

Throughout the implementation of the project, direct eligible costs (and if applicable sub-contracting costs) start to be incurred and therefore actualized. In parallel the beneficiary could start claiming the relevant proportion of indirect costs and need not wait till the end of the project when the exact amount of direct eligible costs is established.

6.1.13 Savings to the Project

It is important to note that, as a general rule any savings to a project go back to the Priority Axis of the Annual Programme under which the project is co-financed. In this regard, the Beneficiary has the responsibility to inform the RA of any savings (even if these are still potential at the time and not yet fully quantified) as soon as the Beneficiary becomes aware of them. **Beneficiaries will be held responsible for any loss of funds to Malta resulting from failure to report savings (or even possibility of savings) to the project.**

The Beneficiary cannot utilise savings without prior authorisation from the RA. If the Beneficiary needs to utilise the savings, the Beneficiary should first inform the RA in writing that there are savings from the project budget allocation and make the request to utilise these savings providing the relevant justification. If the RA approves, the funds may be utilised. If not, they are returned to the Programme for re-use by other projects.

6.1.14 Lifetime of the Project

The Eligibility Period (lifetime of the project) is the time window during which costs incurred in relation with an EU co-funded project are eligible for payment. The eligibility period of the projects is stipulated in the Grant Agreement. The eligibility period of a project starts on the 1st January of the year of the relevant annual programme and ends on 30th June of the year of the annual programme plus two years (01/01/N – 30/06/N+2).

Being totally independent, the start date of the project may actually precede the date of the signing of the Grant Agreement. However it cannot be set to be earlier than the start date of the eligibility period of the particular call or later than the end date of the same period.

If the cost is incurred **BEFORE** the start date of the eligible period, then the cost is **INELIGIBLE** (vide exception hereunder).

If the cost is incurred **DURING** the eligible period but is paid **BEFORE** the start date of the eligible period, then the cost is **INELIGIBLE** (vide exception hereunder).

If the cost is incurred **DURING** the eligible period and is paid **DURING** the eligible period, then the cost is **ELIGIBLE** (subject to other conditions being satisfied).

If the cost is incurred **DURING** the eligible period of the project and is paid **AFTER** the closing date of the project, then the cost is **ELIGIBLE** (as long as the payment request is presented within 3 months from the end of the period only and subject to other conditions being satisfied).

If the cost is incurred **AFTER** the end of the eligible period then the cost is **INELIGIBLE**

The date when costs are incurred is determined as the time when the service is provided or the time when the goods are consumed/delivered and used for the project.

By way of exception, the rule regarding payments (costs are not eligible if paid before the start date of the project) is not applicable to payments relating to equipment purchased before the beginning of the eligibility period and used for the purpose of the project, and for which depreciation amounts are reported. In this case payments can be processed before the start of the eligibility period.

6.1.15 Making a Claim for Payment

Claims for direct payment (Figure 1) and reimbursement (Figure 2) to Service Providers have to be in line with the budget breakdown agreed in the Grant Agreement. Claims have to be made in full, according to the amount shown on the invoice AND receipt/any other proof of payment, i.e. not excluding the local co-financing component.

The Beneficiary should forward a claim for payment to the RA from the day following the signature of the Grant Agreement and every 4 months from the commencement of the project. Claims for payment which are made after the deadline for the conclusion of the project will be accepted up till the period when the Beneficiary hands in the final report (and related documentation) to the RA (by not later than 3 months after the deadline). Such claims for payment will be accepted as long as:

- a) the service has been provided (or the equipment has been delivered) during the eligible period;
- b) the date on the invoice falls within the eligibility period, or else, if invoice falls outside eligibility period then delivery must be clearly stated as done during eligibility period.

All claims have to be made on **the ISC** (Annex 18). The form **MUST** be accompanied with the original invoice/receipt together with the Financial Identification Form (TRS9) (Annex 1) of the Service Provider (for invoices). Such form must indicate the correct bank details of the service provider. In cases where banks do not have an IBAN number, the following information is essential in order to proceed with payment:

BANK
ADDRESS
A/C NUMBER
CORRESPONDENT BANK
A/C CURRENCY

In the case of reimbursements, the Beneficiary, after paying the contractor, uploads the relative documents on the SIS. It must also attach the relevant receipted invoice (proof of payment) to the ISC (Annex 18) and forwards them to the RA. **(The Beneficiary has to keep a copy of each invoice AND receipt, as the original will not be returned)**. A guide on the proper compilation of the ISC is attached as Annex 12a.

(1) Invoices/receipts must be marked with the stamp provided by the RA for the respective Fund and endorsed by the Project Leader. Invoices and receipts must be numbered according to the sequence number on the form and presented in the same order. All invoices received by a beneficiary which have been paid and receipt submitted for reimbursement, must be marked by the beneficiary with the stamp provided by the RA, and retained for record purposes.

(2) The form, together with all covering documentation has to be handed in at the RA in an envelope, marked with the name of the Fund, the code and the name of the Project, on the below address:

Funds and Programmes Division,
Triq il-Kukkanja,
Santa Venera

(3) The RA will carry out verifications in relation to eligibility, correctness and validity of claim. Furthermore it will ensure that claim being made is in line with the categories in the forward budget;

(4) Once the RA has finalised the verifications on the claim made by a Beneficiary, it fills in the relative section of the ISC and submits the ISC together with the proof of payment to the Treasury for the necessary payment. On the other hand, it will return incorrect/incomplete claims (if applicable) to the Beneficiary in order for the necessary corrections to be carried out and inform the latter whether the claim is deemed correct and acceptable or otherwise. It will also inform the Beneficiary, when applicable, of any refunds that have to be made.

(5) The Treasury conducts its own checks. In cases where the Treasury has some reservations either on the ISC or any of the supporting documents, it will return the documentation to the RA, indicating the reasons. The RA may need to consult back with the Beneficiary. Payments will not be processed until all issues relating to the documentation have been cleared. Once the Treasury is satisfied it 'accepts the ISC, signs it and reimburses the Beneficiary.

In the case of the 'direct transfer process', the beneficiary has to upload the invoice and related documentation on SIS. Once the beneficiary ascertains that the necessary documents are in place, it generates the ISC, signs it and forwards it to the RA together with the related invoice. The RA performs its own checks and arrives at an opinion whether to accept the documents received from the beneficiary and proceed with the payment process or to send the documents back to the beneficiary due to the fact that

such documents would not be up to the expectations of the RA. The beneficiary effects the necessary changes and resubmits the documentation to the RA. If satisfied that all documentation is complete and proper, the RA informs the beneficiary to send the cheque (amount due by beneficiary) for onward submission to the Treasury, The RA fills in the relative section on the ISC (confirms it) and submits it together with the cheque to the Treasury. The Treasury fills the last part of the ISC (accepts it) and pays the contractor.

Another level of assurance is the Financial Control Unit within the Funds and Programmes Division which is a separate set-up and reports directly to the Director General selects. Apart from accompanying the SOLID Funds Unit members in an independent manner for on-the-spot checks, the FCU carries further checks and controls on the basis of a formal risk management process. The FCU will carry out checks on 20% of the claims for payment received..The risk assessment methodology is based on three parameters as follows:

- i) The FCU will focus on general areas of concern. Such areas could be a risky beneficiary or a particular type of expenditure;
- ii) Based on its experience of the last two years, the FCU has identified certain categories as representing higher risk. The FCU will focus on these items till they remain considered as high risk areas (e.g. tenders above €100,000);
- iii) The above selections will be supplemented by other checks at SOE by priority stage (annex 19), to ensure that the 20% level of claims to be checked has been achieved.

6.1.16 Stock control procedures

Proper procedures are to be in place for receiving, checking and recording goods received. Any new procedures are to be duly authorised, evidenced and recorded. For every receipt and issue, the balance of stock items is to be re-calculated. Any complete items and products that fall in line with the fixed asset category are to be segregated and indentified separately as non-stock itmes.

6.1.17 The Local Co-Financing and other Financing by the Beneficiary

The maximum EU co-financing under the four Funds is established at 75% of the total eligible costs (the percentage is increased to 80% in the case of projects co-funded under the ERF emergency measures). The remaining 25%, together with non-eligible costs, have to be financed by Malta (national or local) funds (in the case of public entities) or private (own) funds in the case of NGO's and private entities.

6.1.18 Irregularity in the ISC

The RA shall carry out verifications on the form, invoices/receipts and other supporting documents presented. If the RA, on conducting its verifications on the ISC, identifies an irregularity in it, it will inform the Beneficiary accordingly.

If the ISC is rejected in its entirety, the RA shall return it, together with all documentation, to the Beneficiary. The latter will return the completed form together with the signed ISC at the earliest possible.

If the irregularity is noted on any of the supporting documents, the RA will return the rejected documents and note down the rejection. The Beneficiary shall re-submit these documents to the RA, once the irregularity indicated has been rectified. In the meantime, the RA will proceed with processing the accepted claims.

The ISC, or the supporting documents may be rejected for the following reasons:

- a) form not duly filled in;
- b) budget category of invoice incorrect/ not as per agreed approved budget in the Grant Agreement;
- c) incomplete invoices.
- d) expenditure is deemed to be ineligible.

The above list is not exhaustive and the ISC may be rejected for other reasons, which will be duly explained by the RA.

6.1.19 Certification of expenditure by the CA

On a quarterly basis (or at other intervals as deemed necessary), the RA shall forward a statement of expenditure by project (Annex 20) to the FCU. On its part the FCU draws up the statement of expenditure by priority (Annex 19) and sends it to the CA for the certification process.

SOE by project–This will be completed by the RA, indicating the following:

- a. Reference number;
- b. Name of fund;
- c. Project Name
- d. Date
- e. Total verified expenditure for the report;
- f. Declaration of the verifications carried out and co-financing ratio, EU and MLT, to the nearest 2 decimals

Following this the FCU completes the SOE by priority and forwards it to the Certifying Authority

The CA shall extract a sample from the SOE by priority. The CA shall compile the captured sampled invoices in a sample report and forward it to RA. All documentation of captured sampled invoices should be forwarded to CA for expenditure testing. The officer in charge of a particular Fund within the CA shall review all relevant documentation, including:

1. Grant Agreement
2. Annual Programme
3. FO2 Forms
4. Invoices falling within the random sample
5. Irregularities report received between the previous certification and the date of certification
6. Preliminary and/or Final On-the-Spot Checks carried out by the RA, as soon as they are made available
7. Any audit reports, submitted to the CA

The officer shall ensure that, based on the testing carried out:

- every expenditure listed in the report is included as per fund and per project together with any relevant declarations provided by the RA;
- a proof of payment has been issued for every expenditure therein;
- every expenditure was actually effected within the eligible period;
- every expenditure was incurred in operations that were selected for funding and are in line with the Grant Agreement;
- every expenditure related to measures for which all State Aid has been formally approved, where relevant;
- there is compliance with all relevant National and Community rules.

The officer shall review his/her findings with the Senior Manager who, in turn, can discuss with the Director whether to request clarification on queries (if any) to the RA.

If the CA rejects the SOE by priority, an official letter, giving a clear explanation of the refusal, will be drawn up and, if necessary, the rejected batch sent to the RA.

In cases where an outright rejection of the SOE by priority is not required, a formal Request for Clarifications (RfC) shall be made by the CA. This will then be sent to the RA. Certification will not be continued until the RA replies to the CA.

All RfCs must be replied in an acceptable and clear manner and any recommendations made by the CA have to be considered. If a recommendation requires a reasonable time-span to be addressed, certification shall take place provided that the recommendation/s is/are dealt with before the next round of certification.

Once the above points have been satisfied and the Final Reports/Certificates drawn up by the RA, AA and CA are approved by the European Commission, the RA shall inform the CBM to authorise the transfer of funds, equivalent to the certified amount, from the CBM account to Government Revenue by issuing the document 'Transfer of EU Funds to Government Revenue' (Annex 21).

The CA shall record recoverable sums in the Debtors Ledger.

7. Reporting on Irregularities and Fraud

7.1 Irregularities

7.1.1 Definition of Irregularities

The Implementing Acts define irregularities as any infringement of a provision of Community Law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget. Irregularities can be an administrative irregularity, a genuine financial irregularity and/or suspected fraud.

Irregularities can be one-off or systematic. A systematic irregularity is a recurrent error due to deficiencies in the management and control system which are supposed to be aimed at ensuring the correct accounting and compliance with rules and regulations. In both cases funds are in general recovered. In the case of systematic irregularities, recoveries are not restricted to the amounts detected but recoveries can cover the whole programme. The detection of systematic irregularities often requires changes in the implementation system. Beneficiaries will be informed of such changes.

Further to Article 27 of the Commission Decision (Implementing Rules)³⁴, the following irregularities need not be reported to the European Commission, except in cases of suspected fraud:

- (i) cases where the irregularities relate to amounts of less than €10,000 chargeable to the general budget of the European Communities;
- (ii) cases where the irregularity consists solely of failure to implement, in whole or in part, a project included in the annual programme owing to the bankruptcy of the final beneficiary;
- (iii) cases brought to the attention of the responsible authority by the final beneficiary voluntarily and before detection by the responsible authority, whether before or after payment of the public contribution;
- (iv) cases detected and corrected by the responsible authority before any payment of the public contribution to the final beneficiary AND before inclusion of such expenditure in a declaration of expenditure submitted to the Commission.

Should systematic irregularities be detected in the management and control system, the authorities will make a systematic examination and instil the necessary changes. The Beneficiary will be informed accordingly. The RA will keep a 'Register of Irregularities' whereby all irregularities carried out by the beneficiaries which are of an administrative nature, procedural nature or financial are recorded distinguishing between those identified before payment and those identified after payment. The CA, which retains the Debtors' Ledger, will liaise with the RA about such irregularities.

7.1.2 Detecting and Reporting Irregularities

Chapter 4 of the Commission Decision (Implementing Rules) establishing each of the four Funds regulates the reporting of irregularities.

There are various methods how irregularities can be detected:

- a) at Management and Control level through:
 - Checks undertaken by stakeholders (including the Beneficiary itself) during implementation (eg. payment process);
 - Checks made during the verification process by the RA (or by the Financial Control Unit within the RA) (following additional checks carried out from its end, including during on-the-spot checks);
 - Checks made by the Treasury following additional checks carried out from its end;
 - Checks made during the certification process by the CA;
 - Checks undertaken by other stakeholders in the system; and

³⁴ (ERF): Commission Decision of 19 December 2007; (EBF): Commission Decision of 5 March 2008; (RF): Commission Decision of 5 March 2008; (IF): Commission Decision of 8 March 2008

- Checks by the European Commission

b) Audits carried out by the AA and other Audit Bodies.

c) Through other methods such as

- Fiscal controls;
- Evaluations;
- Initial/judicial enquiry;
- Ex-post checks and controls;
- Correction of accounts (reconciliations);
- On-the-spot check;
- Denunciation;
- Grievance or complaint (unanimous or not);
- Situation of operator;
- Preventive control;
- Release of guarantees;
- Press information;
- Parliamentary statements;
- Situation of the Beneficiary;
- Community controls.

Any one player (the RA, CA, AA, Treasury, DoC, Beneficiary or any other relevant entity), involved in the implementation of the four Funds, who, at any stage becomes aware of an irregularity (whether one-off or systematic), has the duty to immediately report the irregularity to the RA in accordance with the procedures specified in this section. The person/organisation detecting the irregularity must fill in the Irregularities Report – (Annex 22) giving details on the relevant irregularity. It is important to note that the Irregularity Report must **be drawn up and sent to the RA copied to the CA and the AA, once the irregularity is detected.**

Should there be no irregularities to report for a particular quarter, the PL has to submit a Nil Irregularities Report (Annex 23) to the RA.

Irregularities Reports have to be immediately reported whilst Nil Returns have to reach the RA by not later than the first 15 days after the end of the quarter under review. Where applicable, the RA informs the AA and the CA that in a particular period no irregularities were reported. The RA has to ensure also that irregularity reports have also been sent to the CA and AA.

Where the Grant Agreement covers activities which have already been implemented, a Nil Irregularity Report covering the period of implementation prior to the signing of the Grant Agreement should be provided by the beneficiary prior to the signature of the same Grant Agreement³⁵.

7.1.3 Reporting Irregularities to the Commission

Reporting of irregularities is regulated by Chapter 4 of the Implementation Rules

The RA shall report to the Commission any irregularity which has been subject of a primary administrative or judicial finding in the progress or final reports on implementation of the Annual Programmes (in line with Annexes 4 and 5 provided in the Implementation Rules).

As indicated in Section 7.1.1, a number of cases need not be reported to the European Commission, except in cases of suspected fraud.

³⁵ This Report is to be provided ONLY if activities (expenditure) were registered prior the signature of the Grant Agreement.

7.1.4 Content of an Irregularity Report

- The General Programme Solidarity and Management of Migration Flows Fund involved, the name of the project and form of assistance being provided through the grant³⁶;
- The provision/procedure which has been infringed (where applicable);
- The nature and amount of the expenditure (EU and Malta Funds);
- In case where no payment has been made, that amounts which would have been wrongly paid had the irregularity not been discovered, except where the error or negligence is detected before payment and would not have resulted in any administrative or judicial penalty;
- The total amount and its distribution between the different sources of funding;
- The period during which or the stage at which the irregularity was committed;
- The practice employed in committing the irregularity;
- The national authority/ies or body/ies detecting the irregularity;
- The financial consequences, the suspension, if any, of payments and where applicable the procedure to be undertaken for recovery;
- Any other sanctions executed;
- The date and source of the information when the irregularity was suspected³⁷;
- The date on which the official report on the irregularity was drawn up;
- The body involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned and;
- Follow-Up required.

7.1.5 Procedure for Recoveries and Set offs

In cases where amounts (initially classified as eligible expenditure and duly reimbursed to the Beneficiary or directly paid to Service Providers) result to be ineligible for EU Funding, it will be the duty of the RA to seek their recovery from the Beneficiary concerned. Irrespective of whether the payment has been made to the Beneficiary (in the form of a reimbursement) or directly to the Service Provider, the funds in question will need to be reimbursed by the Beneficiary.

When such cases are identified, the RA shall take into consideration the amount(s) which were originally verified from its end and shall determine whether recovery has to take place in part or in full. Thus the RA shall initiate procedures for recovery and/or set offs and give relevant instructions with regard to any other follow-up required. In case of recoveries, the RA shall fill the Funds Recovery Form (Annex 24) which, together with the original irregularity report, shall be submitted to the Beneficiary who will be asked to refund (through its respective Head of Accounts) the amounts in question. In case of set offs, the subsequent amounts due to the beneficiary will be reduced by the irregular amount. A scanned copy of the irregularity report and the funds recovery form will be sent to the CA, AA and Treasury. Government Entities will be asked to provide authorisation to transfer the amounts in question through the DAS³⁸ whereas non governmental organisations will be asked to issue a cheque, addressed to the Accountant General.

The frequency by which the process through which recovery of funds will take place shall be determined on a case-by-case basis by the RA. When determining the frequency, the RA shall take into consideration various factors amongst which

- the total amount to be recovered,
- any negative impact of a recovery request on the immediate implementation of the project, and
- the rate of recurrence of such recoveries within the particular project.

In any case, the RA shall submit all recovery requests to the beneficiary by not later than one month after the submission of the final report to the Commission. The RA shall copy in the Treasury Department, the CA and the AA with any such communication relating to recoveries of irregularities. The RA shall reserve the right to withhold further payments pertaining to a particular project until the Beneficiary reimburses the amounts in question.

³⁶ If this information is not available to the person drawing up the report, this information can be obtained from the RA

³⁷ Where applicable

³⁸ DAS is the Government's Accounting System

A final deadline for the settlement of the recovery needs however to be set and in general this should not exceed two calendar months from the submission of the irregularity report to the beneficiary. This, subject to the factors delineated above and others of a similar nature.

The RA will follow the recovery orders to ensure they are paid in due time. The Treasury has to ensure that debts relating to irregularities that are eventually recovered are properly accounted for in full. The CA shall record recoverable sums in the Debtors Ledger. The AA should also be informed by the Treasury when recoveries materialise.

The CA keeps an account of the recoverable amounts and amounts recovered under the general budget of the European Union, and deducts them from the next declaration of expenditure.

Once received, the Beneficiary shall sign the Funds Recovery Form – in the case of public organisations the authority will be provided to transfer the amounts from the respective vote number, whilst in the case of other organisations, a cheque covering the amount shall be drawn up. The Beneficiary will send the signed Funds Recovery Form and the cheque where appropriate to the Responsible Authority, copying the Treasury Department and the Certifying Authority. Once the Responsible Authority receives the signed Funds recovery Form, it will alert the Treasury and forwards to it the cheque with the funds recovered.. Treasury will inform the Responsible Authority when the funds have been recovered; at the same time Treasury will bring this to the attention of the CA and the AA also. The CA will then have to effect any adjustments that may be necessary with regard to certified payments.

7.1.6 Financial Corrections

It is important to note that failure to apply rules and regulations can result in irregularities which, in turn, could lead to financial corrections. In certain cases, particularly in the case of public procurement, the recovery can be up to 100% of the overall contract value. In the case of systematic irregularities the recoveries can extend to other or all components of the project and possibly also other projects of the same Beneficiary. It is pertinent at this stage to refer to Commission Decision of 19th December 2013 whose annex sets out guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.

The following type of corrections may be applied:

- **Specifically quantified corrections** – corrections made where a quantifiable irregularity is detected for an individual operation or several individual operations. These are applied where it is feasible to quantify the correction. This would be the case where operations or parts thereof are ineligible, not part of the Grant Agreement or do not respect national and EU rules.
- **Extrapolated corrections** – these corrections apply where the auditors or controllers have detected in a representative sample of transactions a quantifiable irregularity that can be assumed to have occurred in other operations of the same type, by the same Beneficiary or throughout a Priority Axis or an Annual Programme. The RA can apply such corrections when it has reason to believe that the irregularity detected is not limited to specific cases investigated. The RA has the right to extrapolate the correction to be adopted.
- **Flat rate correction** – these corrections are applied for individual breaches or systemic irregularities that are not in practice quantifiable, such as those resulting from a failure to undertake checks effectively to prevent or detect irregularities or to comply with a condition of the assistance or EU legislation. These corrections apply where it is not possible to calculate the specific loss related to an individual case or several cases of irregularities. They can also be applied when the RA discovers such failures and does not take corrective action. Flat rate corrections can vary and may go up to 100%.

7.2 Fraud

7.2.1 Introduction

Article 310 of the Treaty of the European Union states that Union and the Member States, in accordance with Article 325, shall counter fraud and any other illegal activities affecting the financial interests of the Union. Article 325, *Combating Fraud*, requires that the Union and the Member states shall counter fraud and any other illegal activities affecting the financial interests of the Union and that they shall coordinate their action aimed at protecting the financial interests of the Union against fraud.

Additionally, Article 59 (2b) of the Regulation on the financial rules applicable to the general budget of the Union states that, where the Commission implements its budget by shared management, the Member States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Unions' financial interests. These measures include preventing and dealing with irregularities and fraud. Overall, under each management mode, the general internal control system should achieve prevention and detection of fraud and irregularities.

7.2.2 Definition of 'Suspected Fraud'

'Suspected fraud' is defined in the Implementing Rules of the SOLID funds as:

An irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in point (a) of Article 1 (1) of the Convention drawn up on the basis of Article K.3 of the Treaty on the European Union, on the protection of the European Communities' financial interest. Under this article, fraud affecting the European Communities' financial interests shall consist of any intentional act or omission relating to:

- *The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European communities,*
- *Non disclosure of information in violation of a specific obligation, with the same effect,*
- *The misapplication of such funds for purposes other than those for which they were originally granted.*

7.2.3 Responsibilities of Stakeholders

All stakeholders involved in the management of the SOLID Funds (including the respective Authorities and beneficiaries) and their staff should act honestly and with integrity to safeguard all national and Community resources. Fraud is an ever present threat to these resources and hence must be given due priority by all stakeholders and their members of staff. All stakeholders need to acknowledge fraud as an extremely serious matter and promote an anti-fraud culture throughout their organisations.

All stakeholders are required to take all appropriate measures to prevent fraud and to take the necessary actions to mitigate the risk of fraud. All stakeholders and their staff are required to report any case of suspected fraud concerning SOLID Funds to the Responsible Authority, either through their respective hierarchy or directly if necessary.

All levels of management are responsible for ensuring that an adequate system of internal control exists within the respective areas of responsibility and that controls operate effectively. Responsibility for the prevention and detection of fraud rests primarily with the relevant managers, particularly Project Leaders in the case of projects under the SOLID Funds. A central element of good governance is the sound assessment of an organisation's business risks. Managers must ensure that all risks are identified at an early stage, assessed and properly addressed to either eliminate or minimise adverse impacts. In terms of establishing and maintaining effective controls, it is generally advisable that:

- wherever possible, there is a separation of duties so that control of a key function is not vested on one individual
- supervisory checks are established in each area of work, and such checks are carried out routinely and periodically by management
- backlogs are not allowed to accumulate
- in designing any system or procedure, consideration is given to building in safeguards to prevent and / or detect internal and external fraud
- in order to prevent cases leading to fraud, anti-fraud measures should be considered and incorporated at the design stage of the project and its implementation
- All income is promptly entered in the accounting records with the immediate endorsement of all cheques
- Regulations governing contracts and the supply of goods and services are properly enforced

- Accounting records provide a reliable basis for the preparation of financial statements
- Operate controls which ensure that errors and irregularities become apparent during the processing of accounting information
- A strong internal audit/control presence
- Management encourages sound working practices
- All assets are properly recorded
- Accounting instructions and financial regulations are available to all staff and are kept up to date
- An effective segregation of duties is put in place, particularly with respect to financial accounting and cash/securities handling areas
- Close relatives do not work together, particularly in financial, accounting and cash/securities handling areas
- Creation of a climate to promote ethical behaviour
- Act immediately on internal/external auditor's report to rectify control weaknesses
- Review, where possible, the financial risks of employees
- Issue accounts payable promptly and follow-up any non-payments
- Set standards of conduct for suppliers and contractors
- Maintain effective security of physical assets; accountable documents (such as cheque books, order books); information, payment and purchasing systems
- Review large and unusual payments
- Perpetrators should be suspended from duties pending investigation
- Proven perpetrators should be dismissed without a reference and prosecuted
- Query mutilation of cheque stubs or cancelled cheques
- Store cheque stubs in numerical order
- Undertake test checks and institute confirmation procedures
- Develop well defined procedures for reporting fraud, investigating fraud and dealing with perpetrators
- Maintain good physical security of all premises
- Randomly change security locks and rotate shifts at times (if feasible and economical)
- Conduct regular staff appraisals
- Review work practices open to collusion or manipulation
- Develop and routinely review and reset data processing controls
- Regularly review accounting and administrative controls
- Set achievable targets and budgets, and stringently review results
- Ensure staff take regular leave
- Rotate staff (where possible)
- Ensure the authorisation of all expenditure
- Conduct periodic analytical reviews to highlight variations to norms
- Take swift and decisive action on all fraud situations
- Ensure staff are fully aware of their rights and obligations in all matters concerning fraud.

Notwithstanding the above, all staff members of the respective authorities and beneficiaries have the responsibility to safeguard national and Community resources. All members of staff within the stakeholders are required to:

- act judiciously in the handling of resources and management of public funds, whether dealing with cash or payments systems, receipts or when negotiating with suppliers. Members of staff should not behave in any manner which might compromise their integrity;
- act with caution in dubious situations or suspicious fraudulent transactions;
- report details immediately through the appropriate channel if they suspect that fraud has been committed or see any suspicious acts or events;
- co-operate fully with whoever is conducting internal checks, reviews or fraud investigations. Any information provided by staff members should be treated with confidentiality, subject to legal obligations.

7.2.4 Fraud Response

The scope of this section is to define the authority levels, responsibilities for action and reporting lines in the event of a suspected fraud. This will enable the RA to:

- prevent further loss;

- establish and secure relevant evidence;
- notify the relevant officials immediately and in a structured manner;
- determine a list of external contacts to be alerted;
- assign responsibilities for the carrying out of investigations, reporting and closing of case;
- determine the root cause of the incident and to design and implement measures to prevent the possible reoccurrence of the same incident in the future.

The above measures should strengthen an anti-fraud culture by ensuring that the action is taken whenever such cases occur.

The timely reporting of fraud or suspected fraud through the appropriate channels is critical in managing the risk of fraud and ensuring that the appropriate necessary action is taken. It is also important in fulfilling the mandatory obligation of informing the Internal Audit and Investigations Department as part of the process of dealing with any fraud in a fair and just manner.

When any relevant authority or beneficiary, or their members of staff, suspects or knows that fraud has occurred, he/she must notify his/her immediate superior. If it is inappropriate to raise the matter with the immediate superior, the concern should be raised with the Head of the Responsible Authority. The official with whom the report was filed must immediately relay the message to the Head of the Responsible Authority.

Timeliness plays a crucial role when addressing fraud or suspected cases of fraud. Consequently, when identifying cases of potential fraud, the officers' immediate reaction should be that to alert his immediate superior verbally. This claim should be followed up by written report preferably within 24 hours. The report should provide the following details:

- The amount / value, if relevant or established;
- The position with regard to possible recovery;
- The period over which the irregularity occurred, if known;
- The date of discovery and how the suspected fraud was identified;
- The nature of the irregularity and the event leading to it. This could include: a possible flaw in the internal control systems; or an inherent systematic weakness of controls which gave rise to fraud;
- Whether the person responsible has been identified;
- Whether any collusion is suspected;
- Details of any actions taken to date;
- Any other information or comments which might be relevant to the report.

The Responsible Authority may need to carry out an initial enquiry to ascertain the facts. Such enquiry must take into consideration aspects of:

- The source of the discovery of the suspected fraud;
- The authenticity of the information received;
- The circumstances involved;
- Confidentiality issues;
- Protection of evidence and sources of information.

Once the initial examination confirms the suspicion of fraud, to prevent the loss of evidence, the Responsible Authority must take the necessary steps to secure all original evidence and account for it at all times, keeping records for its movement once it is secured, numbered and labelled.

The Responsible Authority must immediately inform in writing the Permanent Secretary MEAIM Funds, the Permanent Secretary or Head of the beneficiary, the Police and the Internal Audit and Investigations Department. The Head of the Responsible Authority should also appoint an independent case officer to oversee the investigation, assume full responsibility and authority in moving forward with the case. He / she should also act as a liaison with the external investigator, ensuring that any information relevant to this case is provided. It is important that the case officer provides a summary report on the outcome of the investigation which should clearly detail any flaws within the system and how such flaws can be mitigated in order to secure smoother future operations.

8. Retention of Documents

8.1 General Principles

All supporting documents regarding expenditure and audits on the programme concerned are to be kept available for the Commission, the Court of Auditors, and other control authorities for a period of five (5) years following the closure of the Annual Programmes (ie. from the date when the Commission submits its final payment for that particular annual programme) in accordance with the 'Conservation of Documents' set out in each of the basic acts of the four Funds³⁹. This provision shall apply both at projects level and at the level of the Authorities.

This period may be extended either in the case of legal proceedings or at the duly substantiated requests from the Commission.

The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals, including on commonly accepted data carriers.

All documents related to the projects shall be kept available for control and audit purposes up to five years after closure of the Programme i.e. from the date when the Commission submits its final payment for that particular annual programme..

8.2 Records to be Retained

All documents related to the project and expenditure shall be made available during audit missions and on-the-spot checks. The Beneficiaries must ensure that documents relating to specific expenditure incurred and declared and payments made under the assistance and required for a sufficient audit trail including documents constituting proof of actual delivery of works/goods/services co-financed through the EU grant, are retained.

The RA should ensure that reports and documents relating to checks carried out through:

- a) the verification of expenditure;
- b) the certification of expenditure and;
- c) reports on audits carried out by the AA (IAID)

are retained for the stipulated time as described above.

As indicated in the retention of documents table below, Beneficiaries and other four Funds stakeholders would be required to maintain documents in their original format while others would be required to keep copies of these originals. Copies of the original documents must be kept on commonly accepted data carriers, by a competent officer, which include:

- Photocopies of original documents;
- Microfiches of original documents;
- Electronic versions of original documents on optic data carries (such as CD-Rom, hard disk or magnetic disk);
- Documents existing in electronic version only.

It is the sole responsibility of the Beneficiary and relevant horizontal stakeholder organisation (depending on the document) to ensure easy and quick access to relevant project documentation also after the project closes. This is particularly the case when project management is contracted either outside the organisation or to persons with contracts which may terminate at the end of the project.

Copies of original documents must be certified as true copies of originals. The person certifying such copies is dependent on the documents being copied (ie. at which stakeholder in the implementation system). In the case of the Beneficiary organisation, documents should be signed by the Project Leader.

³⁹ IF Article 41; EBF Article 45; RTF and ERF Articles 43 of the respective Basic Acts

8.3 Delegation of Authority

The person responsible to certify true copies of original must establish a procedure where in his/her absence such person will designate the signatory authority to an official within the office. For further information refer to Chapter 14 Delegation of Authority.

8.4 Entities Carrying Out Checks

Refer to Chapter 9 Management and Control and Chapter 10 Audit.

8.4.1 Retention of Documents for Procurement

For retention of documents in relation to procurement, the information has been classified according to the thresholds and split between schedule 2 and 3 as stipulated by the Public Contracts Regulations. Schedule 2 refers to Contracting Authorities whose contracting falls within the competence of the Department of Contract while Schedule 3 refers to the Contracting Authorities who have the authority to administer their own public procurement in accordance with the provisions of the Public Contracts Regulations (LN 296 of 2010). It is important to note that the schedules are regularly updated. The procedure that will be considered valid is that procedure that is legally binding at the time when the procurement process for the tender was initiated. A procurement procedure must be finalised under the same procedure with which the procurement was initiated.

In the case of projects implemented by private organisations or non-governmental organisations, the Beneficiary must follow the spirit of public procurement regulations and apply the procedures required within the thresholds stipulated within the public procurement regulations.

8.5 Filing System for Project Related Documentation

Departmental files must be kept in line with Department's procedures. The colour of the departmental file is the same as used by the organisation in its day-to-day business. The instructions on this file are the same as those used for other departmental files for the organisation.

The PL shall also keep a standard project file for recording all important project related documents (ideally ring files for ease of reference). This file must be readily available for any inspection made by the relevant authorities.

The standard project file is colour coded according to the relevant Fund. Projects co-financed through EBF must have files with a red coloured tag, ERF with a green coloured tag, RF with a blue coloured tag and IF with a purple coloured tag.

Each standard project file should be divided into the sections identified below (with separators) and should strictly follow the same order, with Section 1 being the one on top and Section being at the very end:

1. Grant Agreement;
2. Important Correspondence with the RA (eg. agreement to changes to the project prior to the drafting of an addendum to the Grant Agreement)
3. Procurement (eg. publication of tender, appointment of evaluation committee, evaluation report)
4. Spot Check Reports;
5. Irregularity Reports;
6. Interim Reports/Final Reports;
7. Publicity Records;
8. Inventory of Purchased items

The documents included under each of the above mentioned sections should be filed in date order, with the most recent documents on top.

As stated above, the standard project file does not exempt the organisations from using their usual filing systems for day-to-day correspondence. The standard project file system is merely to facilitate access to the most important original documents during audits and for the four Funds funding purposes only. Copies and day-to-day correspondence should be kept in normal filing systems of the organisations – always in separate files for the project.

8.6 Solid Information System – Retention of Information

In chapter 6 reference was already made to the SOLID Information System which is serving/will serve as a depository of key documents. It is pertinent at this stage to remind the stakeholders about the Government of Malta Password Policy. This policy seeks to ensure that strong passwords are used, in that they are not easily compromised, and also seeks to establish rules for the creation, distribution, safeguarding, termination and reclamation of the Government User Authentication Mechanisms and applicable to all account holders'

The SIS follows the latest MITA Password Standard. Strong passwords shall be hard to guess, have a combination of character types and not related to the user's name. Default passwords should be changed immediately after using it for the first time and thereafter they should be changed on a regular basis. Passwords must never be written down, stored or shared with other persons.

8.7 Retention of Documents

Despite the fact that the purpose of this MoP is specifically focused on the requirements of the Beneficiary, for completeness sake the table below indicates the document that needs to be retained by the various stakeholders involved in the implementation of the four Funds. This will give the Beneficiary a complete picture of the requirements attached to the retention of documents process.

Table 1: Retention of Documents Table

Indicative Documents that must be retained by Entities governed by Public Procurement Regulations										
	Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
1. APPLICATION FORM										
General Programme Solidarity and Management of Migration Flows Application Form		Original			Copy					
Feasibility Studies, CBA (where applicable) Environmental impact Assessment and other related studies (where applicable)		Original			Copy					
Grant Agreement	Yes	Original	Copy		Original					
Addenda to the Grant Agreement (where applicable)	Yes	Original	Copy		Original					
Official Correspondence on agreed changes to the project ⁴⁰	PL change									
2. GENERAL CORRESPONDANCE										
Any correspondence related to the project ⁴¹		Original /Copy	Original /Copy	Original /Copy	Original /Copy	Original /Copy	Original /Copy	Original /Copy	Original /Copy	Original /Copy

⁴⁰ Such as letter of change of project leadership, delegation of authority, letter of extension to projects. The retention of these documents depends on the body sending the information. The sender must retain a copy of the letter/documents sent while the recipient must keep the original. Generally changes to a project are handled by the RA and the Beneficiary.

⁴¹ The retention of these documents depends on the body sending the information. The sender must retain a copy of the letter/documents sent while the recipient must keep the originals.

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
Delegation of Authority ⁴² (where applicable)	Yes	Original/Copy	Original/Copy	Original/Copy	Original/Copy	Original/Copy	Original/Copy	Original/Copy	Original/Copy
Project Management Costs (detailed time sheets in the case of employment contract)		Copy		Original			Copy		
3. PAYMENT PROCESS									
Receipts/Invoices related to all project expenditure	Yes	Copy		Copy			Original		
ISC	Yes	Original		Copy			Copy		
Summary of Debit advices (prepared by Treasury)	Yes	Copy		Copy			Original		
4. VERIFICATION PROCESS									
SoE by Project	Yes	Original	Copy	Copy		Copy			
Signed declaration attached to SOE by Project	Yes	Copy	Original	Copy		Copy			
SOE by Action	Yes	Copy	Original						
Signed declaration attached to SOE by Priority Axis	Yes	Copy	Original						

⁴² It is highly recommended that each office/body identified above, should have the Delegation of Authority Template duly filled in and signed. Each office should retain the original document and forward copies of the document to all offices identified above.

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
5. CERTIFICATION PROCESS									
SOE by Fund	Yes	Original	Copy						
Request for payment to the European Commission ⁴⁵		Copy	Copy						
Reports on checks carried out by the CA during the certification process			Original						
On-the-spot- check reports		Original ⁴⁴	Copy	Copy					
6. PROCUREMENT (PUBLIC PROCUREMENT REGULATIONS)									
6.1 Procurement which does not exceed Euro 2,500⁴³									
a. Quotations		Copy		Original					
<i>Adverts publicising the call for quotations (Government Gazette, website etc)</i>		Copy		Original					
b. Direct from open market/Approval:		Copy		Original					
<i>Justification taking into account the amount involved, the urgency attached to the procurement and restrictions of choice and availability</i>		Copy		Original					

⁴³ One has to bear in mind that different thresholds apply to Voluntary Organisations and NGOs - refer to Chapter 5 of this Manual.

⁴⁴ In the case of spot checks carried out by the RA on the Beneficiary of a project.

⁴⁵ The original document is sent to the European Commission

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
<i>Approval from the Head of Department</i>		Copy		Original					
LPO/Agreement, where applicable	The voucher number and the contract number	Original							
<i>Adverts publicising the call for tenders (Government Gazette, website etc)</i>		Copy		Original					
b. Quotations:		Copy		Original					
<i>Written approval by Minister or delegate</i>		Copy		Original		Copy			
c. Direct from open market		Copy		Original					

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
<i>Justification taking into account the amount involved, the urgency attached to the procurement and restrictions of choice and availability</i>		Copy		Original					
<i>Written approval by Minister or delegate</i>		Copy		Original		Copy			
LPO/Agreement, where applicable in the case of quotations ⁴⁸	Yes	Original							
6.3 Schedule 2⁴⁶ - Tenders that do not exceed the Euro 47,000									
Tender Document		Copy		Original					
Adverts where tenders are made public (eg. Newspapers, websites, Government Gazette)		Copy		Original					
Requests for explanations and published replies		Copy		Original/Copies					
Official letter of appointment of the Evaluation Committee		Copy		Copy ⁴⁷					
Bids submitted by bidders		Copy (if requested)		Original					

⁴⁶ In the case of a restricted procedure, consent from the Director of Contracts is required. The original request for consent must be retained by the DoC whilst the original consent issued by the DoC is retained by the Beneficiary

⁴⁷ Originals sent to members of the Evaluation Committee

⁴⁸ In the case of quotations and direct orders from the open market. In the case of tenders, please refer section on tenders below Euro 120,000,000 threshold. Once again one has to bear in mind that different thresholds apply to Voluntary Organisations and NGOs - refer to Chapter 5 of this Manual

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
6.3 Schedule 2⁴⁹ - Tenders that do not exceed the Euro 47,000									
Tender opening report indicating the number of bids received within the deadline of submission		Copy		Original					
Evaluation Report		Copy		Original					
Publication of selection results		Copy		Original					
Contract/Letter of award (and any other document required by law)		Copy		Original/Copies ⁵⁰					
Letter to non successful bidders		Copy		Copy					
6.4 Schedule 2 - Tenders above the Euro 47,000 threshold									
Funds Commitment Form ⁵¹		Copy		Copy	Original				
a. Tender Document		Copy		Copy	Original				
Letter/Email recommending the members of the Evaluation Committee		Copy		Copy	Original				
Letter/Email approving (or otherwise) the members recommended for the evaluation committee		Original		Copy	Copy				
Adverts where tenders are made public (eg. Government Gazette, Newspapers, website etc)		Copy		Copy	Original				

⁴⁹ In the case of a restricted procedure, consent from the Director of Contracts is required. The original request for consent must be retained by the DoC whilst the original consent issued by the DoC is retained by the Beneficiary

⁵⁰ Not applicable for projects implemented by Non-Governmental Organisations or Public equivalent

⁵¹ In the case of a letter of award, the original is sent to the contractor and the Beneficiary keeps a copy. In the case of a contract, the Beneficiary and the contractor keep an original signed copy each.

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
<i>Contract Notice Advert in the Official Journal (if tender value exceeds the stipulated threshold)</i>				Copy					
<i>Requests for clarifications and published replies</i>				Copy	Original				
<i>Bids submitted by bidders</i>					Original/ Copies				
<i>Tender opening report (indicating the nos. of bids received within the stipulated deadline)</i>				Copy	Original				
<i>Evaluation Report</i>		Copy		Copy	Original				
<i>Minutes of the General Contracts Committee approving (or otherwise) the recommendation of the Evaluation Report</i>		Copy		Copy	Original				
<i>Publication of the results of the adjudication</i>					Original				
<i>Publication of the Contract Award Notice in the Official Journal (where applicable)</i>		Copy		Copy	Original				
<i>Notification award letter</i>		Copy		Original	Copy				
<i>Letter to non-successful applicants</i>					Copy				
<i>Contract</i>		Copy		Original	Original				

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
<i>Appeals and/or Recourse to Court and Defence procedures</i>		Copy		Copy	Original				
<i>Control Sheet</i>					Original				
<i>Addenda to the contract (where applicable)</i>		Copy		Original	Original				
b. Request for Direct Order		Copy		Copy	Copy	Original ⁵²			
<i>Approval of Direct Order</i>		Copy		Original	Copy	Copy			
<i>Contract</i>		Copy		Original	Original	Copy			
<i>Addenda to the contract where applicable</i>		Copy		Original	Original	Copy			
6.5 Schedule 3 – All tenders									
Funds Commitment Form		Copy		Copy	Original	Copy			
a. Tender Document		Copy		Original	Copy				
<i>Adverts where tenders are made public (eg. Government Gazette, Newspapers, website etc)</i>		Copy		Original	Copy				
<i>Contract Notice Advert in the Official Journal (if tender value exceeds the stipulated threshold)</i>				Original	Copy				

⁵² If the direct order exceeds the EU thresholds, the Budget Office will require the acceptance/clearance of the DoC before granting the direct order. Generally, the matter will be referred to the GCC for approval for a negotiated procedure with an economic operator.

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
<i>Requests for clarifications and published replies</i>				Original/Copy	Copy				
<i>Bids submitted by bidders</i>				Original	Copy				
<i>Tender opening report (indicating the nos. of bids received within the stipulated deadline)</i>				Original	Copy				
<i>Evaluation Report</i>		Copy		Original	Copy				
<i>Publication of the results of the adjudication</i>		Copy		Original	Copy				
<i>Publication of the Contract Award Notice in the Official Journal (where applicable)</i>				Original	Copy				
<i>Notification award letter</i>				Copy	Copy				
<i>Letter to non-successful applicants</i>				Copy	Copy				

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
Contract		Copy		Original	Copy		Copy		
Appeals and/or Recourse to Court and Defence procedures				Original	Copy				
Addenda to the contract (where applicable)		Copy		Original	Copy		Copy		
b. Request for Direct Order		Copy		Copy	Copy	Original			
Approval of Direct Order		Copy		Original	Copy	Copy			
Contract		Copy		Original	Copy	Copy	Copy		
Prior Indicative Notice			Copy /Original ⁵³						
7. MONITORING									
Photographs to evidence project implementation (where applicable)		Original /Copy	Copy	Original					
Interim Report		Original (where applicable)		Copy					
Final Report		Original		Copy					
8. IRREGULARITIES									
Irregularity Report ⁵⁴		Original	Copy	Copy	Copy		Copy		

⁵³ A copy is retained by the Beneficiary in the case of Schedule 2 while an original by the Beneficiary in the case of Schedule 3 or in the case of a direct order being issued under Schedule 2.

⁵⁴ A copy is retained by the Beneficiary, DoC and Treasury, where applicable only, depending where and/or by whom the irregularity was committed

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
9. ASSETS/EQUIPMENT									
Inventory		Copy		Original					
10. PUBLICITY RECORDS									
Copies of all publicity used (adverts, press releases, photos of billboards on site, photos of publicity events, leaflets, posters, CDs and DVDs)		Copy		Original					
Evidence of using EU and Malta flag notify the beneficiaries and general public of the General Programme Solidarity and Management of Migration Flows contribution		Copy		Original					
11. TRAINING									
Call for participants				Original					
Application Form				Original					
Acknowledgement Letter				Copy					
Documented report on selection of participants		Copy		Original					
Information of the selection of target beneficiaries		Copy		Original					
Letter to successful applicants				Copy					
Letter to non-successful applicants				Copy					
Participants' list and details		Copy		Original					

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
Synthesis of the type of training offered				Original					
Training costs (detailed time sheets)				Original					
Signed attendance Sheets for both teachers and participants		Copy		Original					
Feedback/Evaluation Sheets				Original					
Documentation used to deliver training (eg. presentation, lesson plans, handouts etc)				Original/Copy					
Outputs (where applicable eg. studies examination papers, etc)				Original					
Certificates to beneficiaries				Copy					
Record of the support provided to each individual beneficiary				Original					
Teacher/trainer's annual report (where applicable)				Original					

Table 2: Retention of Documents Table vis-à-vis Procurement – Local Councils

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
A. Direct Order (for procurement not exceeding €1,164.69 including VAT)⁵⁵									
Authorisation by Council				Original					
LPO/Agreement , where applicable	Yes			Original					
B. Quotations (for procurement exceeding €1,164.69 incl. VAT but not exceeding €4,658.75 incl. VAT)									
Authorisation by Council				Original					
Request for quotations				Copy					
Advert of Publication of Tender in Government Gazette (actual copy of advert)				Copy					
Advert of Publication of Tender in Local Newspaper (actual copy of advert)				Copy					
At least three signed Quotations received				Original					
Justification for the selected quotation				Original					
Reference/Notification to selected bidder/LPO/Agreement, where applicable	Yes			Original					

⁵⁵ Subsidiary Legislation is Ch. 363 (as amended by LN 425 of 2007) – Local Councils (Financial) Regulations, Art. 24(4).

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
C. Tenders (may apply for procurement exceeding €1.164.69 incl. VAT. Compulsory for procurement exceeding €4,658.75 incl. VAT)									
Authorisation of expenditure by the Council				Original					
Tender Document (final version)				Copy					
Advert of Publication of Tender in Government Gazette (actual copy of advert)				Copy					
Advert of Publication of Tender in Local Newspaper (actual copy of advert)				Copy					
Contract Notice in Official Journal (if tender exceeds the stipulated EU thresholds) (Need not be in Beneficiary's file but should be checked from OJ website)				Copy					
Requests for clarifications & replies (during call)				Copy					
Schedule of all tenders received (signed by the Executive Secretary and 2 Local Councillors)				Copy					
Bids received				Original					
Minutes related to the Evaluation by the Tender Committee				Original					
Requests for clarifications & replies (during evaluation)				Original/Copy					
Publication of the Tender Committee's decision				Original					

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
Contract Award Notice (if tender exceeds the stipulated EU thresholds) (Need not be in Beneficiary's file but should be checked from OJ website)				Copy					
Letter of acceptance to successful bidder/s				Copy					
Letter of rejection to unsuccessful bidders				Copy					
Contract (and any other document required by law)	Yes			Original					
Addenda to the Contract	Yes			Original					
Appeals/Recourse to Court and defence procedures				Original					
Valid Performance Guarantee including any amounts stipulated in addenda to the contract (where the contract value exceeds €10,000)				Original					

Table 3: Retention of Documents Table vis-à-vis Procurement – Voluntary Organisations

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
A. Direct Order (for procurement not exceeding €5000)									
Authorisation by the Administrators/Treasurer				Original					
Agreement , where applicable	Yes			Original					
B. 3 Quotations (for procurement equal or exceeding €5,000 but not exceeding €100,,000)									
Request for quotations				Copy					
Adverts (website, government gazette, local newspapers, etc. (where applicable)				Copy					
At least three comparable quotations received				Original					
Justification for the selected quotation				Original					
Notification to selected bidder	Yes			Original					
Agreement (where applicable)	Yes			Original					
C. Tenders (for procurement equal or more than €100,000)									
Tender Document (final version)				Copy					

Documentation	SIS	RA	CA	Beneficiary	DoC	Budget Office	Treasury	CBM	SAMB
Adverts (website, government gazette, local newspapers, etc. (where applicable))				Copy					
Requests for clarifications & replies (during call)				Copy					
Schedule of all tenders received				Original					
Bids received				Original					
Requests for clarifications & replies (during evaluation)				Copy					
Publications of results				Original					
Letter of acceptance to successful bidder/s				Copy					
Letter to unsuccessful bidder/s				Copy					
Contract (and any other document required by law)	Yes			Original					
Addenda to the Contract	Yes			Original					
Appeals)/Recourse to Court and defence procedure (Appeals Committee should be different from the committee that has evaluated the tender)				Original					
Valid Performance Guarantee including any amounts stipulated in addenda to the contract									

9. Management Control

9.1. General Principles

This section is concerned with financial control procedures applied for the General Programme Solidarity and Management of Migration Flows 2007 – 2013 co-financed expenditure. The framework for proper financial management, control and audit is set out in the Programme Framework⁵⁶. At project level the most important control is Internal Control. The Beneficiary/stakeholder organisation is the main actor responsible to put in place and to maintain internal control arrangements to ensure proper and sound financial management of the project and the relevant financial resources.

Audits and verification checks are required to trace transactions and validate the declared outputs and expenditure from a project. A clear documentation system is a requirement to allow reconciliation of amounts certified to the Commission with individual expenditure records and supporting documents at various administrative levels (e.g. Beneficiary, Treasury, RA etc.). The Responsible Authority has drawn up a management and control system applicable to the four Funds which has been assessed for completeness with the Regulatory Framework by the Audit Authority and submitted to the European Commission. This Manual of Procedures incorporates the main tenets of that system as applicable to the relevant organisations, particularly the Beneficiary organisation. It is the responsibility of each management level (Beneficiary, RA, DoC, Treasury, CA, AA etc.) to ensure that there are adequate internal control systems and that these are functioning effectively.

9.1.1 First Level of Control and On-the-Spot Checks

In order to gain assurances with respect to the internal controls being followed by the Beneficiary, the RA shall carry out management verification checks to verify the correct implementation (by the Beneficiary) of projects co-financed under the four Funds. Checks shall be *desk based* as well as *on-the-spot* checks (the latter including administrative and physical).

9.1.2 Desk-Based (administrative) Checks

These are the controls that the RA undertakes on the bases of the documentation submitted by the Beneficiary as part of the payment process. Through desk-based checks the RA verifies, in particular, that the expenditure declared by beneficiaries has actually been incurred and that such expenditure complies with the Eligibility Guidelines. This verification carried out by the RA is, in the first instance, as an administrative check to ensure that expenditure is carried out in line with the Grant Agreement, that the relevant procedures have been followed and that operations and expenditure comply with EC and national rules. It should be noted that these checks are NOT audits but administrative verifications. Any queries submitted to the Project Leader should be answered within the stipulated deadline to ensure that payments are processed efficiently and funds are not at risk.

9.1.3 On-the-Spot Checks

The administrative verifications represent only one component of the so-called *first level of control*. In order to ensure that the administrative checks are robust, the RA complements these first checks with on-the-spot checks. These checks can be either administrative or physical in nature. The administrative focus on the verification of the original documentation related to the implementation including checks on the procurement procedure, payments, filing, inventory management, and publicity. Through on-the-spot checks the RA shall also verify that final beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to the action.

The so-called *physical on the spot checks* are undertaken by the RA to gain assurance on the physical implementation of the project. These could take the form of a site visit to check the equipment (including checks on serial numbers etc.)/ physical infrastructure and /or visits during the delivery of training and / or other services as specified in the Grant Agreement. The RA may use external expertise to support it during checks of the projects' physical implementation. Information on the physical check, where applicable and any related findings (if any), are incorporated in the OTS report. (Annex 11)

⁵⁶ For ERF Article 31 of Council Decision 573/2008/EC and Article 16 of Commission Decision 2008/22/EC
For EBF Article 33 of Council Decision 574/2007/EC and Article 16 of Commission Decision 2008/456/EC
For IF Article 29 of Council Decision 2007/435/EC and Article 16 of Commission Decision 2008/457/EC
For RTF Article 33 of Council Decision 575/2007/EC and Article 16 of Commission Decision 2008/458/EC

The RA shall determine the frequency and timing of the checks on a case-by-case basis. The RA shall inform the beneficiary that an on-the-spot check will take place at least one week in advance. The on-the-spot check template (Annex 11) used during the visit is to be sent to the Beneficiary with the on-the-spot check notification in order to help the Beneficiary prepare for the visit. The on-the-spot check is carried out in the presence of the Beneficiary. Situations may arise where on-the-spot checks are held without pre-announcement, in particular where lack of adherence to the control system at the beneficiary is presumed.

The Beneficiary shall ensure that the Project Leader and any other relevant officials are present for the checks and that the relevant documentation is readily available.

The objectives of the spot checks are well defined and shall cover the administrative, financial, technical and physical aspects of the project. The Beneficiary should note that the following documents form an integral part of the project dossier which is checked:

- Copy of the application and relevant correspondence;
- Original Grant Agreement;
- Supporting documentation (eg. site-plans, MEPA permits (where applicable); time sheets, performance reports⁵⁷
- Original correspondence on agreed changes to the project;
- Copies of procurement documents required in accordance with the relevant thresholds and as indicated in the Retention of Documents Chapter 8 of this MoP;
- A copy of all invoices;
- A copy of all ISC;
- A copy of the pertinent declarations;
- Inventory of equipment and related documentation (eg. Guarantees of equipment etc);
- Documentation required in the case of training (eg. signed attendance sheets and time sheets) as indicated in the Retention of Documents Chapter 8 of this MoP;
- Publicity records (including any cuttings from newspapers and DVDs etc.. where applicable);
- State Aid documents (where relevant);
- Copy of the Interim Reports;
- Copy of the Final Report;
- Copy of the Irregularities Report;
- Copies of Nil Irregularity Reports.

The objectives of the checks are well defined. They are not intended to offer the Beneficiary any comfort/guarantees with regard to future audits and / or recovery of funds.

9.1.4 Follow-up on the On-the-Spot Checks

Following an on-the-spot check, the RA shall send the draft report (outlining findings and follow-up/recommendations and deadlines for action) to the Beneficiary for signature/comments. Any follow-up action required is undertaken by the Beneficiary within a stipulated deadline. Failure to do so may result in suspension of the grant. The finalised report is submitted to the RA within 10 working days for filing and a copy is retained by the Beneficiary.

All the on-the-spot checks incorporating the results are sent to the CA and upon request they are also sent to the AA.

9.1.5 Spot Checks carried out by the CA

The CA may also carry out on the spot checks, if it needs to gain assurances that the system is sound. In such cases, the Beneficiary is informed by the CA and the relevant report template is sent by the CA to the Beneficiary in advance. The Beneficiary is expected to co-operate fully with the CA during these checks. Upon request, copies of the relevant reports are sent to the RA and AA. The CA may also request documentation and data from the RA for clarification purposes as part of its checking process.

⁵⁷ Primarily in the case of employment contracts

10. Audit

10.1 General Principles

The second level of control refers to audits (systems and on operations) that are carried out by local and foreign audit institutions. The Internal Audit and Investigations Department (IAID) is the designated Audit Authority (AA) and it is the main entity responsible for second level of control. The audits (obligatory by Regulation) are carried out on an ongoing basis throughout the programming period and potentially up to 5 years from the date that the European Commission approves the final report.

Beneficiaries should note that other organisations including the National Audit Office (NAO) as well as the European Commission and the European Court of Auditors may undertake audits on the projects. Other organisations such as the SAMB or the VAT Department may carry out checks on the project in order to ensure that the project is being implemented in accordance with state aid or VAT regulations.

Within six months of approval of the MAP, the AA shall present to the European Commission an audit strategy which is to be approved by the European Commission. The audit strategy covers the bodies which will perform the audits referred to below and ensures that the main beneficiaries of co-financing are audited and that audits are spread evenly throughout the programming period. The work of the AA is defined in this strategy. A risk analysis continues to be one of the methods used by the AA.

Risks can include:-

- Inherent risks - the risks of irregularities or error occurring for example, when complex rules and regulations govern the action or when there is a high degree of staff turnover in the Beneficiary organisation.
- Control risks - where there is a risk of controls and procedures not preventing or detecting errors or irregularities occurring.

The following are amongst the risk factors that are taken into consideration:

- Type of Beneficiary (whether well established, public or private);
- Previous reported irregularities or errors (for the first exercise, this will mainly depend on previous Programmes including pre-accession and national funds);
- Previous audits undertaken by IAID and other audit institutions;
- Complexity of the project (the number of people/partners involved in the management of the project, the type and number of contracts in the project, the phases of the project etc.);
- Level of the four Funds support for the project/operation (the financing element as seen in proportion to the total funds allocated to Malta);
- Evidence of increased project cost post project start;
- Mobility of staff within the various management bodies including the ascertainment of the appropriate staff competence;
- Pressure of work (understaffing, volume of transactions and backlogs);
- Availability of documented procedures (availability of internal flowcharts, organisation charts, checklists and internal manuals of procedure);
- The stage of implementation of the project (to determine if everything is going according to plan, that budgets would not have been exceeded, etc.);
- Results of on-the-spot checks carried out by the RA (and CA where the latter are carried out) (the number of checks, the frequency of errors);

The risk analysis factor will each be allotted a weight factor on a score number. The higher the score means higher risk and therefore the relevant Beneficiary will be subject to increased control and checks.

The AA will inform the Beneficiary to be audited at least five days in advance.

The Beneficiary must ensure that all relevant documentation is made available to the auditors. The Project Leader should ensure that the necessary support is provided to the auditors in carrying out their work.

A report will be sent by the AA copied to the RA and the CA. The RA ensures that it disseminates the relevant sections of the report to the stakeholders to which they relate.

The Beneficiary is in the first instance responsible to follow up any recommendations. If an irregularity has arisen, the RA has to ensure that an irregularity report is drawn up, and, if necessary, it issues a recovery order. The RA is to ensure that the Beneficiary has followed up the recommendations with the relevant time-line and that the Beneficiary informs it (the RA) accordingly. The RA in turn forwards the information on the measures undertaken to address the shortfalls and follow-up recommendations to the AA copying the CA

The AA may organise follow-up audits if necessary.

10.2 The obligations of the AA

Each year the AA shall carry out audits according to the audit strategy and the annual audit plan. The senior audit manager following an assessment of the resources available and the time required for completion shall indicate to the auditors the timing and the extent of the audits to be performed so that the auditors may plan accordingly.

10.2.1 Preparation of audit reports and declarations

For the period 2007 to 2013, for each annual programme, the IAID will draft a report comprising:

- a) an annual audit report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the annual programme and reporting any shortcomings found in the systems for the management and control of the programme;

Each auditor is entrusted with the responsibility of extracting from the reports (systems or projects) that he/she has drawn up, those elements that are to be included in the annual report. A review of the process is conducted by the senior audit manager.

The conclusions emerging from the system audits and the audits of projects will be consolidated for each annual programme. In the event of an AP for which an error rate of above the materiality level of 2% of the Community contribution is reported, the AA shall analyse the significance of this error and take the necessary measures, including making appropriate recommendations.

- b) an opinion, on the basis of the controls and audits that have been carried out, as to whether the functioning of the management and control system provides reasonable assurance that declarations of expenditure presented to the Commission are correct and that the underlying transactions are legal and regular;
- c) a declaration assessing the validity of the request for payment or statement of reimbursement of the final balance and the legality and regularity of the expenditure concerned.

Following submission of the request for payment or statement of reimbursement of the final balance by the RA, the AA carries out a careful analysis of the detailed financial report, ascertains that account has been taken into of the results of any audits and/or checks, and that any interest accrued is included.

10.3 Preparation and implementation of audit missions

10.3.1 System Audits

Audits shall be carried out by the AA to verify the effective functioning of the Management Control Systems (MCS) established by the Member State. The audits on the MCS shall cover each of the following processes:

- Programming
- Delegation of tasks
- Selection and award
- Monitoring of the projects

- Payments
- Certification of expenditure
- Reporting to the European Commission
- Detection and treatment of potential irregularities
- Evaluation of the programme

At least one week prior to the commencement of system audits the AA shall inform the RA and the auditee by way of a letter that it intends to conduct an audit. The letter shall indicate the date and the time of the first meeting, and a list of any documentation to be prepared by the auditee. Prior to audit fieldwork the auditor reviews the relevant documentation (regulations, guidelines, manuals etc) and prepares audit tools (questionnaires/check-lists) for use during fieldwork. Fieldwork will include on-the-spot visits, examination and cross-checking of the records and documentation held at the bodies involved in the management and implementation of the four Funds, walk-through tests and interviews with both management and other officers.

10.3.2 Project Audits

Audits on actions (project audits) are carried out following a risk analysis exercise that takes into account factors such as size of the project, type of organisation, and any previous risk factors identified. Sample selection is done to ensure that more than 10% of total eligible expenditure of the AP is subject to audit and that the sample audited consists of a representative mix of projects. Where problems detected appear to be systemic in nature, further examination (extension of audit sample) is carried out to establish the scale of the problems

The IAID will inform the RA of the projects selected for auditing and of the dates it intends to carry out the audits. Depending on the projects to be audited, the IAID will also inform the respective auditee. The RA will provide the AA with the beneficiary contact details.

Project audits are carried out on the spot utilising as a basis the documentation and records held by the beneficiary. Project audits are designed to provide verifications on, amongst others, that:

- the project meets the selection criteria for the AP, has been implemented in accordance with the GA and fulfils any applicable conditions concerning its functionality and objectives to be attained;
- the expenditure declared corresponds to the accounting records and supporting documents held by the beneficiary and/or by the partners in the project and these records correspond to the supporting documents kept by the RA or any delegated body;
- The items of expenditure correspond to:
 - the eligibility requirements
 - to the requirements specified during the national selection procedure
 - to the terms of the GA
 - to the works actually carried out and, where appropriate, to other community and national rules;
- the use or intended use of the project is consistent with the objectives, action or measures set out in the basic acts and, where appropriate, covers the target population;
- the public or private contribution has been paid to the beneficiary;
- there is an adequate audit trail;
- there are no conflicts of interest and good value for money has been achieved, in particular in cases where the RA acts as an executing body of the project.

The AA retains the right to perform other audits after the completion of the projects.

The beneficiary shall also ensure that an adequate audit trail is kept *and* a separate account exclusively for the project or an adequate accounting code for all transactions relating to the project, without prejudice to national accounting rules, is maintained..

The beneficiary is obliged to provide the AA with all the requested documentation and records in order for the AA to carry out the audit.

For both systems and project audits a draft report is drawn up by the lead auditor and reviewed by the AA. Where necessary, a contradictory procedure takes place whereby the findings and recommendations are discussed with the auditee. Once the contradictory procedure is finalised, in the case of system audits the final report is sent to the RA and for onward submission to the auditee, if applicable. In the case of project audits the report is submitted to the RA. The AA sends to the CA a copy of all systems and project audit reports.

10.4 Audit Trail

The PL shall ensure that an adequate audit trail is kept, i.e. that all information and evidence pertaining to and resulting from the implementation of the project is recorded, filed and easily retrievable upon demand. The audit trail includes records of financial transactions, public procurement documents, evidence of publicity; time-sheets and attendance sheets, employment contracts, inventories as well as all correspondence exchanged with the RA, CA or AA,.

An inventory of all equipment procured with the co-financing of EU Funds has to be kept by the PL and put at the disposal of the AA (or any other authority) as requested. The form that has to be used can be found in Annex 14 of this Manual.

Procured equipment has to bear the EU emblem (see Chapter 13 Information and Publicity) and the National Maltese Flag.

Any equipment which breaks down and may no longer remain in use has to be disposed of according to the following guidelines:

- If possible, equipment has to be retained even after it is no longer in use
- Where the above is not possible or practical, a technical report shall be drawn up and photos of the equipment taken, in order to record its existence and the reason for its disposal

A technical report explaining how the equipment was damaged should invariably be drawn up, even if the damaged equipment is going to be retained. The beneficiary is to repair or replace such equipment, especially if the items were broken through negligence.

If any equipment is stolen, the Beneficiary concerned should prepare a technical report and also report the incident to the Police, retaining a copy of the report issued by the latter. Even in this case, the beneficiary is to replace such equipment, especially if the item was stolen through negligence.

Practicality should be the guide in deciding whether to replace the damaged or stolen items if the incident happens for the second time, but the project leader is answerable in any case. If the item is damaged for the second time, the damaged equipment should still be retained.

It is recommended that some form of sanction should be applied to the person causing the damage if the case was not simply an accident but the result of negligence or misbehaviour.

10.5 National Audit Office (NAO)

As the external auditor of Government, the NAO may carry out audits on projects co-financed through the General Programme Solidarity and Management of Migration Flows. The NAO may carry out audits on projects which are implemented by public entities and agencies as well as the private sector or projects implemented by NGOs.

Beneficiaries are to notify the RA in good time when they are in receipt of an announcement regarding an audit. The RA, on its part, will seek to support the beneficiary in the process.

Beneficiaries and other stakeholders (whether public or not) shall grant the NAO full access to the project documentation.

10.6 EU Audit Missions

Officials from the European Commission and the European Court of Auditors carry out audits (both on systems and operations) on projects co-funded by the four Funds.

Auditors generally inform the Maltese counterparts of the mission in advance. In cases where beneficiaries are informed directly by the European Commission, the beneficiaries shall inform the RA to ensure full co-ordination and support.

The RA and/or the AA (as the case may be) usually coordinate a time-table for the audit mission and inform stakeholders accordingly.

10.7 Preparing for Audit Visits *(applicable to all audits)*

In general auditors will want to spend a few days examining documentation held by the beneficiary organisation, the RA, the DoC, the Treasury as well as the CA. Auditors may also ask to be taken on site.

As part of their preparation for an audit mission, Beneficiaries should:

- Ensure that all persons (including technical personnel) within the Beneficiary organisation involved in the implementation of the project being audited, are available during the audit mission. Priority must be given to the audit by all those involved in the project being audited. It is important that such persons are appropriately briefed by the project leader on the scope of the audit mission.
- Ensure that all the project documentation is made available and filed in accordance with the Retention of Documents chapter 8 in this MoP to facilitate easy access to the necessary documentation during the audit.
- Provide a spacious meeting room for the audit mission.
- Ensure that photocopy facilities are readily available in view of the fact that auditors may ask for copies of documents that are on file. The Beneficiary will take note of any copies of documentation that is given to the auditors..
- Ensure that the actual site where the project is being implemented is in accordance with the conditions stipulated in the Grant Agreement, particularly in relation to EU publicity requirements. The technical supervisor should also be available for site visits. It is important to note that auditors may give no prior notice to visit the site and may ask the Beneficiary at short notice for an ad-hoc site visit.

Typically auditors will seek to examine the following documentation during an audit visit⁵⁸

- a. **Project Documentation**
 - Copy of application submitted;
 - Signed Grant Agreement between the RA and Beneficiary;
 - Addenda to the Grant Agreement and letter/s stipulating any changes to the project;
 - Feasibility studies and technical studies (where applicable).

- b. **Quotations ;**
 - Request for Quotations issued;
 - Published advert of the call for quotations (where applicable);
 - The schedule of quotations received;
 - The identification of the chosen quotation;
 - Communication with successful supplier;
 - Communication with non-successful supplier.

- c. **Tendering and Contracting**
 - Tender document launched on the market as well as subsequent clarifications by the contracting authority;
 - Advertisement of the tender (also in the Official Journal where applicable);
 - List of responses to the publication of the tender;
 - The tendering opening report;
 - Any clarifications requested during the adjudication of the tender;
 - The evaluation report and relevant documentation such as minutes of meeting/s of the evaluation committee;
 - Copy of the publication of the adjudication of the tender (and the Contract Award Notice where applicable);
 - Contract drawn up and signed by the DoC/Beneficiary⁵⁹ and the contractor;

⁵⁸ This is only an indicative (not an exhaustive) list of documents which the auditors may ask to review. Other documents which should be part of sound financial management and therefore part and parcel of any Beneficiary's obligations are not necessarily listed here.

⁵⁹ In the case of contracts administered by the Beneficiary organisation

- Any subsequent addenda to a contract;
 - Any other relevant documents related to the contracts (including employment contracts⁶⁰) of the project.
- d. **Payments**
- Copies of the SoE of the project;
 - Copies of a sample of the invoices listed in the SOE and the relevant ISCs (originals are retained by the Treasury);
 - Receipts obtained from the Contractors;
 - Certification of works by technical supervisor, acceptance certificates/reports for supplies and services.
- e. **Information and Publicity**
- Photos or recordings evidencing information activities or publicity undertaken in relation to the project;
 - Original adverts, brochures, leaflets or any other publicity material and promotional items produced through the project;
 - Copies of handouts, documents, attendance sheets, certificates, agendas and other publications displaying EU information and publicity requirements;
 - Copies of press articles (where applicable);
 - Verification of compliance with compulsory EU information and publicity requirements during on site visits (such as bill boards, posters, permanent plaques and identification stickers or plaques on physical items/equipment).
- f. **Monitoring reports**
- Copies of the interim reports prepared by the Beneficiary;
 - Viewing of progress updates in the SIS;
 - Record keeping of time sheets (particularly in the case of employment contracts).
- g. **Others**
- List of participants of activities organised;
 - Selection of participants (mainly in case of IF and related operations);
 - Interim/Performance reports of contracted employees/trainers;
 - Documentation related to the work of trainers (lesson notes/plans, weekly/fortnightly/monthly⁶¹ progress reports by the trainers);
 - Attendance sheets;
 - Evaluation sheets.

10.8 Follow-up to an Audit Mission

Once the audit mission is complete (Including the replies to clarifications sought from the auditee by the auditors), the auditors will write a report with the findings and recommendations (where necessary). The contradictory procedure is triggered. The auditee will go through the findings and recommendations and provide their feedback to the Audit Authority. In case of EC audits, the replies will be co-ordinated by the RA and a consolidated reply will be given on behalf of the Member State.

10.9 Closure

Beneficiaries should note that projects can be audited even after project implementation (e.g. value-for-money audits). In view of this, **all project documentation must be retained by the Beneficiary until at least five years after the European Commission approves the final report.**

⁶⁰ Where applicable

⁶¹ As the case may be

11. Monitoring, Reporting and Evaluation

11.1 General Principles

Monitoring, reporting and evaluation are intrinsically linked. Monitoring is an on-going process of examining the progress of interventions and expenditure to ensure the attainment of programmed results. It is undertaken at various levels to ensure that progress is achieved in implementing the project. It ensures not only that the project is being implemented in line with the Grant Agreement but also that the objectives and targets are being achieved. Reporting records the act of monitoring and documents the findings for follow-up action. Evaluation assesses the efficiency and effectiveness of the action implemented. There are different levels of monitoring namely:

11.2 Monitoring of the Multi Annual Programme

The RA shall monitor the MAP in relation to the national context and characteristics prevalent over its implementation and in order to take greater or different account of community and/or national priority. Moreover the MAP may be re-evaluated in the light of the evaluations and/or following implementation difficulties. If such drivers cause these changes to the MAP, the RA will revise the MAP accordingly after consultation with the relevant stakeholders. Subsequently, the RA shall submit the revised version to the CION for approval.

11.3 Monitoring of the Annual Programmes

In cases of unforeseen developments at the time of approval, the APs can be revised. In such circumstance the RA may effect changes in the financial breakdown of actions or introduce new actions following under spending in the actions established in the programme. Such changes would need to be endorsed also by the Commission. Once endorsed, the CA should be informed on the revisions made to the AP.

11.4 Monitoring of Indicators

Monitoring of indicators is facilitated through the use of targets as identified in the MAPs as well as in the APs, making it possible to measure the progress in relation to each action and the achievements of targets of each project. The drafting of the APs by the RA must ensure that these indicators are reflected in the actions proposed. Subsequently calls for proposals addressing the actions and indicators in the AP are issued by the RA. The PSC evaluates Project Proposals in line with the actions and indicators published in the call. This ensures that projects selected address and are in line with the indicators set in the MAPs. In order to achieve the indicators at programme level each project selected for funding will also have an established list of indicators in the Grant Agreement. The Beneficiary of each project will work towards the attainment of the indicators set out in the respective Grant Agreement, which will ultimately contribute towards the attainment of the indicators set at the MAPs.

11.5 Bilateral Meetings

The RA may hold monthly bilateral meetings with beneficiaries of the four Funds. Project briefs (Annex 25) will be prepared for such meetings and beneficiaries are expected to provide the necessary information as required. The RA will invite beneficiaries for the monthly bilateral meetings as deemed necessary based on the context and risk of the project.

11.6 Monitoring by the Beneficiary

The Beneficiary, through the appointed project leader, has the responsibility of ensuring effective monitoring of the project. The responsibility of the Beneficiary extends beyond the achievement of results but entails also a financial monitoring (and forecasting) function as well as monitoring of physical implementation on the ground. It is up to the Beneficiary organisation to choose the most appropriate tool to ensure effective and timely monitoring of the project, however continuous monitoring activities by the Beneficiary must be well documented, dated and signed. Such monitoring by the beneficiary may take the form of on-site-visit reports, reconciliations prior to payments, etc.

For a detailed description of the responsibility of the Project Leader refer to Section 3.1.

11.7 Monitoring by the RA

Projects are also monitored by the RA, as already stated, through monthly bilateral meetings at the discretion of the RA, spot checks as well as desk checks of the expenditure as requested by the beneficiary in the request of payment form (SoE).

For more details refer to Chapter 9.

11.8 SOLID Information System

Most of the effective monitoring depends upon timely information being uploaded or inputted in the SOLID Information System by all the relevant stakeholders. The SIS is used by the RA to track and deal with urgent issues regarding implementation.

11.9 Interim Report on Implementation of the Project by the Beneficiary

Half way through the eligibility period of the project or at a date established by the RA, the PL shall submit to the RA an Interim Report based on the template provided in Annex 26. Projects having a lesser duration may be exempted from such a requirement at the discretion of the RA. The Interim Reports of the projects will be utilised by the RA to compile a Progress Report about the implementation of the Annual Programme⁶² which will be then submitted to the Commission in case where a second pre-financing payment from the CION is requested by the RA.

The interim report submitted by the Beneficiary shall include the following details:

- Overall assessment of the project implementation carried out to the cut-off date;
- Total amount requested and paid by the cut-off date;
- Progress with regard to indicators;
- Achieved results;
- Description of the problems encountered;
- Visibility measures.

11.10 Progress Report on Implementation of the Annual Programme (by the RA)

The Progress Report shall be compiled **by the RA** according to the template provided by the Commission where a second pre-financing payment is requested. It should then be submitted by the RA to the Commission in cases where it intends to request a second pre-financing. This request shall be based on substantial developments in the implementation of the AP, and a situation where total certified expenditure is at least 60% of the first pre-financing (50%).

The Progress Report shall also include a '*Declaration of Expenditure for the Second Pre-Financing*' by the CA⁶³ certifying the expenditure to date.

11.11 Final Report on Implementation of the Project (by Beneficiary)

Within three months after the deadline for completion of the project, the PL shall submit to the RA a Final Project Report based on the template provided in Annex 27. The Final Project Report shall include, apart from the details indicated in the Interim Project Report, a description of how the results of the project were achieved. Claims for payment not yet settled by the deadline for the closure of the project, have to be submitted to the RA before the handing in of the Final Project Report. However **only invoices and receipts dated within the eligible period of the project shall be accepted.**

11.12 Final Report on Implementation of the Annual Programme (by the RA)

The Final Report on implementation of the Annual Programme⁶⁴ shall be compiled by the RA according to the template provided by the Commission. The Final Reports submitted by the PLs will be used as basis for the compilation of this report. The Final

⁶² Template provided in Annex 4 of the 'Implementation Rules'

⁶³ Template provided in Annex 8 of the 'Implementation Rules'

⁶⁴ Template provided in Annex 5 of the 'Implementation Rules'

Report shall be submitted by the RA to the Commission within nine months following the end of the eligibility period i.e. 31st March of year N+3.

11.13 Evaluation of the Programme

The aim of an evaluation is to improve the quality, effectiveness and consistency of the assistance from the Funds and the implementation of the MAP and APs.

The RA shall compile Evaluation Reports of the Programme⁶⁵. The Evaluation Reports will be compiled by the RA on the templates provided by the Commission. Evaluation Reports shall be submitted by the RA to the Commission by;

- a) by the 30th June 2010 on the implementation of actions co-financed by the IF, EBF and RF;
- b) by the 30th June 2012 for the period 2007/8 to 2010 respectively, on the results and impact of actions co-financed by the four Funds;
- c) and 30th June 2015 for the period 2011 to 2013 respectively, on the results and impact of actions co-financed by the four Funds.

The submission dates for the reports to the Commission may be changed through an official communication by DG Home. Beneficiaries shall co-operate with the RA and its contractors / experts in the compilation of these evaluation reports through questionnaires, interviews, participation in conferences / seminars and also written reports.

⁶⁵ As required by Article 52 (2) (b) of Council Decision 574/2007/EC (EBF); Article 48 (2) (b) of Council Decision 435/2007/EC (IF); Article 50 (2) of Council Decision 573/2007/EC (ERF); Article 50 (2) (b) of Council Decision 575/2007/EC (RTF)

12. Technical Assistance

12.1 Overview

Technical Assistance (TA) under the four Funds may finance Programme preparatory actions, management, monitoring, evaluation, information and control measures, as well as measures aimed at strengthening the administrative capacity of the stakeholders involved in the implementation of the four Funds. TA may take the form of procurement contracts, expert fees, costs related to salaries and/or administrative expenditure subject to the eligibility rules⁶⁶ and is 100% financed by the EU Funds. Costs necessary for the implementation of the Programmes of the four Funds incurred by the RA, AA, CA, delegated bodies as well other horizontal bodies involved in the implementation of the Programme (assisting in the tasks listed in section 12.2 hereunder), are eligible for support under technical assistance within the limits specified in the relevant Articles⁶⁷ of the Basic Act. Each recipient of Technical Assistance support shall be responsible for ensuring that the activity is undertaken in line with the relevant rules and regulations of the Fund/Programme, including public procurement. The RA shall undertake management verifications on all actions financed under TA.

The form to be used in applying for technical assistance is Form A (Annex 28).

Technical Assistance is managed by the Responsible Authority on a demand driven basis. Each of the Multi-Annual and Annual Programmes of the four Funds provides for Technical Assistance. The Eligibility of the TA for a particular programme runs from 1 January N to 31 March N+3.

12.2 General Principles and Guidance

The following measures are the main measures eligible to be supported by Technical Assistance:

- i. expenditure relating to the preparation, selection, appraisal, management and monitoring of actions;
- ii. expenditure related to audits and on the spot checks of actions or projects;
- iii. expenditure relating to evaluations of actions or projects;
- iv. expenditure relating to information, dissemination and transparency in relation to actions;
- v. expenditure on the acquisition, installation and maintenance of computerised systems for the management, monitoring and evaluation of the Funds;
- vi. expenditure on meetings of monitoring committees and sub-committees relating to the implementation of actions. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where their presence is essential to the effective implementation of actions;
- vii. expenditure for the reinforcement of the administrative capacity for the implementation of the Fund.

12.3 Technical Assistance of the four Funds

The TA allocations of each of the four Funds have been entirely merged reflecting the provisions of each of the basic acts of the four Funds which stipulate that when designated authorities are common for the four Funds, the appropriations for the TA expenditure on each of the annual programmes concerned may be merged. Thus the TA under the four Funds for a particular AP are treated as a project. Subsequently the actual charge to the respective TA allocation is allocated between the four Funds on the basis of simple and representative apportionment formulae; the appropriations from the four Funds will be calculated on the basis of the ratio of the TA for a particular fund of the total available TA for that AP.

$$\text{Percentage chargeable for a particular AP} = \frac{\text{Amount of TA for Fund for N(Annual Programme)}}{\text{Total TA of the four Funds for N (Annual Programmes year)}} \times 100$$

⁶⁶ Ref. Ares(2011)371469 – 04/04/2011 Manual of the Eligibility Rules of costs reported for EU support in the context of the General Programme Solidarity & Management of Migration Flows Version 4 – 16 March 2011

⁶⁷ Article 19 (EBF), Article 15 (IF), Article 17 (RF), Article 15 (ERF) of the basic acts.

Costs related to TA may relate to any annual programme (e.g. TA of year N can relate to annual programmes N+1, N+2, N-1, provided that these costs are incurred within the eligibility period applicable to the TA of the programme to which it is being charged).

12.4 Roles and Responsibilities in the utilisation of the TA

12.4.1 TA Management

The RA shall manage the TA on a demand driven basis. The RA shall establish a procedure for submission of requests and their approval as well as control. An officer within the RA shall be assigned the task of TA Manager. The TA manager shall be responsible for the overall co-ordination and day-to-day management of the TA of the four Funds. The TA Manager, works closely under the supervision of Director Funds. The TA Manager:-

- Receives applications from Applicants;
- Carries out preliminary checks of the application and following discussions with the Senior Manager makes recommendations to the Director Funds to enable the latter to take an informed decision;
- Informs the Applicant of the approval/rejection of the request/s for TA;
- Monitors budgetary allocations by components;
- Draws up the necessary reports on implementation (including interim reports);
- Liaises with Department of Corporate Services, Ministry for European Affairs and Implementation of the Electoral Manifesto (DCS, MEAIM) and co-ordinates the payment processes (whether direct payment or request for reimbursement);
- Retains documents as per Manual of Procedures for Project Implementation;
- Undertakes relevant preparations to support management verifications.

12.4.2 The Applicant

Eligible Applicants for TA are those (primarily horizontal) stakeholders involved in the preparation, implementation and closure of the Programme. Potential Applicants include the RA, CA, AA as well as any other organisation involved in the implementation of the Programme such as the Treasury Department (delegated authority) and the Department of Contracts.

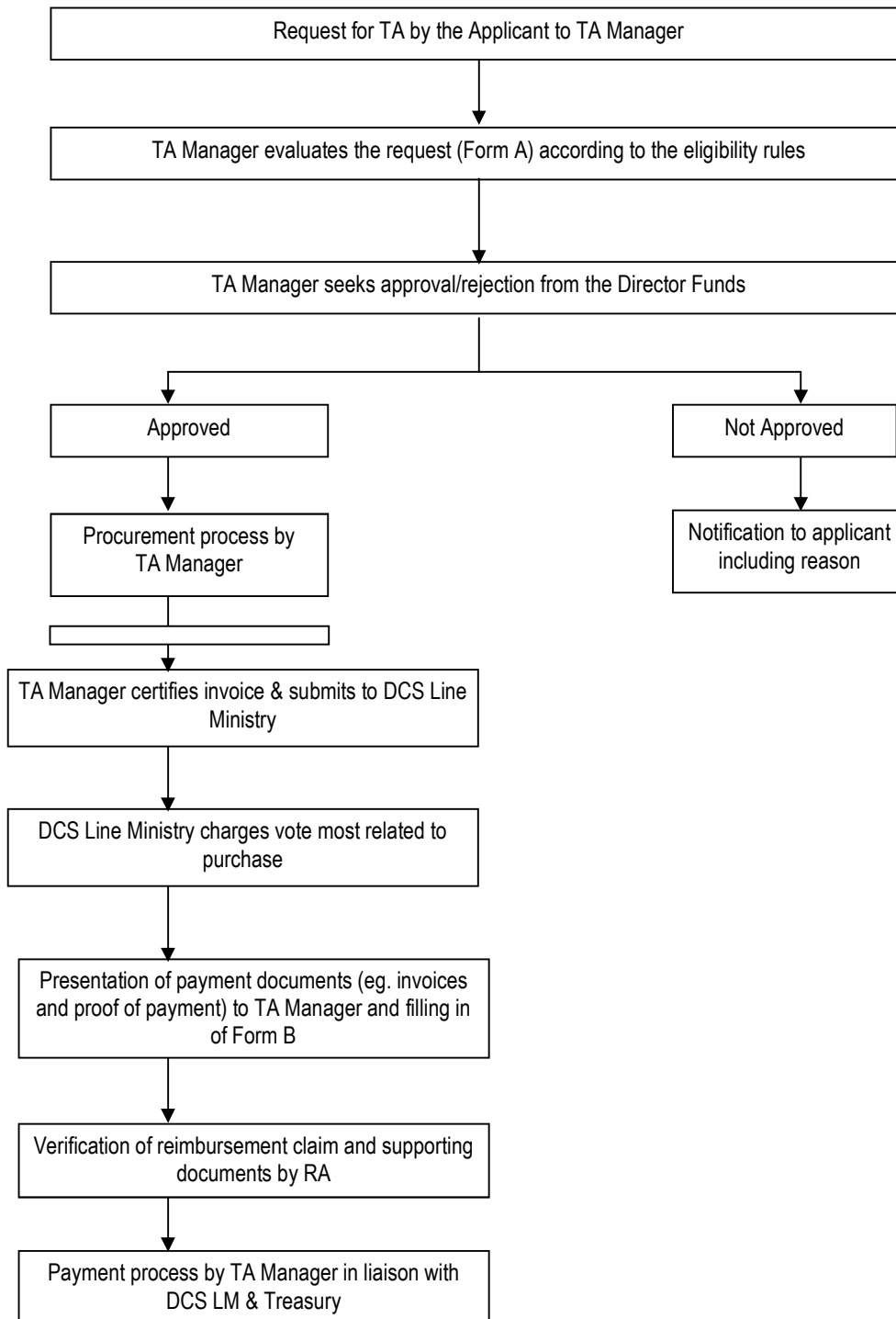
The Applicant submits a request for TA funding using Form A (20) ensuring that this is filled in correctly and that all the necessary documentation is provided. The application is evaluated by the TA manager. Once a request is approved, the Applicant is responsible for ensuring the right procurement process, including the drafting of the tendering documents/call for quotations / recruitment calls (as the case may be) and to implement the action, in line with the rules and regulations of the Fund / Programme as well as in line with national rules. When the Applicant is the respective RA unit responsible for the TA, the procurement may in certain instances be undertaken by the TA Manager.

12.5 Payment Process

12.5.1 RA as beneficiary of TA

A request for approval is drawn up in the duly completed Form A (Annex 28), signed by the Senior Manager Solid Funds and approved by the Director Funds. In case the senior manager is unavailable the request for approval is signed by the Project Manager. The TA Manager certifies the request according to the eligibility rules and procurement procedure and ensures that the funds are available. The TA Manager certifies the invoices and forwards the necessary documentation to the DCS at MEAIM for the drawing up of the Local Purchase Order. After the invoices/ receipts are certified correct, the TA manager is obliged to complete Form B – (Annex 29). The RA submits documents to Treasury for continuation of the payment process. All relevant documentation is to be kept by the TA Manger.

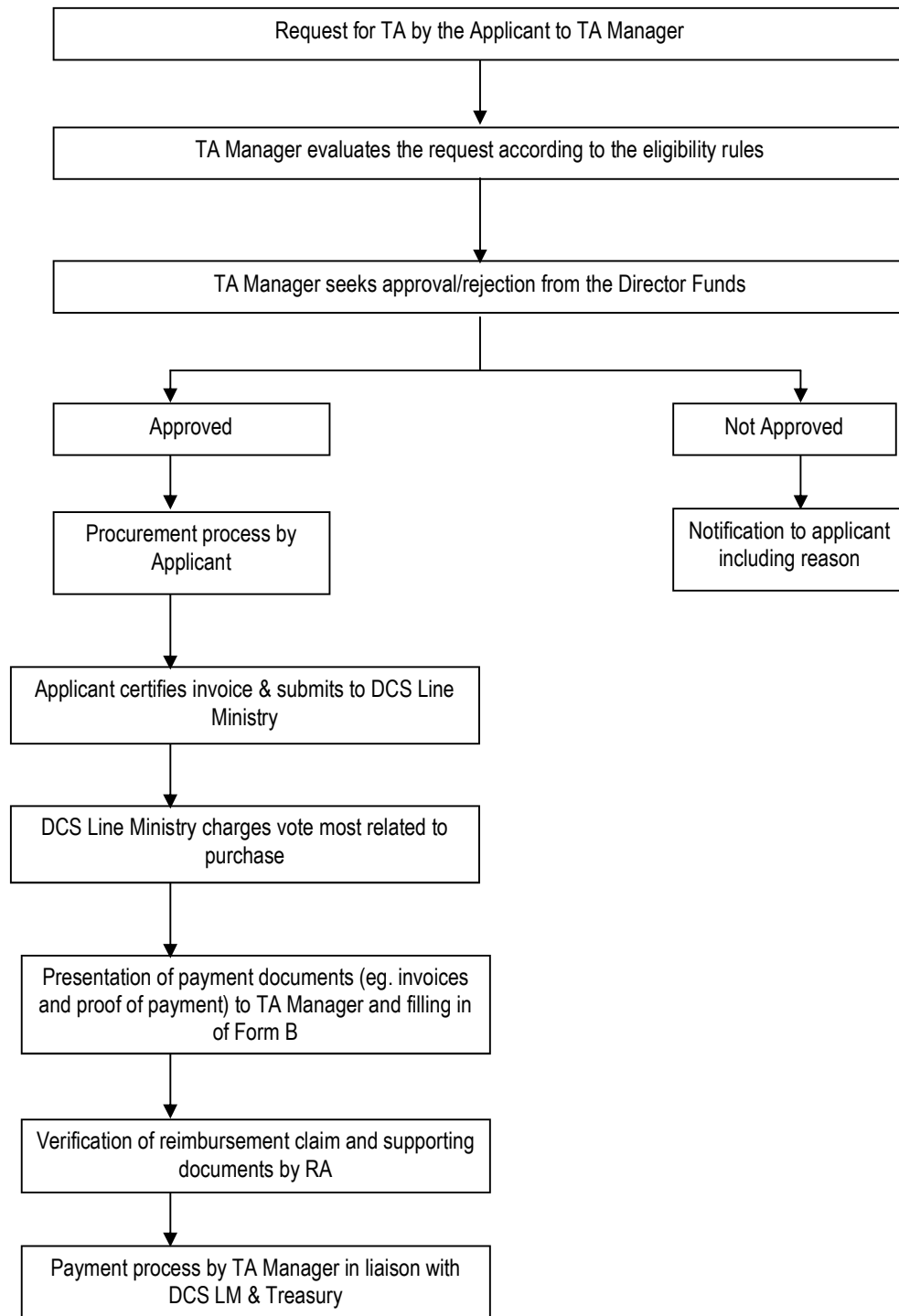
Figure 3 – Implementation/Payment Process (where the RA is applying for TA)



12.5.2 Other Horizontal Stakeholders as Beneficiaries of TA:

If the beneficiary of the TA is another horizontal stakeholder (other than RA), the Applicant (recipient of TA) certifies the relevant invoice/s and submits the documentation to the RA TA Managery. The DCS of the Line Ministry is also informed and the latter charges the budget vote which is mostly related to the purchase in question. Once payment has been effected by the Recipient of the TA, the documentation together with proof of payment and Form B is submitted to the TA Manager at the RA. The TA Manager undertakes preliminary checks and initiates the reimbursement process in liaison with the DCS MEAIM (where TA budget is located). Subsequently the RA TA Manager forwards the request to Treasury for payment.

Figure 4 – Implementation/Payment Process (where the Applicant (recipient) is a horizontal stakeholder)



13. Information and Publicity

13.1 General Principles

This chapter shall provide information on the General Programme Solidarity and Management of Migration Flows Funds to ensure that the results and achievements of the programme and projects co-funded by the four Funds are communicated to relevant stakeholders as well as the general public. The requirement on information and publicity measures pertaining to each of the four Funds is regulated by the Implementing Act of the respective Fund. The guidance below shall act as a promoter to support both the RA and the Beneficiary in meeting the relevant visibility obligations.

13.2 Regulatory Framework

This Chapter of the MoP incorporates and builds on the following regulations and specifications:

- Commission Decision 575/2007/EC Chapter 5 (for RF)
- Commission Decision 457/2008/EC Chapter 5 (for IF)
- Commission Decision 573/2007/EC Chapter 5 (for ERF)
- Commission Decision 456/2008/EC Chapter 5 (for EBF)
- The official Graphical Specifications of the EU Emblem
- The Official Graphical Specifications of the National Flag of Malta
- Relevant National Circulars and Guidelines which the RA may issue from time to time.

13.3 Role of the Responsible Authority (Programme Level Information and Publicity)

The RA has two main functions:

- Providing guidance, monitoring and ensuring compliance with the information and publicity regulations and requirements at programme and project level. The RA undertakes this function through both written guidance (eg. this manual and the RA's website) and also through training sessions which are organised from time-to time and;
- Disseminating information on past programme achievements by publishing onto its website and regularly update the list of project beneficiaries. The list shall include the names of beneficiaries, project titles and the amount of funding allocated to them.

The RA will also provide logos, useful downloads and information through the publicity section of its website https://secure2.gov.mt/fpd/publicity_information

13.4 Responsibilities of the Beneficiary (Project Level Information and Publicity)

The Beneficiary also has responsibilities relating to publicity and information in relation to the project/s. These are:

- Participating in publicity and information measures as well as networks or exchanges of experience organised at EU, national or programme level.
- Implementing publicity and information measures at project level in line with this Manual.

This also involves:

- Carrying out relevant publicity measures (also as specified in the Grant Agreement)
- Ensuring compliance with the logos, emblem and flag and the text set out in section 13.7 below when undertaking the publicity measures.

The Beneficiary shall be responsible for informing the public about the financial assistance obtained from the four Funds. In cases where the community contribution of the project exceeds €100,000 and the operation consists of purchasing a physical object or of financing infrastructure or construction projects, the Beneficiary shall put up a permanent plaque (on the project site or on the equipment) of noticeable size, stating the type and name of the project, no later than three months after completing the project.

In cases of small equipment on which a plaque cannot be affixed, any other means of advertising such as stickers on equipment or plaques affixed in close proximity to the equipment should be considered.

The Beneficiary shall ensure that those taking part in the project have been informed of the relevant funding. This can be done through including a statement indicating that the project is co-financed by the respective Fund in project documents such as attendance sheets or other certificates. The Beneficiary shall keep record of such publicity through the use of, for example, photographs of project signage like billboards, copies of articles in the print media etc.

13.5 Publicity and Information Requirements

13.5.1 Participation in publicity and information measures at EU or Programme Level

The Beneficiary must be aware that acceptance of funding is also an acceptance of the inclusion of the details of the organisation as well as those of the project in *online* or other published lists and databases (e.g. list of beneficiaries compiled by the RA and the Commission). The information includes⁶⁸ name and details of Beneficiary organisation, cost of the project, grant amount and purpose and results of the project. The Beneficiary shall collaborate with the RA during the organisation of events or promotional activities, including networks and exchanges of experience at both national and European level.

13.5.2 Implementing publicity and information measures

Publicity and information is an integral part of project implementation. However, publicity is NOT synonymous with marketing. If the project warrants marketing activities, these should be described and budgeted separately in the project proposal. Attention is drawn to the following main points relating to publicity initiatives:

- **Principle of proportionality:** Publicity measures (financed from the projects)⁶⁹ should be **reasonable** and in proportion to the size, objectives and results of the project
- **Planning and scheduling:** Publicity and information measures should be carefully planned at an early stage and implemented in line with the budget and project plan set out in the Grant Agreement. In the case of projects which involve compulsory publicity and information requirements, project leaders need to ensure that they include these measures in their budgets and implementation schedules. The following must also be taken into account at the planning stage:
 - **Proportion:** Publicity or information measures and their relevant costs must be in proportion and appropriate to the project concerned. What is not considered appropriate will not be borne by the budget of the Beneficiary.
 - **Consultation:** The RA recommends that the Beneficiary informs and consults with the RA about information and publicity activities before implementation.
 - **Target audience:** Publicity and information measures should be appropriate for the identified target groups. Where possible the Beneficiary should also target the general public, particularly when informing about results of the General Programme Solidarity and Migration Flows interventions.
 - **Language and tone:** Publicity and information activities should be neutral and factual in tone to avoid being perceived as biased and/or propaganda. The language used can be either Maltese or English, though use of the former is encouraged to reach a wider audience.
 - **Publicity as opposed to marketing:** The Beneficiary must ensure that publicity and information measures are not used as a marketing tool to promote an organisation, its products, services or infrastructure. Where a project includes an element of marketing, this must be used to complement, but not replace the project's obligatory information and publicity measures. Marketing expenses should also be listed separately in the project's budget and approved. However, marketing initiatives must still conform to the compulsory publicity requirements (the Visual Identity Requirements) outlined below.
- **Tendering and Procurement:** Like other co-financed project components, publicity and information initiatives or items should be procured or contracted in line with national legislation on public procurement. It is important to note that advertising and documents relating to tendering and procurement should preferably comply with the compulsory Visual

⁶⁸ The list is indicative and not comprehensive of the information that can be published

⁶⁹ Beneficiaries are welcome to increase the publicity measures out of their own funding

Identity Requirements outlined in Section 13.7 below. The DoC can advise on this matter, however the Beneficiary should note that the relevant cover page templates for tenders and contracts can be downloaded from https://secure2.gov.mt/fpd/publicity_information

- **Copyright issues and reproduction:** Beneficiary is advised to retain copyright of original publicity or information material, including all artwork or components and to allow the RA to utilise project level publicity or information material during events, presentations or publicity at programme level. Co-financed publicity or information material cannot be used by the Beneficiary for other purposes. It is important that copyright issues are clear to prospective tenderers and set out in the terms of reference.
- **Reporting:** The Beneficiary shall report on progress relating to the implementation of information and publicity actions by filling in the publicity section of the Final Project Report template and submitting the relevant documents. A nil report in the visibility section of the project progress report is also required where relevant. This information and publicity material shall be sent to the RA together with the project Progress Report (with reference to events or billboards, the RA will accept photographs while DVD/CDs will be accepted in the case of TV commercials/programmes).
- **Audit and Control:** The Beneficiary is advised to keep original copies of all articles, news items, press releases, promotional and information material for future checks/audits in line with the requirements set out in Chapter 8 Retention of Documentation and Chapter 10 Audit set out in this MoP, whenever possible. Audio-visual material such as TV and radio commercials, photographs, video-clips, documentaries or features should also be archived and kept for audit purposes. Audio-visual material could also be made available on CD to ensure that it can be viewed by auditors and/or other officials involved in the control process.
- **Confidentiality and data protection:** The confidentiality of participants in all projects is to be respected, especially with regard to IF. Photographs or footage featuring participants can only be transmitted or reproduced for information or publicity purposes if participants give their written authorisation. The relevant letters of authorisation should be retained on file by the Beneficiary. Beneficiaries should ensure that such authorisation is given in order to ensure that publicity material can be used.

13.6 Ensuring Compliance with Visual Identity Requirements and Compulsory Text

All documents, publicity and information items, publications or measures are to include the following elements. These are referred to as the Visual Identity Requirements:

- | | |
|--|---------------------------|
| • The National Flag of Malta | [see paragraph (a) below] |
| • The EU Emblem | [see paragraph (b) below] |
| • The Compulsory Text adapted to the project | [see paragraph (c) below] |

These three main elements make up the Visual Identity of the General Programme Solidarity and Management of Migration Flows 2007 – 2013.

a. The National Flag of Malta. It is important to ensure that the flag is reproduced correctly, in line with the official Graphical Specifications for the National Flag

Full colour:



Monochrome:



b. The Emblem of the European Union. The emblem must be reproduced correctly, in line with the official Graphical Specifications. The EU emblem is strictly compulsory for all information and publicity measures.

Full colour:





Monochrome:



c. The compulsory text. Apart from the EU Emblem and the National Flag of Malta, it is advisable for all publicity measures to include reference to the EU's contribution to projects and the role of the programmes concerned. The text consists of the following:

- Reference to the General Programme Solidarity & Management of Migration Flows 2007 – 2013*
 - The title of the relevant Fund*
 - Reference to the European Union: E.g. *'Project part-financed by the European Union'**
 - The relevant co-financing rate*.
 - The statement chosen by the RA, highlighting the added value of the contribution from the Community: *'Sustainable Management of Migration Flows'**
- *Statements marked with asterisks are strictly compulsory*

For ease of reference and reproduction, the recommended text is incorporated in a standard paragraph which can be adapted to each Fund and project. The illustration below provides an example of the compulsory text and its position between the National Flag and EU emblem:

	<p>General Programme Solidarity & Management of Migration Flows 2007 – 2013 External Borders Fund (EBF) Project part-financed from the European Union</p> <p>Co-financing rate: 75% EU Funds: 25% Beneficiary Funds</p> <p><i>Sustainable Management of Migration Flows</i></p>	
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13.7 Recommended information and publicity

Apart from ensuring that all information and publicity initiatives comply with the visual identity and text requirements, the Beneficiary may also carry out other publicity and information measures such as:

13.7.1 Launch Press Release

- a. Once the Grant Agreement is signed, the beginning of each project may be announced through an official press release, depending on the size of the project. Information or media events may also be organised when projects reach important milestones and completion. The launch activity that involves charging funds to the project must be specifically approved by the RA.
2. It is advisable to keep original copies of press releases or published media articles for reporting and control/audit purposes
3. If an event or launch is organised, it shall conform to the requirements outlined in sub-section below.

Recommended visual identity requirements shall feature on:

- All adverts issued in the press or Government Gazette (and other media) in relation to procurement, recruitment or other procedures;
- The cover pages of tender documents and contracts and;
- The cover pages of all part-financed reports, studies, questionnaires, attendance sheets, certificates, power-point presentations, handouts and other documents.

In the case of media interviews, Beneficiaries are likely to find it difficult to ensure that journalists' articles comply with and include the publicity requirements unless the interview is a paid advertorial. It may therefore be necessary to discuss such issues with the journalist or newsroom prior to the interview.

13.7.2 Events, conferences or training activities

A Beneficiary implementing any of the four Funds projects, which include events, conferences and training or other activities involving several participants is advised to ensure that all participants are informed of the project's source of funding. This involves the following:

- Documents, including hand-outs, presentation slides, attendance sheets, certificates, agendas and other publications may include the project title as well as the compulsory EU emblem, National flag and Compulsory Text mentioned above;
- The EU flag and Malta flag shall be displayed prominently inside the venue, preferably behind or beside the speakers/trainers;
- Venues must be fully-accessible to persons with disability both with regards to training rooms and also facilities⁷⁰ and;
- Photographs and/or recordings of the event shall be taken and retained by the Beneficiary for reporting and audit purposes.

13.7.3 Posters/signs:

- Positioned at sites which are clearly visible to participants and the public, such as in or outside training rooms, reception areas, hallways and entrances;
- Designed in such a way that at least 25% of the poster is dedicated to a) the name and type of the project; b) the EU emblem, National Flag of Malta and compulsory text and;
- Photographed on site by the Beneficiary for reporting and audit purposes.

13.7.4 Print and Audio-visual adverts or Informative Spots

Adverts are effective to ensure transparency and good practice during all project's tendering, recruitment or marketing processes. They can also be an optional publicity tool. The RA's approval should be obtained before optional adverts or informative spots are launched in the media.

All types of media adverts must include the compulsory EU emblem, National Flag and text as outlined in section 13.6(c) above.. .

TV/Radio advertising should only be considered as an option for larger projects or those which have a very wide target audience in view of the significant expense involved. TV commercials could end with the emblems and recommended text.

13.7.5 Optional Billboards, plaques or posters

Billboards, plaques or posters may be used by various types of projects if deemed necessary by the Beneficiary, with the approval of the RA. Such optional billboards, plaques or posters could conform to the requirements for compulsory billboards or plaques outlined in paragraph 13.7.3 above. Photographs of billboards and plaques on site must be kept for reporting and audit purposes.

⁷⁰ Accessibility of venues may be confirmed in consultation with the Kummissjoni Nazzjonali Persui B'Dizabilita` Related guidelines are available on KNDP website.

13.7.6 Promotional Material

Promotional material can be an effective means of information or publicity, as long as it is distributed widely and in a target fashion. Promotional material can include items such as mugs, bags, caps, leaflets, folders, bookmarks, postcards as well as conference material (such as pens, notepads, handouts and backdrops). It is the responsibility of the beneficiary to limit the material at project level to items which can be linked to the project.

It is essential to ensure that all promotional items have sufficient printing space to include the compulsory EU emblem, National Flag of Malta and Compulsory Text as outlined above. Items with very limited printing space or very small items should have at least the following text:



Name of Fund
Project Part-Financed by the European Union
Sustainable Management of Migration Flows

However, the Beneficiary is advised to contact the RA for guidance on a case-by-case basis in this regard or consult the Visibility Guidelines.

13.7.7 Websites, Web-pages and Mail shots

Websites are another effective means of publicising a project, as long as the content conforms to the following recommended specifications:

- Websites, web-pages and mail shots which are part-financed by a project feature the compulsory EU Emblem*, National Flag of Malta and compulsory text* on the homepage and on all other pages (possibly through the use of a permanent banner or equivalent).
- Each should include a reference and link to the European Commission http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/index_en.htm and the Responsible Authority and its website <https://secure2.gov.mt/fpd/home?l=1>
- Co-financed websites should retain the compulsory publicity and information requirements for the duration of the website.



Select the appropriate recommended text from the options below, depending on the project itself, especially with regard to the relevant Fund through which it is being funded. Note that the highlighted text in the templates below is to be adapted to the respective fund, components, co-financing rate of the project concerned and the Fund from which the co-financing will be forked out.

Choose either Maltese or English version, depending on the language used for the information or publicity measure in question.

Beneficiaries are asked to select and reproduce ONE of the following for information or publicity initiatives implemented for projects at the application or selection stage or tendering stage:

FOR PUBLIC ENTITIES



English Version

	<p>General Programme Solidarity & Management of Migration Flows (2007 – 2013) External Borders Fund (EBF) European Refugee Fund (ERF) European Return Fund (RF) European Fund for the Integration of Third-Country Nationals (IF) This project is being considered for European Union part-financing</p> <p>Co-financing rate: 75% EU Funds: 25% Beneficiary Funds</p> <p><i>Sustainable Management of Migration Flows</i></p>	
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Maltese Version

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Rata ta' kofinanzjament: 75% Fondi UE: 25% Fondi mill-Beneficjarju

Ġestjoni Sostenibbli ta' Migrazzjoni

FOR NGOs & PRIVATE ENTITIES



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Beneficiaries are asked to select and reproduce ONE of the following for information or publicity initiatives relating to projects which have already been approved by the Responsible Authority:



English Version

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FOR NGOs



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