



PARLIAMENTARY SECRETARIAT
FOR EUROPEAN FUNDS

**MANUAL OF PROCEDURES
FOR PROJECTS IMPLEMENTATION
COHESION POLICY 2014 – 2020
MALTA**

GUIDE TO BENEFICIARIES

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Preface

The purpose of this Manual of Procedures is solely to provide guidance to Beneficiaries. It should be interpreted in conjunction with the **relevant national legislation** and the **general principles** as laid out in:

1. **Common Provision Regulation (EU) 1303/2013** of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund;
2. **The European Regional Development Fund Regulation** - Regulation (EU) 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006;
3. **The European Social Fund Regulation** - Regulation (EU) 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006;
4. **The Cohesion Fund Regulation** – Council Regulation (EU) 1300/2013 of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) 1084/2006.
5. **The Fund for European Aid to the Most Deprived Regulation:** Regulation (EU) 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived.

Disclaimer: This guidance document and annexes are of an explanatory and illustrative nature and are intended only as guidance to assist the Beneficiaries and others affected by the implementation of Cohesion Fund, European Regional Development Fund and European Social Fund operations to obtain common understanding of the procedures. Relevant national and European Union legislation take precedence over the content of these documents and should always be consulted.

List of Acronyms

AA	Audit Authority
AG	Accountant General
AIR	Annual Implementation Report
CA	Certifying Authority
CAN	Contract Award Notice
CBM	Central Bank of Malta
CF	Cohesion Fund
CV	Curriculum Vitae
DAS	Departmental Accounting System
DoC	Department of Contracts
DCS	Director Corporate Services
DPI	Director Programme Implementation
EAFRD	European Agricultural Fund for Rural Development
EE	Energy Efficiency
EC	European Commission
EFF	European Fisheries Fund
ESF	European Social Fund
ERDF	European Regional Development Fund
eRFS	Electronic Request for Service
EU	European Union
GCC	General Contracts Committee
IAID	Internal Audit and Investigations Directorate
IB	Intermediate Body
ISC	Invoice Status Certificate
KNDP	National Commission for Persons with a Disability
LM	Line Ministry
L.N.	Legal Notice
MA	Managing Authority
MC	Monitoring Committee for Structural Funds
MCA	Malta Communication Authority
MSDEC	Ministry for Sustainable Development, the Environment and Climate
MEDE	Ministry of Education and Employment
MEIB	Ministry for the Economy, Investment and Small Business
PA	Planning Authority

1. Introduction

Guide to Beneficiaries

1. This Manual of Procedures is designed to guide Beneficiary organisations involved in the management and implementation of operations co-financed under the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF).
2. In the 2014-2020 programming period, these Funds - together with the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime & Fisheries Fund (EMFF) - are guided by a single set of rules covering the EU's five European Structural and Investment Funds (ESIF).
3. The European Structural and Investment Funds are allocated according to a Partnership Agreement (PA) between the European Commission and Malta, which sets out the National Authority's plans on how to use funding from the European Structural and Investment Funds between 2014 and 2020. The Partnership Agreements outline each country's strategic goals and investment priorities, linking them to the overall aims of the Europe 2020 strategy for smart, sustainable and inclusive growth.
4. The Priority Axis is complemented by Operational Programmes (OPs) which each set out the priority areas in which the European Structural and Investment Funds will be utilised. The Operational Programmes which are guided by this Manual of Procedures are referred to as:
 - Operational Programme I – 2014/2020 [henceforth OPI 14-20] - *Fostering a competitive and sustainable economy to meet our challenges*, which sets out the priorities and focus areas in which operations will be implemented through the European Regional Development Fund and the Cohesion Fund;
 - Operational Programme I SME Initiative - 2014/2020 [henceforth OPI SME 14-20] - *Stimulating private sector investment for economic growth*, which is financed through the European Regional Development Fund. The SME Initiative facilitates SME access to finance by providing guarantees through a joint instrument, blending Horizon 2020, the Programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME), and the European Regional Development Fund resources;
 - Operational Programme II – 2014/2020 [henceforth OPII 14-20] - *Investing in human capital to create more opportunities and promote the wellbeing of society*; establishes the priorities and focus areas in which operations will be implemented through European Social Fund;
 - In addition to the above, this Manual of Procedures covers also the implementation of the Operational Programme 'The Food Support for the Most Deprived Persons in Malta', which is financed by the Fund for European Aid to the Most Deprived (FEAD), and aims to alleviate the worst forms of poverty by providing non-financial assistance to the most deprived persons.

5. In Malta, the overall co-ordination and management of the Structural Funds and the Cohesion Fund falls under the direct responsibility of the Planning and Priorities Co-ordination Division (PPCD), within the Ministry responsible for European Funds. The Planning and Priorities Co-ordination Division is the designated Managing Authority for all the above-mentioned Operational Programmes and is also responsible for managing and coordinating the Fund for European Aid to the most Deprived (FEAD).
6. It is important to note that operations implemented through the above-mentioned Operational Programmes (OPI, OPII and FEAD) always require both European Union and National Public funds, while under the Operational Programme I SME 14-20, this requirement does not subsist, and the European Regional Development Fund contribution amounts to 100%. An element of co-financing from voluntary organisations or the private sector may also be applicable in the case of operations implemented by these organisations.
7. In addition to what has been listed in the preface of this document, the main European Union Regulations which lay down the general provisions for the implementation of operations under the 2014-2020 programming period are:
 - **The Commission Implementing Regulation (EU) 2015/207** of 20 January 2015, laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council. This Regulation provides a legislative framework and requires models for, *inter alia*, (i) the progress report; (ii) the submission of information on a major operation; (iii) the joint action plan; (iv) the implementation reports for *the Investment for Growth and Jobs* goal; (v) the management declaration; (vi) the audit strategy; (vii) the audit opinion; and (viii) the annual control report. The Implementing Regulation also provides for the methodology to be used for carrying out cost-benefit analysis and, pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council, the model for the implementation reports for the European territorial cooperation goal;
 - **The Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014**, laying down detailed rules for the implementation of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, in relation to the models to be used for submission of specific information to the Commission, along with detailed rules concerning the exchange of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies;
 - **The Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014**, laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, in relation to detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations, and the system to record and store data;

- **The Commission Implementing Regulation (EU) No 288/2014 of 25 February 2014**, laying down rules pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, and common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. This Regulation also lays down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to the model for operational programmes under the Investment for growth and jobs goal, and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal with regard to the model for cooperation programmes under the European territorial cooperation goal.
 - **The Commission Implementing Regulation (EU) No 184/2014 of 25 February 2014**, laying down pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, along with general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, on the terms and conditions applicable to the electronic data exchange system between the Member States and the Commission, and adopting pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, the nomenclature of the categories of intervention for support from the European Regional Development Fund under the European territorial cooperation goal.
 - **The Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014** on the European code of conduct on partnership, in the framework of the European Structural and Investment Funds.
8. The **relevant Maltese Legislation** should guide the Beneficiaries according to their nature (Public or NGO) and the area of implementation.
 9. This Manual of Procedures provides guidance for operations co-financed through Operational Programme I^[106], further guidance is made available through separate Guidance Notes issued by the Intermediary Bodies with every call for applications.
 10. In the case of operations which will involve a call for applications to the public or segments thereof, such as the case of scholarships for students and energy schemes for households, further guidance is issued by the organisation responsible to manage these operations. Such guidance may supplement some of the provisions within the MoP and the National Eligibility Rules.

¹ The Treaty of the Functioning of the EU, 2009; which can be downloaded from: <http://eur-lex.europa.eu/oj/direct-access.html>

11. This document 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 document will be placed on the website of the Managing Authority.

2. Roles, Responsibilities & Channels of Communication

2.1 Managing Authority

In accordance with Article 123(1) of the Common Provisions Regulation, the Planning & Priorities Coordination Division within the Ministry for Foreign and European Affairs is the designated Managing Authority for the following Operational Programmes:

- Operational Programme I – 2014/2020;
- Operational Programme I SME Initiative - 2014/2020;
- Operational Programme II – 2014/2020; and also, the implementation of
- Operational Programme '*The Food Support for the Most Deprived. Persons in Malta*', which is financed by the Fund for European Aid to the Most Deprived.

The general functions of the Managing Authority are set down in Article 125 of the Common Provisions Regulation (EU) 1303/2013.

Managing Authority

Planning and Priorities Coordination Division

Triq il-Kukkanja

Sta Venera SVR 1411

Malta

Tel. no.: (+356) 2200 1142

Fax no.: (+356) 2200 1141

Email: info.ppcd@gov.mt

2.2 Certifying Authority

The Certifying Authority within the Ministry responsible for European Union Funds is the designated Certifying Authority for the European Regional Development Fund, Cohesion Fund & European Social Fund Operational Programmes in line with Article 123(2) of the Common Provisions Regulation.

In line with Article 126 of Regulation (EU) 1303/2013, the Certifying Authority is responsible for the certification process as well as providing Government with information (and compile relevant reports) on requests for interim payments, funds received, debtors' ledger status as well as transferring funds to the Ministry for Finance Revenue Vote following receipt of Funds from the Commission in terms of Articles 129 and 130 of Regulation (EU) 1303/2013.

Certifying Authority

Tel. no.: (+356) 2295 7626

Email: certifyingauthority.meae@gov.mt

2.3 Audit Authority

The Internal Audit & Investigations Department is the designated Audit Authority in line with Article 123(4) of the Regulation (EU) 1303/2013. The Internal Audit & Investigations Directorate is the executive branch of the Internal Audit Investigations Board within the Office of the Prime Minister and is regulated by the Internal Audit and Financial Investigations Act 2003 (Chapter 461, Laws of Malta).

The functions of the audit authority are set down in Article 127 of the Common Provisions Regulation (EU) 1303/2013.

Internal Audit and Investigations Department

Tel. no.: (+356) 2123 7737

Fax no.: (+356) 2123 7681

Email: info.iaid@gov.mt

2.4 Intermediate Body

In line with Article 123(7) of Regulation (EU) 1303/2013, the Managing Authority has entrusted the implementation of the schemes to Intermediate Bodies under Article 107 of the Treaty. In Malta Intermediate Bodies are public organisations identified by the Member State that carry out some functions on behalf of the Managing Authority.

In this case, the Beneficiaries are the enterprises receiving aid under the scheme. There is one Intermediate Body under Operational Programme I² and one Intermediate Body under Operational Programme II³. There are no Intermediate Bodies for the Cohesion Fund. In the case of aid schemes, Intermediate Bodies issue specific guidance notes. Requests for information concerning the Intermediate Bodies can be sent to the Managing Authority.

² Measures and Support Division within the Ministry for Foreign and European Affairs.

³ Jobsplus.

2.5 Line Ministry

1. In most cases the Director Programme Implementation and/or the Director for European Union Affairs is responsible for the Line Ministry function in each Ministry. The Director Programme Implementation has to ensure that the full Line Ministry function (including raising the commitment in the Departmental Accounting System) is carried out efficiently by the relevant officers within the Line Ministry.
2. The Line Ministry is primarily responsible for the inter-agency co-ordination for all operations implemented by any Department/public organisation forming part of that 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 (excluding Intermediate Bodies) during implementation – including liaison with the Managing Authority and other horizontal stakeholders; processing of the second stage of the payment process (including input in the Structural Funds Database) and submission to the EU Payments Unit once assurance that documentation is correct is acquired; monitoring of operations falling within the Ministry's portfolio and follow any issues arising from management checks and audits.
3. Voluntary Organisations will process payments through the Director Programme Implementation within the Ministry for Education and Employment, whilst Local Councils through the Ministry for the National Heritage, the Arts and Local Government⁴.
4. The list of the Directors can be found on:
<https://www.gov.mt/en/Government/Government%20of%20Malta/Ministries%20and%20Entities/Pages/default.aspx> under the contact details of each respective Ministry.

2.6 Beneficiary

1. The Beneficiary is the organisation responsible for the implementation of the operation. The Beneficiary signs a Grant Agreement with the Managing Authority and the operation must be implemented in line with this Agreement. The Beneficiary is responsible to implement the operation in line with the relevant terms and conditions of the Preliminary Agreement/Grant Agreement signed with the Managing Authority as well as this Manual of Procedures. The Beneficiary shall always be guided by the principles of good governance, transparency and sound financial management.
2. The Preliminary Agreement/Grant Agreement signed between the Managing Authority and the Beneficiary gives the relevant detail on the objective, targets and financial allocation of the operation. The Grant Agreement binds the Beneficiary to implement the operation in accordance with terms and conditions of the said agreement and any requests for changes

⁴ For further information on the Payment Process, refer to Chapter 5 of this Manual of Procedures and to the Manual issued by the EU Payments Unit.

shall be notified to the desk officer within the Managing Authority (and/or the Intermediate Body in the case of aid schemes) within good time to allow for an analytical assessment of the request and its relevant feedback for approval or otherwise. Decisions taken are communicated to the Beneficiary in writing, approvals are then generally followed up in an addendum. Although the Managing Authority shall approve all changes in writing, there is no need to sign an addendum each time there is a change. In the spirit of proportionality and also reduction of administrative burden, an addendum may incorporate several changes that have taken place over a span of time. No unilateral changes from the Beneficiary to the Grant Agreement shall be accepted by the Managing Authority.

3. In the case of Aid Schemes, under Article 107 of the Treaty, the Beneficiary is the undertaking (enterprise) implementing an operation awarded by the Intermediate Body. In this case, the Beneficiary has signed a Grant Agreement with the Intermediate Body and the Beneficiary shall ensure that the operation is implemented in accordance with the terms of the said agreement and guidance issued by the Intermediate Body. The Beneficiary shall always be guided by the principles of good governance, transparency and sound financial management.
4. The list of Beneficiaries can be obtained from the Managing Authority's website www.eufunds.gov.mt or by sending an e-mail to info.ppcd@gov.mt.

2.7 Department of Contracts

1. The Department of Contracts within the Ministry for Finance and Financial Services is responsible for the administration of the procurement procedures as laid down in the Public Procurement Regulations 2016 (Legal Notice 352 of 2016 and any subsequent updates), which came into force on 28th October 2016. The Department of Contracts provides guidance and advice to the Beneficiary on all issues pertaining to public contracts. Within the context of Maltese legislation, the Department of Contracts is known as the Central Government Authority whereas the agency procuring the goods/services/works is known as the Contracting Authority.
2. The Department of Contracts 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 non-discrimination, equality of treatment, transparency, mutual recognition, proportionality, open competition, financial management and good governance.
3. The main functions of the Department of Contracts are outlined in Articles 10 - 15 of Legal Notice 352 of 2016.
4. It is the responsibility of ALL Beneficiaries (even those not falling within the direct remit of the Department of Contracts such as voluntary organisations, local councils and other Schedule 3 and Schedule 16 contracting authorities as listed under of Legal Notice 352 of 2016 and any subsequent amendments) to seek the advice of the Department of Contracts on procurement issues.

Department of Contracts

Tel. no.: (+356) 2122 0212

Fax no.: (+356) 2124 7681

Website: www.contracts.gov.mt
etenders.gov.mt

Email: info.contracts@gov.mt

2.7.1 *Departmental Adjudication Boards*

Departmental Adjudication Boards are boards or committees appointed by contracting authorities with the purpose of evaluating departmental tenders received and making recommendations thereon.

Considering the principle of proportionality, it is recommended that Departmental Adjudication Boards use templates and procedures available on the Department of Contracts' website (with applicable amendments that have to be undertaken by the relevant contracting authority) and consult the Department of Contracts where further information on the procedure is required. It is also highly recommended that the Boards refer to the Manual for Evaluation Committees, issued by the Department of Contracts and available at: <https://contracts.gov.mt/en/Resources/Pages/Resources.aspx> under "Manual for Evaluation Committees".

2.7.2 *Departmental Contracts Committee*

For the purpose of European Union funding implementation, this refers to the Committee set up in terms of Article 73 of the Public Procurement Regulations (Legal Notice 352 of 2016) with the purpose of making definite recommendations for the award of public contracts whose value is less than the threshold established in Legal Notice 352 of 2016 and any subsequent amendments.

2.7.3 *Ministerial Procurement Units*

Ministerial Procurement Units are entities established under each Ministry which processes, publishes, administers and recommends the award of a call for tenders published under the open procedure, where the estimated value of this call for tenders exceeds ten thousand euro (€10,000) but does not exceed two hundred and fifty thousand euro (€250,000). Both thresholds are net of Value Added Tax. This decentralisation is carried out in line with the list of Ministerial Procurement Units published in the Public Procurement Regulations.

There shall be in each Ministry a Ministerial Procurement Unit (for the time being, only in specific Ministries) which shall fall under the office of the Permanent Secretary responsible for that Ministry, or

under another person in an equivalent post, being so delegated by the Minister responsible for that Ministry.

Despite what is established in the regulations, the Minister may, irrespective of the value of the contract, order that a Contracting Authority, listed under schedule 16, forward the call for tenders to the Director of Contracts so that they are administered by that Department.

2.8 The EU Payments Unit

The EU Payments Unit within the Ministry responsible for European Union Funds and within the context of the implementation of the European Social and Investment funds in Malta, is responsible for:

- i. Receiving requests for payment/reimbursements (from the Line Ministry) to contractors and Beneficiaries (as the case may be);
- ii. Carrying out relevant checks to ensure that the expenditure and supporting documentation is correct and in line with national Financial Regulations; and
- iii. Effecting payments/reimbursements to contractors and Beneficiaries in respect of expenditure incurred for approved operations.

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 procurement procedure. 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 local and European Union regulations.

2.10 Monitoring Committee

In terms of Articles 47 and 48 of Regulation (EU) 1303/2013, Monitoring Committees charged with overseeing respectively the implementation of the European Regional Development Fund/Cohesion Fund and European Social Fund Operational Programmes in Malta have been established. The Monitoring Committees have their own terms of reference (in line with Article 110 of the same Regulation) and is chaired by the Permanent Secretary for European Union Funds or his/her representative.

Each Committee comprises Government representatives, social and economic partners, representatives of the civil society, the European Commission and the European Investment Bank.

2.11 Ministerial Projects Steering Committee

1. In view of the fact that most operations are implemented by public sector bodies, a Ministerial Steering Committee is set up within each line Ministry with the task to monitor operations and steer implementation to ensure that targets – financial and physical – are reached.

2. The Steering Committee is part of the overall monitoring system. The Committee is chaired by the Permanent Secretary of each Ministry (or his/her representative) and provides a more focused mechanism to track operations' progress and facilitate programme implementation.
3. Information on the Steering Committee can be obtained from the Director Programme Implementation of each Ministry.

2.12 National Audit Office

1. The National Audit Office is the external auditor of the Government of Malta and is completely independent of the executive arm of the Government.
2. Since operations co-financed through Cohesion Policy are considered to be public funds, the National Audit Office may carry out audits on the operations (both on public entities and agencies as well as the private sector and operations implemented by voluntary organisations) as the external auditor of Government.

National Audit Office

Tel. no.: (+356) 2205 5555

Fax no.: (+356) 2205 5077

Email: nao.malta@gov.mt

2.13 Channels of Communication

The following lines of communication shall be adhered to:

1. Only the Managing Authority, the Certifying Authority and the Audit Authority (in their respective roles, and through the official channels) shall directly communicate with the European Commission on issues pertaining to Cohesion Policy 2014-2020.
2. As secretariat to the Monitoring Committees, it is only the Managing Authority that will communicate with the respective Monitoring Committees on issues pertaining to Cohesion Policy 2014-2020. Members should send their comments to the Managing Authority for distribution.
3. In terms of the implementation of operations, the Managing Authority will communicate with the Beneficiary and (in the case of public sector operations) the Line Ministry (Director Programme Implementation) on issues pertaining to the operation.
4. It is the responsibility of the Beneficiary to consult the relevant national authorities on issues pertaining to the operation being implemented by that Beneficiary (e.g. Department of Contracts on procurement; EU Payments Unit on payments; Planning Authority on planning and

environmental permits; State Aid Monitoring Board on state aid; Commission for the Rights of Persons with Disability on the rights of persons with disability; National Commission for the Promotion of Equality on equal opportunities; the VAT department on issues related to Value Added Tax).

5. The Beneficiary and the Line Ministry shall ensure continuous communication with the relevant stakeholders to guarantee a smooth payment process within acceptable timeframes.
6. Any changes to the implementation (including changes in Project Leader and/or contact persons) shall be communicated immediately to the desk officers and Chief Coordinator of the Programme within the Managing Authority. The relevant template on Changes in Project Leader provided with this Manual of Procedures is to be filled in. The Managing Authority shall also inform Beneficiaries/Intermediate Bodies of changes in desk officers assigned to the operation.
7. Any other queries pertaining to implementation in general can be addressed to the Managing Authority.
8. It is the responsibility of the Beneficiaries, Line Ministries and Heads of Organisations to inform the Managing Authority immediately in the case of Structural Funds Database 14-20 users who are transferred to another organisation or have left the operation. This information should be sent to the Structural Funds Database Unit, the Operational Programme Unit, the respective Information Management Unit and the Line Ministry (where applicable). Beneficiaries need to inform the stakeholders accordingly. An electronic Request for Service must be raised by the user's entity through the respective Information Management Unit (or equivalent) in order to deactivate the account, before the account is closed.
9. Structural Funds Database 14-20 users should note that trainers on the system have been appointed within their organisation or the Ministry. Those users requiring assistance in using the database management system, including payment processing, should consult the tutorials uploaded on www.eufunds.gov.mt and contact the respective Structural Funds Database trainers within the organisation or the Ministry. Where users do not know who the respective trainer(s) is/are, they should contact the Head of the organisation or the Operational Programme Unit.
10. The Managing Authority also provides periodic training sessions on the use of the Structural Funds Database. New Beneficiaries interested in attending training sessions should contact the relevant Implementation Unit within the Managing Authority so that they are advised when new training sessions are scheduled. It is important that prior to attending these training sessions, attendees ensure that they have been given access to their Structural Funds Database 14-20 user account.

3. Compliance with Community Policies: Public Procurement, State Aid, Equal Opportunities and Sustainable Development

3.1 Introduction

The Beneficiary shall ensure coherence with Community Policies, in particular (although not exclusively) public procurement, state aid, environment, equal opportunities, and sustainable development. The latter three are identified as horizontal themes under Article 96 of the Common Provisions Regulation (EU) 1303/2013 and shall be incorporated into the European Regional Development Fund/Cohesion Fund and European Social Fund operations.

3.2 Public Procurement

1. All Beneficiaries should ensure that all procurement for operations co-funded by the Structural Funds and Cohesion Fund is carried out in line with the principles of non-discrimination, equality of treatment, transparency, mutual recognition, proportionality and good governance. Public entities are to ensure that procurement is carried out in line with the Public Procurement Regulations applicable at the time of publication. In this regard, it is highly recommended that Beneficiaries ensure compliance with requirements imposed by the Department of Contracts through the relevant Circulars and Procurement Policy Notes which are regularly published on www.contracts.gov.mt.
2. Other agencies not governed by the Public Procurement Regulations are to ensure that they follow the spirit of the Regulations and respect the thresholds therein, particularly regarding publication of the tender dossier.
3. The head of the Beneficiary organization (or its legal representative) is responsible to ensure that all contracting procedures are carried out in the spirit of good governance, fairness, transparency and non-discrimination between economic operators and in line with the Public Procurement Regulations.
4. Tender documents should be drafted in a manner that clearly sets the specifications / terms of reference of the contract and the way that bids are to be adjudicated. Tender Evaluation Committees are to ensure that bids are administratively, technically and financially compliant with the tender conditions.
5. Private companies who are Beneficiaries of European Union funds are to follow any guidance on procurement as recommended by the Managing Authority and/or Intermediate Bodies.
6. Failure to comply with the Public Procurement Regulations will lead to the recovery of funds. The European Commission has issued a set of guidelines on financial corrections to be applied for irregularities detected in the misapplication of Community regulations on public procurement

for contracts co-financed through Cohesion Policy Funds⁵. If irregularities are detected by the Commission services and/or by the control authorities established at a national level, a financial correction (which could reach 100% of the contract value) may be applied.

3.3 State Aid Requirements

3.3.1 General Notes for Project Proponents

1. European Union state aid rules apply to operations which involve any direct (or indirect) financial support from the public sector to commercial enterprises or organizations carrying out an economic activity or if in some way the assistance involved distorts trade or threatens to distort competition within the Community.
2. Applicants have a duty to ensure compliance with state aid rules. Applicants are also encouraged to hold discussions with the State Aid Monitoring Board prior to submission of an application for European Union funds.

Changes to the nature of the operation that have the potential of changing the original application vis-à-vis state aid shall be indicated to the Managing Authority after seeking clearance from the State Aid Monitoring Board accordingly. Should such change have an impact on the financial allocation granted, the Beneficiary will be asked to remedy as appropriate. The Beneficiary should note that failure to seek and receive clearance from the State Aid Monitoring Board may result in recovery of funds in line with the applicable state aid rules.

3.3.2 State Aid Schemes (under Article 107 of the Treaty)

1. Under both Operational Programme I and Operational Programme II, state aid can be granted under a scheme designed and implemented by one of the Intermediate Bodies. In this regard it is the responsibility of the Intermediate Bodies to notify state aid issues to the SAMB and ensure that approval for state aid has been granted.
2. The Intermediate Body has the responsibility to monitor aid based on the information supplied by the Beneficiary and report on the aid in line with the Covenant established between the Intermediate Body and the Managing Authority. Beneficiaries of aid schemes may refer to the relevant Intermediate Body or to the State Aid Monitoring Board for further information.
3. In the case of aid schemes, checks on payments made by Beneficiaries will be undertaken by the Intermediate Body who will also send information to the State Aid Monitoring Board annually. The Managing Authority also checks adherence to state aid rules when performing management verifications.

⁵ Commission Decision of 14.5.2019 laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement

State Aid Monitoring Board

Tel. no.: (+356) 2125 2757

Email: yana.haber@gov.mt

3.4 Equal Opportunities

- 1 Equal opportunity is a cross-cutting theme and all efforts should be made by the Beneficiary to include this element within the operation. The effort undertaken needs to go beyond legislation obligations. Beneficiaries must take into consideration equal opportunities at all stages of the operation and necessary steps should be taken to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation. Accessibility for disabled people regarding operations co-financed through Cohesion Policy should also be ensured.
- 2 Beneficiaries are encouraged to identify possible specific initiatives that promote equal opportunities. In this regard, advice from the Commission for the Rights of Persons with Disability and the National Commission for the Promotion of Equality for advice on equal opportunities legislation is recommended to determine how to integrate equal opportunities in an operation co-financed through Cohesion Policy. Beneficiaries should ensure that any advertising and/or marketing activities undertaken for the operation are free from stereotyping or any form of discrimination.

National Commission for the Promotion of Equality:

Tel. no.: (+356) 2595 7850

Email: equality.gov.mt

Commission for the Rights of Persons with Disability:

Tel. no.: (+356) 22267600

Email: helpdesk@crpd.org.mt

3.5 Sustainable Development

3.5.1 General Sustainable Development

1. The objectives of the European Social and Investment funds shall also be pursued in the framework of sustainable development. Sustainable development is a diverse theme which covers economic growth, social cohesion and the protection of the environment.
2. Beneficiaries must ensure that the operation is structured in such a manner that sustainable development issues are mainstreamed throughout the operation's aims and activities.
3. Beneficiaries should refer to the National Sustainable Development Strategy which can be downloaded from:

<https://msdec.gov.mt/en/sustainabledevelopment/Pages/natstratusdev.aspx>.

3.5.2 Environmental Sustainability

1. Beneficiaries should ensure that an operation is structured in such a way to ensure that environmental sustainability is mainstreamed in the operation's aims and throughout its lifetime.
2. Climate change mitigation and adaptation is an important element for operations co-financed under Operational Programme I. In this regard, Beneficiaries should strive to take into consideration the total climate-damaging carbon emissions generated, reduce them where possible, and then balance the remaining emissions through energy efficient/renewable energy sources measures within the operation.

3.6 Environment and Planning

As explained above, Project Leaders must ensure that planning regulations and obligations are followed and that environmental issues are taken into consideration throughout the operation's life cycle. Operations should be structured to ensure minimum environmental damage and maximum benefits. Project Leaders should also factor in timeframes stipulated by national law and procedures needed to obtain planning permits to ensure an adequate operation implementation timeframe. Officials within the Planning Authority may provide advice on the environmental and planning permits.

Planning Authority

Tel. no.: (+356) 2290 0000

Email: customercare@pa.org.mt

Environment and Resources Authority

Tel. no.: (+356) 2292 3500

Email: info@era.org.mt

3.7 Social Innovation, Transnational & Interregional Co-operation

1. In addition to the above-mentioned horizontal priorities, operations co-financed by the European Social Fund under Operational Programme II shall try to take into consideration the horizontal principles of innovation & transnationality.
2. Article 9(1) of the Regulation (EU) 1304/2013 establishes that the European Social Fund shall promote social innovation within all areas falling under its scope⁶, with the aim of testing, evaluating and scaling up innovative solutions, including the local or regional level, to address social needs in partnership with the relevant partners and social partners. Malta has opted to include social innovation as a cross-cutting theme across the different priority axes within Operational Programme II and it is also part of the selection criterion for operations that are funded under the same Operational Programme. Any operations that meet the principle of social innovation and fit within the defined social innovative actions under the respective Priority Axis, will gain additional marks during the selection process of operations.
3. To complement the principle of social innovation, Article 10(1) of Regulation (EU) 1304/2013 establishes that the European Social Fund Operational Programmes shall support transnational cooperation with the aim of promoting mutual learning, thereby increasing the effectiveness of policies supported by the European Social Fund. Transnational cooperation shall involve partners from at least two Member States. Malta believes that there is a lot to gain from the experience of other regions and has decided to allocate specific marks in the selection process for transnational and interregional co-operation which is implemented as a supporting action in operations of an innovative nature.
4. Beneficiaries implementing transnational and interregional co-operation operations need to demonstrate that their operation will explore the application of solutions being utilised in other Member States in relevant policy areas, to the local scenario. In this regard Beneficiaries shall seek to ensure that partners have the necessary expertise to be able to cooperate, and when claiming funds from the operation, the capacity to adhere to the national eligibility rules.
5. Beneficiaries of trans-national and interregional co-operation can implement their operation/s through sharing of information, experiences, results, good practices and through the development of complementary approaches and co-ordination or joint actions.

⁶ As defined in Article 3 of ESF Regulation N^o. 1304/2013.

3.8 Double funding

In order to ensure coordination between the European Social Investment Funds and other relevant Union policies, strategies and instruments, including those within the framework of the Union's external action aim to avoid the risk of double funding. In this regard the Beneficiary is to ensure that in no circumstances the same costs are financed twice under any budget. For this purpose, upon the approval of the operation and at Grant Agreement signature, the Beneficiary will be requested to declare that no other funds have been requested to finance the same or part of the same operation(s).

Through the lifetime of the operation the Managing Authority continues to undertake checks on double funding through a specific checklist per operation which will be endorsed also by the respective Project Leader.

4. Contracting

4.1 Contracting Procedure

1. All Beneficiaries implementing Cohesion Policy operations are to adhere to the obligations and principles of Public Procurement, in line with Public Procurement Regulations 2016 (LN352/2016). Beneficiaries are encouraged to seek the necessary support from the Department of Contracts as applicable in terms of planning, interpreting and applying regulations, and carrying out the procurement procedures. In addition, the Department of Contracts issues on a regular basis Procurement Policy Notes, Manuals and Circulars to further assist Contracting Authorities in fulfilling their obligations. It is important that such guidance is fulfilled accordingly. The Beneficiary is responsible for following up matters with the Department of Contracts at any step of the contracting procedure, including evaluation of tenders; adjudication and publication of results; contracting; approval for additional costs; addenda to contracts; non-compliance by Contractors with Contractual Obligations; Release of Financial Guarantees; etc.
2. Beneficiaries should note that EU Funds are public funds and EU Funded operations are subject to audits by various National and EU auditing bodies. Funds must be contracted in a transparent and competitive manner. In this regard, Beneficiaries must be guided by the principles of non-discrimination, equality of treatment, transparency, mutual recognition, proportionality, open competition, sound financial management, and good governance.
3. It is important to note that the following points are only guidelines and are not intended to substitute in any way the relevant regulations or guidance issued by the Department of Contracts. **The Managing Authority insists that advice should be sought from the Department of Contracts on all issues pertaining to procurement.**
4. When preparing the tender dossier, the Beneficiary must refer to the Public Procurement Regulations, as established through LN 352 of 2016 and subsequent amendments. **Beneficiaries who are not bound by the Public Procurement Regulations, such as voluntary organisations, are encouraged to follow the spirit of the Regulations. The principles of transparency, fair competition and good governance should always apply.**
5. Local Councils are to follow the Local Councils (Procurement) Regulations 2017 which were issued in terms of the Local Councils Act, Article 72 (3). The publication of these guidelines⁷ is meant to assist Local Authorities in their procurement process. Save as otherwise provided in these Procurement Guidelines, the Public Procurement Regulations shall apply to all public bodies. The relevant tendering templates are available from the Department of Contracts and Beneficiaries should consult the Department of Contracts for the applicable templates which

⁷ Link for Local Council Procurement guidance

<https://localgovernment.gov.mt/en/DLG/Media/Local%20Councils%20Procurement%20Policy%20Notes%20LCPPNs/LCPPN4%20-%20Local%20Councils%20Procurement%20Guidelines%20v1.1.pdf>

are available in the Resources section on www.etenders.gov.mt. Given that tender drafting is a very complex, time consuming and expensive process, it is highly recommended that Beneficiaries check with the Department of Contracts whether there are (administrative or legal) planned changes PRIOR to the commencement of the drafting of the tender to avoid unnecessary waste of resources and time.

4.2 General principles

Beneficiaries should note that irregularities detected in the procurement / recruitment / implementation / payment process may render the operation (or parts thereof) ineligible for funding.

In order to prevent irregularities, the following procurement principles must be observed for all contracts. These principles are intended to facilitate the implementation of operational programmes and to encourage good practice. The below section aims to provide general recommendations on such principles.

Procurement General Issues :

1. Beneficiaries are to ensure that contracting is in line with the approved operation proposal and is reflected in the Grant Agreement agreement.
2. Tenders are initiated by the Beneficiary organisation as the Contracting Authority. The Beneficiary organisation is also responsible for the management of the contract.
3. Beneficiaries are to ensure consistency and compliance with Cohesion Policy publicity requirements when drafting or using tender and contract templates (issued by the Department of Contracts or the Beneficiary's Department/Ministry as Departmental Calls for Tenders), and when issuing adverts relating to Structural and Cohesion Funds.
4. Tenders must be evaluated by an evaluation committee. It is highly recommended that the Boards refer to the Manual for Evaluation Committees issued by the Department of Contracts.
5. Selection and Award criteria must be stipulated in advance in the procurement dossier and tenders are to be evaluated only on those pre-established criteria. No other criteria can be used for the evaluation of the tender. The tender dossier must stipulate all items in detail to determine eligibility of costs under Cohesion Policy.
6. Items which are not included in the approved operation proposal and Grant Agreement should either not be included in the same tender / lot of the eligible items, or be clearly identifiable (also in terms of costs). In such instances, it is ideal to have a separate lot within the same tender for the ineligible items, or a separate Bill of Quantity item. This is particularly important for Beneficiaries issuing works tenders. In addition, extra works which are not paid out of European Union funds, should be settled in a separate contractual arrangement.

7. When preparing the tender dossier, the Beneficiary must observe the European Union requirements on equal opportunities and sustainable development. In executing the contract, the Beneficiary must ensure that the contractor observes European Union & national legislation in relation to environment and equal opportunities, and may recommend ways in which these requirements are met.
8. It is important to ensure transparency and fair competition. This applies for instance in case of requests for quotes from different bidders and comparable quotations to choose the best option.
9. 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.
10. The European Union Official Journal publication is compulsory for tenders exceeding certain thresholds, depending on the classification of the Beneficiary as a Contracting Authority as defined in LN 352 of 2016 and subsequent amendments. These thresholds may change from time to time. It is advisable that the Beneficiary regularly consults the European Union Directives on public procurement⁸, and contacts the Department of Contracts for possible revisions to the thresholds.

Currency and payment schedule:

1. Payments will be in the Euro currency. In case of non-Euro payments, their Euro equivalent will generally be calculated based on the exchange rate taken at the date of the actual payment.
2. The Beneficiary is advised to prepare a payment schedule which must be included in the special conditions of the tender dossier and which should generally be consistent with what has been agreed in the Grant Agreement⁹.
3. The Contractor shall issue the invoice according to the stipulated conditions in the contract and shall deliver the invoice to the Beneficiary implementing the operation.
4. Financial Identification Form (TRS 9) - Whenever the Beneficiary receives an invoice for the first time from a Contractor, the Treasury asks the Beneficiary to provide a [Financial Identification Form](#) filled in by the Contractor. In this form, the Treasury will have the necessary information on the Contractor for the proper execution of the bank credit transfer. This form needs to be sent to Treasury prior to insertion of invoice in the Structural Funds Database 14-20.
5. It is important for Beneficiaries to note that should the Contractors' financial details change throughout the execution of a contract, the Beneficiary is to inform the Treasury to ensure that

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

⁹ When deciding on the payment schedule, Beneficiaries should be guided (where possible) by the disbursement schedule in the Grant Agreement signed with the Managing Authority.

the Contractor fills in a new Financial Identification Form (TRS 9) and submits the new TRS 9 for the Treasury to insert the Contractor's new details.

6. The Treasury Department will issue payment against the details of the latest TRS 9 Form.
7. The invoice should be addressed to the Beneficiary and/or Project Leader. Contractors are to note that invoices must be issued by the company that was awarded the contract. Payments are made via a bank credit transfer only.

Bank Guarantees and Retention Money:

- Where applicable, safeguards such as bank guarantees should be inserted in the tender dossier to recover funds in case of advance payments and/or termination of contract.
- 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 should 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 (i.e. at provisional acceptance stage), but against a bank guarantee (to be renewed until final acceptance stage) of an amount equivalent to the value of the retention money. Further advice should be sought from the Department of Contracts.

4.3 Procurement of Equipment through Cohesion Policy Funds

1. **Documentation:** When purchasing fixed assets through Cohesion Policy funds, it is important that the items are used for the specific reasons for which they were bought and in accordance with the conditions of the Grant Agreement. All documentation in relation to purchase and use of fixed assets (including guarantees), has to be filed in the project file. The Project Leader should ensure that all relevant documents are handed over by the supplier and are filed for ease of reference, in line with the principle of sound financial management and transparency.
2. **Inventory:** It is obligatory to keep a filed inventory of the fixed assets and their location. The Beneficiary is required to fill in an Inventory of the fixed assets list (Annex 1) of all assets and **where possible**, the following details should be included:
 - Contract No
 - Name of supplier,
 - Serial / ID No – *Where the serial numbers are not visible, a unique inventory number should be given,*
 - Purchase / installation date,

- Total cost or value,
- Location of asset,
- Asset description,
- Quantities,
- Whether a guarantee has been applied or not.

The Beneficiary should also list any equipment that has undergone any changes since it was procured.

The Inventory List / Fixed Asset Register of each operation should be frequently updated to include the relevant details of the purchased assets. The list shall be signed and certified correct by the Project Leader and a copy of the list must be sent to both the Line Ministry and the Managing Authority. In the case of Government departments, the inventory list must be endorsed by the Director Corporate Services of the Ministry concerned, whilst in the case of Authorities, Commissions, Agencies and other bodies within the public sector; the Beneficiary's Financial Section/Unit should endorse the document. If the Beneficiary is a Local Council or a Voluntary Organisation, the inventory list should be signed by the executive secretary or the treasurer respectively.

In the case of public entities and voluntary organisations compiling their own accounts, the equipment must also be accounted for according to established accounting standards. In the case of Beneficiaries which are either Government Departments or Ministries, the Inventory List / Fixed Asset Register should follow MF Circular No. 14/99 (or any subsequent amendments) which refers to the Revised Inventory Control Regulations. **It is important to note that the above guidelines are not intended to substitute in any way the relevant regulations or guidance issued by the Government of Malta in terms of inventory.**

3. The Beneficiary must keep in mind that:

- When fixed assets are purchased through Cohesion Policy funds, it is imperative that they are kept in good working order throughout and after the project life, in line with the durability clause in the Grant Agreement and Article 71 of Regulation (EU) N^o: 1303/2013.
- The Beneficiary is to ensure that the asset comes with the appropriate warranties.
- If any fault results to the asset, all documentation in relation to the repair must be kept and should the asset need to be replaced, it is important that all documentation is filed.
- If the asset is replaced, both the old and new serial numbers must be retained. In case the assets being replaced were purchased with funds allocated through an aid scheme, the Beneficiary must inform the Intermediate Body responsible for the aid scheme.
- If the asset 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 asset being replaced.

- If the asset is moved, such shifts need to be reflected in the Inventory.
- The Beneficiary shall ensure that the relevant publicity¹⁰ appears on the equipment purchased, as well as on the relevant documentation (proportionately should apply in the case of infrastructural operations where the whole building or area is co-funded).

4.4 Employment Contracts

1. Services may either be procured through a service tender (procured in accordance with the foregoing sections of this Chapter) or through an employment contract. 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 voluntary organisations) to identify which procedure to apply when considering the Beneficiary's 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, the level of autonomy allowed, the duration and frequency of delivery, and the time (office hours or not) and location of delivery requested.
2. For employment contracts, Beneficiaries should follow its official channel of recruitment if the procedure applied follows good governance, transparent and in line with national legislation.
3. **Full-time or part-time employment, with tasks solely related to the operation:** If a Beneficiary employs a person on an employment contract to work solely on an operation funded through the Cohesion Policy, the Beneficiary shall ensure that the person being engaged works solely on the operation and does not undertake any unrelated work within the Beneficiary organisation.
4. **Full-time or part-time trainers/employees:** Where an individual is employed on the funded operation 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 operation. Before claiming staff costs, the Beneficiary should ensure that these costs are in line with the eligibility rules.
5. To calculate the hours to be claimed, all Beneficiaries are requested to refer to MA Circular 01/2018 and any subsequent updates to this circular available at <https://eufunds.gov.mt/en/Operational%20Programmes/Useful%20Links%20and%20Downloads/Pages/Reference%20Documents.aspx>. The Beneficiary should ensure that the staff costs methodology is properly filled in and endorsed by the Managing Authority prior to claiming staff costs through the Structural Funds Database 14-20.

¹⁰ Refer to the Visual Identity Guidelines and/or consult the responsible officer within the Managing Authority in case of difficulties/particular cases.

6. The eligibility of staff costs shall be determined in the Grant Agreement. For staff costs related to transnational partners, the Beneficiary should refer to the eligibility rules of the relevant Operational Programme. 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 operation). The Beneficiary should always seek advice from the relevant department/entity responsible of employment procedures and Permanent Secretary (MFEA). The Beneficiary must ensure compliance with national legislation and is to be guided by the relevant internal procedures. The Managing Authority and the European Commission are not responsible for any employment related disputes that may arise during and after the implementation of the operation.
7. Terms and conditions of an employment contract should strictly conform to those issued in the respective Call for Applications. Beneficiaries should also consult the relevant Eligibility Rules before drafting the call and/or the contract.
8. The Beneficiary shall retain the necessary documentation recording the employment procedure undertaken and the employment contract. Further detail on document retention is available in Chapter 12.

5. Financial Management and Payments

5.1 Preliminary Agreement/Grant Agreement

The Preliminary Agreement/Grant Agreement signed between the Managing Authority and the Beneficiary give the relevant detail on the objective, targets and financial allocation of the operation.

Whilst the preliminary agreement is an agreement which arises when the parties agree on the main elements for the implementation of the operation, the grant agreement is obligatory. It represents the main contract which outlines all the details related to the approved operation, including the conditions agreed in the preliminary where applicable.

These agreements bind the Beneficiary to implement the operation in accordance with the terms and conditions of the said agreements and any requests for changes shall be notified to the desk officer within the Managing Authority (and Intermediate Body in the case of aid schemes) within good time to allow for an assessment by the Managing Authority (or the Intermediate Body as the case may be) of the request and its relevant approval (or rejection). Approvals for changes are sent to the Managing Authority in writing and these are then generally followed up with an addendum to the Grant Agreement. Although the Managing Authority shall approve all changes in writing, there is no need to sign an addendum each time there is a change. Thus, any Managing Authority approval needs to be properly filed. In the spirit of proportionality and reduction of administrative burden, an addendum may incorporate several changes that have taken place over a span of time. No unilateral changes (from the Beneficiary) to the Preliminary/Grant Agreement shall be accepted by the Managing Authority.

5.2 Savings to the operation

It is important to note that as a rule any savings to an operation go back to the Priority Axis of the Operational Programme under which the operation is co-financed. In this regard, the Beneficiary is to inform the Managing Authority of any potential savings or savings registered on the operation. 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 operation in a timely manner. The Beneficiary cannot utilise any savings arising in one or another component of the operation without prior authorization or subsequent endorsement from the Managing Authority. As a rule, if the Beneficiary needs to utilise savings, it should submit a request to the Managing Authority to utilise these savings, providing the relevant justification.

5.3 Performance Framework

The performance framework is one of the result-oriented tools of the European Social and Investment Funds introduced in 2014-2020 Programming Period. The performance framework includes a set of

milestones and targets which is defined for each priority axis in a Programme and that is reflected, in terms of contribution, in each individual operation.

The milestones set under the European Regional Development Fund, the Cohesion Fund and the European Social Fund are intermediate targets (financial and physical) set for indicators to be achieved by the respective Operational Programme and the individual operation by 31 December 2018, whilst the targets are the financial and physical goals to be achieved at operation closure and/or, in any case, by not later than the 31 December 2023.

Beneficiaries that can demonstrate that the operation will contribute to the achievement of both milestones and targets will benefit from additional marks at selection stage. In addition, should Beneficiaries fail to meet the milestones and the targets set, they could incur a financial loss.

5.4 Eligibility of Costs

A set of eligibility rules is available on the Managing Authority's website¹¹. In the case of aid schemes, information on the eligible costs of aid schemes is available from the respective guidance notes issued by the Intermediate Body (grantor of aid) and any *ad hoc* guidance duly issued.

5.5 Co-financing

The financing of all operations benefiting from Cohesion Policy Funds have an element of national co-financing. The eligible cost and the co-financing arrangements (Community, national public and own resources¹²) are outlined in the Grant Agreement¹³.

5.6 Government Pre-Financing Set-up

1. Distinct procedures for the mobilisation and circulation of funding have been set up to facilitate the implementation of operations and ensure the transparency of financial flows. The financial flows vary according to specific categories of Beneficiaries.
2. **Public Sector Beneficiary:** In the case of operations being implemented by a public sector Beneficiary¹⁴, the Maltese Government's annual financial estimates provide for the pre-financing of the Community share of the forecasted annual eligible expenditure of the operations. The financial estimates also provide for the Maltese co-financing share of the forecast annual eligible expenditure, as well as, an allocation for other expenditure not eligible

¹¹ Beneficiaries should ensure that they have the latest version as the list is reviewed from time to time. Information can be obtained from the MA website – www.eufunds.gov.mt.

¹² Where applicable.

¹³ The eligible cost can vary and can also change throughout the operation's lifetime (e.g. due to changes in the funding gap arising from the monitoring exercise).

¹⁴ Public Sector Beneficiaries consist of Line Ministries, Government departments, public authorities, public corporations, public agencies, public commissions, and public foundations amongst others.

for Community co-financing (e.g. non-eligible Value Added Tax)¹⁵. The EU Payments Unit pays the relevant service/supplier/works provider from the pre-financing arrangement (the annual estimates are allocated in the Government's Departmental Accounting System) following a request for payment raised by the Beneficiary.

3. **Public/Public Equivalent Beneficiary:** In the case of operations implemented by other Public/Public Equivalent Beneficiaries¹⁶, the Maltese Government's annual financial estimates provide for the pre-financing of the EU co-financing share of the forecasted annual eligible expenditure of the operations. Unless otherwise indicated, the national public co-financing share of the operations is provided for from the funds of the Beneficiary (e.g. Local Council). On receipt of invoice/s, the Beneficiary share (together with any ineligible expenditure related to the invoice), is extracted from the respective organisation's allocation. The EU Payments Unit then pays the full amount of the invoice to the service/supplier/works provider on behalf of the Beneficiary, through a request for payment raised through the Structural Funds Database 14-20.
4. **Voluntary organisations:** In the case of voluntary organisations, the (European Union and national) public share for the respective accounting year is allocated in the Structural Funds Item in the Departmental Accounting System by Government as pre-financing. Voluntary organisations shall provide for the co-financing (20% of public eligible cost, unless otherwise stipulated in the Grant Agreement, as well as any other ineligible costs). When submitting invoices to the Line Ministry, voluntary organisations attach a cheque for the amount equivalent to the voluntary organisation share of the invoice, so that the EU Payments Unit then pays the full amount to the contractor.

5.7 Reimbursement of staff costs

Staff costs charged to the operation shall be calculated in line with MA Circular 01/2018 and any subsequent updates to this circular which is available at www.eufunds.gov.mt. Beneficiaries need to differentiate between contracts for full-time or fixed-part time, and staff partially working on an operation and apply the respective methodology as outlined in MA Circular 01/2018.

Staff costs claimed through the Structural Funds Database 14-20 shall be marked as standard scale of unit costs. For eligibility purpose, the Beneficiary shall ensure compliance with the eligibility rules of the relevant Operational Programme.

5.8 Reimbursement of travel costs

Costs of flights shall be charged to the operation in line with Article 67(5)(b) of Regulation (EU) 1303/2013, which states that reimbursement may take place:

¹⁵ In the case of some public entities/corporations the national co-financing and ineligible costs may be sourced from the entity's own resources.

¹⁶ Other Public or Public Equivalent Beneficiaries include Local Councils, socio-economic partners and constituted bodies.

in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary.

Beneficiaries are asked to make use of the ERASMUS+ distance calculator available at https://ec.europa.eu/programmes/erasmus-plus/resources/distance-calculator_en, following which reference needs to be made to the ERASMUS+ Programme Guide¹⁷ to see the applicable rate per participant for the travel distance given through the ERASMUS+ distance calculator.

The rate per participant will cover any flight costs for conferences, seminars, meetings and training that are financed under the European Regional Development Fund, the European Social Fund and the Cohesion Fund during the 2014-2020 Programming Period.

5.9 Reimbursement of simplified cost options

The use of simplified cost options as established under Articles 67 and 68 of Regulation (EU) 1303/2013 and Article 14 of Regulation (EU) 1304/2013 shall take place in line with any conditions set out by the Managing Authority in the Preliminary / Grant Agreement and any subsequent addenda, as applicable, as well as the Eligibility Rules of the relevant Operational Programme.

Beneficiaries will be guided by the Managing Authority desk officer accordingly on the application of simplified cost options and how to record them in the Structural Funds Database 14-20.

5.10 Treatment of Value Added Tax

The treatment of Value Added Tax is regulated on the basis of Article 69 of Regulation (EU) 1303/2013 which stipulates that Value Added Tax is not eligible for funding except where it is non-recoverable under national Value Added Tax legislation. Beneficiaries are to compile the Value Added Tax declaration form during the early stages of implementation. Once compiled the Beneficiary is to submit the form to the Managing Authority. The latter will forward the original copies to the VAT Department for their endorsement. A copy of the Value Added Tax form is also found in Annex 5. Furthermore, the Beneficiary should consult with the VAT Department for all other issues pertaining to Value Added Tax.

5.11 Invoices and confirmation (proof) of payment

This section includes considerations on invoices, receipts and any other proofs of payment. It should also be read in conjunction with Chapter 12.3 - Uploading of documents in SFD¹⁸.

In accordance with Article 65(2) of Regulation (EU) 1303/2013 expenditure claimed for reimbursement from the Funds (i.e. in the drawdown requests from the European Commission) must be real.

An invoice is a request for payment while a receipt (or equivalent) is a confirmation of payment.

¹⁷ Beneficiaries should ensure that they refer to the latest version of the ERASMUS+ Programme guide available online.

¹⁸In line with the MA Circular 05/2018.

5.11.1 *Payment through the normal procedure (by the EU Payments Unit direct to contractors)*

- Where the invoice is a tax invoice, its corresponding proof of payment (not a fiscal receipt) should be filed, but NOT uploaded in the Structural Funds Database. Examples of such proof is given in Table 1 below.
- Invoices which are not tax invoices should be followed by a fiscal receipt within reasonable time of payment, unless the invoice quotes the exemption number of the supplier represented by the acronym EXO. To ensure both objectives of fiscal validity and payment confirmation (as per Structural Funds regulations), a fiscal receipt must:
- Contain reference to the contract in question and the invoice (invoice number). Payments on account without the relevant invoice number are not acceptable;
- Be dated after the payment date; and
- Include the name of the Beneficiary as the recipient of receipt.

It is the responsibility of the Beneficiary to ensure that upon receipt of payment, the contractor / supplier issues a receipt confirming that payment has been carried out. When applicable, adherence to fiscal obligations is to be maintained. Beneficiaries are to ensure that receipts are received within the time prescribed by law and are retained in the project file as well as uploaded on the Structural Funds Database 14-20.

5.11.2 *Reimbursement Requests*

In the case of reimbursement requests, the invoice and corresponding proof of payment should be filed and uploaded on the Structural Funds Database.

If the invoice presented is not a tax invoice (and does not contain an exemption number), a fiscal receipt should be presented as proof, containing:

- i. Reference to the contract and invoice/s in question (invoice number/s). Payments on account without the relevant invoice number/s are not acceptable;
- ii. A date occurring after the payment date; and
- iii. Name of the Beneficiary as recipient of receipt.

Note on fiscal receipts: For the definition of a fiscal receipt and cases of exemption from obligation to issue a fiscal receipt, Beneficiaries should refer to the 'Value Added Tax Act'.

Table 1: Documents required for payment or reimbursement

The details of the reimbursement request are to be entered directly in the payment module on the Structural Funds Database 14-20 in line with the tutorials uploaded on the system available at the same level. Beneficiaries of state aid schemes are to be guided by the Intermediate Bodies and use the templates provided to claim reimbursement.

Payment Procedure	Condition	Invoice Type	Proof of Payment Required	Uploading in the Structural Funds Database 14-20	Filing
Direct payment (Condition 1)	Tax invoice issued by a person registered under Art 10 – for supplies other than exempt without credit supplies – to a person registered under Article 10 or Article 11 of the VAT Act who identifies himself with a Value Added Tax number on invoice.	Tax invoice	Any document proving payment (dated after payment date on the Structural Funds Database 14-20) (e.g. Central Bank debit advice, acknowledgement of receipt from supplier, etc)	Tax invoice only	Tax invoice and proof of payment
Direct payment (Condition 2)	Invoice issued by a person registered under Article 10 – for supplies other than exempt without credit	Not a tax invoice + no	Fiscal Receipt dated after the actual payment date on the Structural Funds Database 14-20.	Invoice only	Invoice and fiscal receipt (and any further proof

	supplies – to a non-registered person	exemption number	<u>OR</u> Fiscal Receipt dated before the actual payment date on the Structural Funds Database ¹⁹ <u>AND</u> further proof of payment (e.g. Central Bank debit advice, acknowledgement of receipt from supplier, etc)		where applicable)
Direct payment (Condition 3)	Invoice issued by a person registered under Article 10 – for supplies other than exempt without credit supplies – to a non-registered person)	Not a tax invoice + with exemption number	Any document proving payment (dated after payment date on the Structural Funds Database) (e.g. Central Bank debit advice, acknowledgement of receipt from supplier, etc)	Invoice only	Invoice and proof of payment
Reimbursement request (Condition 1)	<u>Tax</u> invoice issued by a person registered under Article 10 – for supplies other than exempt without credit supplies – to a person registered under Article 10 or Article 11 of the VAT Act who identifies himself with a Value Added Tax number on invoice	Tax invoice	Any document proving payment (dated after payment date on the Structural Funds Database 14-20)	Reimbursement request, Tax invoice, proof of payment	Reimbursement request, Tax invoice, proof of payment

¹⁹ If dated prior to the payment date, the fiscal receipt cannot be considered as sufficient proof and further proof is required. However, the same receipt remains fiscally valid, as per the Thirteenth Schedule, point 2.

Reimbursement request (Condition 2)	Invoice (not a tax invoice) issued by a person registered under Article 10 – for supplies other than exempt without credit supplies – to a person registered under Article 10 or Article 11 of the VAT Act whether he identifies himself or not with a Value Added Tax number on invoice	Not a tax invoice	Fiscal Receipt dated after the actual payment date on the Structural Funds Database. <u>OR</u> Fiscal Receipt dated before the actual payment date on the Structural Funds Database ²⁰ <u>AND</u> further proof of payment (e.g. official cheque image from bank, bank transfer advice slip, bank statement, acknowledgement of receipt from supplier, etc)	Reimbursement request, Invoice, fiscal receipt (<u>and</u> any further proof where applicable)	Reimbursement request, Invoice, fiscal receipt (<u>and</u> any further proof where applicable)
Reimbursement request (Condition 3)	Invoice issued by a person registered under Article 10 – for supplies other than exempt without credit supplies – to a non-registered person	Not a tax invoice + no exemption number	Fiscal Receipt dated after the actual payment date on the Structural Funds Database <u>OR</u> Fiscal Receipt dated before the actual payment date on the Structural Funds Database ²¹ <u>AND</u> further proof of payment (e.g. official cheque image from bank, bank transfer advice slip, bank statement, acknowledgement of receipt from supplier, etc)	Reimbursement request, Invoice, fiscal receipt (<u>and</u> any further proof where applicable)	Reimbursement request, Invoice, fiscal receipt (and any further proof where applicable)

²⁰ If dated prior to the payment date, the fiscal receipt cannot be considered as sufficient proof and further proof is required. However, the same receipt remains fiscally valid.

²¹ If dated prior to the payment date, the fiscal receipt cannot be considered as sufficient proof and further proof is required. However, the same receipt remains fiscally valid.

Reimbursement request (Condition 4)	Invoice issued by a person registered under Article 10 – for supplies other than exempt without credit supplies – to a non-registered person	Not a tax invoice + with an exemption number	Any proof of payment dated after invoice date	Reimbursement request, Invoice, proof of payment	Reimbursement request, Invoice, proof of payment
Reimbursement request (Condition 5)	Invoice issued by the Beneficiary organisation based on pre-defined milestones or simplified cost options as set out in the Grant Agreement	Not a tax invoice	In line with the documentation requested for that milestone or simplified cost option as set out in the Grant Agreement	Proof that milestone / deliverable has been achieved	Proof that milestone / deliverable has been achieved

5.12 Invoices Payment Process

Stakeholders involved in the payment process [Beneficiary, Line Ministry (Director Programme Implementation and Accounting Officers), EU Payments Unit 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 the contractors. It is the responsibility of the Project Leader to ensure that invoices and the relevant documentation are processed in time and correctly (i.e. first-time round) in order not to slow down the process.

Functions	Responsible Body
1. Certifying Works/Services/Goods and Invoicing	

<p>a) The Structural Funds Database 14-20 is the single channel through which requests for payment (invoices or reimbursement requests) related to the Cohesion Policy 2014-2020 are processed for ultimate payment (or reimbursement) by the EU Payments Unit. Project Leaders and Contact Persons, like all other users, access the system through their unique personal credentials thus retaining accountability throughout the electronic system, in line with Article 10(2) of Commission Implementing Regulation (EU) 1011/2014.</p> <p>b) Tutorials for processing payments are available on the Structural Funds Database.</p> <p>c) Payments under the Cohesion Policy 2014-20 are carried out in a three-stage process, where:</p> <ul style="list-style-type: none">i. The Beneficiary receives the request for payment from the Contractor (or the finance unit within the Beneficiary organisation in the case of reimbursement requests). Following vetting of the request (to ensure compliance with section 1 above) and confirmation of its adequacy, the system automatically generates an <i>Invoice Details Certificate</i> <u>under the Confirmation tab at payment level</u> on the Structural Funds Database 14-20.ii. In the next step, the payment reaches the next level of confirmation on the Structural Funds Database 14-20 - the Line Ministry;iii. Following Line Ministry confirmation on the system, the payment is then checked and confirmed by the EU Payments Unit for the execution of payment. <p>d) To fulfil the step in point (c) above, the Beneficiary shall:</p> <ul style="list-style-type: none">i. Validate the invoice – validation implies that the details entered at payment level are correct. The Beneficiary shall check the following:<ul style="list-style-type: none">- the invoice is the original. This means that the hard copy of the invoice is handed over by the Contractor to the Beneficiary;- the invoice is addressed to the Beneficiary, issued by the company/individual awarded the contract and preferably bears the relevant contract reference code²²;	<p>Beneficiary</p>
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²² The Beneficiary is not to accept invoices that are issued by subsidiary companies and/or by one of the partners in the case of a joint venture.

Beneficiaries are also advised to consult the Guidelines for issuing valid invoices and receipts.

- ii. Ensure that the invoice is based on and reflects the schedule of payments as stated in the respective contract (if applicable). The Beneficiary must also ensure that advance payments in subsequent interim payments are discounted as stipulated in the contract;
- iii. Ensure that the expenditure being claimed is in line with the Grant Agreement of the operation and the eligibility rules of the Operational Programme;
- iv. Verify the delivery of supplies (including quantities), works/ and/or services (except where the invoice refers to an advance payment); and
- v. Confirm compliance with Community and national rules.

The Project Leader shall then complete the online checklist at payment level on the Structural Funds Database 14-20 which is a means of confirming that all the checks above have been carried out.

Through the validation of the payment on the Structural Funds Database 14-20, the Project Leader (or delegate) is confirming that all the contents of the invoice are in line with the contract, Grant Agreement and the national rules on invoicing.

- e) The Beneficiary shall scan the invoice (and any additional documentation required such as the summary certificate of the supervisor in relation to works) and upload it on the Structural Funds Database (refer to Chapter 12 – Uploading of Documents section). It is important that the Beneficiary retains a copy of the invoice/reimbursement request and any supporting documentation in the project file.
- f) The Project Leader validates the payment on the Structural Funds Database 14-20 (and any additional documentation required), which should then be electronically checked and validated by the Line Ministry²³.

Attention: Corporations, Other Public Sector & Public Equivalent Beneficiaries:

²³ In the case of Non-Governmental Organisations, the payment is validated by the Director Programme Implementation, Ministry for Education and Employment, while for Local Councils, by the Director Programme Implementation, Ministry for the National Heritage, the Arts and Local Government.

<p>In the case where the Malta co-financing and any ineligible costs (such as Value Added Tax) are not provided for in the Cohesion Policy line items, the EU Payments Unit shall charge the applicable amount to the respective capital vote of the entity.</p> <p>Attention: Voluntary Organisations:</p> <p>For payable line items only, voluntary organisations are to issue a cheque equivalent to the value of their share as well as the total of any ineligible cost on each invoice and send it to the EU Payments Unit.</p>	
<p>2. Authorising Payments</p>	
<p>In the second stage of the payment process, the Line Ministry²⁴ confirms the checks carried out by the Beneficiary and electronically validates the payment at payment level.</p> <p>The electronic validation of the Line Ministry confirms that:</p> <ul style="list-style-type: none"> a) the Beneficiary has carried out the relevant checks, has completed the payment checklist as required on the Structural Funds Database; b) the relevant National and Community rules, including Public Procurement Regulations and Eligibility Rules, have been complied with; c) the Beneficiary uploaded the relevant request for payment and required supporting documentation (refer to Chapter 12 – Uploading of Documents section); d) the amount being claimed corresponds to a valid contract; and e) the amount being claimed is arithmetically correct. 	<p>Directorate Programme Implementation of the Line Ministry</p>

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In the case of Non-Governmental Organisations, the payment is validated by the Director Programme Implementation, Ministry for Education and Employment, while for Local Councils, by the Director Programme Implementation, Ministry for the National Heritage, the Arts and Local Government.

Submission of documentation from Line Ministry to the EU Payments Unit

In summary the Programme Implementation Directorate is responsible for:

- liaising with the Accounting Officer with regards to the preparation of the required documents related to commitments in the Departmental Accounting System;
- Complete the online checklist under the Checklist tab at payment level; and
- All supporting documents are uploaded on the Structural Funds Database 14-20 at payment level.

3. The Beneficiary should consult the EU Payments Unit for further guidance on the payment process.

5.13 Revenue-generating operations

In case of revenue-generating operations, after their completion, Beneficiaries are guided by the obligations emanating from Article 61(1-6) of Regulation (EU) 1303 of 2013 (and subsequent amendments). In such cases, Beneficiaries are to be guided by the parameters issued in the respective call or as guided by the Managing Authority. During implementation, Beneficiaries are to be guided by Article 65(8) of the Common Provisions Regulation and to liaise with the Managing Authority on how payments should be processed through the Structural Funds Database 14-20.

5.14 Accounting System

In accordance with Article 125(4)(b) of Regulation (EU) 1303/2013, the Managing Authority (or Intermediate Body, as applicable) is entrusted with the function to ensure that:

[...] beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;

Beneficiaries and other bodies involved in the implementation of operations under the European Regional Development Fund, the Cohesion Fund and the European Social Fund need to maintain either a separate accounting system or adequate accounting code for all transactions relating to the operation. It is therefore the responsibility of the Beneficiary to ensure that all transactions related to each co-financed operation are recorded either:

- i. in a fully dedicated separate accounting system; or
- ii. through the assignment of a specific accounting code in the existing system (easily identifiable and retrievable, as well as auditable).

In addition, the Beneficiary should ensure that the auditor's certificate to the financial statements for each financial year is kept and filed for the full duration of the operation, and for the year following the last reimbursement received by the Beneficiary. This will be checked by the Managing Authority during its management verifications, as well as the accounting system in place.

It stands to be noted that operations which are exclusively implemented via simplified cost options in line with Article 67(1)(b), (c) or (d) of Regulation (EU) 1303/2013 or on the basis of a Delegated Act in line with Article 14(1) of Regulation (EU) 1304/2013 are not obliged to maintain a separate accounting system or an adequate accounting code. The obligation to maintain a separate accounting system or an adequate accounting code to record the transactions of an operation in line with Article 125(4)(b) of Regulation (EU) 1303/2013 is only applicable to *operations reimbursed on the basis of eligible costs actually incurred*. It is therefore applicable to:

- Operations who process payments based on eligible costs incurred in line with Article 67(1)(a) of Regulation (EU) 1303/2013;

- Operations who process payments in the form of standard scale of unit costs, lump sums, or flat rates in line with Article 67(1)(b), (c) or (d) but retain some activities whose payments are processed based on eligible costs incurred. Hence a mix of simplified cost options and eligible costs incurred means that the obligation to maintain a separate accounting system or an adequate accounting code needs to be adhered to.

A proper audit trail should be kept in all cases in line with the Managing Authority's circular published on www.eufunds.gov.mt and the documentation uploaded on the Structural Funds Database.

6. Drawdown of Funds from the European Commission

6.1 Statement of Expenditure

1. As explained in Chapter 5 of this Manual of Procedures, the Maltese Government pre-finances operations. However, Malta can only submit a claim for reimbursement from the EU when expenditure has been incurred. Therefore, Beneficiaries and Line Ministries are to ensure that invoices are received, and payments are processed in the shortest time possible.
2. It is important to note that **failure to ensure that payment procedures are initiated and processed efficiently may result in Malta losing funds.**
3. The paid invoices are stored in the Structural Funds Database and undergo a verification process by the Managing Authority / Intermediate Body. Once a substantial amount of expenditure is incurred, the Managing Authority will, at least three times a year, initiate the verification process for the submission of requests for reimbursement from the Commission. The Managing Authority prepares a timetable with established dates for the different stakeholders involved in the process, which is circulated accordingly to all involved parties. However, this does not preclude the Managing Authority from carrying out its verifications earlier and prior to initiation of the verification process. The Certifying Authority is informed by the Managing Authority of the dates it will be forwarding the relevant Statement of Expenditure (SoE) documents for certification.

6.1.1 *The Verification Process*

1. The verification process is an integral part of the implementation system of Cohesion Policy operations. Verification is the process whereby all payments effected by Treasury for each operation benefiting from Cohesion Policy Funds are checked again, verified correct at different levels, and are eventually submitted to the European Commission (by the Certifying Authority) for reimbursement. The verification process thus involves various levels and is undertaken through the Structural Funds Database:
 - a) **At Operation level** this process is undertaken by the Beneficiary (refer to the next section for details). Once the Statement of Expenditure at operation level is generated²⁵, the Managing Authority processes the Statement of Expenditure at the next level.
 - b) **At Priority Axis level** this process is undertaken by the Managing Authority. In line with Article 125(5) of Regulation (EU) 1303/2013, the Managing Authority undertakes documentary checks (which may include both on-site checks and desk-based checks through the Structural Funds Database 14--20) on payments listed in the Statement of

²⁵ Structural Funds Database Tutorial is available on SFD 14-20 under the relevant module.

Expenditure generated by the Beneficiary for each operation. During this stage, the Managing Authority may ask for additional clarifications and/or additional assurances from the Beneficiary. Those payments that are accepted in the verification process by the Managing Authority are then passed on (by the Managing Authority) to the Certifying Authority. At this stage, the Managing Authority recommends which payments selected originally at operation level may be considered for reimbursement from the European Commission. In the case of Aid Schemes under Article 107 of the Treaty, the verification process is undertaken by the Intermediate Body for the whole scheme and is forwarded to the Managing Authority for onward transmission to the Certifying Authority to include it in the certification process. The Managing Authority shall undertake its own sample checks and may ask the Intermediate Body for additional clarifications at this stage.

- c) Upon receipt of the Statement of Expenditure from the Managing Authority, the Certifying Authority undertakes the certification process.

6.1.2 *Verification Process at Operation Level*

1. In this Manual of Procedures, the focus is on the verification process undertaken by public Beneficiaries or Intermediate Bodies at Operation level.
2. Only payments that have been processed correctly (in line with Chapter 5) and against which there are no pending follow-up issues (including suspicion of irregularity) by any of the stakeholders in the system should be verified by the Beneficiary or IB.
3. When undertaking the verification process, the Beneficiary or Intermediate Body must undertake a review of any relevant pending payments not included in previous Statements of Expenditure. Beneficiaries/Intermediate Body may utilise the *ad hoc* checklist which is **only** a guidance of issues that the Beneficiary/ Intermediate Body should check prior to verifying the payments in the Statement of Expenditure at Operation level. The checklists below correspond to the status of the Beneficiary (i.e. whether public or not). The Beneficiary should refer to the relevant Administrative Verification Templates.
4. Once the Beneficiary/ Intermediate Body undertakes the review exercise and is satisfied that all expenditure incurred is in line with the Grant Agreement and contract, and is in compliance with the established Cohesion Policy procedures; the Beneficiary/ Intermediate Body can proceed to generate the Statement of Expenditure by operation (including all relevant payments pertaining to that operation) through the Structural Funds Database 2014-2020. It is important that the Beneficiary/ Intermediate Body generates the Statement of Expenditure within the stipulated deadline, as set out in the timetable issued by the Managing Authority.
5. It is important to note that the Statement of Expenditure is prepared for every operation or scheme separately.
6. The Beneficiary should refer to the Structural Funds Database tutorial: '*How to generate a Statement of Expenditure (SoE) by Operation*'. It is important that the Beneficiary/Intermediate

Body ensures that all necessary documents (as per section 12.3 of this Manual of Procedures) have been uploaded on the Structural Funds Database prior to generating the Statement of Expenditure. It is important to note that should the Managing Authority require any clarifications on expenditure included in the Statement of Expenditure, the Managing Authority submits (via an email) a request for clarification to the Beneficiary/Intermediate Body. The latter must reply immediately to the Managing Authority's request in view of the tight deadlines within which the verification process is completed. If the Managing Authority is satisfied with the Beneficiary's reply, the Managing Authority will proceed with the verification process. If the Managing Authority is not satisfied with the Beneficiary's reply, the Managing Authority may either request additional information, or may reject the expenditure raised by the Beneficiary in the Statement of Expenditure by Operation.

6.2 The Certification Process

The Certifying Authority has overall responsibility of the certification process. Once the verification process is concluded, the Statement of Expenditure (together with any relevant comments) are sent to the Certifying Authority for further processing. The Certifying Authority undertakes its own checks of the relevant documentation and may also ask for clarifications. The Certifying Authority may reject part of the Statement of Expenditure if the necessary assurances are not in place. The Project Leader shall ensure that any documentation tied to the procurement and payment process is filed in the appropriate manner (in the file of the applicable operation and uploaded at the relevant levels on the Structural Funds Database 14-20 in line with the Managing Authority's circular No. 05/2018) to ensure a full audit trail of the certification process (see table related to Documents to be retained).

7. Monitoring, Reporting and Evaluation

7.1 Monitoring and Evaluation

The Managing Authority has drawn up two Monitoring and Evaluation Strategies - one covering the European Social Fund and another covering the European Regional Development Fund and Cohesion Fund - in line with Article 56 of Regulation (EU) No. 1303/2013. The European Regional Development Fund / Cohesion Fund Monitoring and Evaluation Strategy was presented to the Monitoring Committee on 20th November 2015, whilst the European Social Fund Monitoring and Evaluation Strategy was presented to the said Committee on 26th February 2016.

7.2 Monitoring

The monitoring requirements for the 2014-2020 programming period are set in Articles 47 to 53 of Regulation (EU) No. 1303/2013. Monitoring is an on-going process which entails examining the progress on the implementation of interventions, in relation to expenditure and results to be achieved by the interventions, to ensure the attainment of results at Programme level. This is particularly important in reaching the targets and requirements set in the Performance Framework, as indicated in Article 22 of the said Regulation.

As stipulated in the Monitoring and Evaluation Guidance Documents issued by the DG REGIO²⁶ and DG EMPL²⁷, *'Cohesion Policy programmes are implemented in the context of multilevel governance with a clear demarcation of roles and responsibilities.'* Therefore, the actors involved in the European Union funds cycle all have a different role to play in delivering the necessary information to be used in the monitoring cycle. Although the Managing Authority has the overall responsibility for monitoring at Programme level, the monitoring and reporting systems rely on a bottom-up approach and it is important that all actors give their input in a timely and coherent manner.

The implementation system has several tools and structures that support the monitoring process. These are mainly the:

- Structural Funds Database 2014-2020. which is updated on a regular basis;
- Submission of Progress Reports on approved operations, automatically generated through SFD 14-20, and a Closure Progress Report which will be compiled at the operation's closure stage;

²⁶ DG REGIO (March 2014), Guidance Document on Monitoring and Evaluation: European Cohesion Fund and European Development Fund, https://ec.europa.eu/regional_policy/en/information/publications/evaluations-guidance-documents/2013/the-programming-period-2014-2020-guidance-document-on-monitoring-and-evaluation-european-regional-development-fund-and-cohesion-fund.

²⁷ DG EMPL (August 2018), Monitoring and Evaluation of European Cohesion Policy: European Social Fund, <https://ec.europa.eu/sfc/en/2014/document/esf-monitoring-and-evaluation-guidance>.

- Monitoring Committee, set up in line with Articles 47 and 49 of the said Regulation;
- Ministerial/Intermediate Bodies' Project Steering Committees organised by the respective Line Ministries;
- High Level Monitoring Meetings organised by the Managing Authority with individual Line Ministries and/or Beneficiaries; and
- Cabinet.

7.2.1 Monitoring of Results - Use of Indicators

Monitoring of the European Structural and Investment Funds is facilitated through the use of indicators, making it possible to measure progress in relation to the baseline situation at pre-project level, and the achievement of targets for each operation, Priority Axis and the Operational Programme as a whole.

There are three sets of indicators, being:

- Output indicators, which relate to what is directly produced/supplied through operations/interventions supported through European Union funding. Outputs are therefore measured at the level of supported people, supported entities, goods or services delivered, according to the respective indicator and its measurement unit.
- Result indicators, which measure the immediate benefits of the intervention/group of interventions on the target area or participants. Therefore, result indicators go beyond output indicators in so far as they capture a change in the situation, in most cases related to supported entities or participants (depending on the measurement unit of the respective indicator), e.g. in their employment situation.
- Financial Indicators, which relate to the total amount of eligible expenditure entered into the accounting system of the Certifying Authority and certified by that Authority in accordance with point (c) of Article 126 of the Regulation.

In both Operational Programmes I and II, the result and output indicators are described and quantified at Investment Priority level within each Priority Axis. The targets established for the output and result indicators are to be achieved at Programme level by the end of the programming period. Nonetheless, several output and financial indicators which are contributing to the Performance Framework have an additional milestone for 2018, with specific targets to be attained by 2018.

As stated earlier on, to achieve the indicators at Programme level, a bottom-up approach is adopted whereby each operation selected for funding has a set of output and result indicators, which are established in the Grant Agreement. The Beneficiary is responsible to ensure the attainment of such indicators, which will ultimately contribute towards the attainment of the indicators set at Programme level under the relevant Priority Axis.

The indicators of each operation shall be monitored mainly through the Structural Funds Database (SFD 14-20) and the Progress Reports on the individual operations. However, additional surveys and/or research activities may be undertaken (by the Beneficiary and/or the Managing Authority) in the case of certain result indicators.

The Beneficiary is responsible for collecting, verifying and validating the data inputted in the Structural Funds Database 14-20 and the Progress Reports. It is important to note that monitoring of indicators is a condition of the grant and failure to attain the agreed targets could lead to recovery of funds on the operation and loss of funds for Malta.

7.3 Reporting Requirements

7.3.1 Reporting Requirements by the Beneficiary

- **Progress Report on individual operations**

The information previously requested within the project progress report is available through the Structural Funds Database. Hence the Managing Authority will be confirming with the beneficiaries that the information on the Structural Funds Database is updated. This does not exclude the need for the Managing Authority to ask ad hoc information from the beneficiary as part of its day-to-day monitoring, and in order to fulfil its reporting requirements.

- **Closure Report on individual operations**

Upon completion of the operation, the Beneficiary compiles a Closure Report. The report must be reviewed by the Director Programme Implementation and endorsed by the Permanent Secretary (in the case of public sector operations). In the case of operations implemented by Local Councils, the report must also be signed by the Executive Secretary and the Mayor. In the case of voluntary organisations, the report should be signed by the legal representative of the organisation and the person responsible for the organisation's finances.

The original report is to be submitted to the Managing Authority.

7.4 Article 71 of Regulation (EU) No. 1303/2013

In accordance with Article 71 of Regulation (EU) No. 1303/2013, changes to any operation shall be brought to the attention of the Managing Authority.

The Managing Authority shall monitor the obligations under Article 71 for each closed operation (in the form of a Beneficiary declaration), in conjunction with the annual monitoring of indicators and other monitoring obligations, as deemed relevant. In addition, the Managing Authority (on sample basis) will undertake site visits to check the durability of the co-financed operations.

7. 5 Evaluation

In line with Articles 54-57 of Regulation (EU) No. 1303/2013, evaluations will be carried out to improve the quality of the design and implementation of programmes, as well as to assess their effectiveness, efficiency and impact. During the 2014-2020 programming period, the European Commission is putting further emphasis on the implementation of a results-oriented policy, as a means of moving away from an excessive focus on the absorption of funding.

All Beneficiaries and other relevant stakeholders shall co-operate fully with the Managing Authority and the European Commission (and their delegated Contractors) on evaluation exercises. The Managing Authority shall inform the Beneficiary in advance of any evaluation exercises. The Beneficiary is to ensure that any information and feedback provided during an evaluation exercise is accurate and relevant, and is adequately filed by the Beneficiary.

Moreover, if approached by an evaluator directly, the Beneficiary is to promptly inform the Managing Authority to ensure full co-ordination of the exercise and avoid duplication of effort and resources.

8. Audit and Control

8.1 Introduction

This section provides an overview of financial control procedures applied for co-financed expenditure. The framework for proper financial management, control and audit is set out in Regulation (EU) N° 1303/2013.

8.2 Management Verifications (First Level of Control)

1. In accordance with paragraphs 4(a) and 5 of Article 125 of Regulation (EU) No. 1303/2013, the Managing Authority (or its delegated Intermediate Body, where applicable) shall verify that the co-financed products and services have been delivered. The Managing Authority shall also verify that expenditure declared by the beneficiaries has been paid, and that it complies with applicable law, with the operational programme and with the conditions for support of the operation (see also Chapter 5 of this Manual of Procedures). The Managing Authority records its management verifications in line with specific templates however in addition ad hoc templates would be created as required.
2. The verifications carried out by the Managing Authority include the following procedures:
 - administrative verifications in respect of each application for reimbursement presented by beneficiaries;
 - on-the-spot verifications of operations.
3. The **administrative verifications** are based on an examination of the claim and relevant supporting documentation, such as invoices, delivery notes, bank statements, progress reports and timesheets²⁸. The administrative verifications aim at ensuring that expenditure is carried out in line with the Grant Agreement/Commission Decision²⁹ and Delegated Act,³⁰ and that the relevant procedures have been followed, whilst ensuring that operations and expenditure comply with Community and national rules. The administrative verifications are also based on the examination of different procurement process stages, ensuring a clear audit trail and a transparent evaluation process, in line with the tender document.
4. The Managing Authority will also carry out **physical on-the-spot checks**. These checks focus on the physical deliverables of the operation as shown in Annex 3 and 4. In the case of European Social Fund, on-the spot visits will be organised (while the operation is being implemented – e.g.

²⁸ Supporting documents might be reduced/ change when operations are implemented through simplified costs options

²⁹ A Commission Decision is applicable in the case of major operations.

³⁰ In cases of certain operations making use of simplified costs options which are covered by a Delegated Act

during a training session) to verify the reality of expenditure. The Managing Authority may use external expertise to support it during checks related to an operation's physical implementation.

5. In the case of aid schemes falling under Article 107 of the Treaty, administrative and physical verifications are carried out by the Intermediate Body. The Intermediate Body can also be supported by external technical expertise.
6. Administrative and physical verifications may be carried out throughout the operation's lifetime. The Managing Authority/ Intermediate Body shall inform the Department of Contracts/Beneficiary that an administrative/physical check will take place at least one day in advance. The check-list template³¹ (refer to Annex 2) used during the visit is sent to the Beneficiary together with the on the spot-check notification, to help the Beneficiary prepare for the visit. The on-the-spot check reports for both administrative and physical checks will be uploaded on the Structural Fund Database. All stakeholders can view the relevant reports on Structural Fund Database.
7. The Managing Authority will also carry out on-the-spot checks through the online public procurement system - ePPS. Most Contracting Authorities have transitioned from traditional procurement to e-Procurement being the standard e-Procurement solution. E-Procurement is regulated and governed by public procurement legislation, being: Legal Notice 352/2016 (and subsequent amendments), European Directive 2014/24/EU for Classic Procurement, Legal Notice 351/2016 (and any subsequent amendments), and European Directive 2014/25/EU for Utilities.
8. Finally, the Beneficiary is to note that the objectives of the Managing Authority checks are not intended to offer the Beneficiary any comfort/guarantees regarding audits but are merely management verifications in line with the relevant Regulation.

8.2.1 Follow-up Action to the Management Verifications

1. Following an on-the-spot check, the Managing Authority shall communicate with the Beneficiary on issues detected during the management verification. The Beneficiary will be given adequate time to reply, after which the Managing Authority will proceed to close the report and include any follow-ups that may be deemed necessary. If the Project Leader responsible for the operation fails to reply to the Managing Authority's queries or to endorse the report within the stipulated deadlines, the final report may still be considered closed and the Managing Authority may upload the final report on SFD14-20 for the benefit of the relevant stakeholders.
2. Any follow-up action required by the Beneficiary (as identified by the Managing Authority) will be recorded in the report, so that action is undertaken within a stipulated timeframe. Failure to abide

³¹ The Managing Authority records its management verifications in line with specific templates however in addition ad hoc templates would be created as required.

by the set deadline may result in the Managing Authority taking any necessary action to close off the report, and to record its findings accordingly.

3. In the case of Aid Schemes falling under Article 107 of the Treaty, follow-up checks are undertaken by the Intermediate Body managing the scheme, as necessary.

8.3 Systems Audits and Audits on Operations (Second Level of Control)

1. Systems audits and audits on operations are carried out by local and foreign audit institutions. The Internal Audit and Investigations Department (IAID) is the designated Audit Authority in terms of Articles 123 and 127 of Regulation (EU) N° 1303/2013 and is the main entity responsible for system audits and audits on operations. The audits (obligatory by the same Regulation) are carried out on an on-going basis throughout the programming period, as well as during the closure of the Operational Programme (up to three years following the closure of the Operational Programme).
2. **Systems audits** are carried out in accordance with paragraph 1 of Article 127 of Regulation (EU) N° 1303/2013, to verify the effective functioning of the management and control systems of the Operational Programme. Systems audits may be carried out on the main implementing bodies and other horizontal stakeholders, as well as on cross-cutting issues, by undertaking audits on operations.
3. **Audits on operations** are carried out on the basis of an appropriate sample, to verify expenditure declarations to the European Commission in accordance with paragraph 1 of Article 127 of Regulation (EU) N° 1303/2013. The audit authority may decide to audit a complementary sample of operations in order to guarantee coverage of different types of operations, beneficiaries and Union priorities.

An audit on operation usually includes:

- Reconciliation between the expenditure claimed and the supporting documents; and
 - Verification of the execution of the operation, the eligibility of the expenditure, the provision of co-financing, and of compliance with relevant EU and national legislation, including, where applicable, public procurement, state aid, equal opportunities and the environment.
4. The Audit Authority will inform the Beneficiary that is to be audited, at least one day in advance.
 5. 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.
 6. The Audit Authority will send all audit reports to the Managing Authority, for onward submission to the respective auditee, as it deems necessary, and will copy them concurrently to the Certifying Authority.

7. The Beneficiary is in the first instance responsible to follow up any recommendations in any audit report prepared by the Audit Authority. The Line Ministry is to ensure that the Beneficiary has followed up the recommendations within the relevant time-timeframes. The Managing Authority is responsible to coordinate the replies on feedback and comments to be provided to the Audit Authority. These replies are to be submitted within one month of the date of the draft audit report.
8. Within a reasonable time, the Managing Authority is to ensure that remedial action is taken on the findings and recommendations included in the final audit report. The actions taken are to be communicated to the Audit Authority through the Managing Authority. The Audit Authority reserves the right to organise follow-up audits, if necessary.
9. Beneficiaries should note that other organisations, including the National Audit Office as well as the European Commission and the European Court of Auditors, may undertake audits on operations. Other organisations, such as the State Aid Monitoring Board or the Value Added Tax Department, may carry out checks on the respective operations, to ensure that operations are being implemented in accordance with State Aid or VAT regulations.

8.4 National Audit Office

1. As the external auditor of Government, the National Audit Office may carry out audits on operations co-financed through the ESI funds. The National Audit Office may carry out audits on operations which are implemented by public entities and agencies, as well as by the private sector or by voluntary organisations.
2. Beneficiaries are to notify the Managing Authority in good time when they are in receipt of an announcement regarding an audit on any operation co-funded under any one of the two Operational Programmes. The Managing Authority, on its part, will seek to support the Beneficiary in the process.
3. Beneficiaries and other stakeholders (whether public or not), shall grant the National Audit Office full access to the documentation related to their respective operation.

8.5 EU Audit Missions

1. Officials from the European Commission and the European Court of Auditors carry out audits (both on systems and operations) on co-funded operations.
2. 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 Managing Authority to ensure full co-ordination and support.
3. It is the practice for the Managing Authority and/or the Audit Authority (as the case may be) to co-ordinate a timetable for the audit mission and to inform stakeholders accordingly.

4. Beneficiaries and other stakeholders (whether public or not) shall grant the European Union auditors (and/or their delegated contractors) full access to the documentation tied to the operation.

8.6 Preparing for Audit Visits (applicable to all audits)

1. It is common practice for the auditors to spend a few days examining documentation held by the Beneficiary organisation, the Managing Authority, the Department of Contracts, the Treasury, as well as the Certifying Authority. Auditors may also ask to be taken on-site to see the operation's implementation on the ground.
2. In preparation of an audit mission, Beneficiaries should:
 - Ensure that all persons (including technical {possibly contracted} personnel) within the Beneficiary organisation who are involved in the implementation of the operation being audited, are available during the audit mission. Priority must be given to the audit by all those involved. It is important that such persons are appropriately briefed by the Project Leader on the scope of the audit mission. The Managing Authority will also support the Project Leader in this regard.
 - Ensure that all the documentation tied to the operation is made available and has been filed in accordance with the Retention of Documents chapter of this Manual of Procedures and Annex 11 (Chapter 12), 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, as auditors may ask for copies of filed documents. The Beneficiary is to take note of any copies of documentation that is given to the auditors and is to submit this list to the Managing Authority upon completion of the audit.
 - Ensure that the actual site where the operation is being implemented is in accordance with the conditions stipulated in the Grant Agreement, particularly in relation to European Union publicity requirements. The technical supervisor should also be available for site visits. It is important to note that auditors may give no prior notice regarding site visits and may ask the Beneficiary at short notice for an ad-hoc site visit.
3. Generally, auditors will seek to examine the following documentation during an audit visit³²:
 - a. **Documentation tied to the Operation:**
 - Copy of application submitted;
 - Preliminary Agreement;
 - Signed Grant Agreement between the Managing Authority and the Beneficiary;
 - Addenda to the Grant Agreement and letter/s stipulating any changes to the operation;
 - Commission Decision in the case of Major Operations;

³² 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 of financial management and therefore part-and-parcel of any Beneficiary's obligations may not be necessarily listed here.

- Feasibility studies & technical studies (where applicable).

b. Tendering & Contracting

- Tender document launched on the market;
- 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 and during the call;
- 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 {CAN}, where applicable);
- Price budget estimates;
- Guarantees, insurance policies and Malta Environment and Planning Authority permits, where applicable;
- Contract drawn up and signed by the Department of Contracts/Beneficiary³³ and the Contractor;
- Any subsequent addenda to a contract;
- Any other relevant documents related to the contracts (including employment contracts³⁴) of the operation.

c. Other Community policies

- All relevant documentation related to other community policies, including state aid, equal opportunities and sustainable development.

d. Payments

- Copies of the Statement of Expenditures of the operation;
- Copies of a sample of the invoices listed in the Statement of Expenditures;
- Debit Advices raised through DAS;
- Receipts obtained from the Contractors;
- Certification of works by the technical supervisor, acceptance certificates / reports for supplies, services.

e. Information and Publicity

³³ In the case of contracts administered by the Beneficiary organisation.

³⁴ Where applicable.

- Photos or recordings evidencing activities or publicity undertaken in relation to the operation;
- Original adverts, brochures, leaflets, or any other publicity material and promotional items produced for the operation;
- 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 onsite visits (such as billboards, posters, permanent plaques and identification stickers or plaques on physical items/equipment).

f. **Monitoring reports**

- Copies of progress reports/updates sent to the Managing Authority or issued through SFD 14-20;
- Record keeping of time sheets (as applicable).

g. **Others**

- Lists of participants;
- Selection of participants (mainly in case of the European Social Fund and related operations);
- Progress / Performance reports of contracted employees / trainers;
- Documentation related to the work of trainers (lesson notes / plans, weekly/fortnightly/ monthly³⁵ progress reports by the trainers);
- Attendance sheets;
- Evaluation sheets.

8.7 Follow-up to an Audit Mission

Once the audit mission is complete, the auditors submit a report with their findings and recommendations (where necessary). If there is the need, the auditors may ask any of the stakeholders for clarifications. In case of European Commission audits, the replies will be co-ordinated by the Managing Authority/Audit Authority, and a co-ordinated reply will be given on behalf of the Member State.

³⁵ As the case may be.

8.8 Audits after Closure of Programme

Beneficiaries should note that operations can be audited even after the operation has been closed. In this regard, **all documentation tied to the operation must be retained by the Beneficiary, as specified under section 12.1 of this manual.**

8.9 Ex-Post Management Control

1. Beneficiaries are to take note of Article 71 of Regulation (EU) N° 1303/2013. All grants are bound by the conditionality in this article, namely that an operation comprising investment in infrastructure or productive investment, shall repay the contribution from the European Structural and Investment Funds if within five years of the final payment to the Beneficiary, or within the period of time set out in State aid rules, where applicable, it is subject to any of the following:
 - a) a cessation or relocation of a productive activity outside the programme area;
 - b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
 - c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

An operation comprising investment in infrastructure or productive investment shall repay the contribution from the European Structural and Investment Funds if within 10 years of the final payment to the Beneficiary the productive activity is subject to relocation outside the Union, except where the Beneficiary is an SME. Where the contribution from the European Structural and Investment Funds takes the form of State aid, the period of 10 years shall be replaced by the deadline applicable under State aid rules.

Operations supported by the European Social Fund and operations supported by the other European Structural and Investment Funds that are not investments in infrastructure or productive investments, shall repay the contribution from the Fund only where they are subject to an obligation for maintenance of investment under the applicable State aid rules, and where they undergo a cessation or relocation of a productive activity within the period laid down in those rules.

2. All Beneficiaries are to inform the Managing Authority immediately of any such changes to the operation. Changes may require that financial corrections (partial or in full as applicable) be made, which could result in the cancellation of all or part of the European Union contribution.
3. In line with Article 61 and as per Article 65(8) of (EU) 1303/2013, the Beneficiary must also monitor the revenue being generated by the operation to ensure that this is in line with the revenue indicated at application stage. Should there be any substantial deviations (as defined in the Regulation/Commission guidance documents), the Beneficiary must immediately inform the Managing Authority in view of the fact that such changes may also require financial adjustment/correction to the Public Eligible allocation to the operation. **The Beneficiary will be held responsible for failing to report such changes in a timely manner, which could result in loss of funds not only to the Beneficiary, but also to Malta.**

9. Reporting on Irregularities and Fraud

9.1 Irregularities and Financial Corrections

1. An **irregularity** is defined as *'any breach of EU law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the EU by charging an unjustified item of expenditure to the budget of the EU'*³⁶.

2. 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 systemic irregularities, the recoveries can extend to other or all components of the operation, and possibly to other operations being implemented by the same beneficiary.

3. Irregularities can be individual or systemic in nature:

- An individual irregularity is a one-off error which is independent of other errors in the population or deficiencies in the systems;
- A systemic irregularity is an error, repeated or not, resulting from the existence of serious deficiencies in the management and control systems for which requirements are set out in Title VIII - Management and Control of Regulation (EU) N° 1303/2013. System deficiencies are weaknesses in the management and control system.

4. The amount of the financial correction is assessed, wherever possible, based on individual cases, and is equal to the exact amount of expenditure wrongly charged to the EU budget. However, precisely quantified corrections are not always possible or cost effective, if extensive additional verification work is needed.

Commission Decision of 14.5.2019 (C(2019) 3452 final) (Annex 7) lays down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement. The guidelines for determining financial corrections, as laid down in this Decision, provide guidance on the principles, criteria and scales that should be applied in respect of financial corrections made by the Managing Authority concerning expenditure financed by the Union under shared management, for non-compliance with the applicable rules on public procurement. In such cases a flat rate correction, proportionate to the seriousness of the irregularity or the system deficiency, should be made, as follows:

- *Quantifiable corrections* – The financial impact of an irregularity is quantifiable precisely when it is possible, based on an examination of the individual irregularity, to calculate the

³⁶ Article 2 (36) of Regulation (EU) N° 1303/2013

exact amount of expenditure wrongly declared to the Commission (e.g. ineligible expenditure). In such cases the financial correction should be calculated exactly.

- *Non-quantifiable corrections* – In other cases, due to the nature of the irregularity or system deficiency, it may not be possible to quantify precisely the financial impact (e.g. non-compliance with public procurement or publicity rules). In these cases, a flat rate correction may be applied to the individual operation, based on the seriousness of the irregularity or deficiency identified.
- *Extrapolated corrections* – Where irregularities have occurred in a great number of activities throughout an operation, but it is not cost-effective to verify the regularity of such activities not included in the verified sample, the financial correction may be based on extrapolation. In this case, the results of a thorough examination of a representative sample of the individual cases concerned are extrapolated to all expenditure in the population, in accordance with generally accepted auditing standards.

5. Upon detection of systemic irregularities in an operation, the Managing Authority shall immediately notify the Beneficiary and relevant stakeholders (Audit Authority, Certifying Authority, Treasury and other stakeholders as may be applicable), informing them of the immediate measures to be taken. These may include recovery of irregular amounts, suspension of payments on the operation, interruption of payments on other operations managed by the same Beneficiary, corrective action required to reinstate adequate management and control systems so that the risk of any future recurrence is mitigated, and relevant deadlines for all action.

6. Irregular amounts, for both systemic and individual irregularities, shall be recovered ***within three months of circulation of report***³⁷. The periods established shall be interrupted in the case of legal proceedings or other duly motivated cases. Interest charges may apply.

7. When funds have to be recovered from a Beneficiary and the latter does not affect the reimbursement, reminders will be sent to the Beneficiary following the three-month recovery period cited in point 6 above. Should the Beneficiary fail to submit the relevant amount, the Managing Authority will institute legal proceedings through the Attorney General for the recovery of the amounts involved.

9.2 Detecting and reporting irregularities

1. Article 122 of Regulation (EU) N^o. 1303/2013 regulates the reporting of irregularities.
2. There are various methods as to how irregularities can be detected:
3. a. **At management and control level through:**
 - Checks undertaken by stakeholders (including Beneficiaries) during implementation (e.g. payment process);

³⁷ MFIN Circular N^o. 3/2014 'Guidelines regarding recoveries of irregular expenditure paid by Treasury on EU Funds under shared management'

- Checks made during the management verifications (both administrative and physical) by the Managing Authority;
- Checks made during the certification process by the Certifying Authority;
- Checks undertaken by other stakeholders in the system;
- Audits under Article 127 of Regulation (EU) N^o. 1303/2013; and
- Audits carried out by other audit bodies.

b. Through other methods such as:

- Fiscal controls;
 - Evaluations;
 - Initial/judicial enquiry;
 - *Ex-post* checks and controls;
 - Correction of accounts (reconciliations);
 - Denunciation;
 - Grievance or complaint (anonymous or not);
 - Preventive controls;
 - Release of the guarantees;
 - Press information;
 - Parliamentary statements;
 - Situation of the operator;
 - Situation of the beneficiary;
 - EU controls.
4. Any player (the Managing Authority, Certifying Authority, Audit Authority, Treasury, Department of Contracts, Line Ministry, Beneficiary or any other relevant entity) involved in the implementation of European Structural and Investment Funds, who, at any stage of implementation and / or control procedure, becomes aware of an irregularity (whether individual or systemic), has the duty to **IMMEDIATELY** report the irregularity to the Managing Authority in accordance with the procedures specified in this chapter. The person / organisation detecting an irregularity at any stage of the implementation of the programme, shall prepare the European Structural and Investment Funds Irregularity Report (Annex 6), giving details on the relevant

irregularity. The endorsed report is then passed on to the Financial Control Unit within the Managing Authority. **The Managing Authority shall then insert the irregularity on the Structural Funds Database.**

5. Prior to insertion on the Structural Funds Database, the irregularity report is confirmed by the Head of the Managing Authority. Once the irregularity has been confirmed through the system, the report can be distributed through the Structural Funds Database to the Beneficiaries and all relevant stakeholders.
6. In the case of public sector Beneficiaries, they are to notify the Managing Authority and then prepare the report. The report, signed by the person reporting the irregularity, is sent to the Director (Policy Development and Programme Implementation) of the relevant Line Ministry, who counter-signs the report and forwards it immediately to the Managing Authority, copying the Audit Authority and the Certifying Authority. The Financial Control Unit within the Managing Authority will receive the endorsed report and will draw up the report on SFD. Once the irregularity report has been drawn up, the irregularity is confirmed as per usual procedure and is distributed through the Structural Funds Database to all relevant stakeholders.
7. There might be circumstances where officials feel constrained to by-pass the normal system of reporting irregularities. Whenever this situation arises, an official is given the opportunity to report any irregularity directly to the Managing Authority (copying the Audit Authority and Certifying Authority) by filling in the ESI Funds Irregularity Report (ESIFIR).
8. In the case of non-public Beneficiaries (NGOs, partners), an endorsed irregularity is sent to the Managing Authority, which is then inputted in the Structural Funds Database by the Financial Control Unit. Once the irregularity has been carried out, the irregularity is distributed through to the system to the Audit Authority and the Certifying Authority.
9. In the case of private Beneficiaries, the endorsed report is sent to the Managing Authority and the Financial Control Unit will input the irregularity. Once the irregularity has been inputted in the Structural Funds Database, the irregularity is then confirmed and distributed to all relevant stakeholders.
10. As can be inferred from above, the Audit Authority would be in copy of irregularity reports. The Audit Authority fulfils also the role of the Anti-Fraud Co-ordinating Service (AFCOS) in Malta. In this framework, AFCOS (Malta) reports irregularities to OLAF (the European Anti-Fraud Office) using the Irregularities Management System, if the irregularities fall within the respective

parameters. These parameters are described in Article 122(2) of Regulation (EU) N° 1303/2013.

9.3 Content of an Irregularity Report

The template of the European Structural and Investment Funds Irregularity Report includes the following details:

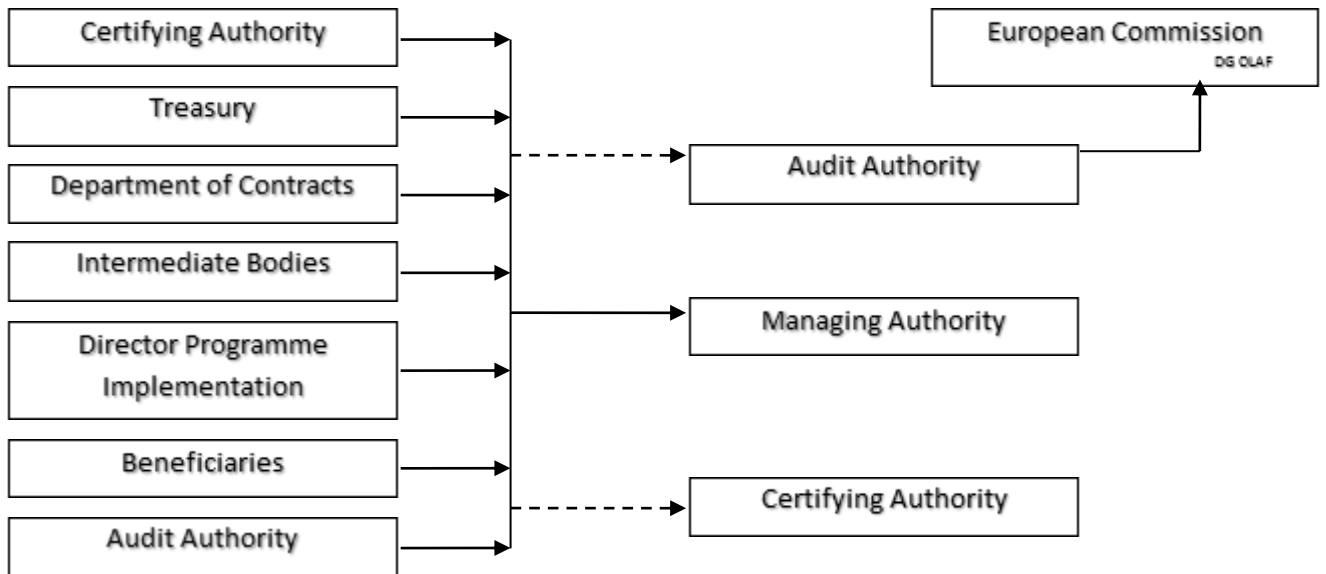
- General information on the Operational Programme, Fund, Union priority and operation affected by the irregularity;
- The date and source of the information of when the irregularity was detected;
- The organisation detecting the irregularity;
- The total recoverable amount and its distribution between the different sources of funding;
- Indication on how the irregularity was detected; The Regulation / Decision / procedure which has been infringed;
- The nature and amount of the expenditure;
- The practices employed in committing the irregularity;
- Explanation of how the irregularity was quantified;
- Type of irregularity;
- The AFCOS³⁸ priority which the irregularity is related to;
- Qualification of the irregularity;
- Accounting year in which the expenditure will be raised;
- The period during which or the stage at which the irregularity was committed;
- The body or bodies involved, except in cases where such information is of no relevance in combating irregularities because of the character of the irregularity concerned;
- The financial consequences, the suspension (if any) of payments, the procedure to be undertaken for recovery, and relevant deadlines;
- Other applicable information; and
- Signatures and dates of the report³⁹.

³⁸ Anti-fraud coordination services - EU Member States are required to designate an AFCOS in accordance with Article 3(4) of Regulation 883/2013 to facilitate effective cooperation and exchange of information, including information of an operational nature, with OLAF.

³⁹ In cases where the Project Leader fails to sign the Irregularity Report within the stipulated deadline, the final report will be considered closed and the MA may upload it unsigned on SFD 14-20 for the benefit of the relevant stakeholders.

Table 2: Irregularities

Detecting Irregularities



9.4 Fraud

Whilst irregularities involve breaches of certain conditions of funding and may be the result of genuine errors (e.g. not filling out a form correctly), fraud is a deliberately committed irregularity constituting a criminal offence.

The Convention drawn up based on Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, defines "fraud", in respect of expenditure, as 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.

According to Article 59(2) of the Financial Regulation, Member States shall take all necessary measures, including legislative, regulatory and administrative measures, to protect the Union's financial interests, namely by preventing, detecting and correcting irregularities and fraud.

The Managing Authority has a clear commitment to combat fraud and corruption through preventive and detective control mechanisms, and transmits cases to the competent authorities for investigations and sanctions.

9.5 Preventive Actions

The Managing Authority is determined to prevent fraudulent activities. For this purpose, the Managing Authority encourages all Beneficiaries to put in place an effective internal control system which aims at deterring potential fraudsters and in maximising the commitment of staff to combat fraud.

For this purpose, the Beneficiary should endeavour to:

- Raise awareness through formal training of all its staff complement involved in the management of the EU Funds about preventative and detective control measures, awareness of the specific roles and responsibilities of all stakeholders, and of reporting mechanisms;
- Put in place an effective separation of duties, particularly with respect to financial and control units, and rotate staff (when possible);

- Promote an ethical culture among staff to act honestly and with integrity to safeguard all national and Community resources;
- Ensure that staff involved in the management and implementation of EU funds is aware of possible conflict of interest or fraudulent behaviour at every stage of implementation;
- Encourage its staff complement to report any case of suspected fraud concerning EU Funds to the Managing Authority, either through their respective hierarchy or directly if necessary;
- Conduct regular verifications ensuring that staff in charge is aware of the Commission and any national guidance on fraud indicators (as in the European Commission 'Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF)⁴⁰.

9.6 Detective Actions

As asserted by the European Union, effectively implemented robust control systems can considerably reduce the fraud risk but cannot eliminate fraud completely from occurring or in remaining undetected. Therefore, the systems must also ensure that procedures are in place to detect fraud and to take appropriate measures once a suspected case of fraud is detected.

The below procedure highlights the authority levels, responsibilities for action, and reporting lines established in the event of suspicion of fraud:

- When any relevant authority or Beneficiary, or their members of staff, suspects 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 Beneficiary/Ministry/Managing Authority. The official with whom the report was filed must immediately relay the message to the Head of the Managing Authority;
- Timeliness plays a crucial role when addressing suspected cases of fraud. Consequently, when identifying cases of potential fraud, the officers' immediate action is to alert his/her immediate superior verbally. This claim, which is treated with confidentiality (subject to legal obligations), is followed up by a written report so that the relevant authorities can be informed and asked to investigate further;
- The Body reporting the suspicion of fraud must act with caution in dubious situations which might lead to fraudulent transactions. In the case of detection of possible forged documents, the Treasury is advised to temporarily stop all payments addressed to the supplier/contractor in question;
- The body identifying/reporting the irregularity/suspected fraud should inform in writing the Permanent Secretary and/or Head of the Beneficiary, and the Internal Audit and Investigations

⁴⁰<https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Financial%20Control%20Unit/Documents/Links%20and%20downloads/Guidance%20on%20European%20Structural%20and%20Investment%20Funds%202014-2020%20%E2%80%93%20Management%20and%20Control/Guidelines%20for%20national%20anti-fraud%20strategies%20for%20ESIF%20EN.pdf>

Department, as per Article 16 of the Internal Audit and Financial Investigations Act (chapter 461 of the Laws of Malta), which states that *“If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director (of IAID), and shall supply to the Director all information in his possession relating thereto”*.

- In terms of Article 18 of the Internal Audit and Financial Investigations Act, *“whenever, and as soon as the Director firmly establishes the existence of suspected cases of irregularities and, or suspected cases of fraud concerning the responsibilities of the auditee under review, the Director shall, if he is of the opinion that the irregularity, if proved, would constitute a criminal offence immediately inform the Attorney General”*.
- The Attorney General will evaluate the case in question and determine whether:
 - To forward the case to the Malta Police for a criminal investigation; or
 - Terminate proceedings of the case at that juncture.
- The Commissioner of Police forwards to the body reporting the case a copy of the report of the investigation, including any court action to be taken by the Police.
- Where the investigation report concludes that no criminal proceedings are required (i.e. it is prima facie confirmed that the suspicion of fraud is not correct), the Managing Authority advises Treasury to proceed with the payment of pending invoices.
- On the other hand, where the investigation report concludes that criminal proceedings are required (i.e. it is confirmed that the suspicion of fraud is factual), the Managing Authority recommends the withdrawal of any suspicious payments from certification already carried out.

9.7 Effective and proportionate anti-fraud measures

Article 125(4)(c) of Regulation (EU) N^o: 1303/2013 obliges the Managing Authority to put in place effective and proportionate anti-fraud measures considering the risks identified. The Managing Authority will use a fraud risk self-assessment tool to assess the impact and likelihood of common fraud risks occurring. The tool identifies specific fraud risks in relation to three processes, namely:

- i. Selection of applicants;
- ii. Implementation and verification of the operations;
- iii. Certification and payments

For each of the specific risks, the first step is to quantify the risk that a given fraud type would occur, by assessing impact and likelihood, ignoring the current mitigating internal controls (**gross risk**). The second step is to factor in the current controls in place and assess the effectiveness of these controls to mitigate the gross risk. The resulting risk (the **residual risk**) should then be assessed on whether it is tolerable or not. If it is not tolerable, additional controls would have to be introduced till the risk level is considered by the Managing Authority to be tolerable (**target risk**).

Thus, the output of the fraud risk assessment identifies those specific risks with respect to which not enough measures are in place to reduce the combined likelihood and impact of potentially fraudulent activity to an acceptable level. The team carrying out the assessment, mostly made up of officers managing the European Structural and Investment Funds, should then come up with further corresponding anti-fraud measures, mostly in the form of mitigating internal controls. The fraud risk assessment exercise is undertaken periodically or whenever a significant alteration to the management and control system is made.

10. Information and Publicity

10.1 Introduction

This section provides information on European Social and Investment Funds publicity requirements to ensure that the results and achievements of the Programmes and operations co-funded by European Union funds are communicated as widely and effectively as possible. These measures are intended to ensure transparency and increase visibility, awareness and promote further the role of the European Structural and Investment Funds⁴¹.

In this regard, the Managing Authority has prepared a Communication Strategy in line with Articles 115-117 and Annex XII of Regulation (EU) 1303/2013, and Commission Implementing Regulation (EU) 821/2014. This was approved by the Monitoring Committee of the European Regional Development Fund and Cohesion Fund on 22nd May 2015 in line with Article 110(2) of Regulation (EU) 1303/2013.

Malta has adopted a common plan to cover information and communication activities related to Malta's Operational Programmes which fall under the European Social and Investment Funds. The Communication Strategy outlines the following topics:

- (a) the legal framework;
- (b) objectives of the Communication Strategy;
- (c) Malta's experience in communicating European Union Funds throughout the 2007-2013 Programming Period;
- (d) communication strategy framework, including the responsibilities of the Managing Authorities, Beneficiaries, Intermediate Bodies and collaboration with other stakeholders;
- (e) target groups;
- (f) key communication messages;
- (g) information and publicity measures including the necessary tools and annual communication plan;
- (h) monitoring and evaluation of this strategy;
- (i) budgetary allocation;
- (j) timeframes.

The Managing Authority, Intermediate Bodies, and Beneficiaries shall take the necessary steps to provide information to and communicate with the public on operations supported by an Operation Programme in accordance with Annex XII of Regulation (EU) 1303/2013.

⁴¹ As required by Articles 115-117 of the Council and European Parliament Regulation N° 1303/2013.

10.2 Role of the Managing Authority (Programme Level information and publicity)

In line with Annex XII of the said Regulation, the Managing Authority and/or the Intermediate Body provides guidance while ensuring compliance with the information and publicity regulations and requirements at Programme and operation level. The Managing Authority and/or the Intermediate Body undertakes this function through both written guidance and through training and information sessions which are organised from time-to-time.

10.3 Role of the Beneficiary (Operation Level information and publicity)

Besides the responsibilities stipulated in Article 2.2 of Annex XII of Regulation (EU) 1303/2013 as well as Articles 3-5 of Commission Implementing Regulation (EU) 821/2014, the Beneficiary has several responsibilities which need to be adhered to, including:

- Implementing publicity and information measures in line with the Grant Agreement and the Visual Identity Guidelines for the 2014-2020 Programming Period (including compliance in the insertion of the European Union Funds logos, European Union Emblem and National Flag of Malta and the compulsory text);
- Participating in information and publicity measures organised by the Managing Authority at Programme level when required;
- Reporting on information and publicity actions to the Managing Authority when required and through the Progress Reports on individual operations. Samples/proofs of publicity actions will also be requested for record keeping and verification by the Managing Authority;
- Participating in publicity and information measures as well as networks and / or exchanges of experience organised at European Union, national or programme level.

10.4 Participation in Publicity and Information Measures at European Union or Programme Level

As stipulated in Article 115(2) and Article 1 of Annex XII of Regulation (EU) 1303/2013, the Beneficiary must be aware that acceptance of funding is also an acceptance of their inclusion in online or other published lists and databases of Beneficiaries compiled by the Managing Authority or the Intermediate Body on its behalf. The information includes⁴²:

- name and details of the Beneficiary organisation;
- operation name;
- operation summary;
- operation start and end date;

⁴² This list is indicative and not comprehensive of the information that can be published.

- total eligible expenditure allocation to the operation; and
- postcode.

This information may also be uploaded on websites, including those hosted by the Commission and / or other European Union institutions where information is collated and presented to show activities across Member States.

The Beneficiary shall collaborate with the Managing Authority (and/or the Intermediate Body on its behalf) during the organisation of events or promotional activities, including networks and exchanges of experience at both national and European level.

10.5 Visual Identity Guidelines

This chapter complements the Visual Identity Guidelines for the 2014-2020 Programming Period. The Visual Identity Guidelines provide the technical specifications for the ESIF logos and the graphical guidelines with layouts/templates for information and publicity measures. These guidelines are an additional tool for the Beneficiaries to abide comprehensively by all the relevant European Union regulations and other national rules and policies.

The Managing Authority has made available a tool kit for use by Beneficiaries whereby publicity templates and logos can be downloaded from this link:

<https://eufunds.gov.mt/en/Operational%20Programmes/Publicity/Pages/Templates.aspx>.

Furthermore, the Visual Identity Guidelines are based on Articles 3, 4 and 5 of Commission Implementing Regulation (EU) 821/2014 which explains the instructions for creating the emblem and a definition of the standard colour, technical characteristics for displaying the Union emblem and the reference to the Fund or Funds supporting the operation and technical characteristics of permanent plaques and temporary or permanent billboards respectively.

11. Delegation of Authority

11.1 Delegating Authority

1. The Beneficiary organisation is responsible for the entire implementation of the operation.
2. The Project Leader represents the Beneficiary on all matters related to the operation.
3. In cases where the Beneficiary opts for external project management, the Beneficiary is expected to explain to the Managing Authority the internal checks and balances introduced within the Beneficiary organisation to ensure that the Beneficiary retains full control and decision-making rights on the operation. The Beneficiary should not be represented by external project management for any meetings concerning the operation.
4. To ensure that the Beneficiary retains full control of the operation, it is advisable to nominate a contact person, in addition to the Project Leader.
5. In cases where tight deadlines are involved, such as during the Statement of Expenditure period and the certification of works and payments, the Project Leader may delegate his/her authority to the contact person or other officials. This option should only be exercised in exceptional circumstances, namely:
 - when the Project Leader is abroad, on sick leave or vacation leave; and
 - in the case of aid schemes, the Project Leader of Intermediate Bodies may delegate authority to selected persons to perform specific tasks for a definite period.
6. In the case of aid schemes (or any other cases approved by the Managing Authority), the Intermediate Body (or Beneficiary) Project Leader may assign a delegation of authority to a designated person/s within the Project Leader's office to:
 - i. certify a payment as correct;
 - ii. insert and confirm payment details in the Structural Funds Database;
 - iii. complete the electronic checklist at payment level on the Structural Funds Database 14-20; and/or
 - iv. upload a scanned copy of the reimbursement request (in the case of state aid operations only), invoice, proof of payment, and any other necessary supporting documentation on the Structural Funds Database 14-20 in line with MA Circular 05/2018. In such circumstances, it is the responsibility of the Project Leader and the Beneficiary to ensure that the delegation of authority is adequately documented, covers a definite period and is supervised.

Only one person shall perform all actions outlined in (i) to (iv) above. Multiple signatures (both in writing and electronic) are not permitted.

7. 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 (as Annex 8) authorising the officer/s concerned to carry out specific tasks on his/her behalf. The template must be completed and signed by both parties.
8. It should be noted that while the function can be delegated, responsibility remains with the Project Leader.

The provisions of this section also apply to the Line Ministry function. The Director Programme Implementation may delegate authority to another officer within the Directorate to certify payments on her/his behalf. A specific or general delegation may be applied, but the ultimate responsibility remains with the Director Programme Implementation. The Line Ministry should fill in the ad hoc Delegation of Authority Forms provided by the Managing Authority and send it to the Managing Authority before the delegate executes the assigned duties.

11.2 Termination & Change of Project Leader

1. Should there be a change in the Project Leader, the current Project Leader and the newly appointed Project Leader should draft a letter informing the Managing Authority that the current Project Leader will be terminating his/her leadership on the operation (ref to Annex 9). The letter should specify the name and designation of the officer who will be taking over the leadership of the operation and the date of the effective handover.
2. Where both parties are available, the letter should be signed by both outgoing and newly appointed project leaders and endorsed by the Permanent Secretary/legal representative of the Organisation⁴³, as per specific form. This procedure also applies for Project Leaders who will be retiring from their post within the Beneficiary organisation. In the case of public sector operations, the respective Line Ministry shall ensure that the above procedure has been undertaken in time and that an effective handing over has been given to the new Project Leader to ensure the smooth continuation of the operation.
3. Beneficiaries should ensure that the post of the Project Leader remains occupied until the end of the document retention period as indicated in Chapter 12 of this manual. Beneficiaries can be required to report to the Managing Authority, Certifying Authority and Audit Authority (amongst others) even after termination of the operation, mainly within the context of the closure of the Programming Period and possible *ad hoc* audits by European institutions or Maltese Authorities.

⁴³ In the case of Non-Governmental Organisations and Local Councils, the change should be endorsed by the Head of Organisation, the Mayor and Executive Secretary, as applicable.

12. Retention of Documents

12.1 General Remarks

All supporting documents regarding expenditure supported by the Fund on approved operations are to be made available to the Managing Authority, the European Commission, the European Court of Auditors, and any other stakeholders involved in the implementation, for a period which will be communicated by the Managing Authority. Documents are to be retained for a period of not less than three years, following 31st December of the year in which the submission of accounts to the Commission following the submission of the accounts in which the expenditure of the operation is included. The time period shall be interrupted either in the case of legal proceedings or by a duly justified request of the competent Authorities responsible for Cohesion Policy in Malta. Documents should be kept in an easy-to access format so that they can be made available as required to the Managing Authority, the Programme auditors, the Certifying Authority, the European Commission and the Court of Auditors. All the Beneficiaries will be informed of this retention period at the end of the operation.

12.2 Records to be retained

In line with Article 140 of Regulation (EU) no. 1303/2013, all supporting documents regarding expenditure supported by the Funds shall be made available during audit missions. The Beneficiaries must ensure that the following are available:

- All documents relating to expenditure declared as part of the operation, including but not limited to proof of delivery of works/goods/services are to be maintained to ensure an adequate audit trail.
- Reports and documents relating to checks carried out through:
 - the verification of expenditure;
 - the certification of expenditure; and
 - reports on audits carried out by the Audit Authority (IAID).

The rules regarding document retention apply to all stakeholders involved in delivering and administering the European Structural Investment Funds, including the Department of Contracts, Treasury, Line Ministry, etc. In this regard, in relation to procurement of Contracting Authorities who fall under Schedule 2 of LN 352 of 2016 (and subsequent amendments), and whose value exceed the threshold; originals of documents should be retained directly by the Department of Contracts. The Beneficiary will still be asked to maintain documents that originate from the Beneficiary's end.

1. As indicated in Annex 11 titled *Documents to be retained*, Beneficiaries and other stakeholders are 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 data carriers (such as hard-disks, DVDs, USB sticks);
 - ✓ Documents existing in electronic version only.

2. It is the sole responsibility of the Beneficiary organisation to ensure easy and quick access to the documentation of the operation, also following the closure of the operation. This is particularly the case when project management is contracted either outside the organisations, or to persons with contracts which may terminate at the end of the operation.

3. Where originals are required, and these cannot be kept in files, copies of original documents must be certified as true copies of originals. The person certifying such copies, is dependent on the documents being copied (i.e. which stakeholder in the implementation system). In the case of the Beneficiary organisation, documents should be signed by the Project Leader (or delegate) and, in the case of the Line Ministry, by the Director Programme Implementation / Director Corporate Services (or delegate).

12.3 Records to be uploaded in the Structural Funds Database 14-20

1. Specific Guidance on the documents to be uploaded by the Managing Authorities, Intermediate Bodies, Beneficiaries and Treasury in the SFD14-20 has been provided in MA circular 05/2018 'Documents to be uploaded in the Structural Funds Database 2014-2020'. In the case of aid schemes, guidance is given in the schemes' guidance notes issued with every call. These documents are NOT intended to reduce the scope of the retention of documents outlined in this Chapter. They are only intended to ensure consistency and availability of information in the conduct of first-level desk-based controls, to provide clear guidance to eliminate unnecessary duplication of work, and to reduce administrative burdens and mitigate the impact on SFD14-20 hardware capacity. Beneficiaries and stakeholders are reminded that all the obligations relating to retention of documents as stipulated in Article 140 of Regulation (EU) No. 1303/2013, the Eligibility Rules, the Grant Agreement, and Manual of Procedures shall remain valid and effective.

2. MA circular 05/2018 and the schemes' guidance notes issued by the Intermediate Bodies, list the documents to be uploaded on the Structural Funds Database 14-20. Documents are to be uploaded only in Portable Document Format (PDF). Assistance on how to upload the documents on the

database can be sought from the Structural Funds Database14-20 tutorials available in each module.

12.4 Data Protection

All Beneficiaries are being reminded to comply at all times with the General Data Protection Regulation (EU) No. 2016/679 and the Data Protection Act of 2018, and any applicable data protection laws in force.

In order for a project to be approved for funding, the Beneficiary organisation as well as any other partner organisation involved in the project's implementation need to agree and ensure that the Managing Authority has access to all the data necessary for the latter to be able to carry out its duties in line with Regulation (EU) 1303/2013, with particular reference to Articles 54, 56, 57,125 and their provisions.

Access to this data will also include storage and processing thereof as evidence of the management verifications undertaken for auditing purposes. This data will be retained for a period of not less than three years following the submission and approval of the accounts in which the final expenditure of the completed operation is included, as per section 12.6 of this manual

12.5 Filing System for Related Documentation

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

- I. Original Application Form, Letter of Approval, Preliminary Agreement, Grant Agreement & addenda to the Grant Agreement;
- II. General Correspondence mostly related to the Grant Agreement;
- III. Payment Process (copies of payments and fiscal receipts and other proofs of payment as applicable);
- IV. Verification Process (including Administrative and Physical On-the-Spot reports);
- V. Certification Process (Statements of Expenditure);
- VI. Procurement and employment procedures;
- VII. Monitoring;
- VIII. Irregularity Reports;
- IX. Deliverables and inventory of fixed assets procured from the operation;
- X. Publicity records;
- XI. Training records.

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

3. Whilst it is preferable that the Beneficiary retains a separate operation file totally dedicated to matters related to the operation, it is understandable that Beneficiaries might already have internal filing procedures to be adhered to (e.g. in relation to procurement, human resource recruitment and selection). To avoid unnecessary duplication of documents and administrative burden, the Beneficiary may maintain its own filing system AS LONG AS all necessary documents may be retrieved through an easy tracking system (e.g. indexing).

4. Government Departmental files must be kept in line with the 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.

12.6 Retention of Documents

Even though the purpose of this Manual of Procedures is specifically focused on the requirements of the Beneficiary, for completeness sake a complete list of documents that needs to be retained (in hard original or copy) by the various stakeholders involved in the implementation of ESIF operations can be found in the Annex '*Documents to be retained*'.

This will give the Beneficiary a complete picture of the requirements attached to the retention of documents process. As a general principle, (original) documents are expected to be retained by the entity which produces them. This is particularly important in the case of procurement which exceeds the established thresholds, under which original documents are generated and filed by the Department of Contracts.

