



Fisheries Operational Programme 2007-2013
Part-financed by the European Union
European Fisheries Fund (EFF)
Co-financing rate: 75% EU Funds; 25% National Funds



Investing in sustainable fisheries

ELIGIBILITY RULES VERSION 2: SEPTEMBER 2014

Eligibility Rules laid down by Malta and applicable to the European Fisheries Fund (2007 – 2013).

APPLICABLE REGULATIONS OF THE EUROPEAN UNION

The following Regulations are used as the basis for rules on eligibility of expenditure for the implementation of operations under the Fisheries Operational Programme for Malta funded through the European Fisheries Fund (EFF).

Council Regulation (EC) No. 1198/2006 of 27 July 2006 on the European Fisheries Fund.

Commission Regulation (EC) No. 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No. 1198/2006 on the European Fisheries Fund.

Commission Regulation (EU) No. 1249/2010 of 22 December 2010 amending Regulation (EC) No. 498/2007 laying down detailed rules for the implementation of Council Regulation (EC) No. 1198/2006 on the European Fisheries Fund.

INTRODUCTION

In general for expenditure to be eligible it has to be in line with the afore-mentioned Regulations. National eligibility rules have been laid down by the Managing Authority (MA) in accordance with Article 55 (4) of Regulation (EC) No. 1198/2006 and within the parameters of the EC Regulations. Beneficiaries should ensure that proposals are formulated on the basis of these Eligibility Rules. These national eligibility rules shall also be used by the Intermediate Body as the basis for drawing up specific rules with regard to aid schemes implemented under Article 107 of the Treaty of the Functioning of the EU¹.

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

¹ These will also require the endorsement of the MA to ensure that they are compliant with the National Eligibility Rules.

ELIGIBILITY CRITERIA

The eligibility of expenditure will be assessed against six main criteria:

1. Approved Project – the expenditure was incurred as part of an approved operation for which a Grant Agreement has subsequently been issued²;
2. Date of when the expenditure was incurred – activity takes place within the eligibility period;
3. Location – expenditure incurred must be related to a project implemented within/for the direct benefit of the eligible territory;
4. Proof of expenditure – presentation of invoices and supporting documents;
5. Implementation – expenditure incurred must be in relation to projects that have been implemented in line with sound financial management and good governance;
6. Type of expenditure – items of expenditure incurred in the delivery of project activities.

1. *Approved Project*

The European Fisheries Fund is the financial instrument supporting the Common Fisheries Policy. The Common Fisheries Policy aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities.

The EFF is meant to help the fisheries sector achieve the objectives set with the reform of the Common Fisheries Policy (CFP) in 2002. The aid it provides must stimulate the development of an economically profitable fisheries sector that is respectful of the environment and contributes to the well-being of the populations dependent on the sector, in other words, it must encourage sustainable fisheries and aquaculture. The projects co-financed by the EFF must help strike a balance between resources and fishing capacity, protect and add value to the environment and natural resources, support competitiveness and the economic sustainability of the sector, improve the quality of life in fisheries areas and promote gender equality among those working in the sector.

For expenditure to be eligible it must be in line with the priorities of the Fisheries Operational Programme for Malta, and must be incurred as part of an approved operation approved by the MA. Following the conditionality letter, a Grant Agreement is subsequently issued. Expenditure can only be considered eligible for those cost items that have been agreed upon with the Managing Authority.

In line with Article 55 (3) of Regulation (EC) No. 1198/2006 expenditure shall be eligible for a contribution from the EFF only where incurred for an operation decided on by the Managing Authority, or in the case of aid schemes by the Intermediate Body, in accordance with criteria fixed in advance by the Monitoring Committee.

² As a clarification, an operation is considered approved at the point that the MA issues a conditionality letter following the PSC process. This conditionality letter is followed up by a formal Grant Agreement (GA).

In addition, in line with Article 56 of Regulation (EC) No. 1198/2006 an operation retains the contribution from the EFF only if that operation does not, within five years of the date of the financing decision of the Managing Authority, undergo a substantial modification: (i) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage, or (ii) resulting either from a change in the nature of owner-ship of an item of infrastructure or the cessation or relocation of a productive activity.

2. Eligibility period

For expenditure to be eligible it must be incurred between **1 January 2007** and **31 December 2015**. Operations must not have been implemented before the starting date for eligibility. Nonetheless, the Grant Agreement will define the eligibility period of each operation which is generally stricter than 1 January 2007 and 31 December 2015³. In the case of Aid Schemes implemented under Article 107 of the Treaty, the date of eligibility cannot precede the date when the call for proposals by the Intermediate Bodies⁴ (to Beneficiaries) is issued.

3. Eligibility of operations depending on the location

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

4. Proof of expenditure

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

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

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

³ Expenditure incurred before the conditionality letter but after 01/01/2007 is to be considered eligible, unless otherwise stipulated in the conditionality letter and/or Grant Agreement.

⁴ In the case of the European Fisheries Fund, the Intermediate Body in charge of the implementation of Aid Schemes under Article 107 of the Treaty is the Ministry for Sustainable Development, the Environment and Climate Change.

equivalent probative value) and must be within the conditions and objectives of the aid granted.

Documents regarding expenditure need to be kept available for the Commission, the Court of Auditors and the Audit Authority for a period of three years following the closure of an Operational Programme, in accordance with Article 87 of Council Regulation (EC) No. 1198/2006, i.e. at least till 31st December 2020.

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

5. Implementation

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

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

6. Type of expenditure

The European Fisheries Fund aims to contribute towards the achievement of targets as indicated in both the Operational Programme as well as the achievement of the priorities established by the European Union.

The rules in the next section outline categories of expenditure eligible for contribution from the EFF provided that they:

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

These are the guiding principles associated with each eligible cost covered by these Rules.

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

ELIGIBILITY RULES

Rule No. 1: Project Management

- 1.1 It is important to note that although functions in relation to project management can be contracted out, nonetheless the legal and financial responsibility of the project rests solely with the Beneficiary. The Beneficiary should undertake regular checks itself on contracted management/supervision.
- 1.2 Project management costs are eligible for a contribution from EFF under the following conditions:
- a. The project is sufficiently complex to warrant the services of project management;
 - b. Beneficiaries either contract out project management through:
 - i. A service tender taking into consideration public procurement procedures⁵;
 - or
 - ii. A specific employment contract on a definite full/part-time basis.
- 1.3 When a Beneficiary opts to recruit persons to perform project management on an employment basis – full-time or part-time – the recruitment and selection procedure should follow the official channel of recruitment of the organisation, in line with national legislation, good governance and transparency⁶.
- a. Employment procedures need to be competitive and transparent; therefore an open call needs to be issued⁷.
 - b. Unless otherwise approved by the MA, internal calls restricted only to Beneficiary organisation's own permanent staff are not eligible under EFF funds.

⁵ Reference should be made to the relevant regulation including but not limited to the Public Contract Regulation.

⁶ It is advisable that, prior to publication, the Beneficiary consults with the Department of Contracts and the Department of Industrial and Employment Relations to identify the appropriate procedure to apply in the particular case.

⁷ Public Sector entities shall follow the procedures outlined in Employment and Training Services Act before issuing an open call.

- c. Social Security Contributions and related costs linked to the employee can be considered eligible expenditure where these are genuinely and definitely borne by the Beneficiary⁸. The employer's social security contributions are also considered eligible as long as proof of payment can be provided⁹.
- d. Overtime related to staff working on the project may be considered eligible subject to the approval of the Managing Authority and if the following conditions are met:
 - i. For employees engaged by stakeholders within the Public Service – the overtime work performed is approved in accordance with and follows all applicable criteria set in Section 3.2 of the Public Service Management Code¹⁰.
 - ii. For employees engaged by other stakeholders within the Public Sector – the overtime work performed may be eligible if appropriately approved and if it follows the criteria set by or for the organisation concerned.
- e. Bonuses or allowances that are not taxable, payments for unfair dismissal, redundancy payments, insurances (e.g. health), golden handshakes, exceptional/extraordinary provisions for pension rights (inc. private pension schemes) are not eligible.
- f. In principle, employment contracts have to be restricted to the specific task and duration of the project¹¹.
- g. Unless approved by the MA, costs directly related to the project management of the Project Leader on the approved project are not eligible.
- h. Allowances as per Collective Agreement may be considered eligible subject to the approval of the Managing Authority.

Rule No. 2: Supervision Costs

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

⁸ Pay slip and payroll (as applicable) need to be made available as proof of payment.

⁹ FS5 (or equivalent) for the relevant month/s, receipt from inland revenue covering the same period/s (or equivalent) and declaration from the financial controller of the Beneficiary that for the employer's share for the NI for the persons claimed is included in the FS5. Other proofs of payment may also be considered as long as they provide sufficient evidence.

¹⁰ PSMC Eleventh Edition, published on 7th March 2011 and eventual updates.

¹¹ Advice should be sought from the Public Administration HR Office (PAHRO) within the Office of the Prime Minister. Entities in the Public Service shall be guided by the conditions provided for in Section 1.1.9.3 of the Public Service Management Code and L.N. 51 of 2007 (and any additions/changes) when preparing employment contracts. The Beneficiary must also ensure compliance with relevant legislation.

Rule No. 3: Staff Costs

3.1 Project management may be obtained internally from existing staff within the beneficiary organisation as approved by the Managing Authority¹². Staff costs are to be apportioned on the following basis.

Eligible staff costs	=	hourly rate * number of hours worked on the project
Where, <i>hourly rate</i>	=	$\frac{\text{Annual Salary}^{13}}{\text{Total number of hours worked in a year}^{14}}$

- a. Bonuses or allowances that are not taxable, payments for unfair dismissal, redundancy payments, insurances (e.g. health), golden handshakes, exceptional/extraordinary provisions for pension rights (inc. private pension schemes) are not eligible.
- b. Social Security Contributions and related costs linked to the employee can be considered eligible expenditure where these are genuinely borne by the Beneficiary¹⁵.
- c. Unless part of the collective agreement of the employee, income supplements to existing staff already employed by the Beneficiary shall not be considered eligible.

Rule No. 4: Real Estate

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

- a. It is approved by the MA.
- b. There shall be a direct link between the purchase/renting of land/real estate and the objectives of the operation to be funded by the EFF;
- c. The land purchase shall, as a general rule, not represent more than 10% of the total eligible expenditure of the operation;
- d. An independent, qualified valuer or duly authorised official body¹⁶, confirms that the purchase/rent price does not exceed the market value; and

¹² Approved staff costs need to be verified through supporting documents, such as signed attendance sheets which must be countersigned by the Project Leader.

¹³ Annual Salary includes the gross wage (before tax) plus the employer's national insurance and statutory bonuses

¹⁴ (Number of weeks in a year * number of working days in a week) – (vacation leave + public and national holidays not falling either on Saturday or Sunday) * number of hours worked each day, e.g. (52 weeks * 5 days) – (24 days leave + xx days public holidays) * 8 hours = xxxx hours worked in a year.

¹⁵ Pay slip and payroll (as applicable) need to be made available as proof of payment.

¹⁶ MA may require a re-assessment from the Lands Department.

e. In the case of aid schemes under article 107 of the Treaty, the eligibility of land purchased/rented shall be assessed by the IB in terms of the aid scheme in its entirety and in any case may never exceed the threshold under paragraph 4.1c of this Rule. In such exceptional cases paragraphs 4.1b and 4.1d shall also apply.

4.2 The renovation and construction of real estate is eligible for funding under the EFF when this is essential for the implementation of the project and is clearly linked with its objectives. Such investment shall have the technical properties needed for the project and comply with the applicable norms and standards.

Rule No. 5: Travel and Subsistence Allowance

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

5.2 Unless otherwise approved by the Managing Authority, travel (economy)¹⁷ and subsistence allowance (inc. utilised contingencies) shall be considered eligible in line with the provisions provided in the Overseas Travel MFIN Circular No. 1/2008 (as amended by MFEI Circular No. 12/2010 and subsequent amendments) or the relevant policy of the organisation and supported by the relevant documentation.

5.3 In the case of experts coming to Malta, the subsistence allowance established by the European Commission within the Europe Aid Framework¹⁸ is the maximum that can be claimed from the Funds. Fees may also be payable to the expert over and above the subsistence allowance, provided that these are justified and reasonable.

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

Rule No. 6: Indirect Costs (Overheads)

6.1 Indirect costs are costs which are not or cannot be connected directly to an individual activity of the entity in question. Such costs would include administrative expenses, for which it is difficult to determine precisely the amount attributable to a specific activity (including but not limited to administrative/staff expenditure, telephone, mobile and internet connection charges, water or electricity expenses).

6.2 Apportionment of the applicant's overheads is not considered eligible. In the case of aid schemes under article 107 of the Treaty, the eligibility of overheads shall be assessed, in the first instance, in terms of the state aid regulations. The

¹⁷ In the case where tickets are not economy class, the Beneficiary may only claim the equivalent of the costs of an economy ticket from the EFF.

¹⁸ http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm

Intermediate Body shall make a request to the MA prior to including such costs as eligible under aid schemes.

Rule No. 7: Research/Studies

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

Rule No. 8: Publicity Costs

8.1 Publicity costs (such as advertising of project activities), are eligible for funding under EFF provided that any publicity measures undertaken are operation-specific and are in line with COUNCIL REGULATION (EC) No 1198/2006 and COMMISSION REGULATION (EC) No 498/2007.

8.2 Publicity costs must also be justified and in proportion to the operation.

8.3 Information and publicity measures shall include requirements as indicated in the Manual of Procedures and Visual Identity Guidelines.

8.4 Special conditions may apply for small objects.

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

Rule No. 9: Consumables

9.1 Consumables¹⁹ are defined as tangible items that may be depleted or worn out by use, that have a life expectancy that is shorter than the duration of the project and are not deemed to be fixed assets in accordance with generally accepted accounting principles and rules.

9.2 Consumables required for the implementation of the project/Programme²⁰ are eligible for co-financing by the EFF, subject to the following conditions:

- a. It must be procured specifically and used solely for the project;
- b. It must not be apportioned between those items that are used by the Beneficiary in carrying out its normal business (not eligible) and those that are related to the project (implementation of EFF);

¹⁹ Where consumables include the need for technical installation/expertise, these costs are also considered as eligible

²⁰ This also applies to Technical Assistance actions.

c. These do not constitute part of the operational costs of the project²¹.

9.3 Eligible consumables²² include amongst others:

- a. printing of documents necessary for the implementation of the operation;
- b. stationery necessary for the implementation of the operation;
- c. postage and mail (supported by appropriate documentation e.g. logbook).

Rule No. 10: Furniture and Equipment

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

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

- a. Under normal conditions of use, including reasonable care and maintenance, has an anticipated useful life of more than three (3) years;
- b. It retains its original shape and appearance with use;
- c. If the article is damaged or some of its parts are lost or worn out, it may be more feasible to repair it than to replace it with an entirely new item; and
- d. It does not lose its identity through incorporation into a different or more complex unit.

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

Rule No. 11: Depreciation

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

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

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

²¹ This statement excludes consumables for technical assistance (which is operational by nature). It is also clear that a limited number of consumables is necessary for commissioning of equipment procured by the Funds, and this is eligible.

²² This also applies to Technical Assistance actions.

- b. Assets are directly used by the project;
- c. Cost relates exclusively to the period of co-financing of the operation in question;
- d. Appropriate working papers showing how the depreciation costs have been calculated have been maintained by the Beneficiary. These include the costs, description and location of purchased items, the date of purchase, the method of depreciation, the length of time the item has been used, whether the equipment was used wholly or partly for EFF purposes, and where relevant, the present estimated residual value of the asset; and
- e. Method of calculating depreciation cost is in accordance with the relevant accountancy rules and with the Beneficiary organisation's accounting policy. The depreciation method should be provided in the Grant Agreement.

Rule No. 12: Vehicles

12.1 The purchase of vehicles is not eligible.

Rule No. 13: Transport Costs

13.1 Transport costs for officers undertaking verification checks may be considered eligible for co-financing under EFF in the following cases:

- a. when it is generally made available under similar activities using national/public funds;
- b. in exceptional and justifiable cases and has to be specifically approved by the MA. Acceptance or rejection is at the sole discretion of the MA.

13.2 Transport costs related to the implementation of one or more aspects of EFF (as defined in Rule 22) are considered eligible upon presentation of appropriate supporting documentation.

13.3 Transport to and from airports for overseas travel related to EFF operations are considered eligible upon presentation of appropriate supporting documentation.

13.4 Other transport costs may be eligible only in specific cases and with the approval of the MA.

Rule No. 14: Purchase of Second Hand Equipment

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

Rule No. 15: Financial and Other Charges and Legal Expenses

- 15.1 *Bank Charges on Accounts:* Where co-financing by the EFF requires the opening of a separate bank account or accounts for implementing an EFF operation²³, the bank charges for opening and administering of this account form part of the administrative costs relating to an operation and are therefore eligible expenditure.
- 15.2 *Financial Charges:*
- a. Interest on debt is not eligible.
 - b. Charges for financial transactions, foreign exchange commissions and losses, and other purely financial expenses are not eligible.
- 15.3 *Legal Fees for Advice, Notary Fees, the Costs of Technical or Financial Expertise and Accountancy or Audit Costs:* The cost of legal fees for advice, notary fees, technical or financial expertise and accountancy or audit services are eligible provided that they are directly linked to the operation and are necessary for its preparation or implementation. Costs related to litigation or advice/consultancy related to possible litigation is not eligible (e.g. possible appeals).
- 15.4 *Fines, Financial Penalties and Expenses of Litigation* are not eligible.
- 15.5 *Costs of Guarantees provided by a Bank or other Financial Institution:* These costs are eligible only to the extent that the guarantees are required by national or Community legislation.
- 15.6 *Costs Relating to MEPA Permits and other Regulatory Permitting:*
- a. Costs incurred by the Beneficiary for the preparation and/or submission of the necessary documentation relevant to the MEPA application processes can be considered eligible subject to MA approval.
 - b. MEPA or other permit fees shall, as a general rule, not represent more than 2% of the total eligible expenditure of the operation unless a higher percentage is approved by the MA and reflected in the Grant Agreement. Such claims should reflect real costs and be supported by invoices and receipts.
 - c. MEPA guarantees in relation to permits are not considered eligible.
- 15.7 *Other Related Expenditure:* Other expenditure including costs involved in winding up a company, bad debts, losses on exchange of currencies and service charges arising on finance leases, hire purchase and credit arrangements are not considered eligible.

²³ Particularly relevant in the case of aid schemes

Rule No. 16: Consultancy Fees

- 16.1 Consultancy which is necessary for the implementation of the project (e.g. drafting of application form, feasibility studies, business plans, cost-benefit analyses) may be considered eligible.
- 16.2 Consultancy which provides support in the completion of application for funds is an eligible item of expenditure subject to a number of conditions:
- a. Approval of the project
 - b. The services of the contractor have been procured in a transparent and competitive way and according to the principle of good governance. In the case of public entities such services need to be procured according to the Public Procurement Regulations.
 - c. The appropriate publicity requirements have been used.

Rule No. 17: Leasing

- 17.1 Expenditure related to the leasing of PCs as per standing Government policy is eligible in its entirety.
- 17.2 Other Expenditure incurred in relation to leasing operations is eligible subject to the rules set out below:
- a. The equipment remains the property of the lessor (i.e. the person leasing out the good);
 - b. The lessee (i.e. the person who leases the equipment from someone else) is not responsible for the maintenance, insurance, repairs etc. of the equipment;
 - c. At the end of the lease the equipment does not become the property of the lessee;
 - d. Leasing costs for which Public Aid is paid should be limited (as a maximum) to the duration of the project;
 - e. Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the appropriate fund) that part of the Public Aid corresponding to the remainder of the leasing period;
 - f. The cost has to be pre-approved by the MA.
- 17.3 The acquisition costs of the asset and the cost of leasing equipment under a finance lease which is similar to hire purchase agreements (where at the end of the lease the equipment becomes the property of the lessee) are not eligible.

Rule No. 18: Software

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

Rule No. 19: Training Costs

19.1 Training that is part of the commissioning of equipment and any introductory training is considered to be part of the investment cost, thus eligible. Any other training is eligible subject to it being in line with the EFF Operational Programme.

Rule No. 20: Contributions in Kind

20.1 Contributions in kind are not eligible.

Rule No. 21: VAT and other Taxes

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

21.2 VAT which is recoverable, by whatever means, cannot be considered eligible, even if it is not actually recovered by the Beneficiary.

21.3 The treatment of VAT will vary depending on the status of the activity carried out. In this regard, Beneficiaries should consult the VAT Department.

21.4 Other taxes and related charges which arise from co-financing by the EFF funds do not constitute eligible expenditure except where they are genuinely and definitively borne by the Beneficiary.

Rule No. 22: Costs Incurred in Managing and Implementing EFF Funds²⁴

22.1 Technical assistance is critical to the efficient implementation of the EFF. The actions under the Priority Axis 5 Technical Assistance will support and accompany the programme implementation, in accordance with Article 46 of Council Regulation 1198/2006. The Technical Assistance supports the main horizontal stakeholders of Malta's implementation system, including the Managing Authority, the Certifying Authority, the Audit Authority, the Intermediate Bodies, and other Bodies relevant to Malta's Implementation system. Activities have to meet the criteria as approved by the Monitoring Committee.

22.2 The following categories of expenditure are eligible for co-financing through the EFF assistance under certain conditions:

²⁴ It is pertinent to note that all other eligibility rules have been and will continue to apply to Technical Assistance.

- a. Expenditure relating to the preparation, project selection, management, monitoring, evaluation, publicity and information, and control activities of the assistance and of operations, including the computerised management system (EFF Database);
- b. Expenditure on meetings of monitoring committees, the annual examination meeting and other meetings relating to EFF and the implementation of assistance. This expenditure may also include the costs of experts and other participants in these meetings, where the Managing Authority considers their presence essential to the effective implementation of the assistance;
- c. Expenditure relating to controls (including management verifications), audits and on-the-spot checks of operations;
- d. Expenditure of salaries of public officers involved in the implementation system;
- e. The payment of overtime work may also be considered eligible if pre-approved by the MA and if the following conditions are met:
 - i. For employees engaged by stakeholders within the Public Service – the overtime work performed is approved in accordance with and follows all applicable criteria set in Section 3.2 of the Public Service Management Code²⁵.
 - ii. For employees engaged by other stakeholders within the Public Sector (e.g. Intermediate Bodies) – the overtime work performed may be eligible if it is appropriately approved and if it follows the criteria set by or for the organisation concerned.
- f. Purchase²⁶ of furniture and equipment in line with the provisions provided in Rule No. 10;
- g. Costs (incurred locally and abroad) related to the participation in meetings and events linked to the EFF Programme and the proposed European Maritime and Fisheries Fund Regulation;
- h. Expenditure relating to training costs (incurred locally and abroad) of stakeholders involved in the implementation of the programme;
- i. Financing costs related to the closure of the 2004-2006 programme after the final date of eligibility;

22.3 Expenditure incurred in relation to renting is eligible for contribution under EFF provided that renting of equipment and venues is necessary for the implementation of the operation/activity. In this case the relevant public procurement regulations apply.

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

²⁵ PSMC Eleventh Edition, published on 7th March 2011 and eventual updates.

²⁶ Leasing of equipment is also eligible if this is standard Government policy.

Rule No. 23: Revenue Generation

23.1 The COCOF note 07/0074/04-EN (and as subsequently modified) define a *revenue-generating project*²⁷ as any operation that has cash in-flows which can be:

- a. **Revenues**, that is, cash in-flows directly paid by users for the goods and/or services provided by the project, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services;
- b. Revenues generated through feed-in-tariffs (e.g. from renewable energy);
- c. **Other cash in-flows**, that is, private and public contributions and/or financial gains that do not stem from tariffs, tolls, fees, rents or any other form of charge directly borne by the users;
- d. **Operating cost-savings**, that is, reduction of operating costs as a direct result of the project being implemented.

23.2 EFF operations may generate revenues, such as provision of services, rentals and enrolment fees. However, these are to be taken into account when calculating the public contribution, in line with the principle of sound financial management. Hence, estimated net revenues generated directly by the project are to be deducted from the total eligible expenditure when calculating the public contribution in the Grant Agreement.

23.3 *The calculation of the public contribution*: the calculation is based on the costs categories defined in the agreement minus the revenues generated or expected to be generated by the specific EFF operation²⁸. Where some of the costs of an action are not eligible for co-financing, the revenues shall be allocated pro-rata to the eligible and non eligible costs.

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

23.5 *The reference period to be used*: As a general rule the reference period should be equal to the period of implementation of the co-funded operation.

23.6 In ALL cases where a project generates revenue/cost savings that were not taken into consideration, the Beneficiary should inform the Managing Authority immediately. The Beneficiary will need to take into consideration such revenue/cost savings in the calculations and subsequently the MA will adjust the Grant Value accordingly. The MA may effect adjustments to the public eligible amount of the project up to the deadline set for the submission of Closure

²⁷ It should be noted that operating cost-savings generated by the projects must be considered in the calculations. Operating cost-savings can be ignored where it can be demonstrated that they are offset by an equal reduction in operating subsidies.

²⁸ For example if the eligible cost of an operation is 100K€ and revenues amount to 20K€ the public contribution will be a maximum amount of $100 - 20 = 80$ K€.

Documents to the Commission, currently set at 31st March 2017 (Article 86, EC 1198/2006).

Rule No. 24: Service Utility Works

- 24.1 In cases where the nature of the project necessitates interventions to utility services these may be considered as eligible. The MA recommends separate BoQs for service utility works.
- 24.2 It is imperative to note that Service Utility Works may only be considered eligible within the framework of an approved project (and not as a project on its own).
- 24.3 Costs linked to repairs or replacement of cables as well as the new cables and service utilities owned by third parties are not eligible.

Rule No. 25: Arrangements for Temporary Structures/Infrastructure

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

Rule No. 26: Maintenance/Repair Costs

- 26.1 Maintenance/repair costs – including those related to items procured through an EFF project – are, in principle, not considered eligible²⁹. The costs related to maintenance agreements (including extended guarantees) in tenders should be clearly identifiable in the contract.

Rule No. 27: Hospitality

- 27.1 Hospitality costs are only eligible if pre-approved by the MA. When approved, the following conditions apply:
- a. That the scope of the hospitality is linked to the activity and not mere entertainment;
 - b. That the same hospitality is extended during similar activities organised by the Beneficiary through national (or other) funds; and
 - c. The costs incurred are reasonable.

²⁹ Other than those identified for the maintenance of the EFF Database and the maintenance costs arising from the lease of equipment needed for the implementation of the EFF Operational Programme (equipment financed/leased through Technical Assistance).

Rule No. 28: Renting

- 28.1 Expenditure incurred in relation to renting is eligible for contribution under EFF provided that renting of equipment, mobile assets or venues is necessary for the implementation of the project. In this case, the relevant public procurement regulations and principles³⁰ apply.
- 28.2 Charging a fee for the use of one's own premises is not eligible.
- 28.3 Renting of premises of the Beneficiary and renting of premises for project management purposes is not eligible.

³⁰ Depending on the nature of the Beneficiary.