

Circular No: EMFF/2/2017

June 2017

NATIONAL ELIGIBILITY RULES FOR EXPENDITURE CO-FINANCED BY THE EUROPEAN MARITIME AND FISHERIES FUND (EMFF)

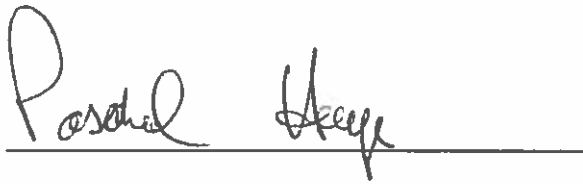
Chief Executive Officer,

1. I am directed by the Minister for Agriculture, Food & the Marine to advise Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies of the eligibility rules for the EMFF Operational Programme 2014-2020 co financed by the EMFF.
2. The Circular should be read in association with the Circular EMFF/1/2017 on Financial Management and Control Procedures for the European Maritime & Fisheries Fund OP 2014-2020 issued by the Department of Agriculture, Food & the Marine.
3. The Circular sets out the eligibility rules which have been developed in accordance with Article 65 (1) of the Common Provisions Regulation (CPR) (EU) 1303/2013, which states:
"The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules."
4. The eligibility rules shall cover all expenditure declared for the EMFF Operational Programme co-financed by the EMFF for the period 2014-2020 programming period and shall be applied when considering items of expenditure to be included in the declarations of expenditure. Any items that do not fall within the scope of these rules should not be included in the declarations of eligible expenditure to be submitted for EMFF funding.
5. The eligibility rules are set out in Appendix 1 and take account of the EU Regulations, i.e. the CPR (EU 1303/2013)³ and the EMFF Regulation (EU 508/2014). The main criteria for eligibility are as follows:
 - a) Expenditure incurred by a beneficiary and paid between 1st January 2014 and 31st December 2023;
 - b) Expenditure incurred by projects/operations approved by the Managing Authority in accordance with the methodology and criteria adopted by the Monitoring Committee;
 - c) All expenditure must be supported by appropriate documents to ensure an adequate and proper audit trail;

- d) All EU publicity and information requirements must be adhered to, as outlined in the Information and Publicity guidelines for European Maritime and Fisheries Fund issued by the Department of Agriculture, Food & the Marine;
 - e) Compliance with the conditions of grant aid as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution, in accordance with Article 125(3)(c) of the CPR (EU) 1303/2013; and
 - f) All applicable public procurement legislation, including enactments transposing EU Directives, and all associated national procurement guidelines and circulars must be stringently adhered to.
6. The Management and Control system for EMFF co-financed activities in Ireland is based on the principle of shared responsibilities and delegation through administrative or service level agreements, with each level of the financial management and control cascade responsible for ensuring that EU and National rules are adhered to at their own levels. Therefore, the day-to-day responsibility for the implementation of co-financed activities rests with the appropriate statutory bodies, e.g. Government Departments, Agencies, Institutions and Authorities, who are also accountable to the Oireachtas and to the Comptroller & Auditor General for the National/Exchequer contribution to the co-financed activities.
7. **All bodies in the financial management cascade are required to comply with the requirements of this Circular as failure to abide may lead to the deferment or cancellation of EMFF assistance by the European Commission and result in a loss to the Exchequer for which the relevant Bodies in the Financial Management cascade will have to account.**
8. The “EMFF Implementation Group” consisting of the Managing Authority, Certifying Authority, Intermediate Bodies and specific Beneficiary Bodies will be established by the Department of Agriculture, Food & the Marine to ensure consistency in the application of these National Eligibility rules.

This group will consider issues arising from the implementation and interpretation of the rules and may make recommendations to the Department of Agriculture, Food & the Marine as appropriate. Further Circulars or guidance documents may issue from time to time in this regard. The proposed National Eligibility Rules or any amendments thereafter will be submitted to the Audit Authority in its role as the Independent Audit Body for its opinion before being formally approved or amended.

9. Finally, any queries on the terms of the Circular should be addressed to the EMFF Managing Authority.

A handwritten signature in black ink that reads "Paschal Hayes". The signature is written in a cursive style and is positioned above a solid horizontal line.

Paschal Hayes

Principal Officer

Marine Programmes Division

22 June 2017

APPENDIX 1

NATIONAL ELIGIBILITY RULES For Expenditure Co-Financed by The European Maritime & Fisheries Fund (EMFF)

1. General Rules of Eligibility

- a) Expenditure shall be eligible for a contribution from the EMFF if it has been incurred by a beneficiary and paid between 1 January 2014 and 31 December 2023, subject to the receipt of the goods and services in accordance with the objectives of the project/operation. Projects/Operations shall not be selected for support from EMFF funds where they have been physically completed or fully implemented before the initial application for funding under the programme is submitted by the beneficiary to the Managing Authority, via the Intermediate Body/Implementing Agency or directly to the Managing Authority in the case of Beneficiary Bodies, as appropriate, irrespective of whether all related payments have been made by the beneficiary.
- b) Expenditure shall be eligible for a contribution from the EMFF only where it is incurred for projects/operations approved by the Managing Authority of the Operational Programme concerned or under its responsibility, in accordance with criteria set out by the Monitoring Committee and compliant with the conditions of grant aid as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution, in accordance with Article 125(3)(c) of the Common Provisions Regulation (CPR) (EU) 1303/2013.
- c) Expenditure that becomes eligible as a result of an amendment to the EMFF OP 2014-2020 shall only be eligible from the date of the submission to the Commission of the request for amendment or, in the event of application of Article 96(11) of the CPR (EU) 1303/2013, from the date of entry into force of the decision amending the programme.
- d) **Proof of expenditure** is always required. To be eligible for a contribution from the EMFF expenditure must be supported by receipted invoices or accounting documents of equivalent probative value, which have a proven link with the projects/operations¹. Where it is not possible to determine a direct link to the project/operation the link may be established using a methodology agreed and documented between the Managing Authority and the Intermediate Body.

Equally, the supporting documentation must provide evidence of reality of the product or service to which the expenditure relates. Effectively, this means that expenditure must be evidenced by documents capable of supporting the accounting records in order to give a

¹ Please note that certain receipts e.g., till receipts submitted, may fade quickly over time. Receipts which are not legible will not be admissible and may need to be either photocopied or scanned before filing.

true and fair view of the transactions in accordance with accepted accountancy practice. The following is a list of records which meet the standard "document of equivalent probative value":

- i. Original invoice or a version certified to be in conformity with the original on commonly accepted data carriers (see Section 1.7 for further information on commonly accepted data carriers);
 - ii. Contractor's statement supported by employer representative's payment certificate (public works);
 - iii. Fee payment request duly certified by project manager;
 - iv. Payroll record to support salaries and wages claimed. Rates of pay should be justified and certified and the allocation of salaries/wages supported by logs/timesheets;
 - v. Travel and subsistence claims duly authorised and in accordance with approved rates, as per Rule 3. Invoices may be used where hotel and meal expenses are claimed in lieu of approved subsistence/per diem rates;
 - vi. Record of calculation and allocation of overhead charge based on actual expenditure duly incurred and paid by the beneficiary/implementing body, or, based on an approved flat rate, in accordance with Rule 4;
 - vii. Claim for contribution-in-kind duly assessed and certified as reasonable by the appropriate authority, in accordance with Rule 5.
 - viii. Salary-related costs (e.g., superannuation) which are an identifiable cost to the project/operation but remain internal to the declaring body and are accounted for separately in the annual accounts of the declaring body.
- e) While bank statements or other documentary evidence of funds transfer to suppliers etc. should be available to provide proof of payment (in the cases (i) to (iv) above), these alone do not constitute a "document of equivalent probative value" since they do not provide evidence (e.g. of the delivery of the product or service) to support the underlying transaction which generated the payment. In this regard, documents such as purchase orders, supplier statements and delivery dockets can provide secondary support to, but not replace, the documents listed at (i) to (vii) above.
- f) Beneficiaries should also comply with the conditions of the grant as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution. The rationale for any deviation should be documented and agreed with the Managing Authority.
- g) Records shall be maintained by the Beneficiary for three years following the year the final payment has been made.
- h) **Simplified Cost Options (SCOs)** are allowed for grants and repayable assistance as set out under Articles 67 and 68 of Regulation (EU) No 1303/2013 and Article 14 of Regulation (EU) No 1304/2013.

These SCOs provide derogation from the reimbursement of eligible costs incurred and paid that is set out under section 1.1 above. This means that certain grants and repayable assistance can be EMFF co-financed using:

- i. Standard scales of unit costs (Article 67(1)(b));
- ii. Lump sums not exceeding EUR 100,000 of public contribution (Article 67(1)(c));
- iii. Flat-rate financing, determined by the application of a percentage to one or more defined categories of costs (Articles 67(1) (d) and 68 of CPR).

The SCOs referred to above and, the costs actually incurred and paid option may be combined only where each option:

- Covers different categories of costs, or;
- Is used for different projects forming a part of an operation, or;
- Is used for successive phases of an operation.

Where an operation or a project forming part of an operation is implemented exclusively through public procurement simplified costs must not be used. However, where public procurement within an operation, or project forming part of an operation, is limited to certain categories of costs, all the SCOs referred to above may be applied.

Any SCOs being availed of by operations implemented under Beneficiary Body Work programmes must be stipulated in the Work Programmes and approved by the Managing Authority. This will establish the specific SCO(s), if any, being applied when claiming any element of the activity's expenditure. Once the Work Programme is approved, no retrospective introduction of alternative SCOs will be permitted. The Work Programme will also indicate the relevant rules that set out the conditions for this type of support.

The European Commission have issued *Guidance on Simplified Cost Options (SCOs): Flat rate financing, standard scales of unit costs, Lump sums*. This Guidance can be located at http://ec.europa.eu/regional_policy/thefunds/fin_inst/pdf/simpl_cost_en.pdf or upon request from the Managing Authority and sets out in detail the various options available. This can be a useful reference document when applying the SCOs.

- i) In accordance with the instructions set out in the Circular on Financial Management and Control Procedures (EMFF/01/2017) and Article 140 of the of the CPR (EU) 1303/2013 these supporting documents must be kept in a proper manner and available for the European Commission and the European Court of Auditors.

The detailed minimum requirements for an audit trail are laid down in Article 25 of Commission Delegated Regulation 480/2014. See Appendix 2. The EMFF Managing Authority is required by the CPR to maintain availability of all supporting documents regarding expenditure supported by the Funds. The requirements for the retention of records are set out in Article 140 of the CPR.

Article 125(2) (d) contains the requirements of Managing Authorities in relation to establishing a system of recording related data in a computerised form. Further detail in relation to this requirement is set out in Article 24 and Annex III of Delegated Regulation EC 480/2014.

Failure to comply with the above procedures may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will be responsible and may be held financially accountable.

The documents should be kept either as originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. The following are considered commonly accepted data carriers:

- Photocopies of original documents;
 - Microfiches of original documents;
 - Electronic versions of original documents; and
 - Documents existing in electronic format only.
- j) The procedures for certification of conformity of documents with the original document should comply with national legal requirements and can be relied upon for audit purposes. Under the Electronic Commerce Act, 2002 (Sections 17 and 18) electronic originals or electronic copies of original documents are acceptable when retained in electronic form in accordance with the provisions of the Act.
- k) Where expenditure, related to the implementation of an operation, is incurred in a currency other than the Euro, it shall be converted into Euro by the beneficiary using, either;
- i. The exchange rate prevailing at the date of payment (thereby requiring the IB to include the actual amount paid in the expenditure declaration); or
 - ii. An appropriate rate based on the accounting policy of the beneficiary (accepting that the amount declared may not equal the actual amount paid).

The Intermediate Body/Implementing Agency has to select one of the two accepted methods for all projects funded under the EMFF OP 2014-2020 and the elected method should be applied consistently to all non-Euro transactions included in Expenditure Declarations for all Operations. This cannot be changed during the lifetime of the programme and the elected method for converting non-Euro transactions should be clearly disclosed in the procedures manual of the IB/IA.

- l) By way of **derogation** from these rules, in-kind contributions and depreciation costs on co-financed assets may, under specific conditions, be treated as eligible expenditure incurred and paid by Beneficiaries in implementing operations. The specific conditions for each of the three derogation categories are set out under Rules 4 and 5.

² Copy can be found at this address <http://www.irishstatutebook.ie/2000/en/act/pub/0027/index.html>. Section 17 deals with electronic originals and Section 18 deals with retention and production.

2. Admissibility of applications

- a) An application submitted by an operator for support from the EMFF OP 2014-2020 shall be inadmissible for an identified period of time as described in Commission Regulation (EU) 288/2015, if it has been determined by the competent authority that the operator concerned:
 - i. Has committed a serious infringement under Article 42 of Council Regulation (EU) No 1005/2008 (1) or Article 90(1) of Regulation (EU) No 1224/2009.
 - ii. Has been involved in the operation, management or ownership of fishing vessels included in the Union IUU vessel list, or of vessels flagged to countries identified as non-cooperating third countries;
 - iii. Has committed a serious infringement of the CFP rules identified as such in other legislation adopted by the European Parliament and by the Council; or
 - iv. Has committed any of the offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council (2), where the application is made for support under EMFF OP 2014-2020.
- b) The beneficiary, after submitting the application, shall continue to comply with the conditions referred to in points (a) to (d) of section 2.1 throughout the period of implementation of the operation and for a period of five years after the final payment to that beneficiary.
- c) An application submitted by an operator shall be inadmissible for an identified period of time, if it has been determined by the competent authority that that operator has committed a fraud, as defined in Article 1 of the Convention on the protection of the European Communities' financial interests³, in the context of the European Fisheries Fund (EFF) or the EMFF.

3. Salaries, Wages, Travel and Subsistence Costs

Staff costs may be eligible subject to the approval of the Managing Authority and meet the following requirements

- a) If an individual is allocated wholly and exclusively to an EMFF project/operation either by way of documented secondment, assignment, employment contract or equivalent, then the salary or wage costs including employer's PRSI and pension are eligible if based on real costs (e.g., amounts paid to employee/revenue/pension fund and not notional costs). In these circumstances, timesheets are not required, but the relevant secondment decision or contract must be available.
- b) Where a person is not exclusively allocated to the project, **Salary and Wage** costs including employer's PRSI and pension incurred in implementing projects/operations are eligible if

³ Convention drawn up on the basis of Article K 3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 49).

based on real costs (e.g., amounts paid to employee/revenue/pension and not notional costs), and are recorded in logs/timesheets.

- c) As a general rule, for the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1,720 hours. Alternatively, a verifiable and auditable methodology which accurately calculates the prevailing working hours based on documentary evidence may be agreed with the Managing Authority.
- d) **Travel and subsistence** costs of project staff members must relate to EMFF projects/operations only and beneficiaries must have appropriate documentation to support the costs. The travel and subsistence rates must be appropriate and justifiable (e.g. in line with applicable civil and/or public service rates and rules for public beneficiaries). Claims for mileage should clearly document the details of the journeys being undertaken. Hotel and meal costs may be claimed in lieu of the per diem subsistence rate if evidenced by receipted invoices. However, the total cost should not exceed the equivalent civil/public service subsistence rate, for public beneficiaries. In the case of private beneficiaries, any eligible travel and subsistence paid must be in accordance with the rates specified and approved in the document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution issued by the public grant awarding body.

4. Purchase cost of tangible fixed assets and depreciation charge

- a) Having regard to the provisions of Department of Finance Circular 02/2004⁴, an asset is defined, for the purposes of these National Eligibility rules, as any tangible item with a useful economic life of more than 1 year and a cost of greater than €1,000 (net of VAT).
- b) The eligible expenditure of the operation to be co-financed from the EMFF shall be reduced by the net revenue not taken into account at the time of approval of the operation, and which is directly generated only during its implementation. The reduction shall be implemented no later than at the final payment claim submitted by the beneficiary. Where not all the costs are eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the cost. As an exception, this shall not apply to the areas identified under Article 65(8) (a) to (i) and the final paragraph of the same Article of CPR Regulation 1303/2013.
- c) The **full purchase cost** of an asset (excluding the purchase of land which), used wholly and exclusively for the co-financed project/operation, can be classified as eligible expenditure and may be charged in full to the project only where:

⁴ Available on Department of Finance website: <http://circulars.gov.ie/pdf/circular/finance/2004/02.pdf>

- i. The asset is purchased within the period of co-financing; and
 - ii. The purchase of the asset is the co-funded operation or the asset has a useful economic life less than or equal to the remaining life of the project; and
 - iii. Expenditure relates to the purchase or construction of plant and equipment that is to be permanently installed and fixed in the project and that it is treated as capital expenditure in accordance with standard accounting practice.

- d) **In all other cases**, expenditure should be limited to the depreciation charge based on the applicable annual depreciation rates, for an asset directly used for the project/operation can be declared as eligible expenditure for a contribution from the EMFF, provided that the following conditions are met:
 - i. the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs were reimbursed;
 - ii. the costs relate exclusively to the period of support for the operation;
 - iii. public grants have not contributed towards the acquisition of the depreciated assets.

5. Purchase cost of second-hand equipment

These costs are not eligible.

6. Land Costs

- a) The purchase cost of land, and any associated costs, are not eligible unless specifically provided for in the Implementation Plan approved by the OPMC. Where permitted in an Implementation Plan the following thresholds will apply:
 - i. The purchase cost of land not built on and land built on for amounts exceeding 10% of the total eligible expenditure for the operation shall not be eligible.
 - ii. For derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %.
 - iii. In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation.

These provisions are in accordance with Article 69(3) (b) of the CPR (EU) 1303/2013.

7. Leasing & Rental Costs

Hire purchases and leasing are not permitted unless specifically provided for in the Implementation Plan approved by the OPMC. The leasing/rental costs of projects/operations are eligible when the following conditions are met:

- i. The lease/rental costs are **exclusively related** to the EMFF co-financed project/operation, and are incurred within the period of eligibility of the project/operation;
- ii. The lease/rental costs are **exclusively related** to the EMFF co-financed project/operation, but the lease/rental period exceeds the period of eligibility of the project/operation, only those costs incurred within the project eligibility period are eligible;
- iii. The maximum amount of EMFF eligible expenditure shall not exceed the market value of the asset leased/rented as supported, where possible, by a receipted invoice or an accounting document of equal probative value detailing the purchase cost to the lessor of the asset being leased/rented.

8. Technical Assistance

- a) The technical assistance costs⁵ covering the following actions are eligible:
 - i. For the preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit;
 - ii. For the reduction of the administrative burden on beneficiaries, including electronic data exchange systems,
 - iii. To reinforce the capacity of Member State authorities and beneficiaries to administer and use the EMFF Funds; and
 - iv. To reinforce the capacity of relevant partners in line with point (e) of Article 5(3) of the CPR(EU) 1303/2013 and to support exchange of good practices between such partners.
- b) These actions include the following:
 - v. Costs relating to the preparation, selection, appraisal and monitoring of the Preparation, selection, appraisal, monitoring, management and support to programmes and operations which are the subject of co-funded assistance.
 - vi. Costs related to meetings of the OP Monitoring Committee and any related sub-committees
 - vii. Financial management and control, audit and verification activities.

⁵ Article 59 of the CPR (EU) 1303/2013 – *Technical assistance at the initiative of the Member States*

"... the ESI Funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ESI Funds may be used by the Member State to support actions for the reduction of the administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds. The ESI Funds may also be used to support actions to reinforce the capacity of relevant partners in line with point (e) of Article 5(3) and to support exchange of good practices between such partners. The actions referred to in this paragraph may concern previous and subsequent programming periods".

- viii. OP-level information actions including costs of the development and operation of programme-related web-sites.
 - ix. Evaluations of the programme.
 - x. Actions for the reduction of the administrative burden on beneficiaries, including the establishment and operation of the computerised system for data exchange and e-cohesion system.
 - xi. Provision of guidance and training to Intermediary Bodies and beneficiaries to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds and participation by Managing Authority staff in appropriate training programmes.
 - xii. Cost of establishment and administration of complaint resolution procedures.
 - xiii. Study visits and attendance at meetings and conferences related to the EMFF.
 - xiv. Networking, co-ordination and other activities in support of complementarities with other EU funded programmes, including attendance at Steering and Monitoring Committee meetings.
 - xv. Any monitoring and evaluation activities that are implemented to support the National Strategic Plan for Sustainable Aquaculture Development.
 - xvi. Technical Assistance may also be used to cover the appropriate costs of the EMFF Audit Authority, as well as the costs of the management controls undertaken by the Managing Authority.
 - xvii. Costs of the intermediate body and of FLAGs related to the establishment of national networks aiming at disseminating information, capacity building, exchanging best practices and supporting cooperation between FLAGs.
 - xviii. Travel and subsistence costs of the Environmental Pillar to attend meetings of the OP Monitoring Committee and any related sub-committees.
 - xix. Any other activities deemed appropriate by the Certifying and Managing Authority
 - xx. The actions above referred to above may concern previous and subsequent programming periods.
- c) As set out in Article 78 of the EMFF Regulation (EU) 508/2014, the amount of funds allocated to technical assistance shall be limited to 6% of the total amount of the Operational Programme.

9. Value Added Tax (VAT)

- a) The cost of VAT is eligible only in circumstances where such VAT is not recoverable under national VAT legislation (Article 69(3) (c) of the CPR (EU) 1303/2013).

10. Sub-Contracting Costs

- a) Sub-contracting costs are eligible where the sub-contracting does not add to the cost of execution of the project/operation, without adding proportionate value to it.
- b) Sub-contracts with intermediaries or consultants in which the costs are defined as a percentage of the total eligible cost of a project/operation are not eligible unless such costs are justified by the beneficiary by reference to the actual value of the work or services provided. If such justification cannot be provided the costs for sub-contracting are not eligible.

11. Location of Operation

- a) As a general rule, operations not located in the programme area are ineligible, with the exception for projects/operations approved by the Managing Authority in writing, in consultation with the Certifying Authority, and that meet the following conditions in accordance with Article 70 of the CPR (EU) 1303/2013:
 - i. the operation is for the benefit of the programme area;
 - ii. the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the EMFF at the level of the priority.
 - iii. the monitoring committee has given its agreement to the operation or types of operations concerned;
 - iv. the obligations of the authorities for the EMFF OP 2014-2020 in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

