

Performance Audit

Simplification of the Regulations in Structural Funds

Report by the Auditor General

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List of Abbreviations

AA	Audit Authority
CA	Certifying Authority
CF	Cohesion Fund
COCOF	Committee on the Coordination of Funds
CSF	Common Strategic Framework
DoC	Department of Contracts
EC	European Commission
EE	Energy Efficiency
EIF	European Investment Fund
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
IAID	Internal Audit and Investigations Department
IB	Intermediate Body
MA	Managing Authority
MC	Monitoring Committee
MFEI	Ministry of Finance, the Economy and Investment
NAO	National Audit Office
NSRF	National Strategic Reference Framework
OP	Operational Programme
OPI	Operational Programme I
OPII	Operational Programme II
OPM	Office of the Prime Minister
PPCD	Planning and Priorities Co-ordination Division
PSAB	Project Selection Appeals Board
PSC	Project Selection Committee
PwC	Pricewaterhouse Coopers
RES	Renewable Energy Sources
SAMB	State Aid Monitoring Board
SFD	Structural Funds Database
TEN-T	Trans-European Network for Transport
VAT	Value Added Tax



Executive Summary

Executive Summary

1. The administration and management of funds acquired from the European Union (EU) to support Operational Programmes are governed by cohesion policies (the current one being Cohesion Policy 2007-2013). In this regard, Malta has adopted two Operational Programmes, one for the European Regional Development Fund (ERDF) and another for the European Social Fund (ESF). The Operational Programme co-financed by ERDF and the Cohesion Fund (CF) is commonly referred to as Operational Programme I (OPI), whereas the Operational Programme co-financed by ESF is referred to as Operational Programme II (OPII). These two programmes, OPI and OPII, were developed according to the strategic priorities identified in the National Strategic Reference Framework. This latter document sets out Malta's strategic priorities for the Cohesion Policy 2007-2013. In this context, OPI is geared towards investing in competitiveness for a better quality of life, while OPII focuses primarily on employment, education, training and social inclusion.

2. The various roles and responsibilities associated with the implementation of the Cohesion Policy 2007-2013 programme is entrusted to a number of governmental authorities. The Planning and Priorities Co-ordination Division within the Office of the Prime Minister is the designated Managing Authority (MA). The role of Certifying Authority (CA) is fulfilled by the EU Paying Authority Directorate within the then Ministry of Finance, the Economy and Investment, while the duties associated with the Audit Authority (AA) are carried out by the Internal Audit & Investigations Department.

3. The Cohesion Policy is based on a shared management system between the European Commission and Member States, with the principal aim of ensuring that the principles of regularity, legality and sound financial management are complied with. Nonetheless, the regulatory requirements, which govern the use of EU funds across Member States, are often seen as complex and administratively burdensome, prompting regular calls for simplification from the EU and national actors as well as stakeholders. To this effect, amendments were made to the General Regulation (EC) No 1083/2006, with the twin objectives of accelerating payments from the Structural and Cohesion Funds, while simultaneously reducing the administrative burdens associated with policy implementation.

4. The simplification measures being reviewed for the purposes of this performance audit are listed hereunder, with the first seven being optional and the rest being non-optional.

- a. Indirect costs (declared on a flat-rate basis of up to 20 per cent of direct costs);
- b. Flat-rate standard scales of unit cost;
- c. Lump sums;
- d. Permitted in-kind contributions to be declared as eligible expenditure in relation to financial engineering schemes;
- e. Advanced payments;
- f. Increased flexibility for major projects;
- g. Co-financed repayable assistance;
- h. Raising of threshold of revenue generating projects; and
- i. Single threshold for major projects.

5. The Contact Committee of the Supreme Audit Institutions mandated the Working Group on Structural Funds to carry out an audit on *“Simplification of the regulations in Structural Funds”*. In this regard, the National Audit Office (NAO) agreed to undertake a performance audit that evaluated nine simplification measures related to Operational Programmes funded by the EU. This parallel audit was carried out in conjunction with 13 other Member States.

6. The principal objectives of this performance audit were to:

- a. Examine whether simplification measures have been implemented in Malta;
- b. Elicit feedback from the relevant authorities and beneficiaries on their experiences so far;
- c. Determine why certain simplification measures were not implemented (if applicable); and
- d. Gather feedback of the involved authorities with regard to future simplification measures.

7. The following sections present the audit’s main conclusions and corresponding recommendations.

Conclusions

8. During the course of this performance audit, NAO noted that, overall, the applied simplification measure proved valuable to the stakeholders, especially beneficiaries. The latter commented positively on the fact that administrative burdens were not associated with this measure.

9. NAO commends the manner by which the MA worked towards determining applicable rates for the ‘indirect costs, declared on a flat-rate basis’ simplification measure. Outsourcing a feasibility study constituted good practice and curbed the risk of introducing an element of subjectivity, since the organisation that undertook the task worked independently from the MA.

10. Although the MA seemed to have some initial difficulty with regard to the transposition of the ‘indirect costs, declared on a flat-rate basis’

measure, it did manage to arrive at an agreement with the EC. The perseverance exhibited in the remedial action taken by the MA is, in NAO’s opinion, also commendable.

11. The ‘increased flexibility for major projects’ simplification measure, which was also transposed, was not applied to any project, as all eligible major projects had already been approved by the EC prior to its actual introduction. The MA strongly supports the application of this measure, which was adopted primarily due to the fact that Malta would be in a position to reimburse, in advance, amounts paid to beneficiaries. Hence, by virtue of this simplification, projects should not stall because of problems that may arise, such as delays in the pending authorisation of an environmental permit.

12. One of the main reasons afforded to NAO with regard to the fact that certain optional simplification measures were not applied was the time and cost associated with carrying out studies that determine applicable rates and justify the use of such measures. In the case of the ‘flat-rate cost’ measure, the MA stated that it did not manage a large enough volume of projects to justify studies carried out in this regard. This situation is further compounded by the fact that the size and nature of projects undertaken in Malta are highly divergent from one another.

13. In the case of lump sums, the MA seems unclear as to the level of monitoring that it would have to carry out if this measure were to be transposed and applied to the Maltese regulatory framework. In the case of other optional simplification measures, the MA stated that it did not have the necessary expertise to implement financial engineering instruments.

14. The two non-optional simplification measures were not applied because they were not deemed applicable to any project. With particular reference to the ‘raising of threshold of revenue generating projects’ measure, the MA stated that this measure had no significant impact on the manner by which operations were assessed and implemented. It stated that, although the measure exempts certain projects from the application of the funding gap methodology, there is still an obligation to apply sound financial management to them. Hence, the MA

does not perceive this latter simplification measure as useful in contributing towards the ultimate aim of simplification.

15. The MA opined that verification should be more inclined towards assessing results achieved and less focused on the checking of minor issues. In addition to duties associated with verifying and controlling a project, the MA is of the opinion that it should also focus on whether the ultimate aims of the respective projects have in fact been achieved, and therefore, carry out performance verifications of the projects concerned.

16. All interviewed beneficiaries proposed the introduction of project leadership training. They were all keen on imparting their knowledge and experience to new and inexperienced project leaders who would most likely encounter difficulties already mastered and addressed by other project leaders.

17. The MA disagreed with the fact that when a project or part of an operation is carried out exclusively through procurement processes, the definition of grants excludes flat-rate financing. Most projects in Malta are carried out by means of a procurement process, and therefore, claiming indirect costs on the basis of an agreed upon flat-rate will be a crucial element for a number of beneficiaries.

18. The MA was concerned about two issues in relation to Article 54 of the draft legislative package, which stipulates how net revenue of projects whose aggregate cost exceeds €1,000,000 should be deducted from eligible costs. More specifically, the MA was of the opinion that there should be a clear identification of the entity that was to determine the flat-rate percentage to apply in the context of revenue-generating projects. Moreover, the MA believes that cost savings resulting from energy efficiency measures (except for feed-in tariffs, which inherently constitute revenue), should be clearly excluded from this Article.

19. With particular reference to Article 75 of the draft legislative package, which sets out proposed regulations in light of the submission of information, the AA was of the opinion that the actuation of this Article would introduce added pressure to it. It noted that the requested operations and systems audits

would have to be presented in a notably shortened timeframe. According to the CA, the obligations set out in this Article are, in effect, contrary to the principles of simplification.

20. In response to Article 113 of the draft legislative package, which focused on the reorganisation of the management structure governing the AA, CA and MA, the latter believed that sufficient flexibility should be ensured so as to enable the system to allow for the different systems across Member States to continue to work effectively. Further to the above, the AA opined that if the CA were to form part of the MA, coordination would improve. On the other hand, the CA stated that during the previous two programming periods it had always been independent of the MA and that this systematic arrangement worked efficiently. Hence, it expressed its apprehension with respect to how the integration of two separate organisations would impact upon the expertise necessary to address their respective tasks.

21. Staff costs were of particular concern to the beneficiaries who participated in this performance audit. In fact, they unanimously agreed that there was a need for simplification with regard to this cost component. The absence of a system that reimburses staff costs is most strongly felt in the case of non-governmental organisations, which have to bear such costs. It was indicated to NAO that persons involved in the running of a particular project end up dedicating a large portion of their time to such projects instead of concentrating on other tasks associated with their job. To this effect, the beneficiaries called for a flat-rate on staff costs.

22. Other highly relevant issues brought to the fore by the various project beneficiaries included the need for greater simplification in terms of record-keeping procedures, as well as an increased overall flexibility in view of complications arising from unforeseen changes in circumstances. With respect to this latter point, the institution of safeguards that provide flexibility would be an ideal avenue for further exploration. Finally, beneficiaries unanimously voiced their concern with regard to the lack of appropriate support provided by their respective line ministries, particularly in the address of arising difficulties and challenges. NAO considers the need to coordinate assistance provided by

the MA and the various involved line ministries as a matter of paramount importance, which if not actively managed, may easily prove to be detrimental to all involved.

Recommendations

23. NAO recommends that should any type of flat-rate be transposed once again, the MA should adopt the same procedure it used in determining the rates for the ‘indirect costs, declared on a flat-rate basis’ simplification measure.

24. NAO is of the opinion that if a downward revision of the stipulated ‘indirect costs, declared on a flat-rate basis’ can be actuated following the signing of the relevant Grant Agreement, an eligible upward revision should also be considered. To this end, NAO recommends that the MA assesses what provisions would be necessary for enabling upward revisions, should project-related circumstances so warrant.

25. With regard to the ‘lump sums’ simplification measure, the MA should take steps to clarify expected monitoring responsibilities so as to be able to take an informed decision on whether to transpose and apply this measure or not.

26. The MA should endeavour to set up a system that connects beneficiaries, especially those managing similar projects. The introduction of such a system would capitalise on the experiences of beneficiaries, shortening learning curves, allowing them to support one another through the exchange of feedback and troubleshooting, while simultaneously enabling positive synergies.

27. NAO recommends that the EC considers the suggestions put forward by stakeholders. These suggestions include clarity on monitoring responsibilities with regard to the establishment of flat-rate percentages by the EC, the principle of

substantial net revenue associated with revenue generating projects, as well as a reorientation of focus in verifying the performance of projects.

28. NAO supports the proposal put forward by the MA with regard to the allowance of flat-rate financing in projects that are carried out exclusively through procurement processes. In this regard, it recommends that Article 57 of the draft legislative package should be altered to reflect this crucial suggestion.

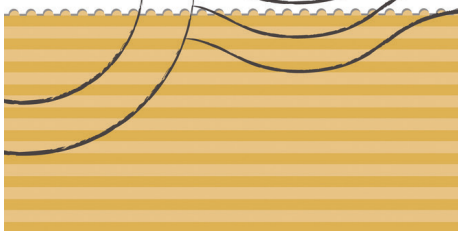
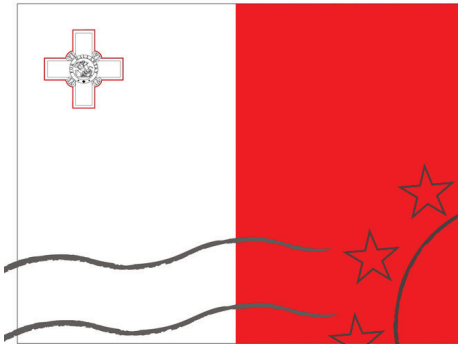
29. NAO noted that clarification was needed with respect to what would happen in cases where an indirect cost compensation rate was more advantageous than another, and whether the Member State in question could choose the one that adds more value to the final amount recouped by beneficiaries. The NAO, hence, urges the EC to provide Member States with clarification on this matter.

30. Conceptually, NAO is not against the fusion of the CA’s roles into those of the MA, given that ample consideration is provided for ensuring sustained and improved coordination, the clear segregation of duties, as well as efficiency and effectiveness gains.

31. NAO recommends that more importance should be given to the reimbursement of staff costs, especially when projects are run by non-governmental organisations. The establishment of a flat-rate in this regard could quintessentially entail a study similar to that carried out by PwC on ‘indirect costs, declared on a flat-rate basis’.

32. NAO is of the overall opinion that feedback on future simplification forwarded by all the stakeholders and to be duly transmitted onwards by the Working Group on Structural Funds, should be taken into consideration by the EC.





Chapter 1

Operational Programmes and Simplification Measures: A Contextual Backdrop

Chapter 1 – Operational Programmes and Simplification Measures: A Contextual Backdrop

Chapter 1 provides the contextual background key in understanding the management and application of funds acquired through the EU. Attention is directed at the key role and functions of multiple stakeholders, namely, the Managing Authority, Certifying Authority and Audit Authority, as well as the project beneficiaries. Centrally important in this regard is a detailed analysis of the various measures intended at simplifying the complex processes and regulations governing EU funds. Finally, this initial chapter concludes by presenting the overall audit objectives and scope, while highlighting methodological considerations.

1.1 Background on EU-funded Operational Programmes in Malta

1.1.1 The administration and management of funds acquired from the European Union (EU) to support Operational Programmes (OP) are governed by cohesion policies (the current one being Cohesion Policy 2007-2013). In this regard, Malta has adopted two OPs, one for the European Regional Development Fund (ERDF) and another for the European Social Fund (ESF). The OP co-financed by ERDF and the Cohesion Fund (CF) is commonly referred to as Operational Programme I (OPI), whereas the Operational Programme co-financed by ESF is referred to as Operational Programme II (OPII). These two programmes, OPI and OPII, were developed according to the strategic priorities identified in the National Strategic Reference Framework (NSRF). This latter document sets out Malta's strategic priorities for the Cohesion Policy 2007-2013. In this context, OPI is geared towards investing in competitiveness for a better quality of

life, while OPII focuses primarily on employment, education, training and social inclusion.

1.1.2 The total number of projects approved as at December 2012 under ERDF was 99, whereas a further eight projects were approved under the CF. These projects primarily address the infrastructural needs of Malta, with special focus on the enhancement of knowledge and innovation. In addition, these projects also target the promotion of sustainable tourism, the development of the TEN-T network, climate change and safeguarding of the environment, urban regeneration as well as the improvement of quality of life.

1.1.3 With regard to ESF, as at December 2012, there were 74 operations, which varied in type. These consisted, in the main, of the organisation of training courses of a vocational nature; campaigns (aimed at raising awareness on a number of related ESF issues, such as work-life balance); social exclusion measures; and schemes (targeting individuals as well as a number of economic sectors).

1.1.4 OPI is based on the priorities highlighted by the NSRF document and addresses the following seven key priority areas (also referred to as Priority Axes) agreed upon between Malta and the European Commission (EC). In essence, the Priority Axes were introduced as a means of further refining categorisation of the OPs.

a. **Enhancing Knowledge and Innovation**

This Priority Axis aims to support Malta's efforts in becoming a knowledge-based and competitive economy. This is achieved through

the strengthening of economic activity, particularly by means of attracting foreign direct investment, supporting enterprise infrastructure and providing the required industrial facilities. Furthermore, this Priority Axis serves to facilitate the transition of local industry towards a competitive knowledge-based economy, thereby indirectly promoting entrepreneurship.

b. Promoting Sustainable Tourism

This second Axis is targeted at promoting a sustainable and competitive tourism industry by providing support for the upgrading of the local tourism product. Such objectives may be attained through the promotion of the Maltese Islands as a prime and diverse tourist destination, and by improving the competitiveness of tourism and cultural operators in this regard.

c. Developing the Trans-European Network for Transport (TEN-T)

This Axis aims to optimise the connectivity of the Maltese islands, both domestically and internationally. The improvement of journey-time reliability, road safety and upgrades to parts of the TEN-T road infrastructure, as well as the improvement of maritime accessibility through the upgrade of TEN-T ports are ways by which the objectives of this Axis should be reached. TEN-T is a planned set of road, rail, air and water transport networks designed to serve the entire European continent. TEN-T envisages coordinated improvements to primary roads, railways, inland waterways, airports, seaports, inland ports and traffic management systems to provide integrated and intermodal routes for the movement of people and freight throughout Europe.

d. Mitigation and Adaptation to Climate Change

This Priority Axis aims to implement measures that intend to mitigate the risks brought about by climate change, as well as measures targeted at reducing aerial emissions resulting from electricity generation, which is one of the greatest sources of greenhouse emissions. Further objectives of this Axis are the promotion of energy efficiency, as well as the

development of infrastructure that minimises the effects of storm water, among others.

e. Safeguarding the Environment

The objective behind this Priority Axis is to continue upgrading the country's environment infrastructure, particularly in the areas of solid waste management and risk prevention. The operational objectives of this Priority Axis include the minimisation of landfilling of waste and the rehabilitation of disused landfills, as well as an increase in the capacity of waste treatment for energy recovery and recycling purposes.

f. Urban Regeneration and Improving the Quality of Life

The aim of this priority is to safeguard and value the country's urban heritage and promote an overall improvement in quality of life through better accessibility, enhanced education, social and health systems, and increased environmental monitoring capacity. In this context, operational objectives include the upgrading of the physical environment and visual appeal of urban cores, particularly through urban regeneration and integrated local development. Other objectives include the improvement of internal mobility, an increase in e-services, as well as continued investment in health, social and educational sectors.

g. Technical Assistance

This Priority Axis aims to facilitate the overall implementation of OPI and to reinforce the administrative capacity of the public administrations concerned. Its objectives include ensuring the efficient administration and implementation of the OP through the effective application of the relevant regulations and procedures. Optimising Programme quality while simultaneously ensuring efficiency, are two other ways by which the aims of this Axis could be achieved.

1.1.5 OPII is also based on priorities highlighted by the NSRF document and addresses five key priority areas, namely:



a. Improving Education and Skills

This Priority Axis aims to invest in human capital in order to increase the overall participation rates in education at all levels, thereby increasing and upgrading the knowledge and skill level of the Maltese labour force. It is planned that these objectives are to be attained by increasing student participation in diverse fields of study, such as science, technology and ICT, as well as by improving the quality and relevance of the educational experience.

b. Investing in the Employability and Adaptability of the Workforce

This Priority Axis aims to invest in human capital to ensure that the working age population as well as enterprises become flexible enough to respond to the needs of the economy, while simultaneously reducing unemployment. The objectives of this Axis are targeted at increasing the participation rate in lifelong learning and supporting the adaptability of undertakings through skill improvement.

c. Promoting an Equal and Inclusive Labour Market

The aim of this Priority Axis is to promote the uptake of stable and quality employment by persons who find difficulty in participating in the labour market. The objectives of this aim are to increase the female participation rate, as well as better integration, retention and

progression of disadvantaged groups in the labour market.

d. Strengthening of Institutional and Administrative Capacity

This Priority Axis aims to invest in human resource development and corresponding mechanisms intended to strengthen institutional capacity as well as the efficiency of public administrations, local government, social partners, and civil society. These aims support the objectives of strengthening the efficiency and effectiveness of the public sector, as well as developing effective partnerships in a wide range of policy areas.

e. Technical Assistance

The aims of this Priority Axis are the facilitation of the overall implementation of OPII, in order to optimise the programme's quality and efficiency, while also ensuring the effective application of regulations and procedures. In this regard, the focus areas include the implementation of the Programme, attending to capacity building requirements, the delivery of information and publicity, as well as the application of innovative activities, among others.

1.1.6 As is illustrated in Tables 1 and 2, the budgetary allocation under OPI stands at €856,615,354 (as at December 2012), while the allocation under OPII stands at €131,764,707 (as



at December 2012). The finer apportionment of funds with respect to the Priority Axes for OPI and OPII are also indicated in the ensuing tables.

The relative apportionment of ERDF, ESF, CF and national co-financing against each OP is presented in Appendix A.

Table 1: OPI Budgetary Allocation against Priority Axis

Priority Axis	Funds
Priority Axis 1	€120,000,000
Priority Axis 2	€120,000,000
Priority Axis 3	€145,000,000
Priority Axis 4	€121,000,000
Priority Axis 5	€189,288,259
Priority Axis 6	€149,000,000
Priority Axis 7	€12,327,095
Total	€856,615,354

Table 2: OPII Budgetary Allocation against Priority Axis

Priority Axis	Funds
Priority Axis 1	€41,400,000
Priority Axis 2	€30,995,000
Priority Axis 3	€36,900,000
Priority Axis 4	€17,199,118
Priority Axis 5	€5,270,589
Total	€131,764,707

1.2 Roles and Responsibilities of Stakeholders

1.2.1 The various roles and responsibilities associated with the implementation of the Cohesion Policy 2007-2013 programme is entrusted to a number of governmental authorities, defined hereunder.

1.2.2 The Planning and Priorities Co-ordination Division (PPCD) within the Office of the Prime Minister (OPM) is the designated Managing Authority (MA) and its main tasks are as follows:

- a. Ensuring that operations selected for funding are in accordance with the criteria set out by the respective OP and compliant with applicable Community as well as national rules and guidelines.
- b. Checking that the project selection process is compliant with the evaluation criteria that were approved by the Monitoring Committee. This latter referred Committee is tasked with the approval of project selection criteria, as well as amendments to the OPs, among others.
- c. Verifying the actual delivery of the co-financed products and services, as well as expenditure declared by the beneficiaries.
- d. Ensuring that a system for recording and storing accounting records is in place for each OP, and that data required for financial management, monitoring, verifications, audits and evaluation purposes, are duly collected.
- e. Ascertaining that bodies involved in the implementation of operations maintain a separate accounting system or an adequate cost centre for all transactions in relation to the operation.
- f. Ensuring that evaluations of the OPs are carried out in accordance with Article 47 of the General Regulation (EC) No 1083/2006.
- g. Setting up procedures to ensure that all documents relating to expenditure and audits

are held in accordance with the requirements of Article 90 of the General Regulation.

- h. Ensuring that the Certifying Authority (CA) receives the necessary information to carry out its tasks in relation to expenditure.
- i. Guiding the Monitoring Committees in their work and providing them with the required documentation.
- j. Compiling annual and final reports on implementation to be forwarded to the EC.
- k. Ensuring compliance with the information and publicity requirements laid down in Article 69 of the General Regulation.
- l. Providing the EC with the relevant information to allow it to appraise major projects in line with Articles 40 and 41 of the General Regulation.

1.2.3 The EU Paying Authority Directorate within the then Ministry of Finance, the Economy and Investment (MFEI) acts as the CA, therefore assuming responsibility for the delivery of the following tasks:

- a. Drawing up and submitting certified statements of expenditure to the EC, as well as applications for payment in line with the provisions laid down in the General Regulation and the Implementation Regulation.
- b. Certifying that the statement of expenditure is accurate and that it can be verified against supporting documentation, as well as ensuring that the expenditure declared complies with applicable Community and national rules.
- c. Ensuring that it is in receipt of adequate information from the MA with regard to verifications to be carried out on expenditure included in the statements of expenditure.
- d. Taking into account the results of all audits carried out by the Audit Authority (AA).
- e. Maintaining computerised accounting records of expenditure declared to the EC.

- f. Maintaining an account of amounts recoverable and withdrawn following cancellation of all, or part of, the contribution for an operation. (Amounts recovered shall be repaid to the general budget of the EU, prior to the closure of the OP and by deducting them from the next statements of expenditure in line with the provisions laid down in the General Regulation.)
- g. Submitting to the EC (by 31 December 2017) a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, supported by a final control report.
- h. Ensuring that the audit work, including that carried out by contracted bodies, is of internationally accepted audit standards.

1.2.4 The duties associated with the AA are carried out by the Internal Audit & Investigations Department (IAID). The IAID constitutes the executive arm of the Internal Audit Investigations Board within the Cabinet Office of OPM and is regulated by the Internal Audit and Financial Investigations Act 2003 (Cap. 461) of the Laws of Malta. These duties are expanded upon in further detail hereunder.

- a. Ensuring that audits are carried out in order to verify the effectiveness of the management and control systems in place.
- b. Ensuring that audits verifying declared expenditure are based on an appropriately constructed sample.
- c. Presenting to the EC (within nine months of the approval of an OP) an audit strategy covering the bodies that are to carry out the anticipated audits, the methodology that is to be used, as well as indicative planning of audits.
- d. Submitting to the EC (by 31 December of each year from 2008 to 2015) an annual control report presenting the findings of the audits carried out during the previous 12-month period ending on 30 June of the year concerned.
- e. Issuing an opinion (by 31 December of each year from 2008 to 2015) on whether the management and control systems in place are functioning effectively.
- f. Submitting by 31 December of a given year (where applicable), a declaration for partial closure assessing the legality and regularity of the expenditure concerned.

1.3 The Cohesion Policy and Simplification Measures

1.3.1 The Cohesion Policy is based on a shared management system between the EC and Member States, with the principal aim of ensuring that the principles of regularity, legality and sound financial management are complied with. As explained in section 1.2, Member State authorities are entrusted with the lead responsibility for all aspects of programme design and delivery. On the other hand, a vast array of regulatory requirements is presented in EU legislation.

1.3.2 These regulatory requirements, which govern the use of EU funds across Member States, are often seen as complex and administratively burdensome, prompting regular calls for simplification from the EU and national actors as well as stakeholders. To this effect, amendments were made to the General Regulation, with the twin objectives of accelerating payments from the Structural and Cohesion Funds, while simultaneously reducing the administrative burdens associated with policy implementation.

1.3.3 The simplification measures being reviewed for the purposes of this performance audit are explained hereunder, with the first seven being optional and the rest being non-optional.

- a. **Indirect costs (declared on a flat-rate basis of up to 20 per cent of direct costs)**
This simplification measure was already in place before the amendments were introduced (in (EC) No 1081/2006 and (EC) No 1080/2006 - the former relating to ESF and the latter relating to ERDF). It refers to indirect costs declared on a flat-rate basis of up to 20

per cent of the direct cost of an operation. The amendment, set out in Article 1 of (EC) No 396/2009 and Article 1(3) of (EC) No 397/2009 (the former relating to ESF and the latter relating to ERDF), introduces two additional forms of eligible costs. The latter refer to lump sums and flat-rate standard scales of unit cost, presented in the ensuing two bullets.

b. Flat-rate standard scales of unit cost

This flat-rate measure was introduced by means of Article 1 of (EC) No 396/2009 and Article 1(3) of (EC) No 397/2009, which stipulate that flat-rate costs were to be calculated by application of standard scales of unit cost as defined by the Member State. For instance, a subsistence allowance rate qualifies as a flat-rate unit cost.

c. Lump sums

Lump sums, also introduced by virtue of Article 1 of (EC) No 396/2009 and Article 1(3) of (EC) No 397/2009, should cover all or part of the costs of an operation and shall not exceed €50,000. If the operational aspect of the project is delivered, the beneficiary is paid the lump sum.

The above three simplification measures are to be established in advance and on the basis of a fair, equitable and verifiable calculation.

d. Permitted in-kind contributions to be declared as eligible expenditure in relation to financial engineering schemes

This simplification measure (set out in Article 1(3) of (EC) No 284/2009) is aimed at facilitating the use of financial engineering instruments, notably within the field of sustainable urban development. More specifically, in-kind contributions (with regard to financial engineering) can be treated as expenditure paid at the constitution of the funds or holding funds. Eligible expenditure must satisfy three conditions:

- i. Eligibility of expenditure shall be established at national level subject to the exceptions provided for in the specific Regulations for each Fund.

- ii. The expenditure amount is duly justified by supporting documents having equivalent probative value to invoices.

- iii. Co-financing from the Funds does not exceed the total of eligible expenditure (excluding the value of in-kind contributions).

In-kind contributions refer to payments made for work that is not paid, for instance, when a beneficiary carries out work and has no invoices to show for it.

e. Advanced Payments

This simplification measure (Article 1(4b) of (EC) No 284/2009) refers to the exclusion of a 35 per cent limit with regard to the total amount of the aid granted to a beneficiary for a given project.

f. Increased Flexibility for Major Projects

Such a simplification measure (Article 1(4c) of (EC) No 284/2009) is intended to accelerate the implementation of major projects, by allowing expenditure that has not yet been approved by the EC, to be included in expenditure declarations. This replaces a regulation that stated that only expenditure related to major projects already adopted by the EC may be included in statements of expenditure.

g. Co-Financed Repayable Assistance

It was deemed necessary for the General Regulation to be amended in order to enable Structural Funds to co-finance repayable assistance. The latter may take the form of reimbursable grants or credit lines managed by the MA through intermediate bodies (IBs) that are financial institutions. Furthermore, repayable assistance that is repaid to the body that provided the assistance must be reused for the same purpose. Article 1(2) and Article 1(3) of (EC) No 1310/2011 refers.

h. Raising of Threshold of Revenue Generating Projects

With the introduction of this simplification measure (Article 1 of (EC) No 1341/2008), the conditions set out for revenue generating projects are only applicable to operations that

are co-financed by the ERDF or CF, the total cost of which exceeds €1,000,000 (whereas this previously stood at €200,000).

i. Single Threshold for Major Projects

This simplification measure introduced (Article 1 of (EC) No 539/2010) a single threshold of €50 million for all major projects. It replaced another one that set a threshold of €25 million for projects related to the environment and a further threshold of €50 million for the rest of the projects.

1.3.4 Appendix B presents the above simplification measures in more detail while also listing the former measures that were replaced.

1.4 Objectives and Scope of Audit

1.4.1 The Contact Committee of the Supreme Audit Institutions mandated the Working Group on Structural Funds to carry out an audit on “Simplification of the regulations in Structural Funds”. In this regard, the National Audit Office (NAO) agreed to undertake a performance audit that evaluated nine simplification measures related to OPs funded by the EU. This parallel audit was carried out in conjunction with 13 other Member States.

1.4.2 The simplification measures referred to above, which came about through amendments to different regulations, relate to those highlighted throughout section 1.3. The audit focused on the transposition and application of simplification measures vis-à-vis ERDF and ESF projects (OPI and OPII) corresponding to the programming period 2007-2013.

1.4.3 The principal objectives of this performance audit were to:

- a. Examine whether simplification measures have been implemented in Malta;
- b. Elicit feedback from the relevant authorities and beneficiaries on their experiences so far;
- c. Determine why certain simplification measures were not implemented (if applicable); and
- d. Gather feedback from the involved authorities with regard to future simplification measures.

1.4.4 This performance audit did not examine the quality of the projects under analysis, yet focused on verifying and reviewing the applicability of simplification measures. This was carried out in line with guidance notes established by the Working Group on Structural Funds.

1.4.5 NAO would like to thank all of the participating organisations for their sustained collaboration throughout this performance audit.

1.5 Methodology

1.5.1 A range of information sources and analytical techniques were used in determining how relevant simplification measures were implemented throughout the 2007-2013 programme in Malta, while simultaneously seeking to elicit suggestions for the way forward.

1.5.2 In-depth research was undertaken with respect to the topic under study, which included a review of local and EU-wide literature and legal frameworks. In the case of EU-wide literature, the NAO mainly referred to reports drawn up by the EC and the European Parliament on the topic of simplification measures. NAO also studied the legal clauses relevant to this audit, which included the Council Regulation (EC) No 1083/2006, as well as amendments and addendums introduced thereafter. These amendments and addendums were, essentially, the simplification measures.

1.5.3 With regard to the local context, NAO undertook a thorough research exercise on eligibility rules adopted in Malta by the PPCD for OPI and OPII. Local progress reports and the Manual of Procedures, both published by PPCD, were also referred to. For the purposes of this performance audit, NAO reviewed and analysed the population of projects where simplification measures were in fact applied.

1.5.4 During the course of the audit, NAO endeavoured in meeting all the relevant local authorities and stakeholders. These refer to the PPCD (in its capacity as MA), the EU Paying Authority

Directorate (in its role as CA), the IAID (tasked with fulfilling the function of AA), and project beneficiaries. Fieldwork was carried out between August 2012 and December 2012.

1.5.5 Semi-structured interviews were held with the abovementioned local authorities, whereas a focus group was facilitated with respect to the beneficiaries. The semi-structured interviews were based on a three-part questionnaire drawn up in agreement with the Working Group on Structural Funds. This questionnaire was categorised under three main headings:

- a. Part I – Providing a general overview of the programmes adopted locally, including statistics on actual funding.
- b. Part II – Encompassing a detailed analysis on which optional and non-optional simplification measures were adopted, how they were transposed, and the difficulties encountered when applying them.
- c. Part III – Involving an elicitation of viewpoints on the proposed draft legislative package of the Structural Funds.

1.5.6 The focus group, which was dually moderated, further substantiated the qualitative findings of the performance audit undertaken. The focus group put forward a number of open-ended questions tapping on the various experiences of project beneficiaries. Feedback and discussions engaged in by the relevant participants were noted and transcribed. This recorded data was subsequently analysed, and key issues emerging from this exercise were drawn.

1.6 Report Structure

1.6.1 The ensuing chapters address and correspond to the questionnaire drawn up by the Working Group on Structural Funds, as was in fact highlighted in section 1.5. Each of the chapters, barring Chapter 2, which is intended to familiarise the reader with the coordination of Structural Funds at a national level, contains relevant conclusions and recommendations.

a. Chapter 2 – Structural Funds Coordination: A Maltese Perspective

This chapter provides a detailed and conceptual account of the general management and administration of EU-funded projects. It focuses on the selection of projects and their subsequent adoption and implementation processes, mainly from the MA's perspective. The workings of the IBs and the responsibilities thereof are also explained. The eligibility rules and community policies that beneficiaries are expected to conform with are presented in this chapter. Also provided in this chapter is information on the manner by which EU-funded projects are reimbursed by outlining the payment process. An overview of the verification processes, pivotal to the reimbursement of funds, is outlined in this chapter's penultimate section. Finally, this process-oriented overview is concluded through the summary review of information and publicity duties associated with the functions of the MA and other beneficiaries.

b. Chapter 3 – Simplification Measures for Programming Period 2007-2013

Chapter 3 focuses on the simplification measures corresponding to the programming period 2007-2013. The analysis of simplification measures that were transposed and applied to the local regulatory framework is followed by the due review of other optional measures that were not deemed applicable to the Maltese context. The role and perspectives of the various involved stakeholders is also elaborated upon, foremost among which are the MA, CA and AA, as well as the project beneficiaries. Finally, this chapter addresses the implementation of the non-optional simplification measures and concludes by means of the review of other general opinions put forward by the diverse stakeholders.

c. Chapter 4 – Future Simplification

This final chapter delves into efforts undertaken at reinforcing and further developing other simplification measures, particularly in view of the transition towards the 2014-2020 Cohesion Policy. The role of

the Maltese MA and other stakeholders, in the context of this newly proposed draft legislative package, is explored, while due attention is also directed at relevant feedback put forward by project beneficiaries.

d. Appendix A – Overview of Structural Funds Programmes

The tables presented in Appendix A provide an overview of the allocation of funds under each respective OP. Table 12 details the allocation of ERDF, ESF, CF and national co-financing as per OP, while Table 13 provides additional information in terms of utilised funding corresponding to contracts signed and funds granted to beneficiaries, as well as declared eligible expenditure.

e. Appendix B – Overview of Simplification Measures

Appendix B compares previous measures with the simplified measures reviewed throughout this performance audit. These comparisons, albeit in more detail, correspond to section 1.3 of this report.

f. Appendix C – Table for Reporting and Analysis of the Use of Measures from the Date of Introduction

This appendix provides, in tabular format, an overview of the extent of usage of all simplification measures as per date of introduction.

g. Appendix D – Table for Reporting and Analysis of the Use of Measures from the Date of Retroactive Applicability

Similar to the previous appendix, this overview, however, reports on the extent of usage of all simplification measures from the date of retroactive applicability.

h. Appendix E – Extract from ESF Eligibility Rules

This final appendix delves into Rule 7 of the ESF Eligibility Rules, which specifically focuses on indirect costs. This, in turn, is linked to the ‘Indirect costs, declared on a flat-rate basis’ simplification measure.





Chapter 2

Structural Funds Coordination: A Maltese Perspective

Chapter 2 – Structural Funds Coordination: A Maltese Perspective

This chapter provides a detailed and conceptual account of the general management and administration of EU-funded projects. It focuses on the selection of projects and their subsequent adoption and implementation processes, mainly from the MA's perspective. The workings of the IBs and the responsibilities thereof are also explained. The eligibility rules and community policies that beneficiaries are expected to conform with are presented in this chapter. Also provided in this chapter is information on the manner by which EU-funded projects are reimbursed by outlining the payment process. An overview of the verification processes, pivotal to the reimbursement of funds, is outlined in this chapter's penultimate section. Finally, this process-oriented overview is concluded through the summary review of information and publicity duties associated with the functions of the MA and other beneficiaries.

2.1 The Project Selection Process

2.1.1 As already indicated in the preceding chapter, the PPCD, in its role as MA for Structural Funds, coordinates the implementation of various EU-funded projects in Malta. This Authority is tasked with the principal aim of ensuring the efficient absorption and management of European assistance, correspondingly structured and channelled according to the established strategic priority areas. These priority areas, which emanate from the NSRF, are structured into OPs by the MA and are subsequently approved by the EC for Cohesion Policy funding.

2.1.2 The various Priority Axes that constitute the respective OPs are reproduced in Table 3 for ease of reference.

Table 3: Operational Programmes Priority Axes

	Operational Programme I	Operational Programme II
Priority Axis 1	Enhancing Knowledge and Innovation	Improving Education and Skills
Priority Axis 2	Promoting Sustainable Tourism	Investing in the Employability and Adaptability of the Workforce
Priority Axis 3	Developing the Trans-European Network for Transport (TEN-T)	Promoting an Equal and Inclusive Labour Market
Priority Axis 4	Mitigation and Adaptation to Climate Change	Strengthening of Institutional and Administrative Capacity
Priority Axis 5	Safeguarding the Environment	Technical Assistance
Priority Axis 6	Urban Regeneration and Improving the Quality of Life	
Priority Axis 7	Technical Assistance	

2.1.3 Each Priority Axis is populated with a number of projects that go through a selection process. A delegated Monitoring Committee (MC) approves the selection criteria utilised in this process. There are currently two MCs - one for ERDF and another for ESF. The Principal Permanent Secretary chairs the MC and each Committee is composed of government representatives, social and economic partners, representatives of civil society, the EC and the European Investment Bank. The latter forms part of the MC only with respect to ERDF projects, if and when invited by the MA. Apart from the approval of the project selection criteria, the MC's responsibilities include the approval of any changes to the OPs, as well as proposals for amendments to the content of the Commission decision on the contribution of funds. MC meetings are held twice yearly to review Programme implementation progress.

2.1.4 The criteria utilised in the selection of projects reflects those adopted by the respective MC. ERDF and CF projects are categorised into two, that is, major and non-major projects. Major projects for both the ERDF and CF are here defined as “a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and whose total cost exceeds EUR 50 million” (Article 1 of (EC) No 539/2010).

2.1.5 Non-major projects that are co-financed by ERDF, as well as all ESF projects are selected through an open-call procedure. On the other hand, major ERDF projects together with all CF projects undergo a process of consultation. Finally, an altogether different procedure is utilised in the application of aid schemes co-financed by both ERDF and ESF and administered by IBs.

2.1.6 The Project Selection Committee (PSC) is tasked with assessing all projects under ERDF, CF and ESF (excluding aid schemes). All appeals are handled by the Project Selection Appeals Board (PSAB), excluding appeals under calls or applications managed by IBs. In the case of the latter, specifically appointed boards are responsible for handling such appeals. The responsibilities of the PSAB include receiving, reviewing and evaluating appeals lodged by potential beneficiaries whose submitted project proposal was rejected.

2.2 Selecting ERDF and ESF Projects

2.2.1 An open call for project proposals with regard to ERDF and ESF projects consists of a project application form, guidance notes to the application form and a deadline for the submission of project applications. Such calls are published by means of press releases, publications of adverts in local newspapers, as well as publications on the MA's website. The MA also delivers information sessions, which facilitate the application process for prospective applicants.

2.2.2 The PSC supports the MA in the project selection process by checking project proposals in terms of eligibility, carrying out an analysis of eligible projects, as well as ranking eligible projects in terms of the selection criteria stipulated by the MC. Project applications are reviewed, and a synopsis of each project is drawn up to help PSC members with the adjudication of project proposals. At this point, issues relating to eligibility criteria or any other aspects of the project in question are clarified with the applicants as deemed necessary by the PSC (the PSC may seek explanations through a clarification letter or meeting with the relevant project applicant) and, where necessary, the advice of technical experts is sought.

2.2.3 PSC members then rank projects according to the criteria approved by the MC. A project must obtain a minimum overall score of 50 per cent to be considered eligible for funding. Depending on the available financial resources (as stipulated in the call for project proposals), the highest scoring projects are selected for funding. Once project leaders are informed of the outcome of the selection process, the MA and the beneficiary draw up a Grant Agreement for each selected project.

Selection of CF Projects

2.2.4 Funding related to CF projects is limited to a select number of priorities (namely, transport and environment), which are essentially national projects that are managed and administered by public entities. This inherently means that a public call for applications is not issued. Instead, the MA launches a call within the relevant Ministry, and submitted projects are subsequently ranked according to the

standard criteria approved by the MC.

2.3 The Selection Process Adopted for Major Projects

2.3.1 As indicated in section 2.1, major projects are those projects with a total cost exceeding €50 million and therefore require the approval of the EC through a Commission decision for each project.

2.3.2 Major projects are identified by the Maltese Authorities and listed in the relevant OP. In the case of a new major project not listed in the OP, a cabinet memo is drawn up prior to requesting a change in the OP. No open calls are therefore issued in this regard. The respective applicant fills in an application form provided by the EC, which is subsequently reviewed by the PSC for compliance purposes. The eligibility and selection criteria thereof are established by the corresponding MC. Once such review is concluded and the application achieves the 50 per cent pass mark, it is sent to the EC together with other supporting documentation, such as a cost-benefit analysis and an environmental impact assessment, among others. Article 41(2) of (EC) No 1083/2006 states that the Commission Decision “*shall define the physical object, the amount to which the co-financing rate for the priority axis applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund.*”

Technical Assistance

2.3.3 The Technical Assistance arm, which is managed by the MA, financially supports the MA’s operations. The latter includes the following associated costs: management, monitoring, evaluation, control, as well as information and publicity activities of the OPs. Stakeholders eligible for Technical Assistance are those involved in the management, implementation and control of the relevant OP/Cohesion Policy. These include the MA, CA, AA, the Treasury Department, the Department of Contracts (DoC), IBs and line Ministries.

2.4 Intermediate Bodies and the Implementation of Aid Schemes

2.4.1 Aid schemes are implemented by IBs on behalf of the MA. Under the 2007-2013 Programme,

there are four IBs that fall under ERDF (Priority Axes 1, 2, 4 and 6), one IB for ESF (Priority Axes 2 and 3) and none for CF.

2.4.2 In this regard, the MA enters into an agreement with each IB by signing a covenant. In the case of aid schemes, the beneficiaries are the enterprises receiving aid under the relevant scheme. The IB selects the beneficiaries that will be implementing the projects under the applicable scheme, who in turn sign a Grant Agreement with the IB.

2.4.3 Prior to launching the scheme, the IB notifies the State Aid Monitoring Board (SAMB) of such a scheme in order to ensure that it has the necessary clearance on any issues relating to the scheme prior to its launch. The SAMB is responsible for the monitoring of state aid in Malta and provides advice and guidance to beneficiaries as well as other stakeholders with respect to state aid. This ensures that EU-funded projects are in line with state aid regulations.

2.4.4 Once the scheme is launched, the IB is responsible for the following key tasks:

- a. Advertising the scheme;
- b. Drafting the guidance notes and application forms for the beneficiaries;
- c. Holding information meetings for potential applicants;
- d. Drafting the eligibility/selection criteria for the relevant aid scheme;
- e. Setting up an Evaluation Committee to evaluate proposals against the approved eligibility criteria;
- f. Drafting the Terms of Reference and the Rules of Procedure for the Evaluation Committee;
- g. Setting up an appeals procedure (including an Appeals Board); and
- h. Drafting the relevant Terms of Reference.

2.4.5 Once the IB and the respective beneficiaries sign the Grant Agreement, the beneficiaries can start to implement their respective projects, with the help of a manual. The latter is drafted by the IB and is intended to help beneficiaries in the implementation of their projects.

2.5 Eligibility Rules and Community Policies

Eligibility Rules

2.5.1 The implementation of operations under both OPs is based on two sets of eligibility rules, one corresponding to each OP. For expenditure to be deemed as eligible, it has to conform to regulations stipulated by the European Council. National eligibility rules have been published by the MA within the parameters established by virtue of various European Council Regulations. In this respect, beneficiaries should ensure that project proposals are drawn up on the basis of these eligibility rules. To this end, project expenses are only approved if corresponding eligibility criteria are met.

Community Policies

2.5.2 All project beneficiaries should ensure that procurement is carried out in line with the principles of non-discrimination, equality, transparency, mutual recognition, proportionality, and good governance. Procurement should be carried out in line with the Public (Procurement) Regulations (2010, S.L. 174.04). Failure to comply with the latter could lead to the EC recovering funds from the beneficiary. Beneficiaries not bound by the Public Procurement Regulations, such as non-governmental organisations and beneficiaries from the private sector, are nonetheless encouraged to follow the same Regulations. Contracting procedures should be carried out in line with good governance, fairness, transparency and non-discrimination between economic operators.

2.5.3 Equality must be ensured at all times during all stages of the project, based on the principle of equal opportunities for all, irrespective of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation and any other form of discrimination should be prevented. In this context, and should the need arise, beneficiaries are encouraged to seek guidance and advice regarding equality by contacting the National Commission for the Promotion of Equality. Similarly, the Commission for Persons with Disability provides guidance and advice to ensure that aspects relating to accessibility

for disabled persons are promoted during the various stages of project implementation.

2.5.4 Sustainable development should be ensured at all stages, including economic growth, social cohesion and environmental protection. The Department for Environment Policy and Initiatives within the then Ministry for Resources and Rural Affairs provides guidance related to environmental sustainability. Planning regulations are to be followed at all times, and beneficiaries can seek guidance from the Malta Environment and Planning Authority prior to submitting the project, in order to factor in any risks emanating from permit requirements.

2.5.5 Invariably, compliance with state aid rules should be ensured. EU state aid rules apply to projects relating to commercial enterprises carrying out an economic activity, which have factored within them any direct or indirect financial support sourced from the public sector. Such rules also apply to projects where the assistance involved distorts trade or threatens to distort competition within the Community.

2.6 Co-financing, Implementation and Contracting

Co-financing

2.6.1 All projects benefiting from Cohesion Policy funding incorporate within them an element of national co-financing. The Grant Agreement, signed by the beneficiary and the MA, stipulates the eligible cost and the co-financing rate. Once the Public Eligible part of the project is determined, projects are ordinarily financed at a ratio of 85:15, with the former corresponding to EU funding, and the latter deriving from national funds.

Implementation

2.6.2 Beneficiaries are responsible for the implementation of corresponding operations in line with the terms and conditions set out in the Grant Agreement signed with the MA and as per Manual of Procedures. The beneficiary should always act in accordance with the principles of good governance and sound financial management.

Contracting

2.6.3 EU funds are inherently public funds and must therefore be contracted in a transparent and competitive manner. To this end, the DoC provides guidance regarding issues related to public contracts. The latter is responsible for the administration of the procurement procedures as laid down in the Public (Procurement) Regulations (2010, S.L. 174.04). The DoC ensures that published tenders are in accordance with the Public Procurement Regulations and that awarded contracts are in line with the principles of free access, transparency and fair competition.

2.6.4 In this respect, the main functions assumed by the DoC, among others, are the following:

- a. Establishing guidelines (manuals) for use by contracting authorities;
- b. Supporting contracting authorities in preparing the tender dossiers (including timely vetting);
- c. Establishing and/or approving the general conditions of tender documents;
- d. Authorising deviations from standard conditions in accordance with the regulations and duly assimilating any such deviations into respective tender documents; and
- e. Ensuring that tender conditions and specifications do not afford an undue advantage or disadvantage to any particular tendering party or person.

2.7 The Payment Process

2.7.1 Upon completion of project works and services, the contractor issues an invoice, which is forwarded to the beneficiary for payment.

2.7.2 The relevant beneficiary, who is responsible for ensuring compliance with contractual specifications and other regulations, checks the contractor's request for payment. The beneficiary must also validate the corresponding invoices and ensure that they all constitute original copies, that their cumulative amounts tally with the schedule of payments, and that the claimed expenditure is in line with the project's Grant Agreement, as well as applicable eligibility and community rules. The MA issues an Invoice Status Certificate through the Structural Funds Database (SFD) and forwards it to the line ministry, in addition to all documents related to the payment.

2.7.3 The corresponding line ministry is primarily responsible for the coordination of all projects implemented by any department and public organisation forming part of its portfolio. This incorporates all phases of the project process, including support provided during the submission of proposals and at implementation stage, the payment process, as well as at monitoring stage.

2.7.4 Once the respective line ministry verifies the forwarded documentation, it processes the payment and sends all relevant documentation to the Treasury Department for payment execution.



2.7.5 The Treasury Department is responsible for checking payments forwarded by the line ministry and effecting payments to contractors through the Central Bank of Malta. The latter administers accounts relating to funds advanced by the EU to finance projects as instructed by the Director Certifying Authority, transfers funds into the contractor's bank account once it receives instructions from the Treasury Department, and issues a Debit Advice to the Treasury Department once the transfer is effected.

Salaries and Staff Costs

2.7.6 Beneficiaries are reimbursed for salaries already incurred in order to ensure that their payment is effected in a timely manner. Hence, beneficiaries pay their employees' salaries from the salaries/payroll vote of the organisation, and subsequently draw up a reimbursement request. In limited (and pre-approved) instances where employees are engaged in more than one EU-funded project, the beneficiaries and MA apportion the salary according to the time spent on each project. Project Leaders endorse and keep a documentation trail of timesheets signed by the respective employees. Where required, the staff costs calculator, which may vary across projects, is used to calculate apportionment.

Aid Schemes

2.7.7 In the case of aid schemes, the IB ensures that requests for payment from the beneficiaries

are complete, correct and accompanied by an implementation report.

2.8 Drawdown of Funds from the EC

2.8.1 Malta can submit a claim for reimbursement from the EU for expenditure incurred by beneficiaries. Once incurred expenditure is of a substantial amount, the MA initiates the verification process (further expanded upon hereunder) in relation to the submission of a Request for Reimbursement. If the MA fails to ensure the efficient processing of such payments, it risks losing funds already earmarked for its projects.

2.8.2 The CA is responsible for the forwarding of payments for reimbursement, which payments would have undergone a number of verification procedures. Initially, the beneficiary (or the IB in case of aid schemes) generates the Statement of Expenditure at Project Level and submits it to the MA. The MA carries out desk-based checks on all payments listed on the Statement of Expenditure and once it is satisfied that all payments certified by the beneficiary are correct, the MA generates the Statement of Expenditure at Priority Level and submits it to the CA. In the case of aid schemes, following the IB's verification, the Statement of Expenditure is forwarded to the MA for review and onward transmission of accepted claims to the CA. Upon receipt of the Statement of Expenditure from the MA, the CA initiates the certification process, where it carries out its own checks on a sample of the claims or invoices pegged with the Statements of Expenditure.

2.8.3 Verification from the IB's end refers to checking that the delivery of the co-financed products and services actually took place and that the expenditure declared by the beneficiaries was actually spent and complies with community and national rules. Verifications incorporate administrative, financial, technical and physical aspects of the operation and must be carried out for every request for reimbursement.

2.9 Auditing, Controlling, Monitoring, Reporting and Evaluating the Projects

2.9.1 Projects and aid schemes co-financed through the Cohesion Policy 2007-2013 are subject to audits by various stakeholders such as the EC, the AA and the NAO. The MA regularly monitors implementation, including payments, whereby checks are carried out on a regular basis.

2.9.2 The MA is responsible for monitoring operations at Programme level. This is an ongoing process and ensures the achievement of results. It is important that all stakeholders involved in the respective project provide feedback in a timely manner. The MA constantly monitors projects through various tools, including regular project progress reports, bilateral meetings and Ministerial Project Steering Committee meetings.

2.9.3 The relevant stakeholders (the beneficiary, the IBs, and horizontal stakeholders) upload documents and input data on the SFD, which is essentially a central electronic system. The MA uses the information supplied on the SFD to track and deal with urgent issues regarding project implementation, such as the monitoring of payments prior to the initialisation of the Statement of Expenditure and contracting. The MA can effectively monitor the progress of its projects if the stakeholders regularly update the SFD in terms of contracting and disbursing.

2.9.4 Project leaders draw up Project Progress Reports, which apart from providing an overview of the projects' progress, serve to identify any risks or issues that need to be resolved. In this regard, the Ministerial Project Steering Committee forms part of the overall monitoring system in the case of public sector projects. The Committee is chaired by the

Permanent Secretary of the ministry under which the project responsibility falls. The Committee's meetings centre on project progress, arising issues and, where necessary, the expediency of programme implementation.

2.9.5 Additionally, the MC meets on a regular basis to monitor targets, facilitate implementation and ensure that objectives and targets are being met in order to enable timely and effective absorption of EU Funds.

2.9.6 Synergy between the different initiatives, as well as the maximisation of resources and the minimisation of risks with regard to the duplication of effort and resources expended across ministries, is encouraged by the Inter-Ministerial Coordination Committee.

2.9.7 The use of indicators has facilitated the monitoring task, which indicators enable the measurement of progress and the achievement of targets. There are three types of indicators, largely monitored by means of the SFD and the Project Progress Report. Output indicators measure the physical output, directly obtained in exchange for public expenditure; result indicators measure the immediate benefits of the interventions; while impact indicators capture the longer-term effects of the Programme on a national level. Each of the projects selected for funding through the Cohesion Policy has an established set of output, result and impact indicators stipulated in the Grant Agreement.

2.9.8 The IB is responsible for the monitoring arrangements of the implementation of the relevant scheme and such arrangements must ensure that the beneficiary in concern has carried out operations in line with national and EU legislation, and in accordance with the Grant Agreement signed between the IB and the beneficiary.

2.9.9 Once the project is completed, the beneficiary compiles a Project Closure Report and forwards it to the MA for its review and endorsement.

2.9.10 During the second quarter of each year, the MA is required to submit to the MC an Annual Implementation Report for each OP. Following the MC's approval, the MA submits the Report to the EC, where it is in turn reviewed. The Annual

Implementation Report includes a record of progress made in the implementation of projects, difficulties encountered throughout implementation, particularly with respect to adherence and compliance to regulations, as well as measures taken to address such problems. It also includes details of total expenditure and claims for payments submitted to the EC, as well as total payments received from the EC.

2.9.11 The MA should also present a final report for each OP for the 2007-2013 programming period by the end of March 2017, containing similar information to that regularly submitted in the Annual Implementation Report.

2.9.12 The evaluation of projects is key in determining the appropriate use and allocation of public funds, or otherwise, and can lead to increased efficiency and effectiveness of the respective OP. It provides a clearer picture of the implementation and expenditure of Structural Funds. Feedback obtained from evaluation exercises serves to reallocate resources or apply changes to the implementation process.

2.10 Information and Publicity

2.10.1 Publicity and information activities undertaken at Programme level fall under the responsibility of the MA. In this regard, a Communication Plan was prepared by the MA and approved by the EC during January 2008. This Communication Plan aims to identify the information and publicity measures that should be applied throughout the programming period.

2.10.2 The Communication Plan stipulates the information and publicity measures that should be in place to ensure that spending from Cohesion Policy funds is transparent and that awareness of such benefits is increased. Information and publicity activities are crucial tools used to inform the public, the media, as well as beneficiaries, about the role assumed by the EU in contributing towards general socio-economic development.

2.10.3 More specifically, all formal documents, publicity and information items, publications and measures are to include the national flag, the EU emblem, the Cohesion Policy logo, as well as compulsory text adapted as part of the visual identity requirements.

2.10.4 The MA holds information events on an annual basis, with the aim of reaching out to the public. The main aims of these events are to keep the public informed, to deliver transparent information, to create awareness about the Funds, and to highlight success stories of Structural Cohesion Funds.

2.10.5 A number of publicity and information measures are compulsory for all projects. These include the issuance of a press release, a billboard in the case of projects involving construction or infrastructural works over a certain threshold, and stickers attached to items such as equipment and furniture. When organising training sessions, events or conferences, all documents pertaining to the event (such as handouts, presentation slides, attendance sheets, certificates and agendas) should include the visual identity requirements; the EU flag and the national flag must also be displayed prominently in the venue, which needs to be fully accessible to all.





Chapter 3

Simplification Measures for Programming Period 2007-2013

Chapter 3 – Simplification Measures for Programming Period 2007-2013

Chapter 3 focuses on the simplification measures corresponding to the programming period 2007-2013. The analysis of simplification measures that were transposed and applied to the local regulatory framework is followed by the due review of other optional measures that were not deemed applicable to the Maltese context. The role and perspectives of the various involved stakeholders is also elaborated upon, foremost among which are the MA, CA and AA, as well as the project beneficiaries. Finally, this chapter addresses the implementation of the non-optional simplification measures and concludes by means of the review of other general opinions put forward by the diverse stakeholders.

3.1 Overview of Transposition and Application of Simplification Measures

3.1.1 With reference to the seven optional and two non-optional simplification measures under review in this performance audit, Malta transposed four measures (two optional and two non-optional)

and then proceeded to apply one such measure. The ensuing sections of this chapter provide an account of the transposition process and the application thereof. Furthermore, the various factors that influenced the decisions not to transpose or apply the measures are also disclosed.

3.1.2 Table 4, presented hereunder for ease of reference, provides a comprehensive list of all the simplification measures subject to review and within the scope of this performance audit. The extent of usage of the optional and non-optional simplification measures is summarily reproduced in tabular format in Appendices C and D.

3.2 Transposing the Simplification Measure – ‘Indirect Costs, Declared on a Flat-rate Basis’

3.2.1 The MA in Malta adopted two optional simplification measures, namely, the ‘indirect costs, declared on a flat-rate basis’ and the ‘increased

Table 4: List of Optional and Non-Optional Simplification Measures

Optional Simplification Measures	Non-Optional Simplification Measures
1. Indirect costs, declared on a flat-rate basis	1. Raising threshold of revenue generating projects
2. Flat-rate standard scales of unit cost	2. Single threshold for major projects
3. Lump sums	
4. Permitted in-kind contributions	
5. Advanced payments	
6. Increased flexibility for major projects	
7. Co-financed repayable assistance	

flexibility for major projects'. However, only the former was actually applied to EU-funded projects and the ensuing paragraphs hence centre on this specific measure. The latter referred measure, that is, the 'increased flexibility for major projects' is discussed in further detail in section 3.4.

3.2.2 Prior to assimilating the 'indirect costs, declared on a flat-rate basis' measure into the applicable Eligibility Rules, the MA commissioned an independent body to carry out a study on the feasibility of applying the said simplification measure. Following the completion of this feasibility analysis, this measure was in fact applied to the 2007-2013 Cohesion Programme.

3.2.3 The driver for the assimilation of this measure into local Eligibility Rules was the fact that beneficiaries would be able to recoup indirect costs incurred, in addition to the direct costs already reimbursed. Under the previous arrangement, that is, prior to the introduction of this simplification measure, it was not possible for such indirect costs to be recovered. The MA stressed upon the importance of clearly demarcating direct from indirect costs, specifically stating that attention should be channelled in this regard so as to eliminate the possibility of double financing.

3.2.4 Of note is the fact that the simplification measure under analysis was only applied to OPII. The PPCD, in its capacity as MA, considered it unfeasible to introduce this simplification measure to OPI, particularly due to the nature of ERDF projects. More specifically, this category of projects is characterised by a series of contracts, often fragmented into subcomponents, which inherently impinge upon the applicability of this simplification measure.

Independent Feasibility Study

3.2.5 As indicated above, the MA commissioned PricewaterhouseCoopers (PwC) to carry out a feasibility study on the implementation of the ESF indirect costs flat-rate rule. The scope of the study was to support the MA in establishing appropriate flat-rates for indirect costs corresponding to the different categories of operations funded under OPII. In this regard, PwC reviewed 20 projects

through a detailed analysis of estimated indirect costs and actual direct costs. Three criteria were utilised in the selection of projects that were to form part of the study sample; namely, project size, relevant classification or categorisation, and type of final beneficiary. This approach was adopted in order to comprehensively address the different types of projects managed by the MA. The main objective of this study was to analyse the nature and extent of indirect costs incurred on the selected projects, thereby allowing for the determination of applicable rates for projects falling within certain criteria.

3.2.6 PwC obtained the relevant data relating to direct and indirect expenses and proceeded to carry out an analysis of the apportionments thereof. Direct costs were readily available; however, PwC could only estimate the level of indirect costs incurred. The latter amounts were arrived at after taking into account data provided by the Project Leaders and/or Project Coordinators involved. Indirect costs were not readily available because beneficiaries were not entitled to claim such costs during the 2004-2006 Cohesion Programme, which was the period taken into consideration for the purposes of this PwC study.

3.2.7 In essence, PwC calculated the proportion of estimated indirect costs in relation to the relevant direct costs for each project. Projects were categorised under five groups, namely: 'Training Outsourced', 'Schemes Outsourced', 'Training In-house', 'Schemes In-house', and 'Campaign/Study'. These groups of projects were further subcategorised according to the magnitude of the projects' direct cost component. The proportions of the cumulative indirect costs of these sub categories in relation to the corresponding cumulative direct costs were once again calculated. In essence, the latter exercise consisted of an apportionment of the estimated indirect costs according to the categories delineated above.

3.2.8 An example of the aforementioned calculation is provided by means of Table 5. The average rate, indicated at four per cent was calculated as a proportion of the respective summation of the 'Project Estimated Indirect Cost' (€42,535) vis-à-vis the 'Project Direct Cost' (€1,037,740).



Table 5: Calculated Absorption Rates

Project Details		Type of Project	Project Size	Project Direct Cost (€)	Project Estimated Indirect Cost (€)	Average Rates	
						Government Ministry	Entities
Equal 3	ME	Training Outsourced	€200,001 -	465,870	22,280	n/a	4%
ESF 7	MTA		€600,000	571,870	20,255	n/a	
Total				1,037,740	42,535		

Source: Adapted from PwC (2009)

3.2.9 PwC concluded that there exists a relationship between the size of a project and its corresponding overhead absorption rates (in percentage terms) with respect to projects undertaken by entities other than Government Ministries and Departments. With regard to 'Training Outsourced' projects, it was noted that the nature of a project influenced the extent of overheads incurred.

3.2.10 The above analysis assisted the MA in determining the rates at which 'indirect costs, declared on a flat-rate basis' were to be calculated. Once the rates were established, they were communicated to the EC, which in turn requested that the MA provide detailed information and

justifications with regard to the nature of ESF projects implemented locally.

3.2.11 Following approval from the EC, the agreed upon rates were assimilated into the OPII Eligibility Rules, where two sets of ranges were created to distinguish between 'All Beneficiaries (except for Government Departments)' and 'Projects Implemented by Government Departments'. This dichotomous approach clearly reflects the discrepancy in overhead absorption rates consonant with PwC's report. An extract of the Eligibility Rules of OPII (specifically corresponding to this rule) can be found in Appendix E, while Tables 6 and 7 illustrate the aforementioned two sets of ranges.



Table 6: Calculation of Indirect Costs – All Beneficiaries (Except for Government Departments)

Size of Grant	Percentage Flat Rate
Less than €200,000	10
€200,000 - €600,000	8
€600,001 - €2.3 million	5
€2.3 million - €4 million	2
More than €4 million	2

Table 7: Calculation of Indirect Costs – Projects Implemented by Government Departments

Size of Grant	Percentage Flat Rate
Less than €200,000	4
€200,000 - €600,000	4
€600,001 - €2.3 million	4
€2.3 million - €4 million	2
More than €4 million	2

Difficulties Encountered with Implementing the Measure and Obtaining Approval from the European Commission

3.2.12 The MA reported that it had encountered some level of difficulty when transposing the measure in question. In particular, COCOF 09/0025/04 (paragraph 4.1) stipulated that,

*“The simplified costs options concern only operations and projects implemented in the **form of grants**, for which otherwise the real costs principle is usually applied i.e. all declared*

expenditure is justified by paid invoices and other accounting documents of equivalent probative value. Therefore, simplified cost options are not available to operations or projects subject to public procurement contracts.”

3.2.13 The above paragraph posed an issue of significant concern for the MA, in the sense that operations in Malta are typically executed through a series of contracts. This method of work was not conducive to the above-quoted paragraph’s clause, stipulating that projects subject to public procurement contracts were not eligible to apply for simplified cost options.

3.2.14 The MA subsequently sought to address this issue and its associated local impact through direct communication with the EC (during July 2009). By means of formal written correspondence, the MA endeavoured to outline the idiosyncratic contractual nature of EU-funded projects in Malta. In its correspondence with the EC, the MA also explained why implementing provisions should not be deemed to constitute outsourced goods or services, even though beneficiaries typically go through a number of procurement processes to implement different components of a given project. Implementing provisions include contracts entered into for the rendering of training services, materials and equipment bought, as well as venues utilised. The MA also delineated what expenses it considered to constitute 'direct costs'.

3.2.15 The aforementioned correspondence followed a meeting that was held at DG Employment during the same month, which meeting was aimed at discussing the proposal of the Maltese MA. After scrutinising the proposal brought forward to it, the EC advised the MA that further clarifications and omissions needed to be effected for the proposal to be fully accepted by the EC.

3.2.16 During August 2010, the MA forwarded to the EC a revised proposal with respect to 'indirect costs, declared on a flat-rate basis' for OP II. This proposal took into consideration the EC's feedback provided in 2009, which resulted in the EC's decision to accept the assimilation into the national legal framework of the simplified cost option under discussion. The acceptance letter (EC Decision number 536-476) was signed in August 2010 and included the following:

"Having examined the mentioned arrangements for the flat rate system that you propose, I can agree to the system. I also agree to the application of the system to those projects selected during the transitory period, from the start of the programming phase to the present date. This means that as long as it is applied in this manner, the Commission will not audit the indirect expenses covered by the flat rate system and will not look beyond checks to ensure that the system itself has been properly applied by beneficiaries."

3.2.17 In view of the fact that the above approval

from EC was finalised during the third quarter of 2010, PPCD had anticipated that projects accepted before this date (but after 2007) would qualify for the reimbursement of indirect costs. In this regard, the MA had included a clause within its grant agreement, whereby beneficiaries indicated their notional acceptance, or otherwise, of reimbursement for indirect costs should the EC accept the aforementioned proposal.

3.2.18 This condition, therefore, set the stage for the beneficiaries of such projects to be reimbursed for indirect costs on a flat-rate basis. The only drawback noted by the MA with regard to this simplification measure was the long duration it took for it to be assimilated into the national Eligibility Rules for OP II.

3.3 Application of the 'Indirect Costs, Declared on a Flat-rate Basis' Simplification Measure

Grant Agreements

3.3.1 As stated in Section 3.2, the MA had anticipated the application of the simplification measure under analysis and offered prospective beneficiaries (applying under the 2007-2013 programming period) the option to apply for it, subject to a pending EC decision. This was the case only for projects that were applied for prior to September 2010, when the EC Decision had not yet taken place. On the other hand, applications submitted during September 2010 and thereafter, stipulated a priori the relevant indirect cost flat-rate.

3.3.2 Up to 2011, 24 approved ESF projects were earmarked for the reimbursement of indirect costs based on a stipulated percentage of direct costs. The following section exclusively focuses on these 24 projects and the application of the simplification measure in concern.

3.3.3 Of note is the fact that the stipulated indirect cost flat rates set out in Rule 7 of the OP II Eligibility Rules may not always be applied in a straightforward manner. More specifically, if a beneficiary asks to be compensated for its project's indirect costs at a lower flat-rate than it is notionally eligible for, the MA uses the rate that had been originally applied for, even if the beneficiary requests a higher rate at a later stage in the project's lifespan. Notably, of

these 24 projects, eight had originally applied for a rate lower than that eligible for. These established rates were subsequently used throughout the projects' life, and in fact, were formally stipulated in the corresponding Grant Agreements. In view of the above, it is of interest to note that if a beneficiary seeks to institute a downward revision of the agreed indirect cost flat-rate, the MA would not find any objection to such an adjustment.

3.3.4 Further to the above, NAO noted that one of the projects was at risk of not being funded due to a downward budgetary revision instituted by the

PSC. This downward revision was attributed to a shortage of funds under the corresponding Priority Axis. Rather than reducing further amounts from the other components, the beneficiary opted, in agreement with the MA, to effect a greater reduction to the flat-rate.

3.3.5 The 24 approved projects involved 18 beneficiaries, where ESF eligible costs amounted to over €32 million (excluding indirect costs). Table 8 presents the eligible ESF funding amounts, the highest applicable flat-rate, the actual applied flat-rate, and the approved flat-rate amount.

Table 8: Signed Grant Agreements with Indirect Costs

Project Reference	Eligible OPII Funding (€)	Maximum Applicable Flat-rate (%)	Actual Applied Flat-rate (%)	Flat-rate Amount (€)
1.22	427,490	8	8	34,199
1.23	205,618	4	4	8,225
1.125	1,248,879	5	≈1.6	20,111
1.130	5,110,265	2	2	102,205
2.137	96,102	10	4	3,844
2.141	140,673	10	4	5,381
2.4	5,227,370	2	2	104,547
2.85	325,365	8	6	19,522
2.139	6,605,326	2	2	132,106
3.102	6,670,439	2	2	133,409
3.108	470,458	8	8	37,637
3.110	287,888	8	8	23,031
3.43	426,972	8	8	34,158
3.47	621,521	5	4.4	27,347
3.48	98,445	10	10	9,845
3.6	785,007	5	1	7,850
3.62	1,281,253	5	0.6	7,688
3.66	98,404	10	7	6,888
3.71	63,481	10	10	6,348
4.152	280,448	8	4	11,218
4.159	301,254	8	8	24,100
4.163	494,467	8	8	39,557
4.86	225,696	8	7	15,799
4.97	598,215	4	4	23,928
Total	32,091,036			838,943

3.3.6 The relevant indirect cost is calculated as a percentage exclusive of ESF funding (direct cost). Hence, if a project has ERDF-type financing, this portion is deducted from the direct cost on which the percentage of indirect cost is calculated. This was the case with 12 of the above-listed projects. Also of note is the condition set out for non-governmental organisations. The latter are expected to bear 15 per cent of the projects' costs, which by default implies that the indirect cost flat-rate is calculated on the remaining 85 per cent of the projects' cost. A further condition set out by the MA relates to value added tax (VAT). In cases when VAT is deemed an eligible direct cost refundable by the EU, this becomes part of the calculation upon which the indirect cost is based. On the other hand, when VAT is not deemed eligible (ordinarily due to the fact that it is recouped directly from the VAT Department), this cost component does not form part of the indirect cost calculation.

Payments Effected

3.3.7 Direct costs are reimbursed following the presentation of invoices, verification by the beneficiary and checks by the respective line ministry and Treasury Department. The latter referred Department then processes the payment through the SFD. On the other hand, indirect costs are reimbursed on the basis of incurred direct costs and formalised through a Reimbursement Request once the direct costs are verified by the MA and certified through a Statement of Expenditure. The latter is essentially a template submitted by the beneficiary requesting to be refunded for the indirect costs of

the project undertaken. It is pertinent to note that the MA only carries out verifications once payments have actually been effected.

3.3.8 With regard to the abovementioned 24 projects that were approved for the processing of indirect costs, NAO noted that, up to November 2012, only six projects had actually filed a Reimbursement Request in this regard. This in no way implies that the rest of the projects will not be reimbursed for indirect costs.

3.3.9 NAO verified the reimbursement of indirect costs as approved by the MA in the Grant Agreement (or Addendum). The indirect costs claimed were in fact based on actual expenditure calculated according to the relevant indirect cost flat-rate stipulated in the Grant Agreement. Table 9 presents the eligible indirect cost, the direct costs incurred, the applicable flat-rate, and the reimbursements made in relation to indirect costs.

3.3.10 Although only 48 per cent of eligible indirect costs related to the above six projects had been paid as at November 2012, the MA envisages that all or most of the indirect cost payment requests will be honoured in due time, subject to the relevant beneficiaries' formalisation of application for outstanding dues. With respect to the rest of the projects, Reimbursement Requests for indirect costs had not been processed through the SFD for payment to be effected by the Treasury Department as at November 2012.

Table 9: Indirect Cost Payments Effected

Project Reference	Eligible Indirect Cost (€)	Reimbursement Requests - Direct Costs (€)	Applied Flat-rate (%)	Effected Payments (€)
1.22	34,199	343,187	8	27,455
1.23	8,225	19,086	4	763
1.125	20,111	3,528	1.6	56
3.71	6,348	60,921	10	6,092
4.86	15,799	147,478	7	10,323
4.97	23,928	197,767	4	7,911
Totals	108,610	771,967		52,600

3.3.11 With regard to the certification of payments, the EU Paying Authority Directorate within MFEI, in its capacity as CA, has implemented a sampling technique, whereby a random sample of projects is selected for the relevant verification of costs. The CA noted that, through this process, the projects that had an indirect cost component included in the corresponding Statement of Expenditure were not being selected as part of the sample. This prompted the Authority to set up an 'Indirect Cost Claims Log' with the specific purpose of addressing, in a separate manner, such reimbursement claims. Through the adoption of this practice, the CA introduced a system that keeps track of the percentage claim of indirect costs against the final aggregated total direct expenditure of a given project.

3.3.12 The CA indicated to NAO that this practice was first applied to the certifying process during the last quarter of 2012. Only one project that had an indirect cost component was captured through this process, and subsequently verified accordingly. Following due certification, the project and its now certified cost component were listed in the 'Indirect Cost Claims Log', pending its next claim for the same cost component. When all costs relating to the projects are claimed, the CA can, through this log, verify that the indirect costs certified tally with the percentage stipulated in the relevant Grant Agreement.

3.3.13 Furthermore, NAO noted that, due to the fact that this practice was introduced during the last quarter of 2012, two projects whose payment for indirect costs was certified did not feature in this log. This may pose a problem when aggregating indirect costs at the end of the projects' life as the figures will not tally due to the omission of these two first payments from the 'Indirect Cost Claims Log'.

3.3.14 Following CA's review of preliminary audit findings, the CA indicated to NAO that corrective action with respect to the issue put forward in the preceding paragraph had in fact been instituted.

3.3.15 The MA and the CA regard this measure as conducive towards simplification. As has been highlighted throughout this section, reimbursement for this type of cost does not require any backing invoices or receipts and is therefore straightforward in its reliance on the percentage specified in the

corresponding Grant Agreement. This inherently relieves the beneficiaries and Authorities from additional administrative responsibilities.

3.3.16 Of particular note is the fact that the MA stated that project applications that were submitted during the early stages of the programming period under review did not apply for indirect costs in their original project proposal due to a lack of awareness and specific knowledge relating to the utility of the simplification measure.

3.3.17 On the other hand, one of the interviewed beneficiaries commented that the decision to include indirect costs within approved operation constituted a 'make or break' condition in deciding to apply for a particular project. Furthermore, all beneficiaries agreed that this measure is a component of paramount importance with respect to project management, especially when considering the fact that certain entities were going to opt out of the project because of the additional indirect costs involved, which would not have been reimbursed were it not for the application of this simplification measure.

3.3.18 Another beneficiary also indicated that a project's conditions may change during its lifespan, such as an overall increase in the cost of materials. However, since the Grant Agreement would have already been signed, the percentage rate agreed upon for indirect costs cannot be changed at that point. In light of this, the beneficiary in question called for increased flexibility in the event of higher overall project costs.

3.4 Optional Simplification Measures Not Applied or Introduced

3.4.1 As already stated above, the MA chose to apply one optional simplification measure. The ensuing paragraphs provide justifications put forward by the MA as to why the remainder of the optional simplification measures were not included in the Maltese framework that regulates EU funding.

Flat-rate Standard Scales of Unit Cost

3.4.2 The MA indicated to NAO that, given the amount of time required to carry out the necessary

studies to determine such flat-rates, it was considered unfeasible to introduce this measure for the programming period 2007-2013. Furthermore, the MA stated that it does not manage a large enough volume of projects to justify studies carried out in this regard. The relatively small size of Malta also exerts influence, in part, on the decision taken, in the sense that the application of flat-rates is not always feasible since the nature of most projects undertaken is highly divergent from one project to another. NAO noted that no decision has yet been taken with respect to the 2014-2020 programming period in light of this simplification measure.

Lump Sums

3.4.3 The MA opines that the audit approach (that was to be adopted once the simplification measure was to be introduced) was not clear in the guidance provided by the EC, specifically with regard to the audit of expenditure incurred on a lump sum basis. For instance, in the case of training, it was not clarified if the MA needs to verify public procurement procedures (quotations and the selection of venues).

3.4.4 The MA was of the opinion that, in the absence of such clarification, no simplification exists. The MA stated that if it were to approve the proposed lump sum through an assessment of costs applied for and subsequently check procurement-related documentation, this would not result in true simplification, but an administrative burden for the MA and no simplification for the beneficiary. However, if the MA only needs to verify that, for instance, training had actually taken place and that attendance sheets were signed, then there is scope and potential for real simplification. The application of this measure will be obligatory for small operations during the next programming period 2014-2020, and in this context, the MA contended that this would pose a problem if rules relating to the audit approach remain unclear.

Permitted In-kind Contributions to be Declared as Eligible Expenditure in relation to Financial Engineering Schemes

3.4.5 By way of background, in the case of Malta, no expertise exists with regard to the management of financial engineering schemes using Structural Funds. For this reason, Government opted to entrust

this task to the European Investment Fund (EIF), that is, the Holding Fund manager. In addition, there are no guidelines on the applicable rates for in-kind contributions (one would need a standard against which to peg the costs declared, in the absence of the referred guidelines). In this regard, Malta operates one financial engineering instrument, JEREMIE, whereby the EIF acts on behalf of Malta in managing the Fund. In-kind contributions are not eligible costs, and hence not included in the Programme Eligibility Rules.

3.4.6 With reference to the JEREMIE scheme, the MA transferred €10 million to the EIF, and an investment board was subsequently established. This board was composed of the Malta Enterprise, the MA and MFEI, with the latter board member assuming chairing responsibilities. EIF proposed that Malta implements a First Loss Portfolio Guarantee, to which the investment board agreed after a number of discussions. EIF issued an expression of interest, and following a due diligence process, contracted the Bank of Valletta to manage and administer this instrument on the basis of the bid put forward. The MA stated that in order for the €10 million, contributed from ERDF, to be deemed as an eligible cost, the portfolio of loans must amount to €51.04 million. The portfolio of loans has to be compliant with the relevant Eligibility Rules, which do not include the simplification measure in question. The €10 million that backed the portfolio serves as a loan subsidy from which applicants benefit, and includes lower collateral as well as up to one per cent lower interest rates.

3.4.7 The MA pointed out that determining, justifying and verifying the monetary value of in-kind contributions was complex. In this regard, it opined that the Commission should establish standard scales, especially since Malta has no expertise and data to establish such scales.

Advanced Payments

3.4.8 The MA indicated that were it to transpose and apply this measure, it would make use of the services of an IB, such as Malta Enterprise, to administer it. The notional role of Malta Enterprise in this respect would entail the advance of an upfront percentage settled prior to the actual implementation of the project. Furthermore, Government would

step in as a guarantor and, therefore, bear the risk of recovering the costs should the project fall through.

3.4.9 In view of the above, the MA stated that no IBs expressed interest in administering this measure, mainly due to the risk associated with helping organisations experiencing financial difficulties. Furthermore, the MA argued that the manner by which aid schemes are implemented is appropriate, and a change in such procedures would not be justifiable.

Increased Flexibility for Major Projects

3.4.10 As stated in section 3.2, this measure has been introduced in Malta, but its application to projects has not been actualised. Although the MA strongly supports the application of this measure, all eligible major projects had already been approved by the EC when it was in fact introduced. Hence, no flexibility payment was required in the implementation of the projects concerned.

3.4.11 This measure was adopted primarily due to the fact that Malta would be reimbursed in advance of amounts paid to beneficiaries. Furthermore, there had been cases where a major project was stalled because a planning permit corresponding to an insignificant component of the overall project would not have been issued on time.

3.4.12 With regard to the transposition of this measure into the national framework, the MA asserted that this measure was in fact transposed through Rule 27 of the Eligibility Rules for OPI, reproduced in Box 1 for ease of reference.

3.4.13 The MA duly noted that such projects are complex in nature and require a considerable amount of preparatory work and environmental permits, particularly in view of certain structural idiosyncrasies woven into the Maltese context. The latter refers to the fact that since Malta's land resource is highly limited, most major projects are bound to bear an impact upon the environment, which would therefore trigger the requirement of obtaining relevant environmental permits. The issuance of such permits may take longer than expected and, consequently, delay the EC's approval of the project.

3.4.14 In light of the above, the MA opined that the introduction of this measure is highly beneficial within the Maltese context, since projects may commence before approval from the EC is granted. On the other hand, according to the CA, this simplification measure is still subject to EC scrutiny and, at this stage, it is not immediately evident whether such change will be beneficial, or otherwise.

Co-financed Repayable Assistance

3.4.15 The introduction of this measure is not planned to take place, especially due to the limited capacity and expertise available within the MA. Furthermore, it would be more sensible to take such a decision when the MA is in possession of the results relating to the JEREMIE scheme, which will only be available at the end of the 2007-2013 programming period.

Box 1: Rule No 27 – Pre-financing of Major Projects

Rule No. 27 Pre-financing of Major Projects

1. *The MA may, at its discretion, pre-finance expenditure related to Major Projects listed within the Operational Programme even if a Commission decision is still forthcoming. Expenditure incurred on a major project not yet approved by the EC may be verified by the MA for onward transmission to the CA.*
2. *In the eventuality that the application for the Major project is refused by the Commission, the Beneficiary will be obliged to repay back the amount pre-financed so that the expenditure declaration may be corrected in line with the Commission decision.*

3.5 Overall Opinions of Stakeholders on Optional Simplification Measures

3.5.1 When considering the overall experience of implementation and usage of the applied optional simplification measure, the cost and administrative burden, as perceived by the various stakeholders, was reduced. This is presented in Table 10 hereunder.

3.5.2 The MA indicated to NAO that the implementation of every simplified cost option had to satisfy a number of criteria before the Member State could have legal certainty in this regard. For instance, the process pegged with the introduction of the ‘indirect costs, declared on a flat-rate basis’ simplification measure took two years to be actuated. This extended period was primarily due to the fact that a study (expounded upon in greater detail in section 3.2) had to be commissioned before rates were decided upon.

3.5.3 Furthermore, the MA indicated that the abovementioned process involved an administrative cost for the MA itself. Another issue brought to NAO’s attention by the same Authority was the fact that, with the implementation of simplification measures, there is a risk of double counting. This may take place when a person manages more than one project and ends up receiving salary refunds from different sources.

3.5.4 The CA provided NAO with other suggestions for further simplification of the measures. It proposed that revenue generated from a project whose beneficiary is a public entity should not be deducted from eligible expenditure, especially when such revenue would, at a conceptual level, be re-injected into the economy, thereby constituting a multiplier effect for economic growth purposes.

3.5.5 The same Authority also suggested that audits carried out should be more inclined towards assessing results achieved and less predisposed to the checking of minor issues. Recovery exercises should be carried out on projects where serious issues exist, such as fraud and mismanagement of funds. Hence, if a project is successful and sustainable, no sanctions should be applied for minor and/or unintentional issues.

3.5.6 The MA noted that while the EC, in Article 74 of (EC) No 1083/2006 (Proportional Control Arrangements), promotes the idea of reducing burdens on low budget projects, the simplification measures nevertheless fail to reflect the principle of proportionality at implementation level, which is when the encumbrance of monitoring and control is most significantly felt.

3.5.7 Article 13 of (EC) No 1083/2006 (Box 2 refers) places full responsibility of Requests for

Table 10: Authority/Beneficiary Perception-based Assessment of the Optional Simplification Measures

Optional Simplification Measures	Perception of Managing Authority	Perception of Certifying Authority	Perception of Audit Authority	Perception of the Beneficiaries
1. Indirect costs	+	+	+	+
2. Flat-rate costs	n/a	n/a	n/a	n/a
3. Lump sums	n/a	n/a	n/a	n/a
4. Permitted in-kind contributions	n/a	n/a	n/a	n/a
5. Advanced payments	n/a	n/a	n/a	n/a
6. Increased flexibility for major projects	n/a	n/a	n/a	n/a
7. Co-financed repayable assistance	n/a	n/a	n/a	n/a

Notes:

- [+] cost/administrative burden reduced
- [o] no changes
- [-/+] cost/administrative burden reduced in this area, but as a countermove other duties increased
- [-] cost/administrative burden increased

Box 2: Article 13 of the General Regulation

Article 13
Proportional intervention

1. The financial and administrative resources employed by the Commission and Member States in the implementation of the Funds in relation to:
 - (a) the choice of indicators provided for in Article 37(1)(c);
 - (b) the evaluation under Articles 47 and 48;
 - (c) the general principles of management and control systems referred to in Article 58(e) and
 - (d) the reporting as referred to in Article 67,

shall be proportional to the total amount of expenditure allocated to an operational programme.
2. In addition, specific provisions relating to proportionality in relation to controls are set out in Article 74 of this Regulation.

Reimbursement on the MA, expecting administrative verifications with respect to each application for reimbursement made by beneficiaries. While understanding the need for transparency, the MA believes that the administrative burden should be proportionate to the size and risk factors associated with the operation concerned.

3.5.8 Furthermore, the MA opined that verification, which is one of the major tasks assigned to it, should shift in focus. In addition to duties associated with verifying and controlling a project, the MA is of the opinion that it should also focus on whether the ultimate aims of the respective projects

have in fact been achieved, and therefore, carry out performance verifications of the projects in question.

3.6 The Non-optional Simplification Measures

3.6.1 In considering the overall experience of implementation and usage of the applied non-optional simplification measures, the cost and administrative burden, as perceived by the various stakeholders, was reduced. This is presented in Table 11 hereunder.

Table 11: Authority/Beneficiary Perception-based Assessment of the Non-optional Simplification Measures

Non-optional Simplification Measures	Perception of Managing Authority	Perception of Certifying Authority	Perception of Audit Authority	Perception of the Beneficiaries
1. Revenue generating projects	o	o	o	o
2. Single threshold for major projects	o	o	o	o

Notes:

- [+] cost/administrative burden reduced
- [o] no changes
- [-/+] cost/administrative burden reduced in this area, but as a countermove other duties increased
- [-] cost/administrative burden increased

3.6.2 With reference to the simplification measure entitled ‘single threshold for major projects’ it was noted that this measure only applied to one project. All other planned major projects’ total eligible costs were in excess of the €50 million upper limit. With regard to one environmental project of a value of €26.2 million classified as a major project, the MA requested that this project continue to be treated as a major project.

3.6.3 This latter case corresponded to a project aimed at rehabilitating a closed landfill, which project had been applied for in November 2009. Following the introduction of the simplification measure in June 2009, the Commission had given Member States the option of either classifying the projects as a major project, or otherwise. In cases where Member States decided not to consider the project as a major project and instead classified it as an environmental project, reporting obligations nonetheless arose with respect to the Annual Implementation Report. This option was communicated to Member States during June 2011, in a Guidance Note on major projects:

“For environmental projects applications with a total cost between EUR 25 and 50 million that fulfil the provisions of Article 40 of Regulation (EC) No 1083/2006, for which the Commission has not issued a decision by the date of entry into force of the Regulation (EU) No 539/2010, Member States will indicate to the Commission if the latter should pursue its assessment and issue

a decision or if the major project application should be withdrawn.”

3.6.4 Notwithstanding the introduction of the simplification measure in focus, the MA decided that this project should still be considered a major one, and was consequently treated accordingly.

3.6.5 With regard to the other non-optional simplification measure, that is, the ‘raising of threshold of revenue generating projects’, the MA stated that this measure had no significant impact on the manner by which operations were run. It stated that, although the measure exempts such projects from the application of the funding gap methodology, there is still an obligation to apply sound financial management to them. The funding gap methodology refers to the calculation of any identified potential net revenue deducted from the eligible funding allocation pertaining to the project.

3.6.6 The MA hence does not perceive this latter simplification measure as useful in contributing towards the aim of simplification. The Committee on the Coordination of Funds (COCOF) note on Article 55 of (EC) No 1083/2006 states that although such projects are exempted from the rules stipulated under this Article, the principle of sound financial management must be nonetheless applied. This is reproduced in Box 3 for ease of reference.

Box 3: Applicability of Article 55 of the General Regulation

APPLICABILITY OF ARTICLE 55

*The amendment of Article 55(5) of Regulation (EC) No 1083/2006 made by Regulation (EC) No 1341/2008 of 18 December 2008 consists in replacing the provision on proportionate monitoring arrangements for operations whose total cost is below EUR 200,000 by a clear **limitation** of the application of the provisions of Article 55(1) to (4) to operations co-financed by the ERDF or the Cohesion Fund the total cost of which exceeds EUR 1,000,000. Operations exempted from the funding gap calculation need to apply sound financial management principles.*

For operations co-financed by ERDF or CF that generate income outside the scope of Article 55, the Member States have the responsibility to determine how to treat them, having regard to the principle of sound financial management (Article 14(1) of Regulation (EC) 1083/2006). For example incidental incomes such as sales of material found on a construction site such as stones during a road construction are to be considered under national rules not as project revenue, but as income reducing the investment costs. As the treatment of such income is national responsibility, the Commission will not as a result of its own audits or controls draw conclusions on the treatment given which could lead to financial consequences for the individual operation. However, it may make recommendations to the Member State to better align its practice to the principle of sound financial management.

3.6.7 In this regard, the MA had written to the Commission, requesting it to accept a proposed methodology for the calculation of a flat co-financing rate for revenue generating energy efficiency (EE) and renewable energy sources (RES) projects below the €1 million threshold:

“In the context of due regard to the principle of sound financial management as well as in the spirit of simplification, the Managing Authority is proposing to adopt a flat (public) co-financing rate of 50% (of eligible cost) for (mainstream) projects whose total costs are below €1 million and that could entail revenue generation by means of the Feed-in Tariff or cost-savings in energy bills.”

3.6.8 The Commission accepted the proposal, which constituted a 50 per cent reduction in eligible costs that have a potential to generate income:

“...the Commission can agree with the proposed methodology to apply a flat co-financing rate of 50% of eligible costs for EE and RES projects below €1,000,000, which have a potential to generate some revenues. This methodology proposed by the Managing Authority is considered to be in line with the principle of sound financial management.”

3.6.9 The MA proposed that the Commission should establish a percentage rate at which financial assistance is to be granted to projects that typically generate revenue. It also proposed that the Commission should draw on its experience of implementing similar projects when establishing this percentage. This practice would inherently alleviate the administrative burden on the Member State when calculating the rate at which EU assistance should be provided. Anticipated benefits in this regard are two-pronged. The first relates to the avoidance of mistakes being committed by the different Member States, and the second being the avoidance of the obligation to carry out financial analyses that yield similar results to that of the Commission.

3.6.10 The MA had a further suggestion with regard to the simplification measure on revenue generating projects. It stated that the Commission should consider introducing the principle of substantial net revenue. If such a measure were to be adopted,

revenue would be taken into consideration only if it reaches a certain threshold. The current measure stipulates that, “Eligible expenditure cannot exceed the current value of the investment cost less the current value of the net revenue (including the residual value) from the investment over a specific reference period appropriate to the category of the investment concerned.” The MA is therefore proposing that should revenue generation be insignificant, its co-financing should remain unchanged.

3.6.11 Furthermore, the MA also noted that beneficiaries of revenue generating projects with a funding amount of below €1 million (which would by default exclude them from this measure), should not be requested to reimburse any revenue generated, even when applying sound financial management. The reason behind this proposal was the fact that the level of income earned from the implementation of such projects is bound to be low.

3.6.12 With particular reference to the CA, this Authority regards this measure as beneficial for Malta because of the relatively small size of the projects.

3.7 Other General Opinions of Stakeholders

3.7.1 NAO noted that all stakeholders unanimously agreed with the fact that proposed simplification should shift the verificatory focus, from one principally based on administrative checks, to one oriented towards the achievement and attainment of results.

3.7.2 All beneficiaries that were interviewed proposed the introduction of project leadership training. They were all keen on imparting their knowledge and experience to new and inexperienced project leaders who would most likely encounter difficulties already mastered and addressed by other project leaders.

3.7.3 It was suggested that such training would be given to prospective beneficiaries prior to application stage. Applicants should be informed beforehand with regard to what project management of EU funds entails. Another idea put forward by the beneficiaries was the option of exploring the setting up of a

dedicated forum for project leaders. Furthermore, a system of mentoring could also be implemented. The general idea is to have a networked system whereby project leaders can reach other project leaders and discuss particular difficulties that need to be addressed.

3.8 Conclusions

3.8.1 During the course of this performance audit, NAO noted that, overall, the applied simplification measure proved valuable to the stakeholders, especially beneficiaries. The latter commented positively on the fact that administrative burdens were not associated with this measure.

3.8.2 NAO commends the manner by which the MA worked towards determining applicable rates for the ‘indirect costs, declared on a flat-rate basis’ simplification measure. Outsourcing a feasibility study constituted good practice and curbed the risk of introducing an element of subjectivity, since the organisation that undertook the task worked independently from the MA.

3.8.3 Although the MA seemed to have some initial difficulty with regard to the transposition of the ‘indirect costs, declared on a flat-rate basis’ measure, it did manage to arrive at an agreement with the EC. The perseverance exhibited in the remedial action taken by the MA is, in NAO’s opinion, also commendable.

3.8.4 The fact that the MA acted with foresight in regard to the applied simplification measure is considered by NAO to constitute good practice. This good practice corresponds to the MA’s decision to provide beneficiaries with the option of requesting their respective refund subject to actual transposition.

3.8.5 NAO noted that the MA does not accede to a beneficiary’s request for an upward revision of the indirect cost rate stipulated in the corresponding Grant Agreement, even if the revised requested percentage is indeed eligible. On the other hand, should a beneficiary ask for a downward revision of this same flat-rate, the MA ordinarily agrees to follow up on such requests. NAO is of the opinion that, if a downward revision can be actuated, an

eligible upward revision should also be considered. Furthermore, during the course of this performance audit, it transpired that a number of beneficiaries had not applied for the full indirect cost rate due to a lack of appropriate awareness and knowledge.

3.8.6 Reimbursement Requests for indirect costs, which underwent a review by the NAO, were all found to be in line with the corresponding Statements of Expenditure and Grant Agreements. The adoption of an ‘Indirect Cost Claims Log’ by the CA will help this Authority track the percentage claim of indirect costs against the final aggregated total direct expenditure of a given project. However, since this practice was introduced during the last quarter of 2012, two other projects that had already undergone the certification process did not feature in this log. This could pose a challenge for the CA when calculating aggregate indirect costs, notably due to the fact that the first payments would be missing. NAO has been duly informed that the CA has already instituted corrective action with respect to this matter.

3.8.7 The ‘increased flexibility for major projects’ simplification measure was also transposed. The MA strongly supports the application of this measure, which was adopted primarily due to the fact that Malta would be in a position to source reimbursement of amounts paid by such projects, in anticipation of approval as a major project. Hence, if the submission of a major project stalls because of problems that may arise, such as delays in the pending authorisation of an environmental permit, this is not to Malta’s detriment in terms of cash flow, as it would be paying the amounts concerned out of the national budget (due to the national pre-financing approach).

3.8.8 One of the main reasons afforded to NAO with regard to the fact that certain optional simplification measures were not applied was the time and cost associated with carrying out studies that determine applicable rates and justify the use of such measures. In the case of the ‘flat-rate standard scales of unit cost’ measure, the MA stated that it did not manage a large enough volume of projects to justify studies carried out in this regard. This situation is further compounded by the fact that the size and nature of projects undertaken in Malta are highly divergent from one another.

3.8.9 In the case of lump sums, the MA seems unclear as to the level of monitoring that it would have to carry out if this measure were to be transposed and applied to the Maltese regulatory framework. In the case of other optional simplification measures, the MA stated that it did not have the necessary expertise to implement financial engineering instruments.

3.8.10 The two non-optional simplification measures were not applied because they were not deemed applicable to any project. With particular reference to the ‘raising of threshold of revenue generating projects’ measure, the MA stated that this measure had no significant impact on the manner by which operations were assessed and implemented. It stated that, although the measure exempts certain projects from the application of the funding gap methodology, there is still an obligation to apply sound financial management to them. Hence, the MA does not perceive this latter simplification measure as useful in contributing towards the ultimate aim of simplification.

3.8.11 The MA proposed that the Commission should establish a percentage rate at which financial assistance is to be granted to projects that typically generate revenue. It also proposed that the Commission should draw on its experience of implementing similar projects when establishing this percentage, thereby alleviating the administrative burden on the concerned Member State.

3.8.12 With respect to the simplification measure relating to revenue generating projects, the MA further suggested that the Commission should consider introducing the principle of substantial net revenue. If such a measure were to be adopted, revenue would be taken into consideration only if it reached a certain threshold. The MA is therefore proposing that should revenue generation be insignificant, its co-financing should remain unchanged.

3.8.13 It was suggested by the CA that audits carried out should be more inclined towards assessing results achieved and less focused on the checking of minor issues. It proposed that recovery exercises be carried out on projects where serious issues exist, such as fraud and mismanagement of funds.

3.8.14 In congruence with the above, the MA opined that verification, which is one of the major tasks assigned to it, should shift in focus. In addition to duties associated with verifying and controlling a project, the MA is of the opinion that it should also focus on whether the ultimate aims of the respective projects have in fact been achieved, and therefore, carry out performance verifications of the projects concerned.

3.8.15 All interviewed beneficiaries proposed the introduction of project leadership training. They were all keen on imparting their knowledge and experience to new and inexperienced project leaders who would most likely encounter difficulties already mastered and addressed by other project leaders.

3.9 Recommendations

3.9.1 NAO recommends that should any type of flat-rate be transposed once again, the MA should adopt the same procedure it used in determining the rates for the ‘indirect costs, declared on a flat-rate basis’ simplification measure.

3.9.2 NAO is of the opinion that if a downward revision of the stipulated ‘indirect costs, declared on a flat-rate basis’ rate can be actuated following the signing of the relevant Grant Agreement, an eligible upward revision should also be considered. To this end, NAO recommends that the MA assesses what provisions would be necessary for enabling upward revisions, should project-related circumstances so warrant.

3.9.3 The CA’s adoption of the ‘Indirect Cost Claims Log’ is considered to constitute good practice. However, NAO recommends for this payment log to include all indirect costs that have gone through the certifying process. This would enable retrospective adjustments to this same log thereby ensuring completeness. This information is readily available for the MA and would ensure that records in this regard are complete and that cumulative indirect costs do in fact tally.

3.9.4 With regard to the ‘lump sums’ simplification measure, the MA should take steps to clarify expected monitoring responsibilities so as to be able to take

an informed decision on whether to transpose and apply this measure or not.

3.9.5 The MA should endeavour to set up a system that connects beneficiaries, especially those managing similar projects. The introduction of such a system would capitalise on the experiences of beneficiaries, thereby shortening learning curves, allowing them to support one another through the exchange of feedback and troubleshooting, while simultaneously enabling positive synergies.

3.9.6 NAO recommends that the EC considers the suggestions put forward by stakeholders. These suggestions include clarity on monitoring responsibilities with regard to the establishment of flat-rate percentages by the EC, the principle of substantial net revenue associated with revenue generating projects, as well as a reorientation of focus in verifying the performance of projects.

Chapter 4 – Future Simplification

This final chapter delves into efforts undertaken at reinforcing and further developing other simplification measures, particularly in view of the transition towards the 2014-2020 Cohesion Policy. The role of the Maltese MA and other stakeholders, in the context of this newly proposed draft legislative package, is explored, while due attention is also directed at relevant feedback put forward by project beneficiaries.

4.1 Transitioning into Cohesion Policy 2014-2020

4.1.1 The co-financing of projects, governed by the Cohesion Policy, has led to convergence and growth in the EU, thereby creating jobs, improving employability through training, co-financing the construction of roads and supporting small and medium-sized enterprises. The current programming period is drawing to a close and will be replaced by another one covering the ensuing period. The EC intends to continue strengthening its work in this regard, and, to this effect, has drawn up a draft legislative package for the Cohesion Policy 2014-2020. The latter was compiled in line with the Europe 2020 long-term growth strategy, and is designed to enhance growth and jobs across Europe.

4.1.2 The Cohesion Policy 2014-2020 will be officially confirmed once all Member States agree on the financial allocation for the Policy. All Member States will need to prepare a partnership contract on all Common Strategic Framework (CSF) Funds. The CSF Funds represent an aggregation of ERDF, ESF, CF, as well as the European Agricultural Fund for

Rural Development and the European Maritime and Fisheries Fund. Member States would be committed to focus on investment priorities, in line with the objectives set out in the Europe 2020 document. The EC's main aim for the forthcoming Cohesion Policy was to have a more integrated approach so as to ensure that the various funds serve coherent goals and reinforce each other's impact.

4.1.3 When liaising with the different Member States' authorities, the EC ensured that technical descriptions of the simplification proposals included in the regulations were forwarded to such authorities. The EC planned to carry out detailed negotiations with these authorities, and in this regard, it drew up an explanatory note that presented the main changes that are to be effected in terms of the proposed simplification.

4.1.4 As stated in the preceding paragraph, the Cohesion Policy legislative package has factored in simplification measures, which the EC believes to constitute an ongoing process and is at the top of the EU agenda for the programming period 2014-2020. A number of simplification measures assimilated into the proposed Cohesion Policy build on changes that were already introduced in the currently active programme, while others constitute altogether new proposals. According to the EC (2012), *"simplification has been one of the most popular demands for the new cohesion policy."* It, however, acknowledges that due to the idiosyncratic administrative set-ups pertaining to different Member States, some simplification measures may, in fact, bring about increased complications to certain countries.

4.1.5 This complication posed a challenge for the EC in trying to find the right balance between flexibility and simplification, while simultaneously maintaining beneficiary interest in the utilisation of EU funding. In fact, Member States' input was key in determining how the simplification measures were to be assimilated into the Cohesion Policy for the next programming period. Member States have particular insight on what functions well within their administrative setup, and what would constitute a difficulty to the system governing operations.

“By putting in place simpler rules, which are more easily understood by the actors involved, thus reinforcing legal certainty, simplification can also help to reduce errors and increase the assurance given by the national delivery systems.”

EC, 2012

4.1.6 The EC is working towards introducing a cohesion policy that harmonises rules for several funds, increases flexibility and proportionality, clarifies rules to improve legal certainty, while simultaneously addressing the digitalisation of documents and processes. In fact, a reduction in administrative burdens for beneficiaries is the principal aim behind the proposals. Of note is the fact that changing simplification measures may inadvertently result in the commission of a greater number of errors, particularly in circumstances where Member States erroneously apply rules from the previous programming period instead of the ones applicable. The EC is well aware of this scenario and has been trying to ensure, as much as possible, a smooth transition from one programming period to the next.

4.2 Malta's Role in the Draft Legislative Package

4.2.1 The MA had, during the second quarter of 2012, reached partial agreement with the EC on the Articles under review. The viewpoints expressed then, which the Authority still held during the course of this performance audit, are reproduced in this section of the report. Of note is the fact that Malta's feedback on these Articles was guided

by the overarching need for further simplification and a more effective application of the principle of proportionality, as well as the need to reduce administrative burdens.

4.2.2 The MA clearly stated that the position it held during the course of this performance audit is without prejudice to the final position that Malta will adopt in the coming weeks, as negotiations on the overall 2014-2020 Cohesion Policy Legislative Package continue in the Council of the EU. The new cohesion policy rules are also closely linked to the Multiannual Financial Framework negotiations and are only expected to be adopted by the European Parliament and the Council once an agreement on the said Framework has been reached.

4.2.3 The EU Funds Policy Coordination Directorate within OPM has been entrusted by Government to coordinate Malta's position and policy with regard to, inter alia, the 2014-2020 Cohesion Policy Legislative Package. The Directorate falls within the same organisational structure as the MA, and the two entities work closely to one another, both towards the ultimate aim of presenting a consolidated position on the next regulatory framework.

4.2.4 The MA confirmed that it had been directly consulted on the Articles that are being addressed in this chapter, where discussions with the Council, based on the Commission's original proposals, had progressed. Part of these discussions also factored in compromise texts tabled by the Presidency. Furthermore, officials from the MA attended a number of sessions of the Structural Actions Working Party, where discussions on these Articles took place in Council.

4.2.5 The AA stated that it was providing the EC with regular feedback to the proposed legislative package, while the CA asserted that it too was very familiar with it.

4.2.6 The ensuing paragraphs provide a detailed account of the feedback and comments from the authorities and beneficiaries in Malta with regard to future simplification measures. It should be noted that where no feedback was provided, NAO assumed that the relevant authorities were in agreement with the measure under discussion.



Article 57 – Forms of Grants

4.2.7 This Article, in its first paragraph, delineates the different forms that grants can take:

- a. “reimbursement of eligible costs actually incurred and paid, together with, where applicable, in-kind contributions and depreciation;
- b. standard scales of unit costs;
- c. lump sums not exceeding EUR 100,000 of public contribution;
- d. flat-rate financing, determined by the application of a percentage to one or several defined categories of costs.”

4.2.8 The MA noted that the basis for reimbursement should be clearly defined under Article 57(3) so as to ensure legal certainty. This third paragraph of the Article states that when an “operation or a project forming a part of an operation is implemented exclusively through the procurement of works, goods or services, only paragraph 1(a) shall apply.” This in itself poses notable difficulty for Malta, since its projects are largely carried out on a procurement basis. In this regard, the MA stated that this paragraph should also include within it Article 57(1)(d), that is, flat-rate financing.

4.2.9 The MA provided further feedback, stating that the method applied should be left to the discretion of the Member State in order to ensure greater flexibility and true simplification. This input

refers to the fifth paragraph of the same Article under discussion, which states that, “The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.”

4.2.10 The MA has also supported a Presidency proposal to amend the first paragraph of this Article, whereby the four forms of grants would also refer to ‘repayable assistance’.

Article 58 – Flat-rate Financing for Indirect Costs for Grants

4.2.11 This Article provides Member States with the option to apply one of three types of flat-rates when calculating indirect costs. The first refers to a maximum of 20 per cent on eligible direct costs; the second consists of up to 15 per cent of eligible direct staff costs; while the third constitutes a flat-rate applied to eligible direct costs based on existing methods and corresponding rates.

4.2.12 With regard to this measure, the MA was unsure as to why two separate percentage rates for indirect cost compensation have been established by the EC. To this effect, it had asked for clarification on what would happen in a case where one option was more advantageous than another, and whether the Member State in question could choose the one that adds more value to the final amount recouped by beneficiaries.



4.2.13 A further suggestion put forward by the MA was an increase of five per cent to the 20 per cent flat-rate. In fact, this change had also been proposed by the Presidency during discussions. The MA further queried whether the calculation of such rates would necessitate a study (similar to the one carried out by PwC, explained in section 3.2 of this report) in order to justify the application of the rate.

4.2.14 The CA noted that it is still in the early stages of certifying payments of projects that have had this simplification measure applied to them during the 2007-2013 programming period. It therefore requires more exposure to such a measure to be in a position to determine whether it is effective or otherwise. However, from its initial assessment, it seems that it will constitute a substantial amount of simplification, particularly in cases where no backing documentation is required.

Article 54(1) – Revenue-generating Operations

4.2.15 It has been proposed by the EC that where projects (with a total cost exceeding €1,000,000) are expected to generate net revenue after completion, that revenue should be calculated and deducted from total eligible costs. This Article sets out two methods by which this could be calculated. One option is the application of a flat-rate revenue percentage, according to the type of operation concerned, while the other one bases its estimate on the current value of the operation's net revenue, taking into account the application of the polluter-pays principle. The

latter option also considers any equity linked to the relative prosperity of the Member State concerned.

4.2.16 The MA was concerned about two issues in relation to this Article. It stated that it was of paramount importance for the entity that was going to determine the flat-rate revenue percentage to be clearly identified in this section of the Article. More specifically, the MA proposed that the Cohesion Policy should stipulate whether it was the Member State or the EC who was to bear the responsibility of determining the applicable rates. A further comment forwarded by the MA with regard to the same flat-rate was the need to have it defined according to the relevant sector (e.g. water, energy and maritime transport).

4.2.17 In addition, with regard to operating cost savings resulting from energy efficiency measures (except for feed-in tariffs, which inherently constitute revenue), the MA believes that such efficiencies should be clearly excluded from this Article.

4.2.18 Feedback generated from the CA revolved around the exclusion of public entities from this Article. The reason afforded in this regard was that revenue could be injected into the relevant Member State's economy, thereby enabling a positive multiplier effect.

Articles 63, 64, 65 and 75

4.2.19 The above-captioned Articles introduce increased responsibility and accountability for

Member States, as well as more reporting obligations (Articles 65 and 75). They also introduce accreditation of management and control bodies at national level (Article 64), and delineate the responsibilities of the Member States (Article 63).

4.2.20 The MA provided feedback on Articles 63 and 65 – proceeding paragraphs refer. The position taken by the MA on these Articles was guided by the need to reduce the administrative burden brought about by the introduction of the provisions set out within them. The AA provided feedback on Article 75, while no comments were put forward with respect to Article 64. It is therefore assumed that all concerned authorities are in agreement with this latter referred Article – text on this Article is also provided hereunder.

Article 63 – Responsibilities of Member States

4.2.21 This Article stipulates that Member States are responsible for the management and control of programmes. In addition, Member States should ensure that the systems set up in this regard are compliant with the provisions of fund-specific rules and that they function effectively.

4.2.22 The Article proceeds in stating that Member States are to, *“establish and implement a procedure for the independent examination and resolution of complaints concerning the selection of implementation of operations co-financed by the CSF Funds. Member States shall report the results of such examinations to the Commission upon request.”*

4.2.23 Furthermore, the method by which official exchanges with the EC are to be carried out is also clearly stipulated in this Article: *“All official exchanges of information between the Member and the Commission shall be carried out using an electronic data exchange system established in compliance with the terms and conditions laid down by the Commission by means of implementing acts.”*

4.2.24 The MA felt that the provisions presented in the preceding two paragraphs should be less rigid. In light of the latter paragraph, the MA proposed that the text should be rendered more flexible, so as to more precisely denote that it refers to statutory official exchanges (for example, the submission of reports) and not to all other official exchanges.

Article 64 – Accreditation and Coordination

4.2.25 This Article lays down the requirement for the body responsible for the management and control of expenditure under the CSF Funds to be accredited through the formal decision of an accrediting authority at ministerial level. The Article proceeds to stipulate the conditions under which this accreditation is given. As noted earlier, no comments were provided by all of the authorities with regard to this Article.

Article 65 – Commission Powers and Responsibilities

4.2.26 The MA is in agreement with this Article, except for its fourth paragraph, which states that, *“The Commission may require a Member State to examine a complaint submitted to the Commission concerning the selection or implementation of operations cofinanced by the CSF Funds or the functioning of the management and control system.”*

4.2.27 The MA – together with other Member States – has supported the omission of the above-quoted provision, as the Authority considers this clause as a source of additional administrative burden. It was indicated to NAO that this issue has yet to be resolved at Council level.

Article 75 – Submission of Information

4.2.28 This Article lists the four types of reports, documentation and accounts that Member States are to submit by the 1st February of the year following the end of the accounting period. Member States will be bound, upon the Commission’s request, to furnish it with further information as deemed necessary. As noted earlier, the MA gave no feedback on this Article, which in NAO’s view inherently implies agreement.

4.2.29 The AA stated that this particular Article will introduce added pressure due to the fact that it will have to perform the requested operations and systems audits in a notably shortened period. This Article, which has been endorsed by all AAs in other Member States, is considered by the AA to constitute a significant challenge.

4.2.30 The CA reiterated the AA’s concerns with regard to increased pressures related to reporting to

the EC. According to the CA, the obligations set out in this Article are, in effect, contrary to the principles of simplification.

Article 113 – Designation of Authorities

4.2.31 According to this proposal, the MA may carry out the duties of the CA, in addition to its normal duties: *“The Member State may designate for an operational programme a managing authority which carried out in addition the functions of the certifying authority.”*

4.2.32 A further change proposed in this Article refers to the MA, the CA and the AA being part of the same public authority or body: *“For the investment for growth and jobs goal, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body.”* This clause does not apply to operational programmes whose total eligible cost exceeds €250,000,000.

4.2.33 The MA noted that it should be ensured that this regulation would remain sufficiently flexible so as to allow for the different systems across Member States to continue to work effectively. The MA also underlined the importance of ensuring that the regulatory framework to be put into place (as laid down in the proposed regulation) was flexible enough to allow Member States to adopt implementation systems and control functions at the appropriate levels.

4.2.34 The AA stated that the setup that is referred to in this Article is similar to the current setup, except for the option of merging the CA with the MA. In its opinion, if the CA were to form part of the MA, coordination would improve. This is, however, a policy decision that must be taken by Government since it constitutes the manner by which the respective authorities function.

4.2.35 The CA stated that if the MA were to take over the CA functions, it would have two options:

- a. Absorb the CA complement as a unit; or
- b. Recruit additional staff to perform the CA's functions.

The CA commented on the fact that during the previous two programming periods it had always been independent of the MA and the system worked efficiently. Hence, it expressed its doubts on option (b) above as its selection would translate into a drain of the expertise that has been gained over the past eight years.

Article 38 – Re-use of Resources Attributable to the Support from the CSF Funds until Closure of the Programme

4.2.36 This Article lays down the conditions for the re-use of resources after closure of the programme in concern: *“Capital resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, which are attributable to the support from the CSF Funds, shall be re-used for further investments through the same or other financial instruments, in accordance with the aims of the programme or programmes.”* With particular reference to this Article, the MA and CA stated that they had no issue with its actualisation.

4.3 Other Suggestions Brought Forward by the Authorities and Beneficiaries

4.3.1 Stakeholders who were in contact with NAO provided feedback on the proposed simplification measures, as well as on Articles they had interest in further simplifying. This section addresses the latter, and includes suggestions for articles that do not already exist.

4.3.2 The CA provided feedback on Article 120(1), which states that, *“The Commission shall reimburse as interim payments 90% of the amount resulting from applying the co-financing rate for each priority axis laid down in the decision adopting the operational programme to the eligible expenditure for the priority axis included in the payment application.”* The CA disagrees with the fact that the EC withholds 10 per cent of the amount from the interim payments, and opines that this clause should be removed altogether from the legislative package. Rather than retaining 10 per cent of the amount from the application as a form of retention money that will be reimbursed once the annual accounts are cleared, the CA proposed that if during clearance of accounts, the EC notes irregular expenditure, one

of two alternatives can be resorted to:

- a. Issue a debit note to the Member State, requesting the immediate recovery of funds; or
- b. Deduct the irregular amount from the next application for payment that the Member State submits to the EC.

4.3.3 The CA provided feedback on Article 124, which stipulates the instalment rates by which initial pre-financing amounts are to be paid. These payments are to be made in three instalments, as follows:

- a. *“In 2014: 2% of the amount of support from the Funds for the entire programming period to the operational programme;*
- b. *In 2015: 1% of the amount of support from the Funds for the entire programming period to the operational programme;*
- c. *In 2016: 1% of the amount of support from the Funds for the entire programming period to the operational programme.”*

4.3.4 The CA believes that the above percentage rates should be higher than those of the annual pre-financing. The percentages in this Article aggregate four per cent over three years, whereas the annual pre-financing percentages aggregate 17 per cent over six years. More emphasis should be made on initial pre-financing (for example, a 15 per cent aggregate on the first three years, and one per cent annual pre-financing for the following six years). The adoption of this method of pre-financing would grant the Member State greater liquidity, thereby facilitating the overall management of funds.

4.3.5 The beneficiaries who were in contact with NAO unanimously agreed that there was a need for simplification with regard to staff costs. The absence of a system that reimburses staff costs is mostly felt in the case of non-governmental organisations, which have to bear such costs. It was indicated to NAO that persons involved in the running of a particular project end up dedicating a lot of their time to such projects instead of concentrating on other tasks corresponding with their job. To this effect, the beneficiaries called for a flat-rate on staff costs.

4.3.6 A further issue brought to the fore by the beneficiaries was the fact that unforeseen changes may lead to complications and higher costs. The latter are borne by the beneficiary as the Grant Agreement would have already been signed. This problem occurs when, for instance, procurement rules change and the project leader is obliged to redesign the tender. In light of this, the beneficiaries stated that the introduction of possible provisions ensuring increased flexibility would be beneficial when they face certain unforeseeable circumstances.

4.3.7 The beneficiaries unanimously agreed that the involvement of line ministries should be greater. In this regard, beneficiaries suggested that line ministries should assume a more active role in assisting project leaders to identify possible solutions to arising difficulties. In the current setup, project leaders are referred to the MA when in need of assistance in addressing particular problems.

4.3.8 The beneficiaries were also concerned with the fact that the procedure required to process payments did not distinguish between large and small projects. The work carried out to process payments for a €10,000 project is equivalent to the work that has to be carried out when processing a €1,000,000 project. Hence, the beneficiaries called for the establishment of simpler payment rules for projects below a certain amount.

4.3.9 The final suggestion put forward by the beneficiaries related to the considerable amount of printing necessitated to adhere to established record-keeping procedures. A project could entail up to 3,000 payments, to be printed in triple copy, with each individual payment record consisting of multiple pages. In this regard, the beneficiaries expressed interest in the possibility of introducing a simplification measure that supports the electronic filing of required records.

4.4 Conclusions

4.4.1 Overall, the stakeholders involved in this performance audit provided useful and relevant feedback. Their opinions encompassed viewpoints on the proposed simplification measures, as well as other general, yet nonetheless related perspectives.

4.4.2 The MA disagreed with the fact that when a project or part of an operation is carried out exclusively through procurement processes, the definition of grants excludes flat-rate financing. Most projects in Malta are carried out by means of a procurement process, and therefore, claiming indirect costs on the basis of an agreed upon flat-rate will be a crucial element for a number of beneficiaries.

4.4.3 The MA was concerned about two issues in relation to Article 54, which stipulates how net revenue of projects whose aggregate cost exceeds €1,000,000 should be deducted from eligible costs. More specifically, the MA was of the opinion that there should be a clear identification of the entity that was to determine the flat-rate percentage to apply in the context of revenue-generating projects. Moreover, the MA believes that cost savings resulting from energy efficiency measures (except for feed-in tariffs, which inherently constitute revenue), should be clearly excluded from this Article.

4.4.4 Furthermore, feedback provided by the CA addressed the exclusion of public entities from this Article. The reason afforded in this regard was that revenue could be injected back into the relevant Member State's economy, possibly resulting in a positive multiplier effect.

4.4.5 With regard to Article 64, which stipulates that Member States are responsible for the management and control of programmes, the MA opined that the formulation of the relevant text should be less rigid. Furthermore, according to the MA, the text in this Article should more precisely denote that it refers to statutory official exchanges (for example, the submission of reports) and not to all other official exchanges.

4.4.6 The MA disagrees with the inclusion of a clause in Article 65, which tasks Member States with the examination of complaints submitted to the EC. The MA stated that this would inherently constitute an administrative burden.

4.4.7 With particular reference to Article 75, which sets out proposed regulations in light of the submission of information, the AA was of the opinion that the actuation of this Article would introduce added pressure to it. It noted that the requested

operations and systems audits would have to be presented in a notably shortened timeframe. According to the CA, the obligations set out in this Article are, in effect, contrary to the principles of simplification.

4.4.8 Further comments were made with regard to another proposed regulation, Article 113, whereby the EC affords Member States the option to diffuse the CA's duties into those of the MA's. This same Article would also offer Member States the option of having the CA, AA and MA managed by one authority or body, except for when the cost of a project exceeds €250 million.

4.4.9 In response to Article 113, which focused on the reorganisation of the management structure governing the AA, CA and MA, the latter believed that sufficient flexibility should be ensured so as to enable the system to allow for the different systems across Member States to continue to work effectively. Further to the above, the AA opined that if the CA were to form part of the MA, coordination would improve. On the other hand, the CA stated that during the previous two programming periods it had always been independent of the MA and that this systematic arrangement worked efficiently. Hence, it expressed its apprehension with respect to how the integration of two separate organisations would impact upon the expertise necessary to address their respective tasks.

4.4.10 The beneficiaries expressed concern with respect to the extent of verification undertaken, specifically indicating that such checks did not distinguish between minor insubstantial payments and larger substantial ones. Although NAO strongly supports the principle of simplification of payments, it does not endorse the creation of reduced checking methods solely based on the value of payments due.

4.4.11 Staff costs were of particular concern to the beneficiaries who participated in this performance audit. In fact, they unanimously agreed that there was a need for simplification with regard to this cost component. The absence of a system that reimburses staff costs is most strongly felt in the case of non-governmental organisations, which have to bear such costs. It was indicated to NAO that persons involved in the running of a particular project end up dedicating a large portion of their

time to such projects instead of concentrating on other tasks associated with their job. To this effect, the beneficiaries called for a flat-rate on staff costs.

4.4.12 Other highly relevant issues brought to the fore by the various project beneficiaries included the need for greater simplification in terms of record-keeping procedures, as well as an increased overall flexibility in view of complications arising from unforeseen changes in circumstances. With respect to this latter point, the institution of safeguards that provide flexibility would be an ideal avenue for further exploration in the context of possible future simplification. Finally, beneficiaries unanimously voiced their concern with regard to the lack of appropriate support provided by their respective line ministries, particularly in the address of arising difficulties and challenges. NAO considers the need to coordinate assistance provided by the MA and the various involved line ministries as a matter of paramount importance, which if not actively managed, may easily prove to be detrimental to all involved.

4.5 Recommendations

4.5.1 NAO supports the proposal put forward by the MA with regard to the allowance of flat-rate financing in projects that are carried out exclusively through procurement processes. In this regard, it recommends that Article 57 should be altered to reflect this crucial suggestion.

4.5.2 NAO noted that clarification was needed with respect to what would happen in cases where an indirect cost compensation rate was more advantageous than another, and whether the Member State in question could choose the one that adds more value to the final amount recouped by beneficiaries. The NAO, hence, agrees with the MA that the EC should provide Member States with clarification on this matter.

4.5.3 Conceptually, NAO is not against the fusion of the CA's roles into those of the MA, given that ample consideration is provided for ensuring sustained and improved coordination, the clear segregation of duties, as well as efficiency and effectiveness gains.

4.5.4 NAO recommends that more importance should be given to the reimbursement of staff costs, especially when projects are run by non-governmental organisations. The establishment of a flat-rate in this regard could quintessentially entail a study similar to that carried out by PwC on the 'indirect costs, declared on a flat-rate basis' measure.

4.5.5 NAO is of the overall opinion that feedback on future simplification forwarded by all the stakeholders, highlighted in this chapter, and to be duly transmitted onwards by the Working Group on Structural Funds, should be taken into consideration by the EC.



Appendices

Appendix A: Overview of Structural Funds Programmes

Table 12: Allocation of Funds as per Operational Programme

OP	Budget of the Operational Programmes (2007-2013)					Percentage in Total	Part of the Audit (Yes/No)
	ERDF	ESF	CF	National Co-financing	Total		
OPI	€443,978,031	-	€284,145,020	€128,492,303	€856,615,354	86.67	Yes
OPII	-	€112,000,001	-	€19,764,706	€131,764,707	13.33	Yes
Sum	€443,978,031	€112,000,001	€284,145,020	€148,257,009	€988,380,061	100	

Table 13: Audited Operational Programmes – Funding Allocation, Contracts Signed and Declared Eligible Expenditure

OP and Fund	Funds (EU Funds + National Co-financing) allocated (in €)						Contracts Signed (until 31.12.2011)/ Funds Granted to Beneficiaries (in €)						Declared Eligible Expenditure to the EC (in €)					
	2007	2008	2009	2010	2011		2007	2008	2009	2010	2011		2007	2008	2009	2010	2011	
OPI [ERDF]	522,327,095	-	-	-	-		-	244,041,846	33,521,676	37,164,703	72,992,840		-	-	6,299,621	28,686,211	73,050,902	
OPI [CSF]	334,288,259	-	-	-	-		-	-	197,263,941	36,507,664	-		-	-	15,510,521	46,142,076	14,123,130	
OPII [ESF]	131,764,705	-	-	-	-		-	60,185,688	80,039,768	76,628,204	108,470,653		-	-	677,171	5,595,039	12,136,464	

Appendix B: Overview of Simplification Measures

Table 14: Overview of Simplification Measures

Simplification Measure	Current Legislative Framework	Former Legislative Framework
Indirect Costs - ESF	EC 396/2009 Article 1	EC 1081/2006 (ESF) Article 11, Clause 3b
	Paragraph 3 of Article 11 of Regulation (EC) No 1081/2006 is hereby amended as follows: 1. point (b) shall be replaced by the following: '(b) in the case of grants: (i) indirect costs, declared on a flat-rate basis, of up to 20 % of the direct costs of an operation;'	3. The following costs shall be expenditure eligible for a contribution from the ESF as defined in paragraph 1 provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below: (b) in the case of grants, indirect costs declared on a flat-rate basis, up to 20 % of the direct costs of an operation;
Indirect Costs - ERDF	EC 397/2009 Article 1, Clause 3	EC 1080/2006 (ERDF) Article 7
	Article 7 of Regulation (EC) No1080/2006 is hereby amended as follows: 3. the following paragraph shall be added: '4. In the case of grants the following costs shall be expenditure eligible for a contribution from the ERDF, provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below: (i) indirect costs, declared on a flat-rate basis, of up to 20 % of the direct costs of an operation;'	
Flat-rate Costs - ESF	EC 396/2009 Article 1	EC 1081/2006 (ESF) Article 11
	Paragraph 3 of Article 11 of Regulation (EC) No 1081/2006 is hereby amended as follows: 1. point (b) shall be replaced by the following: '(b) in the case of grants: (ii) flat-rate costs calculated by application of standard scales of unit cost as defined by the Member State;'	
Flat-rate Costs - ERDF	EC 397/2009 Article 1, Clause 3	EC 1080/2006 (ERDF) Article 7
	Article 7 of Regulation (EC) No1080/2006 is hereby amended as follows: 3. the following paragraph shall be added: '4. In the case of grants the following costs shall be expenditure eligible for a contribution from the ERDF, provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below: (ii) flat-rate costs calculated by application of standard scales of unit cost as defined by the Member State;'	

Lump Sums - ESF	EC 396/2009 Article 1	EC 1081/2006 (ESF) Article 11	
	Paragraph 3 of Article 11 of Regulation (EC) No 1081/2006 is hereby amended as follows: 1. point (b) shall be replaced by the following: '(b) in the case of grants: (i) indirect costs, declared on a flat-rate basis, of up to 20 % of the direct costs of an operation; (ii) flat-rate costs calculated by application of standard scales of unit cost as defined by the Member State; (iii) lump sums to cover all or part of the costs of an operation;'		
Lump Sums - ERDF	EC 397/2009 Article 1, Clause 3	EC 1080/2006 (ERDF) Article 7	
	Article 7 of Regulation (EC) No1080/2006 is hereby amended as follows: 3. the following paragraph shall be added: '4. In the case of grants the following costs shall be expenditure eligible for a contribution from the ERDF, provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below: (iii) lump sums to cover all or part of the costs of an operation.'		
Permitted In-Kind Contributions	EC 284 /2009 Clause 6 & Article 1, Clause 3	EC 1083/2006 (ESF & ERDF) Article 56 Clause 2	
	(6) In order to facilitate the use of financial engineering instruments, notably within the field of sustainable urban development, it is necessary to provide for the possibility of in-kind contributions being considered as eligible expenditure in the constitution of, or contributions to, funds.		
	3. Article 56(2) shall be replaced by the following: '2. By way of derogation from paragraph 1, contributions in kind, depreciation costs and overheads may be considered as incurred expenditure by beneficiaries for the implementation of operations under the conditions laid down in the third subparagraph of this paragraph. By way of derogation from paragraph 1, contributions in kind, as regards financial engineering instruments as defined in Article 78(6), first subparagraph, can be treated as expenditure paid at the constitution of the funds or holding funds or contributing to those funds or holding funds, under the conditions established in the third subparagraph of this paragraph.'	2. By way of derogation from paragraph 1, in-kind contributions, depreciation costs and overheads may be treated as expenditure paid by beneficiaries in implementing operations under the following conditions: (a) the eligibility rules laid down under paragraph 4 provide for the eligibility of such expenditure; (b) the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices; (c) in the case of in-kind contributions, the co-financing from the Funds does not exceed the total eligible expenditure excluding the value of such contributions.	

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Permitted In-Kind Contributions</p>	<p>Expenditure mentioned in the first and second subparagraphs must fulfil the following conditions: (a) the eligibility rules drawn up on the basis of paragraph 4 foresee the eligibility of such expenditure; (b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices, without prejudice to provisions set out in specific Regulations; (c) in the case of contributions in kind, the co-financing from the Funds does not exceed the total of eligible expenditure, excluding the value of such contributions.'</p>	
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Advanced Payments</p>	<p>EC 284 /2009 Clause 7 and Article 1, Clause 4b (7) In order to support enterprises, and in particular small and medium-sized enterprises, it is also necessary to make more flexible the conditions governing the payment of advances within the framework of State aids under Article 87 of the Treaty. 4. Article 78 shall be amended as follows: (b) in Article 78(2) point (b) shall be deleted;</p>	<p>EC 1083/2006 (ESF & ERDF) Article 78 Clause 2 (b) 2. By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions: (b) they shall not exceed 35% of the total amount of the aid to be granted to a beneficiary for a given project;</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Increased Flexibility for Major Projects</p>	<p>EC 284 /2009 Clause 8 and Article 1, Clause 4c (8) In order to accelerate the implementation of major projects, it is necessary to allow expenditures relating to major projects which have not yet been adopted by the Commission to be included in expenditure declarations. 4. Article 78 shall be amended as follows: (c) Article 78(4) shall be replaced by the following: '4. When, in application of Article 41(3), the Commission refuses to make a financial contribution to a major project, the expenditure declaration following the adoption of the Commission decision must be rectified accordingly.'</p>	<p>EC 1083/2006 (ESF & ERDF) Article 78 Clause 4 4. In the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure.</p>

Co-Financed Repayable Assistance	EC 1310/2011 Article 1 Clauses 2 and 3	EC 1083/2006 (ESF & ERDF) Articles 43 and 44
	<p>(2) in Title III, Chapter II, the following section is inserted: ‘SECTION 3A Repayable assistance Article 43a Forms of repayable assistance 1. As part of an operational programme, the Structural Funds may co-finance repayable assistance in the form of: (a) reimbursable grants; or (b) credit lines managed by the managing authority through intermediate bodies which are financial institutions. 2. The statement of expenditure concerning repayable assistance shall be submitted in accordance with Article 78(1) to (5). Article 43b Reuse of repayable assistance Repayable assistance, repaid to the body that provided that assistance or to another competent authority of the Member State, shall be reused for the same purpose or in line with the objectives of the relevant operational programme. Member States shall ensure that an adequate record of the repayable assistance repaid is shown in the accounting system of the appropriate body or authority.’; (3) the following article is inserted: ‘Article 44a Non-application of certain provisions Articles 39, 55 and 57 shall not apply to operations falling under Article 44.’</p>	<p>Article 43 The agreement referred to in the first subparagraph of Article 42(1) shall detail in particular: (a) the types of operation to be covered by the global grant; (b) the criteria for selecting beneficiaries;</p> <p>Article 44 As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, and for urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development. When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms: (a) the award of a public contract in accordance with applicable public procurement law;</p>
Raising of Threshold of Revenue Generating Projects	EC 1341/2008 Article 1	EC 1083/2006 (ESF & ERDF) Article 55 Clause 5
	<p>Article 55(5) of Regulation (EC) No 1083/2006 shall be replaced by the following: ‘5. Paragraphs 1 to 4 of this Article shall apply only to operations which are co-financed by the ERDF or Cohesion Fund and the total cost of which exceeds EUR 1,000,000.’</p>	<p>5. Without prejudice to their obligations under Article 70(1), Member States may adopt procedures proportionate to the amounts concerned for monitoring revenues generated by operations whose total cost is below EUR 200,000.</p>

Single Threshold for Major Projects	EC 539/2010	EC 1083/2006 (ESF & ERDF) Article 39
	<p>Regulation (EC) No 1083/2006 is hereby amended as follows:</p> <p>(1) Article 39 is replaced by the following:</p> <p><i>'Article 39</i></p> <p>Content</p> <p>As part of an operational programme or operational programmes, the ERDF and the Cohesion Fund may finance expenditure comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and whose total cost exceeds EUR 50 million (hereinafter a major project).'</p>	<p>As part of an operational programme, the ERDF and the Cohesion Fund may finance expenditure in respect of an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds EUR 25 million in the case of the environment and EUR 50 million in other fields (hereinafter referred to as major projects).</p>

Appendix C: Table for Reporting and Analysis of the Use of Measures from the Date of Introduction

Table 15: Simplification Measures Used from the Date of Introduction to 31.12.2011

Measure	Date of introduction in EU regulations	No. of all projects	No. of projects in which the measure in principle is applicable (potential projects)	No. of projects with the measure applied (actually affected projects)	Percentage (No. of projects with the measure applied / all projects)	Percentage (No. of projects with the measure applied / potential projects)	Funds allocated to all projects	Funds allocated to projects in which the measure is applicable (potential projects)	Funds allocated to the projects where the measure applied (actually affected projects)	Percentage (Funds allocated to the projects where the measure applied/all projects)	Percentage (Funds allocated to the projects where the measure applied/potential projects)
Optional measures											
1. Indirect costs	10. 6. 2009	62	61	24	39%	40%	€108,155,772	€103,091,067	€33,988,114	31%	33%
2. Flat-rate costs	22. 5. 2009 (ESF) 10.6.2009 (ERDF)	-	-	-	-	-	-	-	-	-	-
3. Lump sums	22. 5. 2009 (ESF) 10.6.2009 (ERDF)	-	-	-	-	-	-	-	-	-	-
4. In-kind contributions in financial engineering schemes	9. 4. 2009	-	-	-	-	-	-	-	-	-	-
5. Advanced payments (State-aid)	9. 4. 2009	-	-	-	-	-	-	-	-	-	-
6. Increased flexibility for major projects	9. 4. 2009	-	-	-	-	-	-	-	-	-	-
7. Co-financed repayable assistance	23. 12. 2011	-	-	-	-	-	-	-	-	-	-
Non-optional measures											
8. Total costs of revenue generating projects raising to € 1 Mio. (excl. ESF projects)	25. 12. 2008 (ERDF only)	-	-	-	-	-	-	-	-	-	-
9. Single threshold for major projects of €50 Mio.	25. 6. 2010 (ERDF only)	-	-	-	-	-	-	-	-	-	-

Appendix D: Table for Reporting and Analysis of the Use of Measures from the Date of Retroactive Applicability

Table 16: Simplification Measures Used from the Date of Retroactive Applicability to 31.12.2011

Measure	Date of applicability of measure	No. of all projects	No. of projects in which the measure in principle is applicable (potential projects)	No. of projects with the measure applied (actually affected projects)	Percentage (No. of projects with the measure applied / all projects)	Percentage (No. of projects with the measure applied / potential projects)	Funds allocated to all projects	Funds allocated to projects in which the measure is applicable (potential projects)	Funds allocated to the projects where the measure actually affected projects)	Percentage (Funds allocated to the projects where the measure applied / all projects)	Percentage (Funds allocated to the projects where the measure applied / potential projects)
Optional measures											
1. Indirect costs	1. 8. 2006 (ERDF only)	-	-	-	-	-	-	-	-	-	-
2. Flat-rate costs	1. 8. 2006	-	-	-	-	-	-	-	-	-	-
3. Lump sums	1. 8. 2006	-	-	-	-	-	-	-	-	-	-
4. In-kind contributions in financial engineering schemes	1. 8. 2006	-	-	-	-	-	-	-	-	-	-
7. Co-financed repayable assistance	1. 1. 2007	-	-	-	-	-	-	-	-	-	-
Non-optional measures											
8. Total costs of revenue generating projects raising to €1 Mio. (excl. ESF projects)	1. 8. 2006 (ERDF only)	-	-	-	-	-	-	-	-	-	-

Appendix E: Extract from ESF Eligibility Rules

Rule No. 7: Indirect Costs (Overheads)

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).
2. Arbitrary apportionment of the applicant’s indirect costs is not considered eligible. However, these costs can be declared on a flat-rate basis, according to the table under item (4) below.
3. The flat rate on indirect costs will be calculated on the declared expenditure relating to direct costs incurred from the beginning of the project. This direct expenditure should be justified by paid invoices and other accounting documents of equivalent probative value.
4. The rates to be applied are as follows:

All Beneficiaries (except for Government Departments)

Size of Grant	Percentage Flat Rate
< €200,000	10
€200,000 - €600,000	8
€600,001 - €2.3 million	5
> €2.3 million - €4 million	2
> €4 million	2

Projects implemented by Government Departments

Size of Grant	Percentage Flat Rate
< €200,000	4
€200,000 - €600,000	4
€600,001 - €2.3 million	4
> €2.3 million - €4 million	2
> €4 million	2

5. If the Managing Authority has approved a flat rate covering indirect costs in the Grant Agreement, this rate is eligible subject to the conditions in the agreement and those listed below:
 - (a) Actually incurred direct costs are the basis for the calculation of indirect costs. Any reduction in these direct costs (i.e. in relation to the estimated budget or following a financial correction) will have an impact on the flat-rate amount of indirect costs, which will be validated by the Managing Authority;
 - (b) Any income generated within an ESF operation shall be deducted from the total costs declared on the ESF operation, which will result in a proportionate decrease in the indirect costs validated by the MA;
 - (c) The flat rate does not apply to ERDF type of expenditure.

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