

Swyddfa Cyllid Ewropeaidd Cymru
Welsh European Funding Office
Grŵp yr Economi, y Trysorlys a'r Cyfansoddiad
Economy, Treasury and Constitution Group



Llywodraeth Cymru
Welsh Government



IRELAND WALES CO-OPERATION PROGRAMME 2014-2020

Version 7 – March 2023

Programme eligibility rules and guidance

VERSION HISTORY

Version	Date	Comments
1.0	November 2015	Publication of version 1, replaces draft consultation version 0.2
2.0	June 2017	<p>Version 2 replaces Version 1 issued in November 2015. Summary of Key Changes:</p> <ul style="list-style-type: none"> • Amended logos on front cover • Numbered all Rules • Amended date Programme adopted (page 9) • Amended terms to ensure consistency with mainstream rules • Section 3 added reference to the Ireland/ Wales Co-operation Programme 2014 - 2020 Programme Eligibility Rules and Guidance as well as regional ERDF eligibility rules • Section 5.1.4.2 updated in terms of Welsh partners providing written assurance of conformation with British Standards where an alternative security standard • Section 5.1.4.4 e-Cohesion removed – timeline for incorporation has lapsed • Section 8.2 - added guidance on eligibility of employment agencies costs • Section 8.2 - clarification on costs that must be excluded from calculating the flat rate e.g. unpaid volunteer project workers and stipend payments • Section 14.2.1 – Volunteer rates updated • Section 15.1 Rule 53 - added text on irrecoverable VAT • Section 16.4 - guidance on how to calculate the annual estimate of productive hours for unit costs for project staff if not using the EC figure of 1,720 hours • Section 25.3 –reference to Ireland/ Wales Co-Operation Programme 2014-2020 Programme Eligibility Rules and Guidance as well as regional ERDF eligibility rules.

3.0	May 2019	<p>Version 3 replaces Version 2 issued in June 2017. Summary of Key Changes:</p> <ul style="list-style-type: none"> • Statement from CIFAS – sharing information with fraud prevention agencies • Vouchers & Tokens - amended when considered paid • Clarification on sick pay calculations added • Monthly hourly rate calculation added • Best practice note added regarding keeping an inventory log of all equipment purchased using structural funds, • Net revenue – line added to clarify that revenue generation must be declared in line with Durability Rules. • Note added to inform beneficiaries of visits WEFO Management and Verification Team will carry out post completion. • Updates to reflect changes to Structural Fund Regulations following the adoption of the ‘Omnibus’ Regulation 2018.
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4.0	May 2021	<p>Version 4 replaces Version 3 issued in May 2019. Summary of Key Changes:</p> <ul style="list-style-type: none"> • Part 2, Section 5, Rule 9 - requirement to adopt consistent approach to exchange rates conversion/ calculation • Section 5.1.4.2 - Use of email confirmation to confirm/ declare eligibility to participate in ERDF supported projects • Section 8, Rule 24 & Section 25.4 – changes made by HM Revenue & Customs to the Employment Allowance as of 6 April 2020 • Section 16.5 & Annex D – changes to Simplified Cost Options Flat-rate 40% via the ‘Omnibus Regulation’
5.0	November 2021	<p>Version 5 replaces Version 4 issued May 2021. Summary of change:</p> <ul style="list-style-type: none"> • Section 8.2.5, Redundancy and Severance Schemes i.e. additional/ special payments offered at the discretion of an employer, and, • Part 4, Section 18.1, Rule 80 - clarification on support to ‘undertakings in difficulty’ due to reasons of the COVID-19 pandemic

6.0	June 2022	<p>Version 6 replaces Version 5 issued November 2021. Summary of change:</p> <ul style="list-style-type: none"> • Sections 8.2, eligibility of Health and Social Care Levy. • Update at Section 16.6 to capture the ability for ERDF supported operations to adopt a Unit cost for direct staff costs • Update at Section 18.1 ‘undertakings in difficulty’ – no longer a consideration in terms of de-minimis aid as from 24 April 2020 <p>Update to add Frequently Asked Questions documents:</p> <ul style="list-style-type: none"> • COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes • EU Structural Funds programme: purchasing
7.0	March 2023	<p>Updates to:</p> <ul style="list-style-type: none"> • Section 7.6, Rule [18] – clarification of what costs can be paid, by exception, outside the agreed financial lifetime of an operation • Section 22.3 – providing clarification in terms of commemorative plaques and permanent plaques/ billboards • Annex H – update Q9 – the UK Subsidy Control Act • Annex I – EU Structural Funds 2014 to 2020: Procurement Contract Modifications - additional guidance for WEFO beneficiaries/ project partners. Guidance first published on Welsh Government website October 2021 and last updated September 2022. Inserted at Annex I for ease of reference for beneficiaries

GLOSSARY

<p>Us, our, we</p>	<p>The Welsh European Funding Office (WEFO), a part of the Welsh Government and the designated programme managing authority and certifying authority; and</p> <p>The Southern Regional Assembly (SRA), one of three Assemblies in the Republic of Ireland and programme partner for the Ireland Wales Cooperation Programme 2014-2020 as well as the Managing Authority for the Southern and Eastern Regional Programme in Ireland.</p>
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You, your	The EU funds grant beneficiary, whether as a lead beneficiary or a joint beneficiary.
EC, the Commission	European Commission
ERDF	European Regional Development Fund
EU, the Union	European Union
ETC	European Territorial Co-operation. One of the specific goals of the EU European Structural and Investment Funds.
Programme	The Ireland Wales Co-operation Programme, being the formal programme proposal adopted by the EC.
Operation, project	The proposals set out in your funding application documents and approved by us.
Regulations EU Regulations EU legislation	EU law with binding legal force throughout every EU Member State, on a par with national laws. The legislative package relevant to the ETC goal is listed below [#]

The legislative package is subject to change but at the time of publication, comprises:

- Regulation EU 1303/2013, 17 December 2013 (The ESI Fund Common Provisions and Structural Funds General Provisions)
- Regulation EU 1301/2013, 17 December 2013 (The ERDF Regulation)
- Regulation EU 1299/2013, 17 December 2013 (The ETC Regulation)
- Regulation EU 288/2014, 25 February 2014 (Commission Implementing Regulation)
- Regulation EU 184/2014, 25 February 2014 (Commission Implementing Regulation)

- Regulation EU 480/2014, 3 March 2014 (Commission Delegated Regulation)
- Regulation EU 481/2014 on ETC eligibility rules, 4 March 2014 (Commission Delegation Regulation)
- Regulation EU 215/2014, 7 March 2014 (Commission Implementing Regulation) as amended by Regulation EU 1232/2014, 18 November 2014
- Regulation EU 821/2014, 28 July 2014 (Commission Implementing Regulation)
- Regulation EU 1011/2014, 22 September 2014 (Commission Implementing Regulation)
- Regulation EU 207/2015, 14 February 2015 (Commission Implementing Regulation)
- Regulation EU 1516/2015, 10 June 2015 (Commission Delegated Regulation)

- Regulation EU 1970/2015, 8 July 2015 (Commission Delegated Regulation)
- Regulation EU 2018/ 276, 23 February 2018 (Commission Implementing Regulation)
- Regulation EU 240/ 2015, 7 January 2014 (Commission Implementing Regulation)
- Commission Implementing Decision 2014/ 190/ EU
- Commission Implementing Decision 2014/ 99/ EU
- Commission Decision of 19.12.2013
- Commission Recommendation of 6 May 2003
- Omnibus Regulation 2016/0282
- Regulation (EU, Euratom) 2018/ 1046

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PART 1: INTRODUCTION

1. Background

The rules and conditions governing the use of the European Structural Funds are determined partly by EU legislation and partly by programme-specific rules. The Ireland Wales programme eligibility rules apply in the absence of a specific rule in the EU legislation or when the programme rules are stricter than EU requirements. The Ireland Wales programme eligibility rules are just as important as the EU rules and to disregard them has the same consequence of making the associated expenditure ineligible for EU support.

2. Purpose

The purpose of this document is to help beneficiaries, and potential beneficiaries, understand and apply both the programme-specific and the European rules by avoiding, wherever possible, technical terms, legal references and jargon, and providing answers to practical questions and examples of best practice.

3. Applicability

The rules and conditions in this document apply to the Ireland Wales Co-operation Programme 2014-2020, funded by the European Regional Development Fund to contribute towards the 'European Territorial Co-operation' (Commission CCI code 2014TC16RFCB048, Programme adoption date: 13 February 2015).

This document sets out the eligibility rules established by the EC as well as programme eligibility rules jointly established by Ireland and Wales. Programme eligibility rules apply to all beneficiaries, whether located in Ireland or Wales.

For any eligibility matters not covered by the EU Regulations or by the jointly agreed programme eligibility rules set out in this document, the following rules will apply:

- **Project partners based in Ireland:** the applicable Ireland/ Wales Co-Operation Programme 2014-2020 Programme Eligibility Rules & Guidance and the applicable ERDF Irish eligibility rules (Southern and Eastern Regional Programmes for the Investment in Growth and Jobs objective) and the Office of Government Procurement www.procurement.ie.
- **Project partners based in Wales:** the applicable Ireland/ Wales Co-Operation Programme 2014-2020 Programme Eligibility Rules & Guidance and the applicable ERDF Welsh eligibility rules (West Wales & the Valleys and East Wales Programmes for the Investment in Growth and Jobs objective) and Value Wales Procurement Route Planner <http://prp.gov.wales>.

4. Overview: the dimensions of eligibility

EU financial support is paid in relation to the **eligible expenditure** of the beneficiaries. The eligibility of expenditure is much broader than just the eligibility of project costs. There are many dimensions of eligible expenditure:

Geographic eligibility	The EU supported activities may need to take place in a specific geographical area. Businesses or people receiving support from a project may also need to be based in a specific area.
Scope of intervention	There are restrictions on the types of activity and industries than can be supported by the ERDF and the ETC Programme.
Costs	Some types of costs are always ineligible and others are only eligible subject to certain conditions. The ability to demonstrate a direct link of a cost to an eligible project activity may also influence its eligibility (whether an 'indirect' or a 'direct' cost).
Timing of expenditure	There are rules on the period in which expenditure and activity can take place, including special rules on expenditure that has taken place before a grant funding agreement is concluded.
Level or incidence of expenditure	Eligible expenditure is only 'counted' at agreed points in the payments chain, depending on who is making the payment and when the funds are actually paid.
Other EU/ national laws and regulations	All activities financed by the EU Funds must comply with EU rules and policies such as public procurement, competition, the environment and equal opportunities as well comply with Member State laws and regulations (Ireland, UK). Support must comply with EU State aid rules and where those rules are stricter than ERDF rules, they take precedence over the ERDF rules.
Information and publicity requirements	The support of the EU Funds must be adequately publicised by beneficiaries.
Proving 'real costs'	With the exception of depreciation charges and any contributions in-kind, only costs actually borne by a beneficiary, and supported by invoices or equivalent documents, are eligible.
Use of 'simplified costs'	Eligible costs must be calculated and declared in compliance with the applicable terms and conditions set out in the grant funding agreement. Simplified costs cannot be used to declare the eligible costs of fully procured activities, projects or operations.
Audit trails	Evidence of expenditure, activities, outputs and of compliance with all applicable funding conditions must be kept until the beneficiary has been informed by us that that they are no longer required.
Durability of projects	In some cases, investments/ activities/ assets must be maintained for a certain time beyond the end of the project implementation period to avoid needing to repay the ERDF support.

PART 2: GENERAL RULES AND CONDITIONS

5. RULES

You must comply with the rules and conditions set out in this document.

1. Costs are only eligible if they are necessary for managing, initiating or implementing the activities/ actions approved by us.
2. Project activity and spending must be lawful, complying with all applicable national and EU laws and regulations.
3. A suitable cost budget line must exist for the types of cost that you intend to declare as eligible (staff costs, equipment, indirect costs etc.). This will be evidenced in the financing plan/ delivery profile or related documents approved by us.
4. You must comply with the general and specific conditions set out in our grant funding agreement and any applicable EU State aid rules, which may go beyond the rules and conditions described in this document.
5. You must ensure that all relevant accounting records and supporting documents are retained, both financial and non-financial information, to demonstrate compliance with the rules and conditions. These must be retained until we notify you that they are no longer required.
6. You must maintain an up-to-date record of the location of original project records.
7. The audit trail must include documents that are verifiable, auditable, and readily available and held in an acceptable format that protects their authenticity and integrity.
8. Accounting records and supporting documents must be accessible for audits, verifications and any related investigation. We will aim to provide as much notice as possible but EC auditors are only legally obliged to provide 12 working days' notice of audit visits, therefore you should ensure that your records management arrangements are sufficiently robust to cater for such requests.
9. Where expenditure is incurred in pounds sterling, by a Welsh lead/ joint beneficiary and which has to be converted into Euros for inclusion in a payment claim to WEFO. The expenditure must be **converted into Euro** using the monthly accounting exchange rate of the European Commission (EC). Due to the timing of the transactions, costs for items/ services may be incurred in one month and paid in another. The Welsh lead/ joint beneficiary must decide whether to use the date the cost for the item/ service is incurred or the date the cost for the item/ service is paid. This will then determine the correct EC monthly accounting exchange rate to be used to calculate the

conversion from pounds sterling to Euros. Once the Welsh lead/ joint beneficiary has decided which date to use, this must be adopted for all subsequent conversions for payment claims for the project. For example, if the incurred date is adopted, then when converting all subsequent pounds sterling transactions into Euros, the date the transaction was incurred determines the EC monthly accounting exchange rate to be used.

Please note, where a beneficiary receives an invoice in a foreign currency & which has to be converted into its national currency, the beneficiary can follow its own established internal exchange rate policy. The policy must adhere to national accounting standards, provide details as to where & when the exchange rate is obtained and specify how the rate is applied – where all these elements are demonstrated the cost will be eligible for support.

10. You must arrange access to project records if requested by us, the designated national audit and control bodies or the relevant EU institutions (European Commission, European Court of Auditors, European Anti-fraud Office)

5.1 GUIDANCE

5.1.1 Basis of support

The ERDF support is a non-repayable grant, meaning that the EU grant does not need to be repaid to us if the funding rules and conditions are satisfied.

5.1.2 Unintentional mistakes ('errors') and fraud

Although errors are relatively infrequent, and fraud even rarer, we must protect the EU budget by putting measures in place to prevent, detect and correct any errors and to thoroughly investigate any suspicions of fraud.

Expenditure that does not comply with the EU or programme rules is irregular (an 'irregularity') and cannot therefore be declared to the EC as expenditure that qualifies for ERDF support. If the ERDF support has already been paid out to beneficiaries, the EC expects those amounts unduly paid to be recovered by us.

Fraud, in the context of ERDF programmes, means intentionally doing something or declaring something that you know is false and results in, or could have resulted in, EU funds being paid out in error. It also means intentionally not doing something or not declaring something that you know would (or could) result in EU funds being paid in error. Therefore, this definition applies to overstating eligible expenditure and understating/ not reporting project revenues, as well as non-compliance with other reporting and notification obligations set out in the grant funding agreement.

We have a zero tolerance approach to fraud and any suspicions of fraud will be investigated. We also have a legal obligation to inform the European Anti-Fraud Office (OLAF) of both suspected and actual fraud cases.

FRAUD PREVENTION

Please note that we may share data you provide to us with fraud prevention agencies and third parties for the purposes of preventing and detecting fraud. In order for us to comply with the fair processing principle of data protection we need to advise you how your personal data may be used.

The information we collect from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance or employment in future. Further details of how your information will be used by us and these fraud prevention agencies, and your data protection rights, can be found by contacting dataprotectionofficer@gov.wales

Further information is also available at:

<https://gov.wales/privacy-notice-welsh-government-grants>

If you have any queries on this please get in touch with WEFO.

5.1.3 Replacing ineligible expenditure

You should be aware that if we declare expenditure to the EC but subsequent checks and audits identify that some of your declared eligible costs are, in fact, ineligible, you will not be allowed to substitute those costs with new 'replacement' eligible costs. Where such errors are identified, the EU Regulations allow the cancelled EU contribution to be re-used by us for other operations in the Programme - it cannot be re-used by you for the same operation/ project.

5.1.4 Audit trails

The audit trail comprises two elements: accounting records and supporting documents.

'Document' means either paper records ('hard-copy') or an electronic medium/ digital records that contains relevant information [Article 2(17) EU 1303/2013].

'Accounting records' means the financial records for the eligible expenditure, match funding, project revenue and other receipts that are coded/ charged to the EU operation/ project and underpin the amounts that you declare to us in your regular payment claims.

You must ensure that an adequate audit trail is maintained to demonstrate the effective and compliant implementation of your project and the eligibility of expenditure.

You must ensure that all relevant records are made available on request as set out in the grant funding agreement, for example to support verifications, audits or any related investigations.

The acceptance of digital records, documents converted into digital form, and photocopies of paper records are acceptable subject to the conditions set out in 5.1.4.2.

Annex C provides further information and practical guidance.

5.1.4.1 Document retention periods

Unlike previous programming periods, document retention periods for beneficiaries are not linked to the Programme closure, meaning that average retention periods will reduce to between 5 and 10 years from the date that you declare expenditure to us.

In most cases, the retention period will be around 3 years following the completion of your operation. If the total eligible expenditure approved for your operation does not exceed €1m, the retention period in most cases will be much shorter – around 4 years from the submission of your claim to us.

We will inform you in writing of the document retention periods that apply to you.

The detailed rules for determining the precise retention period are set out in the below:

Note for Joint Secretariat staff

WEFO must inform beneficiaries in writing of the **start date** for determining the document retention period and the **retention period**. The retention period will either be:

- for operations where the total approved eligible expenditure is less than EUR €1m, **3 calendar years** from the 31 December that follows the inclusion of the **annual eligible expenditure** in the accounts submitted to the EC each March.
- for all other operations, **2 calendar years** from the 31 December that follows the inclusion of the **final eligible expenditure** that signifies the completion of the operation.

The beneficiary may still need to retain documents for a longer period if required by the applicable State aid rules or if audits or investigations are underway and the beneficiary is specifically advised to retain the audit trails until further notice.

See EU 1303/2013, Article 140, para 1 and 2.

5.1.4.2 Format of documents

Documents can be retained in any one of the following formats:

- Electronic/ digital versions of original paper documents held on commonly accepted data carriers such as microfilm, digitised/ scanned/ replica images etc.
- Documents that exist only in their electronic/ digital version i.e. so-called 'born digital' records that originates in digital form such as e-mails, database records, spreadsheets and word processing files etc. This extends to both structured and unstructured records and includes, for example, electronic records management systems; digital file formats, such as PDF, JPEG and TIF when created and then transmitted digitally; databases; video clips, digital photography etc.
- Original paper documents.
- Certified true copies of an original paper document.

[Article 140 of EU 1303/2013].

Conditions for accepting documents that exist only in electronic/ digital form

To ensure that the authenticity and integrity of 'electronic/ digital only' records so that they can be relied upon for legal and audit purposes, you must be satisfied that the ICT systems in place meets nationally accepted security standards.

For project partners based in Wales, the system must be designed to conform to **BSI BIP0008-1:2014** or **ISO 27001:2013**. If an alternative security standard is to be used for project partners based in Wales, you should provide us, in advance, with written assurance to substantiate the system is comparable to British Standards/ ISO requirements. WEFO will then confirm whether the alternative is an acceptable security standard in the UK.

For project partners based in Ireland, nationally-accepted security systems can be used, whether a standard developed for use exclusively in Ireland or International Standards accepted in Ireland – if considered legally acceptable in Ireland and reliable for audit purposes. All applicable laws and regulations governing the use of electronic information, such as the Electronic Commerce Act 2000, must also be respected as explained in Section 36.

Beneficiaries should therefore obtain relevant assurances on IT systems security standards from their IT/ Information Security department or corporate management team. If in doubt, paper records should be used

For the purposes of our verifications and audits, you should keep a document that describes the procedures you have undertaken to obtain the necessary assurances that adequate IT security standards are in place to rely on the information held electronically/ digitally.

If you are unable to obtain the necessary assurances on the IT security standards, then the records will not be acceptable for our compliance purposes. [Article 140(6) of EU1303/2013].

Conditions for accepting digitised, scanned, replica digital versions of original paper documents

Beneficiaries using scanning, e-archiving or image processing systems (where original paper documents are scanned and stored in digital form) must ensure that certification processes and controls are in place that, at least:

- Guarantee that each 'e-document' (scanned image) is identical to the paper original.
- Make it is impossible to scan the same paper document to produce several different e-documents of the same original document (each e-document remains unique and cannot be re-used for any other than its initial purpose).
- Where the document evidences a financial transaction, the approval, accounting and payment process for each e-document should be unique (it should not be possible to approve, account for, or pay the same e-document twice).
- Once scanned, it must be impossible to amend e-documents or to create altered copies (or amended/ altered versions are held as separate versions and the original, unaltered version of the image remains available for audit purposes).

Verifications and audits may ask to examine the policies and procedures in place to provide assurance of the above certification processes and controls, and may also ask to observe the scanning and certification process taking place in real time.

Certified true copies of original paper documents (photocopies)

The photocopied document must contain a 'certification statement'. The certification declaration must be annotated on, or appended to, the copy. The original document does not need to be marked.

If a document contains multiple pages then the first page should be certified and the number of attached pages indicated on the front page (alternatively, each page could be certified).

The certification statement must be signed and dated by an employee who can vouch that the copy is a true replica image of the original.

The certification statement is added at the time that the copy is made or very shortly afterwards, so that the signatory can recall seeing the original and therefore confirm that the copy is satisfactory.

The 'certification statement' can be chosen by each beneficiary but must, at least, contain the following:

- Signature
- Date
- 'True copy', 'certified copy', 'certified' [or similar phrase to signify what the signature and date represents]

It is recommended, but not mandatory, that the certification statement also includes the printed name/ position of the signatory or other unique reference (such as employee/ payroll number) so that future project staff and/or auditors are able to easily identify the signatory if required.

The following is an example of a compliant certification statement:

I certify this document as a true copy of the original
SIGNATURE:
DATE:
PRINTED NAME/ POSITION IN ORGANISATION [optional]:
NAME OF ORGANISATION [optional]:
NUMBER OF PAGES CERTIFIED IN THIS DOCUMENT [if applicable]:

If more efficient, a single certification declaration can be used for a batch of photocopies. The certification statement must include:

- a unique batch reference number/ code to identify the batch.
- the number of documents – and pages if individual documents contain more than one page – included in the certified batch.
- the references/ numbers of each of the documents included in the batch. If the documents are not already referenced/ numbered, then references/ numbers should be added to each document prior to batch certification.

Other considerations

When deciding on the most appropriate document format, please remember that records may need to be retained for a longer period than your normal organisation records retention policy requires. You will need to code or label EU project records to prevent their premature destruction. You will also need to consider practical issues such as storage space and the risk of damage or technological obsolescence.

Beneficiaries should give particular consideration to the risk of technical obsolescence of digital records, both the ICT hardware or software applications used to access the records. Organisations holding records will need to ensure that original records are retrieved from all electronic records systems that risk becoming obsolete or no longer accessible.

To be clear, there is no expectation or requirement by WEFO or the European Commission that hard-copy documents or 'wet signatures' must be used or are preferable to digital records. Indeed, the EC and Welsh Government fully encourage beneficiaries to maximise the opportunities to embrace the benefits or paperless administration, including participation in the e-Cohesion system.

Beneficiaries should therefore note the guidance in 5.1.4.2 above and consider how technology can provide suitable methods to, for example, identify and authenticate a document, or demonstrate the authorisation of a transaction, information or decisions.

September 2020 update: Use of email confirmation to confirm/ declare eligibility to participate in ERDF supported projects. This approach is advised only for certain ERDF projects where SME eligibility and individual employee attendance at training events/ workshops required.

Following further research on the use of email to provide electronic confirmation/ declaration of eligibility, WEFO has incorporated the following into its Eligibility rules:

Email confirmation/ declaration from an individual employee within a SME/ business organisation can be accepted in place of a 'wet' or fully electronic (eIDAS) signature in the following circumstances:

- Where it is as clear as possible that the email used is that of the employing SME/ business organisation for the individual employee
- Where it is supported by a package of evidence confirming eligibility of SME/ business organisation via a completed SME declaration and evidence of individual employees attendance at workshops.

The above can then be considered to meet the fundamental requirement set out for the electronic execution of documents - 'intention to authenticate clearly expressed & with corresponding audit trail to support intention'. Therefore, if it can be evidenced that these arrangements are in place, this will negate the requirement to retrospectively revisit evidence at a future point in time and once COVID 19 restrictions have been lifted.

The following conditions also apply:

- Where the conditions set out above cannot be evidenced then beneficiaries will still be required to revisit evidence, as per normal requirements, at a

future point in time and once it is possible to do so. As always the case for EU projects, beneficiaries to note that, when subject to future audit, the auditors may, on occasion, seek additional evidence to support the eligibility of specific participants, should they conclude that the documentation originally provided is not sufficient to meet eligibility requirements. However, it is important to note that the auditor will also take into consideration the guidance and restrictions in place at the time. Please refer to Annex F of this guidance entitled, '[COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes](#)', specifically to Questions 6 & 6a for a non-exhaustive list. Should you have any specific queries, please contact the Joint Secretariat to discuss further.

- A link to the Irish Government's guidance on Covid-19 can be found [here](#).
- As noted above this approach is advised only for certain ERDF projects where SME eligibility and individual employee attendance at training events/workshops required. For other documents, such as signature of Funding Agreements, and other such legal documentation, we will still expect the usual procedures to be adopted wherever possible – only where this cannot be demonstrated will there be a need to follow up in the future.

5.1.4.3 Records and documents not held on the beneficiary's premises

In practice, supporting documents and data could be created, collected or received

by:

- beneficiaries (lead beneficiary, joint beneficiary); or
- third party delivery partners such as procured contractors and service providers.

However, EU project records - meaning documents and data forming part of the project's audit trail – must not be permanently retained by third party contractors/ service providers. The beneficiary must arrange for the transfer of project records from contractors/ providers to the beneficiary who will retain the records for future audits and checks. Contracts, agreements and protocols with contractors/ providers must therefore set out these rules.

It is the lead beneficiary's responsibility to ensure that the audit trail requirements are clearly understood by joint beneficiaries.

All records must be readily accessible for audits, verifications and any related investigations. We will aim to provide you with as much notice as possible when we need to examine project records but, particularly as the EC is only required to provide 12 working days' notice for their audits, you should ensure that arrangements are sufficiently robust to cater for such requests.

If records are unavailable during these visits, the related expenditure could immediately be at risk of being declared as ineligible.

Where records are held at locations other than the beneficiary's main premises – such as off-site storage facilities – then the **beneficiary should undertake regular spot-checks** to ensure that:

- Records are retrievable and accessible, including where applicable, access to view digital/ digitised records using ICT equipment; and
- Records are complete; structured and well-organised; in good condition; and in an acceptable format that meets our requirements.

The beneficiary should keep a record of these regular spot-checks performed on its partner organisations, including details of any remedial action taken when the results of the checks were unsatisfactory.

Where the lead beneficiary considers it necessary, they should also consider requiring the transfer of original documents at the time that the joint beneficiaries submit their invoices or expenditure statements. Similarly, where the beneficiary is informed, or suspects, that a joint beneficiary may shortly cease trading (close down, dissolved, liquidation etc.) or other imminent event that may impair the ability to comply with all record-keeping requirements, it must arrange for the records to be transferred and held at its own premises.

The beneficiary is reminded that the absence of an adequate audit trail, or the inability to access records during audits and verifications, will lead to the associated expenditure being declared as ineligible with a corresponding reduction in ERDF contribution. If already paid to the beneficiary, the ERDF grant will need to be repaid to us. This will occur regardless of whether the problem is caused by the beneficiary's own actions or that of a partner/ provider. It is therefore very important that the beneficiary clearly sets out the requirements with its partners from the start.

Finally, as set out in the grant funding agreement, you must at all times retain an up-to-date list of the location of all project records.

See **Annex C** for further information on audit trails.

PART 3: ELIGIBLE COSTS

6. BACKGROUND: Methods of calculating and declaring eligible costs

When you apply for funding, we will work with you to identify the options for forecasting, calculating and reporting your eligible costs. The amount of EU grant we will pay you is driven by the eligible costs you declare to us. The options are:

real costs	'See Section 7 . Eligible costs are calculated by reference to the costs that you have incurred and paid, together with, if applicable, contributions in-kind from third parties and depreciation charges.
flat-rates	'See Section 16 . Using the 'simplified costs' approach, eligible costs are calculated by applying a flat-rate percentage to certain other categories of costs. For example, indirect costs calculated as a percentage to your staff costs.
unit cost or lump sum	'See Section 16 . Using the 'simplified costs' approach, eligible costs are calculated on the basis of performing agreed activities or achieving agreed outputs/ results.
mixed	'Combinations of the above methods within the same operation: some categories of costs – or entire activities/ projects - reimbursed using 'simplified costs' and others' using 'real costs'.

In certain projects, or for certain categories of costs, not all these options may be available – see **Section 16**.

7. Real costs

7.1 Definition of 'real costs'

Costs actually borne and paid out by beneficiaries and declared as eligible cost in your payment claim to us.

In addition to costs actually incurred and paid out by you, 'real costs' also includes:

- Contributions in-kind from third parties – see Section 14.
- Depreciation charges – see Section 12.

For each individual cost claimed, there must be evidence that the amounts have been already been paid out by you together with receipted invoices, or equivalent documents, that prove the reality of the declared costs.

7.2 RULES

11. Real costs must be identifiable, verifiable and recorded in your accounting records and using your usual cost accounting practices and applicable national accounting standards. In other words, you must not change your cost accounting policies and practices simply because your project is partly funded by EU funds.
12. You must only submit your claim to us when the costs have already been incurred and paid, other than for depreciation charges and contributions in-kind as those amounts are not actually paid out by you.

7.3 GUIDANCE

7.3.1 Definition of 'incurred' costs

Costs for which a beneficiary is liable, i.e. contractual, legal or a similar obligation to make a payment. It is not necessarily the same as the date of invoice as invoicing dates could be before or after the 'incurred' date. The payment of invoices issued before the goods or services have been received or delivered are only considered as being both 'incurred and paid' in the circumstances set out in 7.3.4.

Eligible costs must be genuinely incurred by a beneficiary approved by us – not by a third party, even if the beneficiary enjoys the benefits of those purchases.

Payments of invoices arising from contracts let by beneficiaries are 'costs incurred by the beneficiary' even if an external procurement service provider/ central purchasing body was engaged to carry out the procurement procedures (the beneficiary is still the legal entity contractually liable to pay the contractor).

7.3.2 Definition of 'paid' costs

'Paid' means disbursed by the beneficiary that incurred the cost i.e. funds debited from the beneficiary's bank account and transmitted to the contractor, employee, organisation to be paid etc.

Sometimes, your project will make a payment or internal transfer to another part of your organisation, either on a notional/ accounting entry basis (e.g. book-keeping

entries between different cost centers) or through an ‘actual cost’ payment transaction between separate bank accounts and supported by internal invoices. These payments could be based on: standard ‘charge-out’ organisationally-agreed rates; recharges of actual costs; or on an arms-length ‘trading’ basis (cost plus a profit margin). Other than one exception for pension contributions (see next paragraph), these internal transactions are only recognised by us as ‘paid’ when funds leave the organisation’s bank account(s) and are being transmitted to the external contractor/ service provider or to an employee - not when funds are moved between different parts, or bank accounts, of the same organisation.

Where eligible employer’s pension contributions are transferred to pension trustees/ schemes/ ring-fenced pension fund reserves administered by the same organisation (the beneficiary), the eligible costs will not technically be ‘paid out’ to another organisation. In this situation, the ‘paid’ rule applies to when the funds are transferred to the pension scheme/ fund internal account. The contributions paid must be verifiable to the pension scheme rules and/or employee contracts.

Payments/ transfers of funds between beneficiaries (transfer of funds from a lead beneficiary to a joint beneficiary – or – joint beneficiary to/ from another joint beneficiary) are not considered to be ‘paid’ until payments are disbursed to a third party e.g. suppliers, contractors or salary costs paid to employees.

Real costs are ‘paid’ when they complete the payment process, specifically:

Type of payment	When deemed to be ‘paid’?
Electronic/ automated payments: <ul style="list-style-type: none"> • Direct-debits • Standing orders • BACS • CHAPS • Funds transfers 	Debit transaction posted to beneficiary’s bank account
Cheque	Debit transaction posted to beneficiary’s bank account
Debit card	Debit transaction posted to beneficiary’s bank account

Credit card (corporate/ organisation's credit or charge card – not personal cards of staff members).	Transaction posted to credit card account (regardless of when the credit card balance is eventually repaid)
Cash (petty cash)	When the recipient is handed the cash and signs/ issues a receipt.
Vouchers and tokens	When the voucher or token is paid for by the beneficiary, not when used by the recipient.

7.3.3 Definition of ‘identifiable and verifiable’ costs

You must account for real costs either using separate bank accounts operated exclusively for this purpose or by using accounting codes that uniquely link the transactions to the EU project.

You will need to provide us with a list of individual payments and receipts for each claim period and this list must reconcile with the amounts declared in your payment claim.

This transaction list of costs and receipts should be generated directly by your accounting system or, if produced manually, must be capable of being reconciled to your accounting records.

Each beneficiary – lead beneficiary and joint beneficiary – must comply with this requirement for their eligible expenditure.

7.3.4 Paying for goods or services in advance

If you are **required to** pay for goods or services in advance, including deposits, you may include these costs in you claim to us as a ‘paid’ cost but only where:

- these are the standard business terms of the supplier or contractor and is at their request; and
- to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or
- to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).

You must not voluntarily offer this arrangement to suppliers or misuse the rule to speed up access to the EU funds. If you are subsequently unable to use the goods or services due to circumstances outside of your control (for example, cancellation of a trip or event, bad weather etc.) you must document the full circumstances in your project records as part of the audit trail.

You must also ensure that the goods are delivered or services are performed before the end of your project. If the contract is not fulfilled, you must seek a refund and your eligible project expenditure must be reduced accordingly so that the EU grant is not claimed.

7.3.5 Retentions, contingency sums, escrow accounts and similar industry specific payment bonds.

Payments for contingency sums, typically used in construction contracts, is considered as incurred and paid at the point that you pay the contractor if required as part of their standard contract terms and conditions.

Contingency sums are however limited to 10% of total eligible costs for the operation (calculated after the exclusion of the contingency amounts).

In addition, you must ensure that the funds are released, returned or replaced with real costs in line with the contract terms and, at the latest, before the project end date. We may be able to extend this period in suitably justified cases beyond the project end date and up to 31 December 2023 subject to suitable monitoring arrangements. Expenditure still held by a contractor as a contingency sum after 2023 is ineligible for support and will need to be removed from your declared eligible costs.

The same approach applies where the you are required to deposit funds into an escrow account or similar type of payment bond held in a thirty party bank account until contract terms are fulfilled. These rules only apply where such arrangements are customary or standard business terms for the type of works, supplies or services in question. Costs will not be considered as 'paid' if such arrangements are instigated at the initiative of the beneficiary to bypass the usual 'paid out' eligibility rule.

If you retain part of the payment due to a contractor until satisfactory completion of all works, please let us know so that your payment profile reflects this. Note that the final payment must be made to the contractor or service provider before 31 December 2023 to be eligible.

7.4 VALUE FOR MONEY & SOUND FINANCIAL MANAGEMENT

RULES

- 13. Real costs must be reasonable, justifiable and demonstrate value for money.
- 14. Real costs must clearly be necessary to manage and implement your project in the manner described in the funding application approved by us.
- 15. The 'double-financing' rule: You must ensure that you submit an item of expenditure (i.e. a specific cost item) for reimbursement **only once** and must not submit the item of expenditure to different EU funding sources separately in order to obtain financial support from more than one source for the same cost item.

7.5 GUIDANCE

7.5.1 Value for money

The principle of 'economy' requires that the resources are made available in due time, in appropriate quantity and quality and at the best price.

The principle of 'efficiency' concerns the best relationship between resources employed and results achieved.

The principle of 'effectiveness' concerns the attainment of the specific objectives set and the achievement of the intended results.

It therefore follows that unnecessary, unapproved, excessive or reckless expenditure will not be supported by the EU Funds.

7.5.2 Achieving value for money in recurring low-value purchases of the same, or similar, goods or services

Costs may be considered to be excessive, and therefore ineligible, if there is evidence that you are paying significantly more for supplies, goods and services than the prevailing market rates.

Where our, or your own, purchasing/ procurement rules (see Section 25.3) do not require you to obtain more than a single quote, you are still expected to make reasonable efforts to seek price comparisons or carry out benchmarking exercises for goods and services that you will be purchasing on a recurring basis. This is not required in relation to staff costs or where the aggregate value of the recurring purchase is forecast to be less than £1,000 (Wales projects) or €1,350 (Ireland projects) over the project's lifetime.

If a beneficiary is involved in more than one operation funded by the European Structural and Investment Funds, the price comparisons/ benchmarking assessments should be undertaken across all the corresponding operations if the same or similar goods or services are being purchased.

You must retain evidence of these price comparisons for future verifications and audits including, if applicable, recording your **justification for not** obtaining price comparisons (legitimate use of a single supplier, bespoke/ specialist provision etc.).

The purpose of this control is to achieve value-for-money by demonstrating that beneficiaries do not pay more than the generally accepted price range for similar goods and services. It does not mean that the 'cheapest' goods or services must always be selected – price is only one element of value-for-money considerations.

7.5.3 The ‘double-financing’ rule

While double-financing the same cost item is clearly prohibited as set out in rule above, you may allocate an item of expenditure between more than one EU project or EU fund but must agree a method of cost allocation. For example, allocating shared marketing costs where your project or group of projects is supported by more than one EU fund.

If you implement more than one EU-funded operation/ project at the same time, there must be mechanisms in place to demonstrate that expenditure items are only declared for reimbursement once and no more than 100% of each cost is claimed in total.

7.5.4 Use of the beneficiary’s existing facilities, assets and other equipment

We expect you to make use of any available/ unused accommodation, assets and equipment if they are suitable for the project’s needs rather than buy new items or rent accommodation.

Where this is the case, you can claim the costs of maintenance, repairs, consumables etc. that arise due to the project’s use of those facilities and equipment.

7.6 ELIGIBILITY DATES

RULES

16. Real costs must be incurred **and** paid on or after 1 January 2014 and no later than 31 December 2023.

17. Your eligibility start date will be confirmed in the grant funding agreement and will usually be the date that we approve your project. We can consider approving costs incurred or paid before this date, but not before 1 January 2014, on a case-by-case basis (see ‘retrospective approval’ below) but you should note that costs related to preparing project proposals and securing EU funding approval are ineligible for EU support.

18. Costs must be incurred and paid during the implementation period of your operation. If you purchase any goods/ services during the implementation period that are for use once the operation has closed, these cannot be reimbursed by EU funds and will be considered ineligible. The Financial Completion Date of the operation sets out the final date by which costs can be incurred and defrayed. There are two exceptions we can accept – outlined below:

- NI, tax and pension costs – linked to staff salary payments. Where it is not possible for you to pay these costs within the same month as the associated salary costs. Only applicable to salary costs that are paid within the agreed financial lifetime of your operation
- Final evaluation costs – if/ where you experience a delay in your final evaluation, with the payment date for this cost falling outside your operation closure date. You will need to seek agreement from us in order

to claim the cost as part of your final claim. Please see WEFO guidance entitled, 'EU Structural Funds 2014-2020: Project Closure FAQs', for further details.

19. If we amend the Co-operation programme with the EC to add new activities that can be supported for the first time, any costs that then become eligible because of the change are only eligible from the date that we submit our revised programme to the EC for their approval. We will confirm this date in the grant funding agreement.

7.7 GUIDANCE

Costs incurred before 2014 are ineligible for support even if paid later years.

7.7.1 Retrospective approval of operations

We can consider approving funding for your operation even if it has already started and costs have been incurred and paid. We cannot however award you funding if, at the time of your application to us, the operation is **fully implemented/ fully completed**, irrespective of whether you have made all the related payments.

Operations can be considered for retrospective approval as far back as **1 January 2014**.

We will only use this flexibility if we are satisfied that you can demonstrate that the operation has **complied with all the applicable rules and conditions** set out in your funding agreement, for example: separate accounting codes for financial transactions; compliance with applicable cost eligibility rules; adequate audit trails; full compliance with Public Procurement and State aid rules.

For these reasons, any activities that you enter into, or costs that you incur, before we approve your operation must be at your own risk.

8. Staff costs (direct costs)

8.1 RULES

20. Direct staff costs must relate to managing, administering, or delivering of your project.

21. The direct costs of staff in public administrations undertaking activities to discharge their core statutory responsibilities and functions are not eligible for ERDF support.

22. Direct staff costs are eligible only to the extent that they relate to activities which you would not carry out if the project was not undertaken.

23. Staff must be remunerated in accordance with your established pay, grading and related HR terms and conditions. If you are a newly established organisation, e.g. set up purely to implement the EU project, then you must follow the principle of value for money when setting pay rates, particularly in relation to only paying reasonable market rates necessary to attract the candidates with the required skill set needed for the EU project tasks. In all cases, the remuneration paid to staff should not be significantly more than prevailing market rates for the nature of the work to be performed.

24. Costs can include the gross employment costs: salaries, employers' national insurance contributions (inclusive of the health and social care levy, as noted at section 8.2 – only applicable for Welsh beneficiaries/ partners) employers' pension contributions, non-consolidated pay awards, and

other costs directly linked to the salary payments in line with employers usual employment policies that respect equal treatment of all personnel. Welsh lead/ joint beneficiaries - where your organisation is eligible to claim Employment Allowance you must account for this within any claims you submit to WEFO for receipt of structural fund support. You will also need to have a robust mechanism in place to record the amount of employment allowance received in order to demonstrate that the de-minimis threshold of €200,000 over three fiscal years is not exceeded/ breached. WEFO will not contribute towards any amount received as Employment Allowance.

25. The costs of training and developing project staff are eligible if suitable justified as being necessary for the effective and efficient implementation of the project. Project staff may participate in corporate learning and development activity – and treat the related time as eligible project time – where mandatory for all employees or linked to the individual’s performance/ development plan.

26. Costs of providing taxable benefits to employees that form part of the standard employer-wide contractual terms and conditions are also eligible. Examples include childcare costs, crèche facilities, lunch vouchers and ‘all-staff’ bonus payments (but not performance-related or tax-free bonus payments).

27. Similarly, if in line with the employer’s general policy or written into an employment contract/ appointment decision, the following are also eligible: paid sick pay (but only amounts that are not recoverable from the Central Government), maternity and paternity benefits (including paid adoption leave), pre-retirement benefits and other family benefits.

28. The cost of replacement staff – to cover for an employee temporarily away from the workplace on maternity, paternity or long term sick leave – is eligible. You may need to consider asking us for an increase in your staff costs budget to accommodate paying the replacement staff as well as the employee temporarily absent.

29. Overtime payments are eligible if directly related to the project. Where an employee is entitled to take time off in lieu instead of, or in addition to, overtime payments, the time spent not working on the project (when the lieu time is used) can also be considered as eligible project time.

30. Costs of ‘external staff’ - individuals (but not contracts with firms/ companies as these are classified as ‘external expertise and services’) directly contracted by the beneficiary to temporarily work on the project - are eligible subject to the following conditions:

- > the person works under the beneficiary’s instructions and, unless agreed by the beneficiary, on the premises of the beneficiary.
- > the results of the work carried out belongs to the beneficiary/ the benefits accrue to the EU project.

> the costs are not significantly different from those for staff performing similar tasks that are employed by the beneficiary (if such tasks are performed by the beneficiary).

8.2 GUIDANCE

The costs of staff assigned to manage or implement the ERDF supported activities, including general project management, control and administration.

These individuals could be:

- 'Internal staff':
 - employed by a beneficiary (the employer);
 - inward secondment from another organisation (contract with home employer but working for the beneficiary who is the host employer);
- 'External staff':
 - agency workers/ casual staff (agent pays the worker; beneficiary pays the agent); or
 - costs arising from a direct contract between an individual – but not a firm/ company – and the beneficiary where not through a contract of employment e.g. self-employed traders, independent contractors, independent consultants, freelancers/ piecemeal / portfolio workers. This definition therefore recognises remuneration paid to people in return for work directly related to the operation/ project but contracts with 'one-person' firms/ companies are 'external expertise and services' and not 'external staff'.

External staff costs for workers contracted through **employment agencies** are eligible for support from the structural funds. The audit trail will need to include documents to demonstrate the amounts paid to the worker from the agency, inclusive of any national insurance and pension contributions. The agency's commissions and fees are also eligible costs; however they do not fall within the definition of staff costs and therefore must be removed when calculating an operation's indirect costs using the flat rate 15% simplified cost option. If the agency is unwilling or unable to provide the required supporting documents detailing the breakdown of commissions, fees and amounts paid to the worker then the associated staff costs cannot be included in the calculation of the operation's indirect costs.

For all costs other than salary/ wage costs, the following eligibility conditions apply:

- Cost must be incurred and paid by the employer;

- The employer's obligation to make the payment or provide the benefit must be established/ fixed by the employment document (contract of employment, appointment decision or similar document) OR required by law;
- Costs that an employer can recover from tax authorities/ government (such as VAT, statutory sick pay/ maternity pay etc.) are not eligible for ERDF support. This rule applies even if an employer chooses not to seek reimbursement from the authorities/ government.
- The payment must be in line with the employer's standard practices, the national standard practices and applicable legislation as referred to in the employment document and in relation to the country where the staff member is actually working;

Tax free bonuses or other non-taxable benefits are ineligible costs, as are exceptional or extraordinary provision of pension or redundancy rights, i.e. beyond the standard scheme rules or statutory requirements.

Where an employer pays for an employee's **membership and subscription fees** for professional bodies and similar professional or networking groups, the costs are only eligible if the EU project role requires the post-holder to hold the qualification(s) in question. This must be evidenced by a job description, job advertisement or similar document that confirms the necessity of the qualification for the post-holder to carry out the work on the Ireland Wales ETC project.

Travel and accommodation costs, and other costs connected to business trips, are not direct staff costs for the purposes of flat-rate calculations (simplified costs) based on direct staff costs.

The costs of **paying consultancy firms, professional services companies** and other 'contracts for services' with firms are not 'staff costs' even if the work is performed by one persons – these are 'external expertise and services' (see **Section 11**).

Unpaid volunteer project workers are not direct staff costs and therefore cannot be included within the calculation for the flat rate (simplified costs) based on direct staff costs. The applicable hourly/ annual rates of pay associated with unpaid volunteer time that can be claimed by a beneficiary are listed at section 14.2.1.

Where an individual is in receipt of **bursaries, scholarships, allowances, stipends and similar direct financial support** the partner/ beneficiary will need to consider whether the payments meet the definition of 'Staff Costs' set out in the 'Rules' in Section 8.1 above. Where the payments do not meet the definition of 'Staff Costs' e.g. the student / individual is a third party and not an employee of the partner/ beneficiary, where payment is made by a third party organisation to the student/ individual e.g. a research council and not incurred and paid by the partner/ beneficiary they cannot be included within the calculation for the flat rate (simplified costs) based on direct costs.

Where the partner/ beneficiary and the university/ educational establishment making the payment to the student/ individual are the same organisation and so would

effectively be paying themselves then this would be ineligible as it would not meet the definition of 'paid/ defrayed' by the partner/ beneficiary that incurred the costs i.e. funds debited from the partner/ beneficiary's bank account and transmitted to the contractor, employee, organisation to be paid. Sections 7.3.1. & 7.3.2 above refer.

Costs associated with the health and social care levy introduced in April 2022 are a direct staff cost and therefore eligible (only applicable for Welsh beneficiaries/ partners) .

8.2.1 Time recording

Staff working on an EU project full-time or a fixed number of hours are not required to record their working hours in a time sheet as a basis for justifying the costs. However, the individual's job description, letter of secondment, employment contract or similar document (e.g. correspondence from HR department) must verify that the role is full-time on the specific EU project, whether full time or fixed number of hours. See Annex C for details on documents required for audit.

For the purposes of this guidance, 'full-time' means all the hours in the individual's standard contractual working week. 'Part-time' means that some of the individuals contracted weekly working time is spent on activities not eligible for support from the EU project. This could be:

- Fixed percentage of contracted time worked on the ETC operation per month [no time sheet required];
- Flexible number of hours worked on the ETC operation per month [time sheet required]; or
- On an hourly basis [time sheet required].

[Article 3(1) of EU 481/2014]

Staff costs for individuals working a fixed percentage of time on the ETC operation can be calculated using a fixed percentage of gross eligible employment costs without a need to use a working time registration system (time sheet). [Article 3(4)a of EU 481/2014]. The fixed percentage of time must however be verifiable to employment documents such as job description, employment contract or appointment decision.

Staff costs for flexible/ variable hours (i.e. not full-time and not fixed number of regular hours) are eligible if a time registration system is in place, completed by the worker and verified by their supervisor or another more senior colleague who is able to confirm the accuracy of the information. The time records must cover 100% of the working time of the employee [Article 3(4)b of EU 481/2014].

Staff costs for individuals who, according to their employment documents, work on an hourly basis must be calculated using the hourly rate specified in their employment contract multiplied for the time actually worked on the project (evidenced by time sheet).

Time records can be daily, weekly or monthly and can be electronic/ automated or a paper ‘time sheet’ (see [TEMPLATE 1](#) for an example). The time registration system must allow for the identification of actual time spent on the managing, delivering or administering the EU project. For verification and audit purposes Beneficiaries will be required to provide this evidence of hours actually worked. Where applicable this can also be supported by evidence such as leave records and flexi sheets.

The eligible project hours in each work period are then multiplied by an hourly staff rate for inclusion in your payment claim.

Hourly rates are calculated as follows:

$\frac{\text{Annual eligible staff costs [divided by]}}{\text{annual productive hours per standard employment contract terms}}$

‘Annual productive hours’ excludes time not spent at work - paid annual leave, paid public holidays, and other paid leave entitlements set out in the employment contract and / or employer’s HR policies.

As this hourly rate calculation recognises annual paid leave entitlements, no eligible hours must be entered on time sheets when the individual is taking their paid leave.

Below are two worked **examples** of how hourly rates can be calculated on either an annual or monthly basis.

Worked example – calculated on ANNUAL basis

Calculation	Explanation
Annual eligible staff costs = €28,500	<i>basic salary €25,000 employers NI contribution €2,500 employers pension contribution €1,000</i>
Weekly contracted paid hours = 40	<i>per contract</i>
Paid annual leave, public holidays and other contractual paid leave = 35	<i>25 days annual leave 10 public holidays</i>
Annual productive hours = 1,800	<i>40 (hrs a week) x 52 weeks = 2,080 hrs 35 days paid leave x 8 hours per day = 280 hours productive hours = 2,080 (paid) less 280 (paid but not in work) = 1,800</i>
Hourly staff rate = €15.83 claimed for each hour actually worked on the EU project (nothing claimed when employee takes their paid leave).	<i>€28,500/1,800</i>

Worked example – calculated on MONTHLY basis

Calculation	Explanation
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Monthly eligible staff costs = €2,375	<i>As per the relevant payslip/ payroll report for that month i.e. gross salary, employers NI contribution & employers pension contribution</i>
Total hours actually worked = 150	<i>Total actual hours worked (not including any annual or sick leave taken) as recorded on the monthly timesheet</i>
Hourly staff rate = €15.83 claimed for each hour actually worked on the EU project (nothing claimed when employee takes their paid leave).	€2,375/ 150

Whatever calculation used, beneficiaries must ensure that no more than 100% of eligible costs are claimed over the life of the project. An ad-hoc reconciliation could be requested by WEFO verification staff where it is deemed necessary – for example where potential for significant discrepancies has been identified.

If the individual does not utilise their contractual paid leave entitlement and it is forfeited - or works on the EU project during periods of paid leave - this time can follow the 'overtime rules' (unless the unused paid leave is carried forward to later years) if such practices are permitted by the employer's HR policies and procedures.

Sick Pay

Sick pay is an eligible cost where declared in accordance with section 8.1, rule 27. In order to calculate the costs for the individual who is on sick leave, the basis on which staff costs were identified for the operation at approval must be used.

For example, staff working a fixed number of hours can claim in accordance with the agreed number of hours and/or percentage of time the individual has been scheduled to work on the operation (as agreed in their job description/ secondment letter/ employment contract).

Where an hourly unit cost has been agreed (simplified costs), the rate detailed within your Funding Agreement must be used.

For staff working flexible/ variable hours, justification for the methodology used to calculate the amount of sick leave claimed must be retained and made available upon request. For example a beneficiary could carry out an analysis of historical data (minimum of 3 months where possible) to determine how much to claim.

8.2.2 Staff training costs

External paid training provision for project staff is eligible if:

- Necessary for the compliant implementation of the project, e.g. statutory or regulatory requirement for project staff to be able to carry out the EU project activities.
- Necessary to comply with any other applicable EU, UK or Ireland laws and regulations.

Significant time spent away from the project on learning and development activities – e.g. secondments, work shadowing, structured management development programmes – will not be supported and must be excluded from the eligible time charged to the project. ‘Significant’ is defined as more than 5% of the individual’s weekly working hours that would usually be charged to the ETC project. This can be assessed using averages over a month or, at the most, quarters (Jan-Mar, Apr-Jun, Jul-Sep, Oct-Dec).

8.2.3 Inward secondments

The employment terms and conditions of the ‘home employer’ apply to all staff costs rules in this document unless you have a contractual arrangement in place to apply your own policies and remuneration during the period of the secondment.

8.2.4 Exceptional paid leave: suspension; disciplinary procedures; absence from work during investigations into potential wrongdoing or employment contract disputes; ‘gardening leave’; and similar additional exceptional paid leave

Staff costs during these periods are not eligible for support because it represents time not spent on the EU project and we do not consider them to be the core remuneration terms and conditions that ‘staff costs’ are intended to cover.

8.2.5 Redundancy and severance schemes

We will consider eligibility is on a case-by-case basis applying the following principles:

- Staff must be working on the Ireland Wales ETC project at the point at which the redundancy or severance decision is taken.
- The post must become redundant. Costs are ineligible if the post/ role is continuing and is intended to be ‘back-filled’ using recruitment or a transfer of existing staff.
- There must be a statutory or contractual requirement to pay redundancy or severance costs under Irish/ UK employment law (depending on the location of the project partner who employs the individual).
- Payments made to the staff member must adhere to the corresponding statutory provisions/ thresholds and contractual obligations.
- Additional/ special payments that form part of a redundancy package, including enhanced pension or redundancy rights, but which are offered at the discretion

of the employer and in excess of statutory or contractual requirements, are ineligible costs.

- Payments related to voluntary redundancy/ voluntary severance schemes where the post is not being made redundant is ineligible.
- Eligible expenditure on redundancy costs will be calculated pro-rata in relation to the number of years and months of continuous service working on Ireland/ Wales ETC projects (including from previous programming periods).
- Costs will also be calculated on a pro-rata basis if the employee only currently works part of their contractual weekly hours on the ETC project, regardless of whether the individual worked full-time on EU projects in the past.
- Staff assigned, transferred, or promoted to an Ireland/ Wales ETC project from another role in the organisation must work on the EU project for a minimum of 2 years before redundancy/ severance costs can be considered as eligible.

These rules mean that, while we are able to support the usual, contractual employment costs of staff working on Ireland/ Wales ETC projects – including directly related costs such as employers’ pension and NI contributions - the scope to support redundancy and severance costs is possible but more constrained.

Even where redundancy/ severance costs are eligible for support, the availability of a ‘staff costs’ budget line in the corresponding project is not automatic and will depend on the availability of programme funds to support such unexpected staff costs (i.e. if not already built into the budget profile at project approval stage).

8.2.6 Discretionary payments to staff or former staff

These costs are ineligible.

This includes: enhanced redundancy/ severance terms; non-contractual payments on dismissal; employment tribunal costs; compensation for loss of office; the costs of investigating, defending or settling legal/ contractual disputes with employees or former employees; ‘out-of-court’ settlements; damages, compensation for loss of office

8.2.7 Recruitment costs, relocation packages and disruption allowances

The costs of **relocation packages** are eligible where the job advertisement states that relocation expenses form part of the remuneration package. The job in question should cover, at least, the full duration of the EU project and demonstrate value for money i.e. clearly added value benefits for the project compared with not offering a relocation package.

We will assess each case on its merits and will ask you to provide:

- A detailed analysis of the expected costs, which must be reasonable and comparable to, or lower than, public sector rates;

- Your standard HR policy setting out the terms and conditions for deciding when to offer relocation packages; and
- Clear justification supporting the appointment of the individual concerned, based on objective and auditable criteria (their experience, skills, knowledge etc.).

Staff **recruitment** costs are eligible, including the reimbursement of candidates and interviewer/ facilitator costs for attending interviews and assessment exercises.

The following documents should be retained:

- Job advertisement, invitation for assessment, invitation to interview or similar documents that inform candidates that travel and accommodation costs will be reimbursed; and
- Employer's standard HR or recruitment policies and procedures that confirm that reimbursement of travel and accommodation costs can be offered to candidates or for external interviews/ assessors/ panel members etc.

Disruption allowances are eligible if confirmed in right to receive such payment is set out in the employer's standard HR policies or the employees contract. A disruption allowance means additional payments to staff when staff are required, or strongly encouraged, to relocate to another premises as part of a wider organisational premises/ location strategy. It also means payments to staff in recognition of temporary adverse changes to the working environment (noise or inconvenience caused by building improvements etc.).

9. Office and administrative expenditure (direct costs)

9.1 RULES

31. Costs are eligible if they satisfy the general rules (section 5) and the definition of 'direct cost' (section 17.1).

32. Expenditure must relate to one of the following elements: [see Article 4 of EU 481/2014]:

- Office rent;
- Insurance and taxes related to the buildings where the staff is located and to the equipment of the office (e.g. fire, theft insurance);
- Utilities (e.g. electricity, heating, water);
- Office supplies;
- General accounting provided inside the beneficiary organisation;
- Archives;
- Maintenance, cleaning and repairs;
- Security;
- IT systems;
- Communication (e.g. telephone, fax, internet, postal services, business cards);
- Bank charges for operating and administering the account or accounts where the implementation of an operation requires a separate bank account to be opened (to be approved by WEFO in advance);
- Office supplies;
- Charges for transnational financial transactions.

33. Eligible expenditure for the above costs where the 'direct cost' criteria is not met can also be considered for reimbursement through 'indirect costs' – see Section 13

9.2 GUIDANCE

Transaction charges for processing financial transactions across international borders are eligible.

Bank charges for opening or administering accounts are only eligible where we tell you that a separate account must be opened as a condition of the ERDF support.

Fees and charges for breaching your bank account conditions are ineligible, as are charges applied to credit cards, charge cards, or other debt or credit arrangements.

Charges and interest for overdrafts/ debit balances/ exceeding credit limits are ineligible.

Fines, financial penalties and expenditure on legal disputes and litigation are ineligible. Legal costs arising from instigating or defending legal action/ litigation are ineligible – see Section 15.

9.2.1 Statutory and obligatory costs

If your project gives rise to additional statutory payments or similar costs arising from mandatory/ regulatory obligations – such as the purchase of licenses and permits, specialist staff training, additional health and safety measures, insurance, taxes and levies – these are eligible as long as the project activity itself is not the beneficiary's core statutory responsibility or function as a public body/ administration.

For clarity, we cannot provide financial support to help you discharge your normal statutory functions and responsibilities but can assist you to fund any additional costs incurred as a direct consequence of implementing your project, for example, the cost of UK Disclosure and Barring service checks for new project employees, if such checks are necessary.

9.2.2 Insurance

Insurance premiums are eligible if the insurance is directly related to your project and meets the standard eligibility rules in terms of being necessary, directly related to the project etc.

If your organisation has a policy of internal self-insurance rather than using commercial insurance policies (for example, central government and other large public sector organisations), you must follow your usual accounting policy unless we tell you that we require you to arrange an insurance policy.

9.2.3 Use of beneficiary's premises and equipment

It is expected that beneficiaries utilise unused space in their premises for locating project administration staff and, if applicable and suitable, for delivery activities. Direct costs that arise from using such space are eligible (depreciation charges for assets used exclusively by the project, directly attributable telephone/ utilities costs etc.). Where no existing space is available, or the available space is unsuitable, we can consider supporting rent of external premises, and related costs, and account for this in the operation's financing plan and delivery profile.

The same principle applies to office equipment.

10. Travel and accommodation costs

These are the costs of transportation, overnight accommodation and subsistence costs, allowances and travel insurance for the management and delivery of your project.

10.1 RULES

34. Costs are eligible if they satisfy the general rules (section 5) and the definition of 'direct cost' (section 17.1).

35. Expenditure is limited to the following elements [Article 5 of EU 481/2014]:

- Travel costs (e.g. tickets, travel insurance, car insurance, fuel, car mileage, toll and parking fees);
- Cost of meals;
- Accommodation costs;
- Visa costs; and
- Daily allowances ('per diem' payments).

10.2 GUIDANCE

Where daily allowances paid to employees and intended to cover some, or all, of the other cost elements (meals, accommodation etc.), those costs cannot be declared as eligible in addition to the daily allowance.

Where an employee makes a direct payment for these type of costs, rather than being settled by the employer (beneficiary), the costs are only eligible if supported by proof of subsequent reimbursement by the beneficiary to the employee.

Your usual internal staff policies and rates, including mileage rates paid out to staff, apply when calculating the eligible amounts, subject to the general principle of value-for-money as explained in section 7.5. If you are decide that your usual policies and rates may not satisfy the standards of section 7.5, you should adopt the rates set out in the next paragraph.

In the absence of any established rules and rates, the following rules will apply:

- Most economic means of transport and the most direct route
- Trains and flights - standard/ economy class only
- Wales project partners: Mileage reimbursement rates of 45 pence per mile (50 pence if carrying passengers who are part of the EU project team and this replaces a separate claim from the passenger).
- Ireland project partners: Mileage reimbursement rates in line with appropriate public sector rates. 'Per diem' allowances (fixed amounts paid to the traveler to cover likely subsistence costs but without the need for evidence of receipts etc.)

- are only eligible if these are part of the employer's established standard travel costs policy. This should not be confused with simplified costs (unit costs/ lump sums) – see section 16.

Application of 'usual' staff and HR policies

Remember that all references to the 'usual staff and HR policies and procedures' throughout this document means the policies of the relevant **employer** (each beneficiary, whether the lead or a joint beneficiary) – it does not mean that the lead beneficiary's staff and HR policies can be used for other beneficiaries in the operation.

11. External expertise and services (direct costs)

This means contracts and agreements with external firms relating to professional services and expertise needed to successfully implement your project, e.g. legal fees; costs of technical and financial experts; consultancy fees; control and audit costs; studies, or surveys; language translations; services related to provision of venues, etc.

The services and expertise can be provided by a public or private law body or a natural person other than the beneficiary of the operation.

It does not include 'external staff' – see section 8.2 for definitions.

11.1 RULES

36. Expenditure is limited to the following elements [Article 6 of EU 481/2014]:

- Studies or surveys (e.g. evaluations, strategies, concept notes, design plans, hand books);
- Training;
- Translations;
- IT systems and website development, modifications and updates;
- Promotion, communication, publicity or information linked to an operation or to a
- Co-operation programme as such;
- Financial management;
- Services related to the organisation and implementation of events or meetings (including rent, catering or interpretation);
- Participation in events (e.g. registration fees);
- Legal consultancy and notarial services, technical and financial expertise, other
- consultancy and accountancy services;
- Intellectual property rights;
- The provision of guarantees by a bank or other financial institution where
- required by EU or national law or in the Co-operation Programme document
- adopted by the monitoring committee;
- Travel and accommodation for external experts, speakers, chairpersons of
- meetings and service providers;
- Costs of verifications under Article 125(4)(a) of Regulation (EU) No 1303/2013 and Article 23(4) of Regulation (EU) No 1299/2013;
- Certification and audit costs on programme level under Articles 126 and 127 of
- Regulation (EU) No 1303/2013; and
- Other specific expertise and services needed for operations.

11.2 GUIDANCE

Professional services (legal advice, notary fees, technical and financial experts, consultancy, accountancy and auditors) are eligible if they are directly linked to the project and are necessary for its effective management or implementation.

Audit and control costs are eligible if they are directly linked to the project and are necessary for its preparation or implementation or if we ask for them.

Any travel and accommodation expenses of external experts and incurred by those contractors/ service providers are part of their service contract and do not fall into the scope of the 'travel and accommodation' eligible costs rules set out in this document.

Booking fees are eligible if it can be demonstrated that they are reasonable, justifiable and deliver value for money.

Hospitality and entertaining

Entertainment costs exclusively for staff are ineligible. Entertainment activities that are part of your agreed business plan may be supported, for example, awards ceremonies or similar awareness raising or promotional events. If such activities are not evident from your business plan, you must obtain our written approval to provide assurance of value for money and necessity.

Hospitality costs – room hire, refreshments, food etc. – are eligible costs if the meeting/ event is necessary and the amounts claimed in line with the beneficiary's usual policy and limits.

12. Equipment expenditure (direct costs)

These are tools or devices that you purchase, rent, hire or lease where necessary to successfully implement your project: ICT hardware; laboratory equipment; small moveable machines and instruments; and other equipment needed for the project.

Please also refer to 'asset register' requirements in section 12.2.

12.1 RULES

37. Expenditure is limited to the following elements [Article 7 of EU 481/2014]:

- Office equipment;
- IT hardware and software;
- Furniture and fittings;
- Laboratory equipment;
- Machines and instruments;
- Tools or devices;
- Vehicles; and
- Other specific equipment needed for operations.

12.2 GUIDANCE

12.2.1 Method of acquisition: purchase, rent or lease

The key consideration must be value for money assessed over the duration of the project and the expected economic life of the equipment, including the estimated sale or scrap value when no longer needed. You do not have to choose the lowest cost option - effectiveness and efficiency are equally valid considerations.

We will only reimburse costs during the project implementation period and contractual payments beyond this point will not be supported.

The EU funds cannot be used to reimburse finance or debt servicing costs. Therefore, any interest and finance charges on lease, hire purchase, or rental contracts are ineligible and you must therefore fund those elements in full.

12.2.2 Depreciation charges

Depreciation charges are eligible if the use of buildings, equipment or other asset is necessary, with a direct link to the implementation of your project. The total depreciation charges charged to the project for a particular asset must not exceed its original purchase price.

The charges must relate exclusively to the period of support for the project and you must apply your usual accounting policy and practices for calculating the depreciation charges. An accounting method is not 'usual' if it has been customised for a particular project or for ERDF support.

Depreciation charges for assets that were acquired in full or in part with the support of a government grant/ public funds – from any source, EU, IE or UK – is ineligible.

It does not matter when the item has been purchased, even if this is before we approved your project or before 1 January 2014, as long as the item's economic lifetime has not been exceeded according to your usual depreciation policy for such items.

12.2.3 Second-hand equipment

These costs are eligible subject to these conditions:

- The purchase cost must not exceed its current market value, taking into account its age and condition.
- The equipment must have the technical characteristics necessary for the operation and comply with applicable norms and standards.
- The seller must provide a written declaration confirming that the equipment was not purchased with a contribution from one of the five European Structural and Investment Funds (ERDF, ESF, EAFRD, EMFF, Cohesion Fund) whether from the 2014-2020 programming period or from earlier programmes.

12.2.4 'Exclusive use'

If other parts of your organisation - or other organisations or individuals – also make use of the EU funded equipment, you must only charge a fair and equitable share of the costs for your project. We can provide advice on a suitable method of apportionment if this case arises.

12.2.5 Assets

The Ireland Wales Programme is not designed to support capital/ infrastructure projects but may fund the purchase of small assets such as tools and equipment if part of the approved Business Plan.

If an asset is needed exclusively for the EU project – and your organisation has no use for the asset beyond the end of the project – you can claim the full asset cost as an eligible cost even if the asset's expected economic life extends beyond the project implementation period, if the best value for money option was to purchase the item, rather than rent, lease, or hire it.

If we have not approved the purchase of assets – for example, where your organisation will benefit from the asset beyond the end of the project – you can still claim depreciation costs during the period when the project is utilising the assets, as described in 'depreciation' section above.

You must maintain an **asset register** to register all assets purchased using support from the EU funds. You may either use your organisation's corporate asset register or you can set up a project-specific asset register. The register must record at least:

- Date of purchase/ acquisition
- Cost
- Description of item and/or unique asset number
- Location
- Depreciation charged to date (if applicable)
- Net 'book value' (original cost less depreciation charged to date)
- Sale/ disposal date and amount (if applicable)

If a project-specific asset register is used, it must be possible to reconcile the asset values (cost, depreciation, net book value) and asset categories through to the aggregated information presented in the corporate asset register. Adequate explanations must be provided for any variances.

Please also see section 24 regarding advice on intangible assets such as Intellectual Property Rights.

To note: Best practice is to retain and maintain an inventory log of all equipment purchased using support from EU funds, in order to support any audit challenges. Equipment with an asset life of less than one year can be regarded as a revenue cost.

13. INDIRECT COSTS

13.1 RULES

Where we agree that your project is likely to give rise to indirect costs, as defined in section 20.3, these are eligible costs but can only be claimed as a **flat-rate simplified cost** (see section 17).

13.2 GUIDANCE

Indirect costs are allocated a discrete budget line in the operation's delivery profile (WEFO Online/ PPIMS) and therefore, **all other costs in the delivery profile can only be direct costs** and must therefore meet the definition of direct costs provided in Section 18.

14. CONTRIBUTIONS IN-KIND

14.1 RULES

In addition to costs actually incurred and paid out by a beneficiary, eligible expenditure can also take the form of contributions in-kind donated to the project by third parties and for which no payment is made.

Contributions in-kind are another form of 'real costs' along with depreciation charges and costs actually incurred and paid.

RULES

Contributions in kind must be either:

38. The provision of works, goods, materials or services (including professionals and researchers); or

39. Unpaid project work (volunteer staff who manage and/or deliver the project); or

40. Donations of land and/or buildings for which no cash payment has been made by the beneficiary (but land and buildings expenditure is not anticipated in the Ireland Wales Programme).

41. In all cases, the total public support (EU funds and national public match funding) actually received by the operation must not exceed total eligible expenditure excluding contributions in-kind. Put another way, the value of all contributions in-kind must not exceed the contribution of the beneficiaries to the eligible costs of the operation. This threshold is assessed at the end of the operation. The rule is to ensure that beneficiaries do not receive more public funds than is needed to pay for project costs.

42. Contributions must be provided specifically to be used on the named operation/ project and not a general purpose 'any project' donation to the beneficiary. This is particularly important to ensure that the same contribution is not registered to more than one EU project.

43. The value of the contributions must be determined **either** by:

*the **costs** actually incurred by the third party and supported by accounting documents to confirm the costs, less depreciation charged to date where applicable (i.e. depreciable assets acquired, purchased or constructed more than 12 months before the donation to the EU project); or*

*the **market value** at the point of the donation to the EU project. This will be the cost that the project would have to pay to acquire the goods or services at the current market price;*

44. The value of the contribution must be capable of being independently assessed and verified. We cannot accept a value simply asserted by the third party. Therefore, if there is difficulty in obtaining evidence of 'current market value', the 'cost actually incurred' option should be used instead.

45. Regardless of the method used to attribute a value to the contribution in-kind, the resulting amounts are still classified as 'in-kind' costs – not actual costs incurred and paid.

46. The receipt/ reality of the contribution and its cost or value must be capable of being independently assessed and verified. There must be evidence that your project received and utilised the contribution. For clarity, the rule is that the value and the delivery of an in-kind contribution should be possible to assess and verify independently: it does not impose an obligation to do so at the point that the contribution is recorded as an eligible cost. In effect it sets out a requirement for an audit trail – it must be possible to assess and to verify, that the value attributed to each in-kind contribution is compliant with the valuation methods listed above and it must be possible to verify that that the in-kind contribution has indeed been made/ delivered. The exception to this rule is the value of land or buildings, which must be certified by an independent qualified expert or duly authorised official body before the value is declared as an eligible cost.

47. The value attributed to an in-kind contribution should approximate the price which you would pay for this contribution on the market under normal circumstances. The current 'market value' of an in-kind contribution can be established in different ways: based on statistics, market surveys, comparable transactions, standard rate card/ professional hourly charge out rates etc.

14.2 GUIDANCE

For clarity, ‘third parties’ excludes other beneficiaries in the same operation and so, for example, a joint beneficiary cannot make a contribution in-kind to the lead beneficiary in the same operation.

The following are not ‘contributions in-kind’ to an EU project:

- Price discounts and similar business price negotiations.
- Credit notes.
- ‘Buy one get one free’ and similar ‘free’ products or services.

The ‘paid out’ rule (see section 7.3.2) does not apply to contributions in-kind. The value of the contribution is usually best measured using its current value in the market, regardless of its historic cost. Sometimes, the best (or only) way of valuing the contribution will be by reference to its purchase price/ original cost. This can be verified to receipted invoices from the third party, or similar accounting documents, but in all cases is not necessary to obtain proof that the invoice was ‘paid’ by the third party organisation.

14.2.1 Unpaid work (volunteers’ time)

The value of the work is recorded as the verified time and the rate of remuneration for **equivalent work**. This means the market rate for the type of project work performed – not the rates that the individual usually earns/ previously earned.

The hourly rates must be agreed by us. The current rates are listed below.

Volunteers working on projects based in Wales

Volunteer work is not categorised as ‘staff costs’ as they do not arise out of a contract of employment or contract for paid services carried out by the individual.

The rates below are obtained from the UK Annual Survey of Hours and Earnings (ASHE) (November 2020). The rates are for the UK but excluding London and the South East. In all cases, the rate used must not be lower than the applicable UK National Minimum Wage for the volunteer’s age.

Job Title	SOC Code ¹	Hourly Rate (£)	Annual Rate (£)
Project Manager	2424	23.41	46,992
Project Researcher	2426	18.59	35,298
Project Coordinator	3539	14.59	27,890
Trainer	3563	14.76	29,150
Project Administrator	4159	11.06	21,733

¹ Standard Occupational Classification

Please note the rates will be applicable to projects approved by the Joint Secretariat from 1 July 2019 onwards. Projects approved prior to this date will only utilise the revised rates upon re-profile/ re-evaluation where this constitutes a significant change in finances. The latter to be discussed and agreed with the Joint Secretariat.

Volunteers working on projects based in Ireland

The applicable rates will be agreed on a case-by-case basis and will be the higher of:

- Market rates/ statistical data of average earnings/ equivalent rates for civil service/public sector employees engaged on comparable work on ETC projects (supporting evidence to be provided to support the rates); or
- The applicable rate (age dependent) determined by the National Minimum Wage Act 2000.

14.2.2 Donations of land and buildings

The Ireland Wales Cooperation Programme does not intend to support land and buildings as eligible expenditure, whether as real costs or contributions in kind. Therefore, beneficiaries must obtain our agreement in writing for such costs to be considered as eligible.

In the event that we do approve eligible land and/or buildings costs, the usual rule requiring no cash payment for the contribution in-kind does not apply in relation to making a nominal payment for the purposes of a lease agreement, but no more than £1 per year (Wales projects) / €1 per year (Ireland projects).

The value of the land or buildings must be certified by an independent qualified expert or duly authorised official body.

Contributions are ineligible if they are land (not built on or built on) with a value exceeding 10% of the total eligible expenditure of your project. For derelict sites and for those formerly in industrial use which comprise buildings, this limit may be increased to 15%. In exceptional and duly justified cases, a higher percentage (>15%) may be considered for environmental conservation projects. Please contact us to discuss all cases exceeding 10%.

14.2.3 Accounting for contributions in-kind

You must account for contributions in-kind as follows:

- Include as an eligible cost in your payment claim using the most appropriate expenditure category. This will generate a grant payment at the agreed grant rate.
- Include, in the same claim, a corresponding entry as 'match funding', recognising that the in-kind costs have been, in effect, funded fully by the third party donor.
- Both entries must be for the same value.

15. Summary and further clarification of ineligible 'real costs'

15.1 RULES

The following costs are always ineligible:

48. Purchase of assets that were previously acquired using EU support.
49. Costs deemed ineligible by the corresponding State aid rules, where applicable.
50. Company dividends paid to shareholders, even if intended as an alternative to a salary.
51. Costs of activities that are in breach of applicable EU, UK or Ireland Laws and Regulations.
52. Costs reimbursed by other European Union actions or programmes.
53. **VAT** that can be recovered from the relevant national tax authorities under the applicable VAT legislation, even if you choose not to recover it. For clarity, VAT that you have paid, but where you can demonstrate that you are unable to recover from the tax authorities, is an eligible cost if you retain the VAT invoice, or equivalent prime document of the transaction, for future inspection during verifications and audits. Where irrecoverable VAT is claimed as an eligible cost, **the claim must be substantiated by** suitable evidence from the partner to confirm their VAT status e.g. a letter from the relevant tax authority or from the partner's accountants or auditors. This information should be readily available; therefore any related costs incurred in confirming the VAT status would only be allowable on an exceptional basis.
54. Interest and financial charges on debt, including credit or charge cards, except for grants given in the form of an interest rate subsidy or guarantee fee subsidy. Financial charges, includes charges arising from the fluctuation of foreign exchange rates ('exchange losses').
55. Costs arising from deferring or renegotiating payments to creditors.
56. Legal costs of instigating, or defending, litigation/ legal proceedings arising from the operation's activities, including employment-related or other contractual disputes. Where legal work is necessary to implement the operation's approved activities in the way described in your business plan, and with estimated costs included in the approved delivery profile, these costs are eligible (examples: legal advice to comply with applicable laws and regulations; costs relating to exercising a compulsory purchase order etc.).
57. Purchase of land (built on or not built on) in the amount exceeding 10% of the total eligible expenditure for the project. For derelict sites and for those formerly in industrial use which comprise buildings, this limit shall be increased to 15%. In exceptional and duly justified cases, a higher percentage may be permitted for projects concerning environmental conservation.

58. Notional/ theoretical costs, even if the beneficiary has reasonable grounds to assume that the cost is close to 'real costs' or its market value. For example, internal 'charge-out' rates without a direct link to actual amounts paid out by the organisation or 'estimated commercial value' rates for use of unoccupied premises.
59. Estimated or budgeted costs (this does not mean depreciation charges).
60. Opportunity costs, being amounts that you believe represents income foregone as a direct result of the project/ project activity.
61. Accounting estimates and valuations such as provisions, reserves, contingent liabilities, write-downs, bad debt provisions, amortisation of intangible assets and asset impairment charges.
62. Bad debts or similar accounting/ debtor 'write-offs', including write-off of staff loans.
63. Donations or gifts to political parties and other payments for activities of a party political nature.
64. Any profit margin (mark-up, cost plus pricing etc.) that you add to your own internal costs.
65. Payments or fees for late payments to your creditors.
66. Costs involved in winding up a legal entity.
67. Voluntary payments to staff or former members of staff i.e. payments beyond the amounts due if strictly applying contractual or statutory terms. For example, direct ('out-of-court') settlements for unfair dismissal or grievance claims against an employer.
68. Compensation or similar payments to former employees in respect of unfair dismissal settlements.
69. Gifts, the purchase of prizes, donations and similar voluntary payments (fails the 'necessary' eligibility test). However, the distribution of **small items** (not exceeding EUR 50 per gift) related to promotion, communication, publicity or information is **eligible** [Article 2(2)b of EU Regulation 481/2014].
70. Entertaining staff or third parties (but see 'hospitality and entertainment' section regarding eligibility of events, ceremonies etc.).
71. Criminal fines, penalties and damages.
72. Statutory fines, penalties and damages.
73. Parking fines, motoring related fines.
74. Costs incurred by employers in setting up or closing down pension schemes.
75. Costs incurred in winding up/ closing down a company (whether enforced or voluntary), including the costs arising from entering, or exiting administration, bankruptcy, liquidation or similar measures.
76. Any interest and finance charges on lease, hire purchase or rental agreements.

16. Simplified costs

Please also refer to the comprehensive '*simplified costs: detailed guidance for beneficiaries (V3 May 2019)*' available on the Welsh Government website

The simplified costs currently available are listed in **Annex D** and the key features of simplified costs can be found in **Annex E**.

16.1 *Applicability of simplified costs*

Simplified costs (flat-rates) are the only method available for calculating indirect costs. Indirect costs cannot be declared on a 'real cost' basis. Simplified costs are also mandatory for small operations where the planned public support to operation is less than €100,000 (see Annex D).

Other simplified costs are optional but **we strongly encourage** all beneficiaries to consider using simplified costs because they are likely to reduce administration and audit burdens, reduce financial errors and free up project staff to focus on delivery and achieving results – rather than compliance and back-office processes.

16.2 *Flat-rate 15% for indirect costs*

This rate is available to all operations where we are satisfied that the operation is likely to give rise to indirect costs.

Eligible indirect costs are calculated by applying a flat rate of 15 % of eligible direct **staff costs**. Please see section 8.2 where employment agency workers are employed to deliver/ implement the activities of the operation.

The 15% rate is established in EU Regulation Article 68(b) of EU Regulation 1303/2013 and so does not need to be justified in advance by us or the beneficiaries.

16.3 *Flat-rate 25% for indirect costs (RD&I)*

Indirect costs for qualifying research, development and innovation operations are calculated by applying a 25% flat rate to all applicable direct costs.

The 25% rate is established in EU Regulation 1290/2013 (rules for participation and dissemination in Horizon 2020) and the possibility of using this rate and method for the ESI funds is set out in Article 68(a) of EU Regulation 1303/2013. The rate does not need to be justified in advance by us or the beneficiary,

When this rate is used, indirect costs are determined by applying a flat rate of 25 % of the total applicable direct costs. Applicable direct costs mean all eligible direct costs but excluding the following:

- (1) costs of sub-contracting (contracted delivery of operations, projects or discrete activities)
- (2) costs of resources made available by third parties which are not used on the beneficiary's premises
- (3) financial support to third parties.

To note: If a beneficiary itself directly delivers a project (meaning keeping **full control of the management and implementation** of the project – not outsourcing/ not fully procured), then some of the **costs** within the project that need to be contracted (e.g. some of the project implementation costs like cleaning services, external expertise, purchase of furniture, etc.) can be included as an applicable direct cost when calculating the 25% flat rate.

The 25% rate is an alternative, not in addition to, the '15% of staff costs' option available to all operations described above.

NOTE FOR JOINT SECRETARIAT STAFF

Operations (or projects within an operation) qualify for the 25% rate as a 'research and innovation' operation if coded by WEFO as falling into the ERDF 'intervention fields' and investment priorities listed in Article 20 of EU Regulation 480/2014.

16.4 Flat-rate 20% for direct staff costs

This rate is available to all operations.

The total direct staff costs of an operation are calculated by applying a flat rate of 20 % of **eligible direct costs** (other than direct staff costs). When this flat-rate is chosen, no additional direct staff costs can be declared.

Staff costs means direct contracts with individual workers carrying out work for the project and therefore includes internal and external staff (self-employed, agency workers) but not contracts with firms/ companies/ incorporated bodies.

The 20% rate is established in EU Regulation Article 19 of EU Regulation 1299/2013 and does not need to be justified in advance by us or beneficiaries.

16.5 Flat-rate 40% for Direct and Indirect Costs

This rate is available to all operations.

Eligible direct costs, other than staff costs, and indirect costs are calculated by applying a flat rate of 40 % of eligible direct **staff costs**.

Staff costs means direct contracts with individual workers carrying out work for the project and therefore includes internal and external staff (self-employed, agency workers) but not contracts with firms/ companies/ incorporated bodies.

Please note as from 2 August 2018: salaries and allowances paid to participants can be declared **in addition to the eligible direct staff costs and to the 40% flat rate applied to the eligible direct staff costs**. In terms of the Ireland-Wales Programme, this will include projects where individual employees of SMEs are provided with training via attendance at training events/ workshops, and the salaries and allowances paid by the SMEs to the individual employees are utilised as in-kind contributions towards project costs.

16.6 Unit costs for project staff costs

A fixed hourly rate for project staff is established in your funding award letter and this can be used when submitting your payment claims.

The key benefit of using this option is that throughout the implementation of the operation, verifications and audit will not examine payroll financial records or bank statements to confirm the amounts were paid out.

Hourly costs are established by dividing the latest documented annual gross employment costs by 1,720 hours. The latest gross employment costs can include all eligible staff costs as set out in Part 3 (salary, employers' taxes and pension contributions etc.).

The annual estimate of productive hours (1,720) is determined by EC Regulations and can be used without further justification. Alternatively, should you choose not to use the standard annual working time of 1,720 hours you will need to provide / justify to WEFO details of the **latest** annual gross employment costs (as documented via your accounts, payroll records etc.) together with the proposed annual productive hours. This will enable WEFO to verify and agree the staff hourly rates to be used by you, with rates being documented in your funding award letter. For further details please see section 5 of the WEFO 'Detailed Guidance on using simplified costs'.

The agreed rates can be set for individual staff members or, more likely, for groups of staff using grade/band averages.

If staff hourly unit costs have been in place for at least two years, you may request that the rate be revised to reflect the latest documented employment costs at the time of the review.

We currently offer a fixed rate per participant unit cost to calculate project staff costs to European Social Fund (ESF) supported operations only. However, it is possible for ERDF supported operations to utilise standard scales of unit costs based upon outputs and/ or results. If you are interested in adopting a unit costs approach/ methodology for your ERDF supported operation, please see the 'Further Information and Advice on Simplified Costs' section below.

16.7 Technical Assistance Unit cost for Travel & Subsistence

A fixed unit cost is available for Travel and Subsistence supported under Technical Assistance.

A unit cost rate of €250 per person, per trip is available for costs incurred by an organisation travelling overseas to meet or seek potential partnerships, with the aim of establishing operations across the Ireland Wales Programme.

The availability of the unit cost is subject to WIN3 scheme rules and eligibility criteria:

<https://irelandwales.eu/sites/default/files/2018-04/Ireland%20Wales%20WIN3%20Eligibility%20Terms.pdf>

16.8 Further information and advice on simplified costs

Please contact us to discuss the 'ready-made' simplified costs set out above or if you are interested in the possibility of using unit costs or lump sums (eligible costs determined exclusively by **performance of activities** or **achievement of**

milestones, outputs or results) – these are explained in the separate '*simplified costs: detailed guidance for beneficiaries*' document published on the WEFO website.

17. FURTHER GUIDANCE: Definition of 'Direct' and 'Indirect' costs

Remember that costs are only eligible when they relate, directly or indirectly, to an eligible project activity.

'Expenditure categories' means expenditure items with similar characteristics and purpose.

17.1 Definition of 'direct' costs

Direct costs are the costs of initiating and implementing the agreed project activities where a **direct link** between the cost and the ERDF supported activities can be demonstrated and **easily quantified** without the need to consider arbitrary apportionment methodologies (cost drivers based on square-footage of space occupied by the project, headcount, staff hours etc.).

Contracts let by beneficiaries are direct costs, even if the contract pricing terms enable the contractor to receive payments for what the contract may describe as 'indirect costs'.

17.2 Direct costs allocated on a pro-rata basis

Identifiable eligible costs listed in an invoice/ contract/ statement alongside other unconnected or ineligible costs.

These costs are directly related to the ERDF supported activity, and a direct link can be demonstrated, but the invoice – or equivalent document – aggregates the costs with other items that are not directly linked to the specific EU project. Therefore, it is necessary to identify and allocate the costs that relate to the EU project. These amounts can then be treated as direct costs.

Audits and verifications will need to see supporting records to verify the basis for the cost allocations.

Examples:

- Telephone lines and call charges traceable to the individual EU project staff or to a workspace occupied solely by the EU project team.
- Beneficiary's head office/ corporate centre pays a contracted service provider a fixed amount for each staff member in the organisation (e.g. to provide ICT services or software licences charged per user). The EU project could claim these costs as 'direct costs' for the staff working on the EU project if those services are actually used and the EU project benefits from the services. An audit

trail is required to identify the named individuals benefitting from the services and evidence of the amounts being paid to the contractor.

17.3 Definition of 'indirect' costs

Indirect costs are, by default, all other eligible costs that do not meet the above definitions of a direct cost.

In brief, these will be eligible costs or activities that your project **benefits** from in some way but where the value of those costs cannot be directly linked your specific project because it is **difficult, or impossible, to quantify a precise amount** attributable solely to a single operation/ project.

Remember, even if it was possible to demonstrate the link and quantify the precise amount, the costs would still only qualify as an eligible direct cost if it met all the other general rules and conditions e.g. clearly necessary to advance your project in the way described in the funding application; value for money use of EU funds; full supporting documents and audit trails.

'Indirect costs' must always be clearly distinguished from 'direct costs' in the agreed forecast budget, delivery profile and subsequent expenditure claims.

Typical 'indirect costs' will arise from:

- Indirect staff (central accounting services, general clerical support, custodial/ archiving services, corporate customer services, senior management/ executives/ directors not engaged directly on the project but with general oversight and governance responsibilities);
- General corporate supplies (furniture, consumables, stationary, photocopying);
- Office rent for shared workspaces;
- Materials and equipment rental or leasing (not used exclusively by the EU project);
- Utilities (electricity, heating, water, drainage);
- Maintenance, cleaning, repairs, security services;
- ICT systems, WIFI and Broadband connections;
- Communication (telephone, fax, internet, postal services, business cards);
- General insurances (property insurances, public liability, life assurance etc.);

17.4 Q&A - distinguishing between a direct and an indirect cost

Q: Are the beneficiary's general administrative running costs/ establishment/ premises costs always 'indirect'?

A: No. These costs could be direct or indirect, in line with the above definitions, and so varies case-by-case depending on the arrangements in each operation/ project.

Administrative expenses would be 'indirect' if unable to precisely identify the amount attributable to the EU project(s). For example, 'central services' such as: recruitment/ HR support, WIFI/ broadband; general accounting services; corporate general management; cleaning; security; telephony, ICT facilities; water or electricity expenses, and so on.

Alternatively, all these costs could also potentially be 'direct' costs if provided exclusively for the EU project(s) with an audit trail to the invoices and proof of payment etc.

Q: Are rent, rates and utilities bills 'indirect costs'?

A: Same response as previous question.

If the EU project is the only occupant of a building or rented space, these types of costs could be directly attributable in full in the EU project(s) (as direct costs).

These costs will be 'indirect' where unable to establish the precise amounts attributable to/ consumed by the EU project(s). Where the beneficiary uses 'charge-out' system or similar apportionment approach to shared costs, this indicates that the costs are 'indirect'.

Q: Are 'apportioned' costs 'indirect costs'?

Apportioned costs are indirect costs.

For this purposes on these rules, 'apportioned costs' refers to where an organisation uses an arbitrary methodology to determine the amounts to be charged to projects/ departments to enable the organisation to recover the costs actually paid out. A suitable cost driver is chosen (e.g. staff hours; square footage of space occupied; headcount) as a basis for sharing out the costs to those that benefit from them.

PART 4: ELIGIBLE ACTIVITIES AND LOCATION OF ACTIVITIES

18. Eligible activities

Activities can be supported if assessed and agreed by us when we make our funding award decision, either during the initial funding decision or a later revision.

In addition, the ERDF Regulation EU 1301/2013 determines that the scope of support must fall into one or more of the activities described in Article 3 of that Regulation. In addition, the ERDF can be used for the investment priorities set out in Article 7 of the ETC Regulation EU 1299/2013.

We will assess compliance with the ERDF and ETC Regulations and the Ireland Wales Co-operation Programme when you submit your funding application to us.

18.1 RULES ON THE SCOPE OF THE ERDF

The following are outside the scope of the ERDF and will not be supported:

77. Decommissioning or construction of nuclear power stations;
78. Investment to achieve the reduction of greenhouse gas emissions from activities falling under Annex I of EC Directive 2003/87/EC;
79. Manufacturing, processing and marketing of tobacco and tobacco products;
80. 'Undertakings in difficulties' as defined under EU State aid rules. **Please note:** as from 24 April 2020, undertakings receiving **de minimis aid** will not be regarded as 'undertakings in difficulty' for the purposes of receiving ERDF support. This also applies to undertakings that entered into difficulty as a result of the COVID-19 outbreak and have received support complying with the **COVID 19 Temporary Framework for State aid** measures (see annex F, question 11 for more detail)
81. Airport infrastructure unless related to environmental protection or accompanied by investments necessary to mitigate or reduce its negative environmental impact.

In addition to the above regulatory rules, project costs are only eligible if they relate to implementing an eligible project and eligible activities.

Projects are eligible if they aim to deliver the priorities and objectives agreed between us and the EC in the Co-operation Programme. We will check this before we award you funding based on the information in your funding application. It is a condition of your funding that you notify us of any changes to the project so that we can check that it still remains eligible for support.

Similarly, your plans for achieving the project's objectives ('activities' 'actions') must be approved by us to ensure compliant.

The following general rules apply:

18.2 RULES ON ELIGIBLE ACTIVITIES

82. All SMEs in the agri-food, maritime and fisheries sectors can potentially benefit from relevant ERDF support. In all cases, this approach excludes ERDF support for the **primary production of agricultural products** as defined in the EU Treaties and related State aid legislation. Where activities could potentially be supported by more than one of the EU programmes, we will signpost you to the relevant fund if unclear.

83. We cannot fund public administrations to help them deliver services that are their normal statutory responsibility or duty, for example, provision of statutory school age education; primary health services; public parks and libraries.

84. The ERDF is aimed at providing added value that would not be achieved by the Member State acting alone and therefore funds cannot be used to substitute existing or planned public funding programmes.

85. The ERDF cannot substitute national/ regional public or private match funding to EU projects/ programmes directly managed by the EC. Similarly, EU projects/ programmes that are directly managed by the EC cannot substitute national/ regional public or private match funding to ERDF operations.

19. Geographic eligibility

The lead partner/ beneficiary must be located within the Ireland Wales programme area as set out in the Co-operation Programme document.

We also expect **joint beneficiaries** to be located within the programme area and for all **activities to be implemented** within the programming area, but suitably justified exceptions can be considered on a case-by-case basis.

19.1 RULES

86. The lead beneficiary must be located within the Ireland Wales programme area. This is determined by the premises/ office address of the lead beneficiary staff working on the Ireland Wales operation.

87. We can also consider supporting an operation, or parts of an operation, implemented **outside the programme area** if all the following conditions are met:

88. The 'out of area' activity is for the benefit of the Ireland Wales programme area.

89. Implementing the activities outside of the programme is the best – or only – way of maximising the benefits to the programme region.

Implementation takes place within the European Union.

90. WEFO is able to carry out the necessary management, control and audit functions on the 'out of area' activity OR is able to conclude agreements with authorities in other EU Member States to carry out this work on WEFO's behalf.

91. If your operation receives support to undertake **technical assistance or promotional activities** and **capacity building**, these may take place **outside the EU** if it benefits the programme area. You must seek our approval for this type of expenditure in advance so that we can confirm that it is necessary and check that adequate management, control and audit arrangements are in place. 'Promotional activities' should be understood as activities which aim to raise awareness and disseminate information, for example, business opportunities and knowledge transfer at trade fairs.

92. If only part of your operation is implemented outside the programme area (e.g. one project or specified activities/ tasks) you will need to account for the activities and costs connected to the 'out of area' element of the project and report this to us in your payment claim.

19.2 GUIDANCE

Please note that there is a limit of this type of flexibility and so we may be unable to support your operation even if it meets the above criteria. We will advise you on this at the time of your application. The total amount allocated under the programme for activities or operations implemented outside the programme area must not exceed 20 % of the support from the ERDF at programme level.

If benefits clearly accrue to other areas, regions or countries in the EU – rather than exclusively to the programme area providing the funding – we will need to determine the pro-rata benefits attributable to the programme area. The eligible costs for those activities will then be limited to the agreed percentage. If this applies to your operation, please contact us to discuss a suitable basis of apportionment.

In the case of physical/ tangible/ productive investments, the location of the project is self-evident (the location of the assets/ the productive activity). In other cases, the 'location of the operation' can be determined by the location of the supported activities or by determining where the results of these activities are used. The latter may be case for research and development operations where some activities may involve work in other regions or countries, but the results of the work are exploited/ developed exclusively by the programme region. This also applies in the case of study trips.

The location of corporate or administrative offices, including the location of the EU project management and administration teams, is not – in itself - a factor in determining geographic eligibility.

Finally, remember that, in addition to the rules set out above, you must also comply with any geographical eligibility rules established in your agreed business plan or arising arise from State aid rules.

PART 5: OTHER FUNDING CONDITIONS

20. Revenue

EU grants must not have the intention or effect of producing a profit within the framework of the ERDF supported actions (the 'no-profit principle'). Where a profit/surplus is made, a percentage of that profit – corresponding to the EU contribution towards the eligible costs that generated that profit – may have to be returned depending on whether the revenue arises during the implementation period of a project or the, post-completion, exploitation phase of a project.

20.1 Definitions

Revenue means cash in-flows directly paid by users for the goods or services provided by the operation/ project:

- Contributions from final users of infrastructure built by the operation (tariffs, service fees, charges).
- Income from the sale of products, or by-products, produced by the operation on the market.
- Income from sale of other project related services e.g. enrolment fees or similar receipts directly generated by the operation.
- Income from the sale of land or buildings rehabilitated or built by the operation.
- Income from the rent of land or buildings rehabilitated or built by the operation.

Revenue is not:

- EU grant receipts.
- Contributions in-kind.
- Match funding where an amount of 'net revenue' (see definition below) is generated during project implementation. The 'net revenue' amount cannot be utilised as match funding and must be declared to WEFO
- Payments you receive arising from a contractual condition on a breach of contract between you and third parties (i.e. contractual penalties) or as a result of the withdrawal of an offer by a third party chosen in public procurement rules (i.e. forfeiture of deposit) is not considered as revenue and does therefore not need to be deducted from the your eligible expenditure (you can retain 100% of such receipts).

Operating costs means recurrent costs to operate and maintain the assets created by the project during the period corresponding to the generation of revenue. This includes replacement costs of short-life equipment. Operating costs may be fixed

costs (staff, maintenance and repair, general management and administration, insurance) or variable (consumption of raw materials, energy, consumables).

Operational cost savings means net cash in-flows arising because operational costs have decreased as a result of project implementation. These are treated the same way as 'revenue'.

Note: Operational cost savings that arise as a result of the implementation of energy efficiency measures and which occur after the completion of a project are no longer treated as net revenue.

Net revenue means Revenue **plus** Operational Cost Savings **less** Operating Costs. Operational Cost Savings can be excluded if they are offset by an equal reduction in operating subsidies (and therefore are not an overall financial benefit). You will need to provide details of the total revenue amount generated by the project during its implementation. This will enable WEFO to calculate how much of the total revenue has been used to cover operating cost and therefore the correct amount of 'net revenue' applicable to your project.

The rules to follow will depend on the type and nature of the operation. We will inform you in your grant funding agreement of which rules applies to your operation:

<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project' • No flat-rate percentage provided by the EC – or WEFO/ beneficiary does not want to use flat-rate. • Able to objectively forecast future revenues at funding application/ appraisal stage. 	Rule A
<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project' • No flat-rate percentage provided by the EC – or WEFO/beneficiary does not want to use flat-rate. • Not able to objectively forecast future revenues 	Rule B
<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project' • A flat-rate percentage revenue estimate is provided by the EC. • WEFO and the beneficiary agree that the flat-rate approach is suitable. 	Rule C
<ul style="list-style-type: none"> • Operation does not meet the definition of a 'revenue generating project' but still generates income. 	Rule D

20.1.1 Definition of a 'Revenue Generating Project' (RGP)

These are ERDF operations where ALL of the following criteria are met:

- You expect to generate net revenues **beyond the completion date** of your operation (during the exploitation phase).
- The operation is **not subject to State Aid rules**.

Total forecast **eligible costs exceed € 1 million** at the time of funding approval decision.

Put another way, the operation is not a RGP if it is subject to State aid rules; or not expected to generate net revenues beyond completion; or has total eligible costs below €1m.

The operation will also be exempt from the classification as a RGP if you intend to be reimbursed on the basis of unit costs or lump sums – rather than real costs – if anticipated revenue has been fully taken into account when the value of the agreed unit costs/ lump sums.

State Aid

Operations that are subject to State aid rules are not classified as RGP. To clarify, this means public support which constitutes:

- De minimis state aid.
- Compatible state aid to SMEs, where the aid intensity or an aid amount limit is applied in relation to the state aid.
- Compatible state aid, where an individual verification of financing needs in accordance with the applicable state aid rules has been carried out.

20.1.2 Rule A

This rule requires a full **funding gap analysis** over full economic life of the investment. The calculations are only concerned with revenue directly attributable to the funded actions – does not cover revenue generated by non-EU funded activities or from ineligible expenditure/ ineligible activity.

Only the revenue cash-flows relating exclusively to the project owner and/or operator (i.e. the economic entity, or entities, that activates the project) will be considered. If the owner and operator are not the same legal entity, the consolidated total revenue will be calculated but excluding cash flows between the owner and operator.

Only 'incremental' cash flows are taken into account, i.e. the additional costs and benefits arising compared to what would have happened in the absence of the project.

If your project is classified as a RGP, the planned **EU funding support will be adjusted in advance** taking into account the potential of the project to generate net

revenue over a specified reference period that covers both the implementation of the project **and a period beyond completion**.

Your project's potential net revenue will be determined in advance by estimating your project's eventual funding gap, i.e. how much ERDF support is needed given the anticipated revenue that the project will generate.

Calculation of discounted net revenue of the project, taking into account:

- the reference period appropriate to the sector or subsector applicable to the project
- the profitability normally expected of the category of investment concerned
- application of the polluter-pays principle
- considerations of equity linked to the relative prosperity of the Member State or region concerned

When this method is used, the net revenue generated during implementation of the project, resulting from sources of revenue not taken into account in determining the potential net revenue, must also be declared and deducted from the eligible expenditure of the project, no later than your final payment claim.

Where not all the investment cost is eligible for EU funding, the net revenue can be allocated pro rata to the eligible and non-eligible parts of the project cost.

The full methodology for calculating the discounted net revenue of operations generating net revenue is set out in Articles 16-19 of EU Regulation 480/2014.

The calculations required are complex and require familiarity with a number of financial and accounting concepts. We will guide you through the process and provide detailed instructions.

20.1.3 Rule B

If you have a RGP and we agree that it is not possible to objectively determine future revenues in advance, the net revenue you generate until **three years beyond the completion of your operation** - or by 30 September 2023 if earlier - will need to be deducted from eligible expenditure. You must inform us of all net revenue generated after the submission of your final payment claim until the three year period (or 30 September 2023 if earlier) has expired.

20.1.4 Rule C

As a simplified approach, we can agree to apply a flat-rate net revenue percentage for the sector or subsector applicable to the project:

Sector		Flat rates
1	ROAD	30%
2	RAIL	20%

3	URBAN TRANSPORT	20%
4	WATER	25%
5	SOLID WASTE	20%

Source: Annex V of EU 1303/2013

The ERDF support is then determined in advance by adjusting the forecast eligible costs using this formula:

ERDF support = Eligible Costs * (1- flat-rate %) * grant intervention rate%
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Example

Rail project with €2m of eligible costs and a grant intervention rate of 50%:

$$\text{ERDF support} = \text{Eligible Costs} * (1 - \text{flat-rate } \%) * \text{grant rate } \%$$

$$\text{ERDF support} = \text{€2m} * (1 - 0.20) * 0.50$$

$$\text{ERDF support} = \text{€2m} * 0.80 * 0.50$$

$$\text{ERDF support} = \text{€1,6m} * 0.50$$

$$\text{ERDF support} = \text{€800,000}$$

Before the revenue generation calculation, the project would have received €1m of ERDF support (eligible costs * 50%). The effect of the flat-rate adjustment is to reduce eligible expenditure by €400k and so ERDF support falls by €200k. The project's eligible costs are still recorded as €2m (not €1.6m) and match funding is required for €1m (not €1.2m).

The project does not have to account for the apparent funding gap of €200k – €2m eligible costs less the €1.8m to be received from EU and match funding - the assumption is that future revenue will meet this gap but this is not monitored by WEFO or the EC.

For clarity, where the flat-rate method is used **all** the net revenue actually generated during implementation and beyond completion during the exploitation of the investment **is considered to have been taken into account and settled** by the application of the flat rate and is therefore not deducted subsequently from the eligible expenditure.

20.1.5 Rule D

If your project is not a RGP but your project activities directly generate revenue during its implementation period, your project's **eligible costs must be reduced/offset by the amount of the net revenue received**, this will reduce the amount of EU grant payable.

Any payment you receive arising from a contractual condition on a breach of contract between you and third parties (i.e. contractual penalties) or has occurred as a result of the withdrawal of an offer by a third party chosen in public procurement rules (i.e. deposit) is not considered as revenue and does therefore not need to be deducted from the your eligible expenditure (you keep all of such receipts).

You should inform us of such receipts as soon as possible and no later than in the final payment claim that you submit to us.

If only part of your total project costs are eligible costs, you only need to apply a proportion of the revenue. The net revenue should be allocated pro-rata to the eligible and non-eligible parts of the total project costs.

You only need to tell us about revenue generated **during project implementation period** - you do not need to inform us of any revenue generated beyond the implementation of your project.

21. Match funding

Although the ERDF can support a significant part of your eligible costs, you will also normally be required to contribute a share of the costs or source other funding providers who are willing to provide financial support. This is called match funding (sometimes called national 'co-financing' or 'co-funding') meaning a contribution to eligible costs to supplement the EU funding contribution.

We will agree an appropriate level of match funding with you within the range set out in the Programme and respecting any applicable limitations set by State aid rules.

Match funding could one or more of:

- Beneficiaries own financial contribution (self-financing)
- Financial contributions from third parties (receipts from public and/or private sources)
- Contributions in-kind from third parties (non-financial resources made available free of charge to the project)

Match funding must be 'clean', meaning that it has not been declared for other projects supported by EU or national public funds and must not have originated from an EU funding source.

You cannot use EU funds to match fund your project - these funds must be co-financed by national or regional, public or private funds. This means for example, that funds received from another EU programme, like Horizon 2020, cannot be used to provide the required national contribution to the ETC operation.

However, funds borrowed from the European Investment Bank Group (EIB and EIF) can generally be used to finance the national or regional contribution to a project under European Structural and Investment Funds (ERDF).

We examine your match funding proposals when we assess your funding application. You must let us know if the amount or source of match funding subsequently changes during the implementation of the project.

For clarity, the following is not match funding:

- Revenue/ income generated by a project – see section 20.
- ‘Cashback’, credit notes or refunds from suppliers, service providers or contractors.
- Financial contributions from third parties to fund ineligible costs.

22. Publicity and the visibility of EU funding

EU funding is conditional on beneficiaries taking the steps necessary to provide information to, and communicate with, the public on the support provided by the EU.

During implementation of an operation and through its information and communication measures, the beneficiary must inform the public, staff and participants about the ERDF support.

Beneficiaries must also set out similar provisions in their contractual arrangements with providers / contractors so that the contribution of the EU funds is communicated as widely as possible.

Evidence to demonstrate that the following arrangements have been implemented effectively will form an integral part of verifications, audit visits and reviews of projects.

The beneficiary must allow basic details (i.e. the name of the beneficiary, project name, location, the amount of EU funds allocation, and the amount of EU funds paid after project completion, and output targets and results) to be published (electronically or otherwise), by WEFO.

22.1 Use of Logo and referencing of the Fund

- All information and communication activities (e.g. press notices, documents, web / social / digital media, events, promotional items etc.) undertaken by the beneficiary must acknowledge support from the ERDF to the operation by displaying:
 - the Ireland Wales **programme** logo.
 - the ERDF **fund** logo available from WEFO, which must comply with the technical characteristics (graphic standards and definition of standard colours) laid down in WEFO’s Information and Publicity Guidelines.
 - a reference to the **European Regional Development Fund**. For small promotional objects, there is no need to make reference to the Fund.

- The Fund logo must always be displayed in colour on websites. The fund logo should be displayed in colour in all other media but a monochrome version may be used in justified cases. Beneficiaries should contact WEFO if unable to publish a colour emblem.
- The Fund logo must always be clearly visible and placed in a prominent position, its position and size appropriate to the scale of the document or material being used.
- Where an information or communication measure relates to an operation or to several operations supported by more than one ESI Fund (ERDF, ESF, EAFRD, EMFF), the reference to the European Regional Development Fund may be replaced by a reference to the European Structural and Investment Funds. A logo for the European Structural and Investment Funds (available from WEFO) can also be used if the beneficiary is in receipt of two or more ESI funds.
- If other logos are also displayed on websites, documents or other publicity material, the Fund logo must be at least the same size, measured in height or width, as the largest of the other logos.

22.2 Websites

- Where a beneficiary website exists, the beneficiary must publish a short description of the operation, proportionate to the level of support, including its aims and results, and highlighting the EU financial support.
- When the Fund logo is displayed on a beneficiary website:
 - The Fund logo must be visible when landing on the website, inside the viewing area of a digital device, without requiring a user to scroll down the page.
 - The reference to the Fund must be made visible on the same website.

22.3 Posters, billboards, and plaques

- During implementation of an operation, the beneficiary must place at least one **poster** at a location readily visible to the public and participants, such as the entrance or reception area of a building. A design template will be provided by WEFO for best practice purposes, but as a minimum, the poster must be at least A3 size and include the name of the operation; its main objective; acknowledgement of ERDF financial support, the statement: 'EU Funds: Investing in [Ireland or Wales - delete as appropriate]; and the respective fund name and logo.
- The beneficiary must also display a permanent commemorative plaque (supplied free of charge by WEFO), which bears the Fund logo, in a prominent location that

is clearly visible to the public, staff, and participants. Please see '**March 2023 update**' below for further details.

- Where individuals or organisations take part in the ERDF operation, other than 'beneficiaries', such as contractors and service providers, the beneficiary must ensure that those taking part have been informed that the operation is supported by the ERDF. Any document relating to the implementation of the operation which is used for the public or those taking part in the activities supported by the operation, including any attendance or other certificate, must include a statement to the effect that the operational programme was supported by the ERDF. If the document includes other logos, the Fund logo must also be used.
- During implementation of an ERDF infrastructure or construction operation and where public support exceeds €500,000, the beneficiary must put up a temporary billboard of significant size at a location readily visible to the public. The billboard must include the Fund logo covering at least 25 per cent of its area. 'Public support' includes both national and EU support. If your operation uses pounds Sterling, the EUR exchange rate is assessed only at the point that we send you a funding agreement letter.
- No later than three months after final completion of an ERDF infrastructure or construction operation, the beneficiary must display a permanent billboard (design template provided by WEFO) of significant size at a location readily visible to the public. Please see '**March 2023 update**' below for further details.

March 2023 update:

- permanent commemorative plaque – will only apply to capital ERDF supported operations (*i.e. infrastructure or construction*) where public support exceeds €500,000. In addition, a beneficiary will have the option to display a permanent plaque **or** billboard upon final completion and by no later than three months after this date. This requirement aligns and is consistent with point 5 of Annex XII of EU Regulation 1303/ 2013.

You must also comply with any publicity, information and communication conditions set out in the WEFO funding agreement letter and WEFO's Information and Publicity Guidelines.

Fund logos and commemorative plaques are supplied by WEFO. Design of posters, other plaques, billboards and other materials must be agreed by WEFO to help comply with the technical characteristics set out in the EU Regulations and WEFO's Information and Publicity Guidelines.

For clarity, costs incurred in meeting publicity and information conditions are eligible costs ('external expertise and services').

Source / further information: Article 115(3) of EU Regulation 1303/2013

23. Durability rules

If your operation is an investment in infrastructure or productive investment, the EU grant contribution must be repaid to us if, **within five years of our final payment to you** (or within the period set out in applicable State Aid rules if longer), any of the following events occur:

- The productive activity ends.
- The project activity is relocated outside of the funding programme region that provided the ERDF support (relocation to another part of the programme region is acceptable but you must inform us of this).
- There is a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage.
- There is a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Productive investments are investments made to increase the productive capacity of an enterprise.

If these events occur, you must let us know and we will recover the EU contribution in proportion to the period for which the requirements have not been fulfilled, i.e. sliding scale from 100% to 0% during the five year period.

If cases concerning investments or jobs created by SMEs, we may decide to reduce the time limit from five to **three years**, unless State Aid rules impose a longer period.

Where the beneficiary is not a SME, the beneficiary must also repay the EU contribution if productive activities are relocated outside of the European Union within **ten years** of the final payment (or within the period of time set out in the State Aid rules if applicable). For clarity, SMEs are exempt from this rule.

Exceptions to the durability rules:

- Projects that are not investment in infrastructure or productive investments are exempt from these rules (unless the applicable State Aid rules impose an obligation to maintain the investment and where a cessation or relocation of productive activity takes place within the period specified in those State Aid rules).
- These rules do not apply to contributions to or by Financial Instruments
- An operation that ceases productive activity due to a (non-fraudulent) bankruptcy is also exempt.

[Article 71 of EU 1303/2013]

Assets held after the completion of your project

If you no longer use an asset that was purchased using ERDF support, you may sell it but note that the sale proceeds may need to be reported to us as 'revenue' – see Section 20 above for cases where revenue beyond project completion still need to be reported.

If you sell or donate an asset to another project funded by the ESI funds, that project will be unable to claim the purchase costs as an eligible project cost or a contribution in-kind.

Please note WEFO Management Verification Team will undertake project visits to check compliance with durability rules – the visit will occur at least once within the five years upon completion of an operation.

24. Intellectual Property Rights

The handling of Intellectual Property Rights (IPRs) may need to be considered in some projects.

You should note that regardless of the ownership or legal title of intangible assets such as IPR, we reserve the right to examine the results of your project including intellectual property rights covering such results.

Like any other asset co-funded by the EU support, we expect the beneficiary/ beneficiaries to be the legal entity that owns the asset – not individuals employed by the beneficiary, working for the beneficiary, or other third party.

Subject to any applicable State aid rules or other reasons agreed by us, the results of projects, including IPR covering such results, may be disseminated/ published by you or us. All such publications or any other method of dissemination must mention that the results/ IPR were generated with the assistance of EU support.

If your project is expected to generate IPR that will be disseminated in publications, events or training activities, a dissemination policy should be developed in the first year of your project to ensure the knowledge is swiftly disseminated, with the permission of all participants and protected if applicable.

You should take your own legal advice regarding IPR ownership and/or legal title including arrangements for joint ownership, licencing etc. You are reminded that revenues generated from licencing sales may be subject to the revenue generating project rules set out in section 20.

Where the project outputs and results are capable of industrial or commercial application, you should consider adequate and effective protection for such results, for example patent rights.

25. Compliance with all applicable laws and regulations (EU, UK, Ireland)

25.1 EU laws and regulations

Compliance with applicable EU rules and policies is a fundamental condition of the eligibility of expenditure for reimbursement from the ERDF. The most important, but not the only, areas in practice are **public procurement, state aid, environmental protection and equal opportunities**.

The EC applies a scale of financial corrections for breaches of EU public procurement rules, starting at 100% for complete disregard of tendering requirements in public contracts. It recommends the EU Member States apply the same scales of penalties.

As regards State aid, when the EU Funds co-finance aid to businesses the total public aid (national and EU sources) must remain within the financial ceilings or aid intensity limits laid down for the State aid scheme in question.

You are reminded that State Aid rules and requirements are **in addition to** the rules and conditions in this document. In particular, different rules will sometimes apply in relation to document retention periods, revenue generation, and maintaining productive investments for a period of time beyond the end of your project.

25.2 UK and Ireland laws and regulations

Project activity and expenditure must comply with all applicable national laws, regulations and similar provisions, including compliance with tax and social security legislation.

You must seek legal advice where required to ensure you meet all such obligations.

Any unforeseen obligatory, contractual, legal or statutory costs that you incur as a consequence of implementing your project may be eligible if they meet the rules in this document but we are not obliged to increase your approved eligible expenditure to cover such costs. All additional costs are your responsibility and not the responsibility of WEFO, the EC or other project funders, even if such costs are unavoidable.

25.3 EU and national procurement rules

You must carry out procurement and purchasing procedures in a way that demonstrates **value for money** or, if appropriate, the lowest price. In doing so, you must also take account of any, perceived or actual, **conflict of interests**.

The best way for beneficiaries to secure, and demonstrate, value for money is through fair, open and transparent competition for contracts.

Beneficiaries must comply with all applicable EU, UK/ Ireland and other national government rules and policies when letting contracts partly funded by the EU funds, including national implementation of the European Public Procurement Directives 2014.

The applicable rules and guidance are:

- **Project partners based in Ireland:** the applicable Ireland/ Wales Co-Operation Programme 2014-2020 Programme Eligibility Rules & Guidance and the applicable ERDF Irish eligibility rules (Southern and Eastern Regional Programmes for the Investment in Growth and Jobs objective) and the Office of Government Procurement [gov.ie - Office of Government Procurement \(www.gov.ie\)](http://www.gov.ie)
- **Project partners based in Wales:** the applicable Ireland/ Wales Co-Operation Programme 2014-2020 Programme Eligibility Rules & Guidance and the applicable ERDF Welsh eligibility rules (West Wales & the Valleys and East Wales Programmes for the Investment in Growth and Jobs objective) and Value Wales Procurement Route Planner <http://prp.gov.wales>.

25.4 State aid

State aid is an EC term for public resources provided selectively to commercial undertakings that has the potential to affect competition and trade within the EU.

This type of public assistance - State aid - could distort the market, which in turn could result in lower competitiveness for business, less innovation and ultimately higher prices for consumers.

The definition of State aid stems from Article 87 of the EU Treaty and translates to the 5 tests set out below. **All five tests** have to be met for the State aid rules to apply.

1. Aid is granted by an EU Member State OR through state resources such as European funds managed by national public administrations or the distribution of lottery funds.
2. Aid confers an advantage on the recipient.
3. It favours certain commercial undertakings OR the production of certain goods i.e. it is selective in its nature.
4. It distorts competition OR has the potential to distort competition.
5. The activity is tradable between EU Member States and the aid has the potential to affect that trade.

State aid has a wide application as it can relate to any support provided to undertakings. An 'undertaking' is defined as any entity, regardless of its legal status engaged in economic activities or that competes with commercial organisations.

The undertaking does not have to be profit making so long as the activity carried out is one which **in principle has commercial competitors**. Public organisations,

charities, universities, voluntary entities, social enterprises and not for profit organisations can all be classed as 'undertakings' when they engage in economic activity.

The potential to distort competition and affect trade criteria is very broad - even small amounts of aid could potentially distort competition and it is sufficient that a product or service is subject to trade between Member States even if the aid recipient does not itself trade with other Member States.

Whilst the European Treaty sets out that State aid is incompatible with the common market, there are circumstances where State aid can be allowed.

These circumstances are set out in the **State aid rules** - a series of frameworks, guidelines and exemptions. These rules enable Member States to provide support to achieve desirable policy outcomes.

Where the support is classed as State aid, the aid provider/ aid administrator needs to ensure that they have the necessary approvals, exemptions and/or notifications are in place.

We can only award funding when it is satisfied that the potential for State aid to be present has been properly assessed and, if required, such support is allowed by the State aid rules. State aid could potentially exist at a number of levels in an ETC operation:

- We provide financial support to a lead beneficiary;
- Lead beneficiary provides financial support to joint beneficiaries; Where a delivery organisation, contracted by a beneficiary, provides financial or non-financial support to end users/ end recipients that meets the five State aid tests, e.g. where a contracted service provider is used to distribute financial support to companies on behalf of the beneficiary.
- For beneficiaries utilising the De Minimis scheme there is a 200,000 euro threshold and beneficiaries must ensure the aid recipient does not exceed this threshold over a 3 year fiscal period. The beneficiary must establish how much aid they have received to date before the award of any aid. The beneficiary must also write to the aid recipient and inform them of the value of the de-minimis aid provided to them.
- Welsh lead/ joint beneficiaries: where your organisation is eligible to claim Employment Allowance you must account for this within any claims you submit to WEFO for receipt of structural fund support. You will also need to have a robust mechanism in place to record the amount of employment allowance received in order to demonstrate that the de-minimis threshold of €200,000 over three fiscal years is not exceeded/ breached. WEFO will not contribute towards any amount received as Employment Allowance. Please see Annex H for further details regarding State Aid, inclusive of the UK Subsidy Control Regime

- . For more detailed information on State Aid then please visit the State Aid website via the following links:
<https://gov.wales/state-aid>
<https://enterprise.gov.ie/en/What-We-Do/EU-Internal-Market/EU-State-Aid-Rules/>

26. Technical Assistance rules and conditions

Where described in the business plan/ funding application and approved by us, the ERDF may support actions for:

- programme preparation, management, monitoring, and evaluation;
- programme monitoring committee meetings and any sub-committees;
- programme information and communication measures, including the costs of language translation and interpreters;
- networking connected to the efficient and effective implementation of the programme;
- complaint resolution;
- programme control and audit, including anti-fraud and corruption measures;
- actions to reduce the administrative burden for beneficiaries, including the introduction of electronic data exchange systems ('e-Cohesion');
- only where envisaged in the Co-operation Programme adopted by the Commission, actions that reinforce the capacity of the programme authorities, and beneficiaries to administer and use the EU Funds; and
- actions to reinforce the capacity of, and exchange best practices between, relevant partners;

These actions may concern the 2014-2020 programme period as well as the preceding or subsequent programming periods, if this is covered in the approved business plan.

Technical Assistance support is excluded from the rules regarding revenue set out in Section 20.

Activities can be implemented outside the funding programme area, but within the EU, provided that the project is for the benefit of the Co-operation programme area.

Technical Assistance expenditure may be incurred outside the EU if it benefits the programme area but you must seek our approval for this type of expenditure in advance from WEFO so that we can confirm that it is necessary and check that adequate management, control and audit arrangements can be put in place.

Technical Assistance actions linked to the functions and tasks necessary for the implementation of the programme is fulfilled by:

- the managing authority (WEFO) and other bodies designated to carry out control tasks
- the certifying authority (WEFO)
- the audit authority (Welsh Government, European Funds Audit Team) and other bodies designated to carry out audit tasks
- the joint technical secretariat

In some cases, other bodies can fulfil some of these functions, for example, coordination of programme implementation, but technical assistance funds must not be used to support **functions not necessary** for the efficient and effective implementation of the Co-operation Programme.

27. Combining support from more than one EU Fund

Funding your project from more than one EU Fund or Programme

It is possible for your project to receive EU support from one or more of the European Structural and Investment Funds or from one or more programmes and from other EU instruments, provided that each expenditure item included in a request for payment for reimbursement by one of the Funds does not receive support from another Fund or EU instrument, or support from the same Fund under another programme.

In addition to clearly separating the expenditure items, it is essential to identify which funding source has generated which outputs, results and other project outcome.

Other EU or ESI funds cannot be used as national match funding for your project.

More flexible rules exist for investments supported by both Horizon 2020 and the Structural Funds but this is outside the scope of this guidance note.

ANNEX A – Roles and responsibilities of the lead and the joint beneficiary

Operations are managed and implemented by **two or more** beneficiaries – at least one based in Wales and one in Ireland – and one of them must be designated by the beneficiaries as the **lead beneficiary**.

The Ireland Wales Cooperation Programme has determined that the **maximum number of partners is 6** per operation. Beneficiaries must be located in Wales or Ireland.

The lead beneficiary must:

- lay down the arrangements with joint beneficiaries in an agreement comprising provisions that, at least, guarantee the sound financial management of the funds allocated to the operation and arrangements for recovering amounts unduly paid to beneficiaries;
- assume responsibility for ensuring implementation of the entire operation;
- ensure that expenditure presented by all beneficiaries has been incurred in implementing the operation and corresponds to the activities agreed between all the beneficiaries, and is in accordance with the grant funding agreement provided by WEFO; and
- ensure that the expenditure presented by other beneficiaries has been **verified by a controller or controllers** where this verification is not carried out by WEFO.

Costs incurred and paid by joint beneficiaries can be included in the lead beneficiary's payment claims only if the lead beneficiary is satisfied that the other beneficiaries are aware of, and in a position to comply with the beneficiary rules set out in this document and the grant funding agreement.

Costs incurred and paid by joint beneficiaries can be included in the lead beneficiaries payment claims only if the joint beneficiary has confirmed their acceptance of the beneficiary rules set out in this document and the grant funding agreement, by signing the relevant Schedule 3 in the funding agreement for the operation.

The lead beneficiary must ensure that the other beneficiaries receive the total amount of the contribution from the funds as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce that amount for the other beneficiaries.

Project revenue

Lead beneficiaries must ensure that any revenue received by joint beneficiaries and any other beneficiary/ delivery partner is recorded and reported in the same way as the lead beneficiary's obligations set out in Section 20.

Contributions in-kind

Joint beneficiaries and delivery partners are not 'third parties' and cannot therefore provide in-kind contributions to the operation. Contributions of joint beneficiaries and delivery partners to the project are therefore treated as 'own resources' match funding within the meaning of section 8 and not in-kind match funding.

A partner may provide the project with the use of already owned assets, property, equipment, furniture etc. This could be for the partner to use on the project or provided to other partners or the lead beneficiary's to use. The same principle applies as when this happens at lead beneficiary level – the purchase cost of such items are ineligible but asset depreciation charges and repairs and maintenance costs can be claimed where justified. See section 7.5.4

ANNEX B - Audits and verifications

Introduction

'Verifications' mean the checks that we, a designated 'controller', perform on operations and their projects. These could be 'desk-based' checks performed remotely from our offices or may involve visits to where records are kept and, if different, where the project activities take place.

'National audits' mean audits undertaken by the Welsh Government's European Funds Audit Team, being the designated lead 'audit authority' for the Ireland Wales Co-operation Programme. These audits involve visits to where records are kept and, if different, where the supported activities take place.

'EC audits' mean audits undertaken by the staff of the European Commission. It does not mean audits performed by the European Court of Auditors.

Rights of access and notice periods

For statistical or fraud prevention and detection purposes, it may be necessary for verifications and audit staff to access a beneficiary's general accounting records, even where a project is financed by way of lump sums, unit costs or flat rates (rather than 'real costs'). These checks, however, will **not** be used for questioning the values of the flat-rate, unit costs or lump sums already agreed by us in your funding award letter.

Duplication of audits

To avoid excessive audits, the following rules apply:

- Smaller value ERDF operations (total eligible expenditure does not exceed EUR 400,000) will not be audited more than once by EC auditors or national auditors **during the lifetime** of the operation. This period begins from the award of funding and last until WEFO provides the EC with its annual accounts for the accounting year (July to June) in which the operation is considered 'fully completed'.
- All other ERDF operations (exceeding the EUR 400,000 threshold) will not be audited more than once EC or national auditors **in the same year** (1 July to 30 June).
- Operations will also not be subject to an audit by EC or national auditors in any year if there has already been an audit in that year by the European Court of Auditors. This rule will only apply if the EC or national auditors are satisfied that the results of the audit work performed by the European Court of Auditors can be accepted for the purpose of fulfilling their respective tasks.

As an exception to the above rules, EC or national auditors reserve the right to carry out audits of operations where they, or the European Court of Auditors, have established a **specific risk of irregularity or fraud**, in the case of evidence of serious deficiencies in the effective functioning of the programme's management and control system.

The EC may also, for the purpose of assessing the work of the national audit authority, review the audit trail of the audit authority or take part in the on-the-spot audits of the audit authority and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the audit authority, the EC may carry out audits of operations.

Further information: Article 148 of EU 1303/2013.

ANNEX C - Further guidance on audit trails

Accounting records

Financial accounting records at the beneficiary level (lead or joint) must provide detailed information about expenditure actually incurred and, where applicable, paid out, together with funds received such as financial match funding from third parties; revenue generated by the project; and refunds, return of deposits, 'cashback' payments, release of contingency sums, credit notes and similar receipts.

Beneficiaries must clearly distinguish the EU project transactions from routine business transactions, either by using a separate accounting system or by using accounting codes that uniquely link the transactions to the specific EU project.

The accounting records must show the **date** of the transaction, the **value** of each item, and sufficient **identifying information** to enable the transaction to be matched with the supporting documents.

In addition, the beneficiary's usual cost accounting practices and internal control procedures must facilitate a direct **reconciliation** between the amounts declared, the amounts recorded in their accounts and the amounts stated in the supporting documentation.

Manual interventions into the accounting data – such as adjustments and journal transfers - must be traceable, documented and justified.

For items of expenditure relating to more than one EU Fund operation, the allocation of costs between the operation and the other operations must be set out in supporting working papers.

The lead beneficiary aggregates each beneficiary's eligible costs and receipts into a single payments claim for submission to WEFO. The lead beneficiary must retain working papers to demonstrate how the aggregated payments claim reconciles to the underlying costs and receipts declared by each beneficiary in the operation.

In all cases, eligible expenditure must be capable of being **linked with the corresponding activities** that gave rise to those costs. For example, **presence sheets, attendance sheets, and proof of delivery** for supported activities must be traceable to the associated cost invoices and staff costs (including if applicable, staff time records). This is a key consideration when verifications and audits look to test **the reality of the project's activities**: not just whether the costs can be proven.

Supporting documents

Each operation is different but the general rule is that beneficiaries must retain **all documents necessary to demonstrate that the funding rules and conditions have been met.**

Beneficiaries must keep **appropriate** and **sufficient** evidence to prove the proper implementation of their project and eligibility of the expenditure declared. 'Sufficiency' relates to the quantity of evidence; 'appropriateness' relates to its quality. Evidence is considered sufficient and appropriate if it is persuasive enough for the verifications and audit staff, who will be guided by generally accepted audit standards.

All supporting documents must be verifiable, auditable and available.

Therefore, while it is not possible to provide an exhaustive list of supporting documents, the most common types:

- Proof that costs were incurred: receipted invoices, bills or statements together with purchase order; goods received notes (if applicable); payroll records; contracts etc.
- Proof that costs were paid out: bank statements, BACS/ CHAPS reports, cheque book stubs/ copies of paid cheques.
- Proof of the cost (or value) of contributions in-kind and proof that the contribution was actually delivered to/ utilised by the project.
- Documents to prove the reality of reported outputs and results.
- Evaluation reports.
- Procurement and contract management records, including details of unsuccessful bids.
- Inventory or register for equipment and other assets.
- Evidence proving compliance with all other funding conditions explained in this document and the grant funding agreement – State aid rules; information and publicity measures, cross-cutting themes, environmental compliance etc.
- For expenditure declared on the basis of unit costs (simplified costs): adequate records and other supporting documentation to prove the number of units declared. Beneficiaries do not need to identify the actual eligible costs covered or to keep or provide supporting documentation (such as accounting statements) to prove the amount declared per unit.
- For expenditure declared on the basis of flat-rates (simplified costs): adequate records and other supporting documentation to prove the eligibility of the costs to which the flat-rate percentage is being applied. The beneficiaries do not need to identify the costs covered or provide supporting documentation (such as

accounting statements) to prove the eligible expenditure amounts declared on a flat-rate basis.

- For expenditure declared on the basis of lump sums (simplified costs): adequate records and other supporting documentation to prove that the corresponding milestones or events, as set out in the grant funding agreement, were implemented properly. The beneficiaries do not need to identify the actual eligible costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared as a lump sum.
- Photographs of billboards.
- Copies of promotional brochures, training materials, qualification and completion certificates/ awards.

Staff costs: supporting documents

For staff costs (whether 'real costs' or 'unit costs'), beneficiaries must keep time **records for the number of hours** declared in each claim period. The time records must be signed and authorised by the staff member and their supervisor, at least monthly but preferably weekly.

As an exception, for **persons working exclusively on the ETC project** or a **fixed percentage of weekly contracted hours**, there is no need to keep time records **if** either:

- (a) the employment contract, appointment decision, secondment written terms and conditions, job description (or similar document) clearly assigns the individual to work all their contracted hours on the one ETC operation (or for a fixed percentage of contracted hours); **or**
- (b) the beneficiary signs a **declaration** confirming that the persons concerned have worked exclusively on the one ETC operation. (This declaration must be dated and authorised/ countersigned for acceptance by the staff member concerned).

Beneficiaries must be able to justify and, where applicable, provide supporting documents to demonstrate a link to the work undertaken and results achieved for the staff hours declared as eligible costs.

Staff costs must be detailed per individual staff member (and not aggregated to a summary level) carrying out work. The value must be the individual's hourly rate multiplied by the actual hours worked during the claim period. The eligible staff costs must reconcile to the beneficiary's usual accounting records (i.e. general ledger transactions, financial statements) and supporting documentation (i.e. employment contracts, appointment decision, collective labour/ trade union agreements, time records, bank statements showing disbursement of the salary payments to the individuals, etc.).

In the absence of structured time recording systems (computerised or paper-based 'time sheets'), verifications and audits may – at their discretion – consider accepting alternative evidence supporting the number of hours declared, if it considers that it offers an level of assurance equivalent to that provided by structured time sheets. Possible alternative evidence may be considered at the discretion of the verifications/ audit staff, such as (non-exhaustive list): travel documents proving participation in a meeting or activity (boarding pass, travel tickets, hotel invoice, etc.) and minutes of the meeting/ event; attendance lists; working papers; log books; professional/personal diaries; documents related to presentations; publications; correspondence such as letters, notes, memos, emails; etc.

Time recording systems/ time sheets must include:

- the name and reference ('case ID') of the ETC operation.
- the name of the employer/ beneficiary.
- the full name (forename & surname), date and signature of the person working on the EU project.
- the number of hours per day declared for the EU project.
- the supervisor's/ project manager's full name and signature
- a brief description - or codes that link to further detail/ supporting documents - of the activities carried out, to understand and show what work was carried out to easily verify that the work carried out matches the activities approved by WEFO.

A template paper-based time sheet is available – see [TEMPLATE 1](#).

Information included in time sheets must match other records, for example, records of annual and sick leave taken, and work-related travel.

ANNEX D - Simplified Cost Options

ETC Ireland Wales: Simplified Costs			
Costs calculated using simplified costs	Type of simplified cost	Description	Availability
INDIRECT COSTS	Flat-rate: 15% of eligible direct staff costs	Eligible indirect costs are calculated using the flat-rate calculation without any need to justify the rate. No audit trail for the real indirect costs are required. The expenditure calculated using the flat-rate are then treated as if actually incurred and paid out by the beneficiary, including for match funding purposes.	All operations.
INDIRECT COSTS	Flat-rate: 25% of eligible direct costs	As above. The following eligible direct costs are not considered to significantly impact on a beneficiary's real indirect costs and must therefore be excluded from the calculation by deducting them from eligible direct costs before the 25% is applied: <ul style="list-style-type: none"> - Sub-contracting costs (i.e. full contracted delivery of an operation, a project or activities) - Costs of resources made available by third parties but not used on the beneficiary's premises - Direct financial support provided to third parties (e.g. grants, stipends etc.) 	Qualifying research and innovation projects : see section 16.
STAFF COSTS	Flat-rate: 20% of eligible direct costs (other than staff costs)	Eligible direct staff costs are calculated using the flat-rate calculation without any need to justify the rate. No audit trail for the real staff costs are required. The expenditure calculated using the flat-rate is then treated as if actually incurred and paid out by the beneficiary, including for match funding purposes.	All operations.
INDIRECT COSTS, CONTRIBUTIONS IN-KIND, DEPRECIATION, AND DIRECT	Flat-rate: 40% of eligible direct staff costs	The only eligible costs verified to accounting records and supported documents are <u>direct staff costs</u> . All other costs are deemed to be covered by the 40% flat-rate However, as per Section 16.5: please note as from 2 August 2018: salaries and allowances paid to participants can be declared in addition to the eligible direct staff costs and to the 40% flat rate	All operations.

COSTS (other than direct staff costs)		<p><u>applied to the eligible direct staff costs.</u> In terms of the Ireland-Wales Programme, this will include_ projects where individual employees of SMEs are provided with training via attendance at training events/ workshops, and the salaries and allowances paid by the SMEs to the individual employees are utilised as in-kind contributions towards project costs.</p> <p>The direct staff costs can also be claimed on a unit cost (hourly rate) basis – see below - including the use of 1,720 annual hours, without justification.</p> <p>'Staff costs' means employees of the beneficiary; personnel seconded to work on the EU project; costs of individuals working on the project under a direct contract (external staff) but this does not include: service contracts with firms (even if 'one person' companies) or volunteer project workers.</p>	
STAFF COSTS	Unit cost: € hourly rate for beneficiary staff managing and delivering projects.	Hourly rate(s) agreed case-by-case for each beneficiary based on the latest actual eligible staff costs for the individual staff members – or groups of staff at similar grades/ similar experience – over the preceding 12 months. Hourly rates can be updated every 2 years on request. When calculating an hourly rate, the annual productive working hours of the employees are used (requires justification to supporting documents) or presumed hours of 1,720 can be used without justification.	All operations.

TRAVEL & SUBSISTANCE COSTS	Unit cost: €250 per person per trip	<p>A fixed unit cost is available for Travel and Subsistence supported under Technical Assistance.</p> <p>A unit cost rate of €250 per person, per trip is available for costs incurred by an organisation travelling overseas to meet or seek potential partnerships, with the aim of establishing operations across the Ireland Wales Programme.</p> <p>The availability of the unit cost is subject to WIN3 scheme rules and eligibility criteria: https://irelandwales.eu/sites/default/files/2018-04/Ireland%20Wales%20WIN3%20Eligibility%20Terms.pdf</p>	Technical Assistance Operations only
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NOTES

- Where an operation clearly gives rise to indirect costs, these can only be calculated using flat-rate simplified costs. No alternative calculation method is available.
- Direct staff costs can be calculated using unit cost hourly rates even if the resulting figure is then also used as the basis of calculating a flat-rate (i.e. flat-rates based on a percentage of staff costs).
- The costs of paying contractors/ service providers for fully procured activities or projects in an operation must be declared using ‘real costs’ – simplified costs are not applicable for that part of the operation.

ANNEX E – Simplified costs: key features and guidance

Introduction

In short, simplified costs are an alternative way of calculating and reporting your eligible project costs. They use estimated costs, agreed and fixed in advance, rather than the costs that you actually incur and pay.

Simplified costs can significantly reduce project administration time and effort; ease audit and inspection burdens; and reduce document management and retention costs.

These simplified methods are an alternative to the ‘real costs’ approach explained in Sections 7 to 18 and have the potential to reduce the risk of payment claim and compliance errors.

Please take time to ensure that you and the joint beneficiaries fully understand the terms and conditions set out below and in the grant funding agreement letter.

Key features

Rules & Conditions	Simplified costs	Real costs
Each cost item must be individually coded to the EU project or separated in your accounting system	X	<input type="checkbox"/>
You must provide us with a list of individual costs incurred and paid	X	<input type="checkbox"/>
You must be able to provide proof of payment for each payment, such as a bank statement	X	<input type="checkbox"/>
You must retain receipted invoices, or equivalent accounting documents, for each individual payment	X	<input type="checkbox"/>
You must retain expenditure documents (invoice/ proof of payments) until we notify you that they can be destroyed, potentially for up to 10 years	X	<input type="checkbox"/>
We, and possibly the EC, will audit and verify on the costs you have incurred and paid	X	<input type="checkbox"/>
Each cost incurred and paid must comply with the ‘real costs’ rules (EC and programme rules) set out in this document	X	<input type="checkbox"/>
We and the EU institutions retain the right to examine your general accounting records for statistical, methodological or fraud-prevention and detection purposes.	<input type="checkbox"/>	<input type="checkbox"/>

So, most of the 'real costs' rules in section 7-15 would not be considered during audits and verifications of any categories of costs - or entire activities - that are being reimbursed using the simplified costs approach, for example, checks that each individual cost item was:

- incurred by a beneficiary
- paid by a beneficiary
- value for money
- separately identifiable and verifiable in the beneficiary's accounting system via a unique code or a separate accounting system
- directly linked to an eligible activity
- necessary, not excessive, not reckless
- not a specifically disallowed cost under the Programme eligibility rules

Some of these factors will be considered when you apply for a simplified costs – any flat-rate or unit cost agreed by us cannot be based on ineligible costs or activities for example – but once agreed with us **in advance**, the above areas are not examined during the implementation of your project.

Please note that within an operation/ project, some costs may be reimbursed using 'real cost' rules while others may use the 'simplified costs' methods. The rules in the above table apply to the selected option for each expenditure category – not to the entire operation/ project.

There are two 'ready-made' simplified cost currently offered in the Ireland Wales Programme:

- Flat-rate financing ('flat-rates')
- Unit costs

Flat-rate financing means that eligible expenditure for specified expenditure categories will be deemed to be an agreed percentage of the eligible costs declared for certain **other** expenditure categories. We currently use this method for calculation of indirect costs and there is also an option to use a flat-rate to calculate staff costs.

Unit costs means that reimbursement will be based on fixed unit costs for an agreed level of activity or results, regardless of the real costs you incur and pay to carried out those activities or produce those results.

We currently offer the following unit cost options – (a) hourly staff costs. If used, eligible staff costs will be calculated using an agreed hourly rate agreed in advance and confirmed in the grant funding agreement and (b) a fixed rate per participant unit cost to calculate project staff costs to **European Social Fund (ESF)** supported operations only. However, it is possible for ERDF supported operations to utilise standard scales of unit costs based upon outputs and/ or

results. If you are interested in adopting a unit costs approach/ methodology for your ERDF supported operation, please contact your PDO/ OO.

In both cases, the real costs are not considered and the simplified cost arrangement may subsequently turn out to be higher or lower than your real costs. You must therefore carefully consider this financial risk and the feasibility of addressing any potential shortfall. You will not be able to request additional EU funds to address a shortfall arising from the use of simplified costs.

Applicability of simplified costs

Simplified costs (flat-rates) are the only method available for calculating indirect costs. Indirect costs cannot be declared on a 'real cost' basis.

Other simplified costs are optional but **we strongly encourage** all beneficiaries to consider using simplified costs because they are likely to reduce administration and audit burdens, reduce financial errors and free up project staff to focus on delivery and achieving results – rather than compliance and back-office processes.

In some cases, simplified costs are **not available**:

- Activities, or entire projects/ operations, that are being implemented **exclusively through contracting** i.e. delivered or implemented via procured works, goods or services. This applies to both public procurement and to contracts let by private bodies. Where contracting within a project is limited to incidental, secondary or support costs but you still directly deliver or implement the project or activity rather than use contracting/ outsourcing – simplified cost options can be used.

Simplified costs **may** not be a good option in the following cases:

- You, and your partners if applicable, are unwilling or unable to accept the financial risk that your real costs may not be fully reimbursed.
- You, and your partners if applicable, are unwilling or unable to account for surplus receipts i.e. where simplified costs turn out to be higher than your real costs incurred and paid. We will not undertake any checks on the existence or handling of any surplus.
- Your match funding providers are unwilling to contribute to the operation/ project if costs are not based on actual project costs.
- Your project is subject to State aid rules and the related conditions do not support 'simplified costs' or State aid document retention requirements means that the benefits of simplified costs are reduced.

Exclusion of 'fully procured' activities, projects or operations

If a project is implemented exclusively through procurement, then you cannot chose simplified costs as a basis for reimbursement from us **for those costs** – we can only reimburse you based on real costs (i.e. the contract invoice costs).

If only part of a project is implemented via procurement, then simplified costs are available. To qualify, the project, and all its delivery activities, must be implemented by you – you keep full control on the management and implementation of the project/ activity even if some of the budget lines or expenditure items within the project are acquired via contracting procedure (e.g. part of the project implementation such as cleaning services, external expertise such as a qualified trainer, purchase of furniture).

Where a project comprises discrete delivery activities (strands):

- Strands of activity fully implemented via procurement (i.e. managed/ delivered by a contractor) cannot access simplified costs.
- The 'other' strands (managed/ delivered by the beneficiary) can access simplified costs.

In relation to this rule, 'procurement' applies to all procurement including contracts below the thresholds established by EU public procurement directives.

Project phases and simplified costs: projects with a 'mobilisation' phase

You have the option of using the 'real costs' approach during the mobilisation phase of your operation, if applicable, and then change to simplified costs for the delivery phase.

You will however need to choose your preferred basis of reimbursement in advance of each phase so that the terms and conditions can be included in your funding award letter. We will need to provide a revised funding agreement before the start of the delivery phase.

You will not be able to change from simplified costs to real costs once the operation has started, even if your operation has a mobilisation phase.

ANNEX F - COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes

Coronavirus (COVID-19) & European Structural Funds supported projects

The COVID-19 crisis creates significant challenges for us all. WEFO recognises that this is affecting the way in which European Structural Funds projects are being delivered. We ask that you continue to try and deliver project activity, as best you can, whilst ensuring that a robust audit trail is kept at all times. However we are committed to working flexibly and pragmatically with all of our beneficiaries to ensure stability in the short term and to support the recovery that will be needed post crisis.

Government guidance has been produced to assist individuals and businesses in preparations to minimise the risks and impact of COVID-19 and we recommend beneficiaries should familiarise themselves with this, if not already done so.

If you should experience any impact on the delivery of your structural fund project as a result of coronavirus (COVID-19), please refer to the relevant WEFO contact for further advice. WEFO recognises that this situation is evolving very quickly with advice likely to change at short notice. Taking this into account, we will look to make decisions as early as possible and on a case by case basis, making allowances where possible and appropriate. In the meantime this FAQ document has been produced for beneficiaries to reference before contacting WEFO.

1. Eligibility of project costs – will project costs continue to be eligible where official restrictions are in place which affect ‘business as usual’ activity?

Any necessary costs that have already been approved by WEFO, are featured within the operation’s Business Plan and included within the agreed Delivery Profile will continue to be eligible, even in situations where offices have been forced to close and staff are working at home or project activity is reduced. For example rental costs, other accommodation costs (including Flat Rates) and staff costs. As with all costs agreed by WEFO, there is an expectation that value for money is secured and where savings or reductions can be made then these options should be explored where possible.

NB: Organisations must not duplicate or ‘double fund’ where any of these costs are covered by other government grants received to deal with the impact of COVID-19.

2. Can Staff Costs continue to be claimed?

Yes Staff costs for beneficiary staff contracted to work on the operation continue to be eligible and should continue to be claimed in line with the organisation’s own policies and in accordance with WEFO’s eligibility rules, as has always been the case. Where the beneficiary’s policies cover extraordinary circumstances (for example special leave for school closures) these costs continue to be eligible. Additionally where beneficiaries policies allow for staff to continue to work at home whilst self-isolating then these costs will continue to be considered eligible. WEFO will accept official emails as evidence to confirm what the organisation policy is for circumstances related to Coronavirus. Sick pay continues to be eligible if claimed in accordance with the WEFO eligibility rules.

Where these staff work across a number of operations the method for claiming their staff costs will continue to be determined by each individual contract i.e. whether a job description/ contract of employment/ letter of secondment specifies a fixed number of hours or percentage of time to be allocated to certain projects/ operations being supported by the structural funds then they should continue to be claimed in this way.

Where staff are employed on a flexible basis/ variable hours, the lead and/ or joint beneficiary must retain justification for the methodology used to claim these costs. For example, beneficiaries can use an historical average (minimum of 3 months where possible) in order to determine how much to claim. Any other method must be agreed with the Project Development Officer (PDO)/ Operations Officer (OO). Please ensure that all documentation relating to the analysis is maintained for audit purposes.

NB: Where a beneficiary decides to access the UK Government Coronavirus Job Retention Scheme, or the Irish Government’s Temporary Wage Subsidy Scheme, any staff costs associated with the delivery of the approved operation will not be eligible for structural fund support as receipt of these payments will be considered ‘double funding’.

2a. What about organisations that need to use the Government Furlough scheme?

Whilst we have confirmed that WEFO funded staff costs can continue to be claimed where project activity is reduced, we recognise that some

organisations will need to make a decision on the use of the UK Government's Furlough scheme for their staff, particularly where staff costs are being matched by their own or other funds.

Organisations must not duplicate or 'double fund' staff costs, i.e. claim funding from HMRC through the Coronavirus Job Retention Scheme (CJRS) or the Irish Government's Temporary Wage subsidy Scheme, as well as the usual grant funding received from WEFO to cover staff costs. This would be an inappropriate use of public money and WEFO will seek to recover 'double funding' that has been claimed and paid.

Therefore, upon receipt of these furlough payments beneficiaries will need to ensure deductions are made from claims to WEFO for staff costs during/ for this period.

The WEFO claim form declaration has been amended to include the following statement:

I confirm, to the best of my knowledge that:

- all the details on this form are correct;
- all of the expenditure declared has been defrayed (paid out) on eligible activities in relation to the Operation;
- none of the expenditure declared has also been claimed or covered by other funding sources (double funded) e.g. from other grant funders, COVID-19 Emergency Funding/Furlough Schemes etc.
- I have adhered to the User Terms and Conditions and all applicable WEFO conditions of funding, rules and guidance that may apply to this claim form.

Private and Third Sector Bodies - receiving support via the structural funds whom may also be dependent on income from other sources, including commercial activities, fees and/ or charges:

The decision to furlough staff and apply to the UK Government Coronavirus Job Retention Scheme (CJRS) is a decision for each & every organisation to make in discussion/ agreement with their employees. Upon applying to the JRS, you must claim in a proportionate manner e.g. where a loss of 50% of income only 50% of the associated staff costs to be claimed via JRS. Where you have an established organisation wide policy which enables the top up of the furlough payment i.e. the 20% gap, structural funds will be able to assist you in supporting this cost for those employees employed & undertaking activity on a supported operation/ project. However, please note this assistance will only be at the rate of the agreed intervention rate for the operation/ project, not the full 20% amount.

NB: The UK Government continues to issue updates to this guidance, beneficiaries using the CJRS must ensure that they are familiar with these changes before submitting claims to WEFO.

2b. If an organisation decides to pay the 20% top up of the furlough payment, are these costs eligible?

If a beneficiary has made an organisation-wide decision to top up the furlough payment received via the UK Government Coronavirus Job Retention Scheme (CJRS), this can be considered an eligible cost for staff contracted to work on structural funded operations, but only on the basis that this policy is also applicable to **all other staff** within that organisation. This will also apply to/ include national insurance and pension contributions, where the full amount of such payments are not met via the UK CJRS. This is subject to there not being any increased cost implications to the operation and a reminder that WEFO will only pay at the approved intervention rate of the 20% salary amount.

2c. What evidence will need to be provided to show that project/ operation staff have been placed on furlough?

Where project/ operation staff have been placed on furlough & are in receipt of furlough payments, the following evidence requirements will apply:

- Where furlough payment equates to 80% of staff salary and the beneficiary organisation is **not** paying the remaining 20% of staff salary – sight of organisation policy in respect of the furlough process, together with a list of the project/ operation staff placed on furlough and (a) payroll audit trail showing furlough payments to project/ operation staff, (b) letter from the beneficiary to project/ operation staff confirming placed on furlough
- Where furlough payment equates to 80% of staff salary and the beneficiary organisation **will** pay the remaining 20% of staff salary - sight of organisation policy in respect of the furlough process, inclusive of confirmation of the 20% top up of salary being paid to all employees of the organisation, together with a list of the project/ operation staff placed on furlough and (a) payroll audit trail showing furlough payments and defrayment of NI/ pension costs for project/ operation staff, (b) letter from the beneficiary to project/ operation staff confirming placed on furlough & top up of 20% of salary being applied by the beneficiary organisation.

3. Restrictions on travel abroad.

This concerns operations/ projects that contain costs for travel abroad within approved business plans and/ or those operations/ projects where individual journeys abroad have been authorised by WEFO. Where travel has been booked & it is to a country/ territory that the UK Foreign & Commonwealth Office (FCO) has advised 'against all travel' or 'against all but essential travel' – a beneficiary will firstly need to approach its own travel insurance provider (where applicable) & claim against the insurance. If for any reason, the travel insurance policy will not reimburse the cost of travel, the reasons for this will need to be provided to WEFO. Pending the reasons for the insurance policy not paying out & where WEFO accepts as being reasonable/ justified to claim from structural funds, then the foregone travel costs will be considered eligible. Insurance excess fees are considered to be an eligible cost.

4. What is the impact of having to extend projects and increase costs with little or no increase in targets and outputs?

If beneficiaries are unable to deliver their projects as planned because of the virus, we will consider the situation on a case by case basis, as we would for any other situation which prevents a beneficiary from delivering their contractual obligations as planned. We will of course be sympathetic to this, and will consider extensions etc; as appropriate but being mindful that these dates cannot go beyond the Programme eligibility date of 31st December 2023, with a preference for dates not to be later than June 2023 in order to enable all closure activity to occur. Your WEFO Project Development Officer (PDO)/ Operations Officer (OO) will be the point of contact to discuss this in detail.

5. Would cancellation fees be eligible?

Where a beneficiary has incurred costs which turn out to be fruitless because of events or decisions beyond their control e.g. meetings are cancelled by third parties or following Government advice, that expenditure will not be made ineligible for EU funding, as long as reasonable steps have been taken to minimise that cost e.g. they have made any possible insurance claims. Looking ahead beneficiaries should exercise caution when booking attendance at events and avoid doing so whilst movement/ travel restrictions are in place, unless there is a fully refundable option in such scenario.

6. Can alternative methods of providing participant evidence be used – for example scanned/ electronic signatures, email confirmation and scanned copies where not possible to have sight of original copies?

Yes scanned copies of identification or emailed enrolment forms can be accepted as evidence for management verifications, the same applies to participant results that can be self-declared under existing rules. For example we will accept email confirmation from a participant (e.g. please see attached my application form), this along with the email could replace the signatures for the time being. It has also been agreed that we will allow passports etc; to be provided without being certified. These flexibilities have been introduced on the condition that, at a future date, projects will need to go back over this evidence as per normal requirements and at the earliest opportunity. Beneficiaries **must continue** to ensure that GDPR rules are taken into account whilst implementing these revised measures.

6a. September 2020 Update: Use of email confirmation to confirm/ declare eligibility to participate in ESF/ ERDF supported operations. Following further research on the use of email to provide electronic confirmation/ declaration of eligibility, WEFO has incorporated the following into its Eligibility rules:

Email confirmation/ declaration from a participant/ individual employee within a SME/ business organisation can be accepted in place of a 'wet' or fully electronic (eIDAS) signature in the following circumstances:

- Where it is as clear as possible that the email used is that of the participant – for example is accompanied by other correspondence to that address e.g. enrolment form, other correspondence.
- Where it is supported by a package of evidence confirming that individual's eligibility – for example; ESF - evidence of right to live and work in the UK along with priority/ project level eligibility, ERDF – evidence of eligibility of SME/ business organisation via a completed SME declaration and evidence of individual employees attendance at workshops.
- For ESF, evidence that the four step process has been followed for assessing and evidencing a participant's eligibility.

NB: This approach can also apply to a text message declaration from ESF participants, however only where used as a last resort and evidence in place to demonstrate that (a) the telephone number of the participant reconciles with other evidence noting the number for the particular

participant and (b) the declaration cannot be obtained by any other means.

The above can then be considered to meet the fundamental requirement set out for the electronic execution of documents - 'intention to authenticate clearly expressed & with corresponding audit trail to support intention'. Therefore, if it can be evidenced that these arrangements are in place, this will negate the requirement to retrospectively revisit evidence at a future point in time and once COVID 19 restrictions have been lifted.

The following conditions also apply:

- Where the conditions set out above cannot be evidenced then beneficiaries will still be required to revisit evidence, as per normal requirements, at a future point in time and once it is possible to do so.
- As always the case for EU projects, beneficiaries to note that, when subject to future audit, the auditors may, on occasion, seek additional evidence to support the eligibility of specific participants, should they conclude that the documentation originally provided is not sufficient to meet eligibility requirements. However, it is important to note that the auditor will also take into consideration the guidance and restrictions in place at the time.

This approach is advised only for ESF participant eligibility evidence and certain ERDF operations where SME eligibility and individual employee attendance at training events/ workshops required. For other documents, such as signature of Funding Agreements, and other such legal documentation, we will still expect the usual procedures to be adopted wherever possible – only where this cannot be demonstrated will there be a need to follow up in the future

7. Can electronic signatures be used on the assumption that the organisation's own policies and procedures allow for this?

There is no WEFO or EC requirement that hard copy documents or 'wet signatures' are used or are preferable to digital records and the use of electronic systems, where at all possible, is encouraged. If alternatives to 'wet signatures' are used then the beneficiary must conform to the requirements set out in section 5.1.4.2 of the WEFO 'Rules' so as to ensure that the authenticity and integrity of the records can be relied upon for legal/ audit purposes, there are the required certification processes

and controls in place and the ICT systems used conform to the required BSI standards.

Further information can also be found in the link below, to the UK Gov site document, which contains a link to a UK regulation and the eIDAS regulation.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545098/beis-16-15-electronic-signatures-guidance.pdf

8. Redeployment of staff – where operation/ project staff are being redeployed to other core critical services to address the impacts of COVID-19 will operation/ project staff costs still be eligible for support via the structural funds?

Where there is a need for operation/ project staff to be redeployed to undertake urgent work on minimising the impact of COVID-19, please contact your WEFO Project Development Officer (PDO)/ Operations Officer (OO) and provide the following information:

- (a) copy of the organisation policy or similar evidence which enables redeployment of staff – e.g. organisation email/ bulletin or terms of employment contract;
- (b) details of the operation/ project staff members to be re-deployed;
- (c) time period of redeployment i.e. start and end dates (latter where known);
- (d) redeployment activity & wider benefits of undertaking the activity, particularly if/ where the activity has some alignment with the original WEFO approved operation aims/ objectives/ activity.

The above will enable the PDO/ OO to provide informed advice & will ensure a sufficient audit trail for the future.

Please be mindful of the final paragraph at question 2 should a beneficiary exercise their right via the UK Government's Coronavirus Job Retention Scheme or the Irish Government's Temporary Wage Subsidy Scheme.

NB: Where operation/ project staff are redeployed and excess hours are worked i.e. they work over their normal agreed contracted hours. Any overtime payments which they will qualify for as a result of working over their normal agreed contracted hours, will have to be met via the beneficiary's own resources/ budget. This also includes any travel and

subsistence costs associated to the redeployment. Overtime payments are only classed as eligible for Structural Funds support when they relate directly to the delivery of an EU operation. There should be no increase to the usual/ agreed budgets for staff costs claimed on the EU operation.

9. Will deadlines for claim submissions, verification checks and review findings be extended under the current circumstances?

Claims will still be invited in line with the individual Operation's delivery profile with an expected date towards the end of the third week following the end of the claim period. This has always been a target date and Operations can submit before or after this date if necessary.

WEFO would like operations to submit claims in line with their delivery profiles. If beneficiaries are struggling to submit claims, please contact the Lead Payment Officer or Project Development Officer (PDO)/ Operations Officer (OO) so we can assist in any way we can. Missing a claim "deadline" does not mean the opportunity to claim is lost.

You will be aware that since March 2020 MVT has offered an option for beneficiaries to defer their verifications. This was in direct response to the COVID-19 pandemic which found many beneficiaries at a disadvantage as they had to leave their premises at short notice and many did not have the IT capabilities that allowed them to provide the necessary evidence remotely. However, since that time beneficiaries have been able to adapt and have found ways to be able to deliver the evidence required. As a result the vast majority of beneficiaries who are now offered the option to defer are turning down that offer and are choosing to continue with their verifications. Therefore, WEFO's Programme Performance Board have decided to end the option to defer, for any samples issued from 14th September 2020.

However, we appreciate that beneficiaries may still be experiencing difficulties providing full and complete audit trails for some evidence items. If this is the case, then please contact MVT to discuss your situation with them and they will consider what flexibilities MVT can implement on a case-by-case basis.

If you are experiencing difficulty in submitting your claims, please contact your Lead Payment Officer or Project Development Officer (PDO)/ Operations Officer (OO).

10. Face-to-face support to participants and businesses has now ceased and is being delivered remotely i.e. telephone/ email/ skype. Can alternative methods of providing evidence of this support be used, such as:

- **notes of the discussion**
- **email verifications for registration/ attendance records/ achievements of results that are not signed by the participant/ business**
- **Microsoft forms that gather registration information and audit trail consent from participants/ businesses**

Under the current circumstances WEFO will accept this approach. All notes of discussions should be retained alongside the date/ time. When the COVID-19 crisis ends, beneficiaries should ensure that the participant/ business signs and dates the relevant paperwork required to confirm that the support has taken place.

11. Is the European Commission considering changes to regulations to respond to COVID-19 e.g. state aid?

Yes. The European Commission has introduced a series of flexibilities under the Coronavirus Response Investment Initiative (CRII), Coronavirus Response Investment Initiative Plus (CRII+) and the Temporary Framework for State Aid in response to the current situation. One such flexibility has been the update to the European Regional Development Fund (ERDF) Regulation EU 1301/ 2013, effective from 24 April 2020, to enable support to businesses that (a) have been in existence for more than 3 years and (b) have been experiencing financial difficulty as from 31 December 2019 **due to reasons of the COVID-19 pandemic**'. Prior to this date the ERDF Regulation did not allow support to be provided to 'undertakings in difficulty' as defined under EU State Aid Rules and as outlined/ contained within the WEFO eligibility rules for both the ERDF/ ESF Programmes and Ireland Wales Programme. WEFO has decided to highlight this particular flexibility in order to provide clarification to beneficiaries.

WEFO will continue to maximise the flexibilities that have been put in place and will work directly with beneficiaries, where required/ necessary. If you have any further questions on this please contact your PDO/ OO.

Please note that the new REACT EU Regulatory Package of proposals published by the European Commission on 28 May 2020 does not apply to the UK.

The European Commission has announced that the State Aid COVID Temporary Framework will not be extended beyond 30 June 2022. Please see attached European Commission news item:

https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2980

12. Are there any changes to procurement rules as a result of COVID-19? Can I release advance payments to my suppliers to ensure continuity once the crisis is over?

The procurement regulations already contain provisions to enable a response in cases of extreme urgency. Where beneficiaries intend to use these they should obtain the appropriate procurement advice.

Additionally the following note also applies in Wales - UK Government Cabinet Office Policy [Note - Supplier relief PPN02 /20](#).

<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

Due to the current COVID-19 crisis it may be that advance payments to suppliers are unavoidable, in order to support those suppliers at risk to ensure that they are better able to cope and resume normal service delivery and fulfil their contractual obligations when the crisis is over. Therefore payments in advance for services as part of an approved contract & which are applied in line with the Cabinet Office Policy Note will be eligible for support.

In addition the WEFO eligibility rules already accommodate paying for goods and services in advance where:

- these are the standard business terms of the supplier or contractor and is at their request or unavoidable; and
- to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or
- to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).

Further guidance entitled WEFO COVID-19 Guidance for Contracting Authority Beneficiaries is available at Annex G. Beneficiaries should only

consider following the guidance for buying goods or services that are needed as a direct result of the COVID-19 pandemic.

Non-contracting Authorities will need to follow their existing established procurement policies for any procurement activity undertaken during this period. The existing policies may detail processes to be adopted where exceptional measures are encountered e.g. COVID-19. A robust audit trail will need to be maintained of any procurement activity undertaken during the period and/ or as a direct result of COVID-19. A link to the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis can also be found below

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN)

12a. Due to remote working, how do organisations ensure that 2 people are present in the opening of tender documents?

It is important to ensure transparency with regards to procurement even during this period. If possible & the technology is available, the tender could be opened via skype or any type of video call with a second person and the process documented for audit purposes.

13. Will the European Commission waive the obligation to comply with applicable management and control requirements?

Despite the exceptional flexibilities laid out in the EC Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+), the Commission has made very clear in its communications that the legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances.

Therefore, beneficiaries must continue to maintain their already agreed/ established accounting/ management & control/ monitoring systems for operations/ projects, in order to claim support from the structural funds & satisfy audit requirements.

It has been recognised however that some verifications and audits are currently not possible and the regulations already allow for these to be performed at a later date. Desk-based verifications/ audits will be undertaken, where possible, until such time as it is safe for staff to

perform visits again. Please see question 9 for more detail relating to verifications.

13a. Has there been any change to the rules on defrayment as a result of COVID-19?

No. As outlined in the above question, there has been no change to the rules on management and control systems. All expenditure must be fully incurred and defrayed before it can be included in a claim form to WEFO. For example, where beneficiaries have chosen to take up the HMRC option to defer National Insurance payments, then we would not expect those payments to be included in a claim until they have been paid to HMRC.

14. Can we change our project activity under current rules to help respond to the situation?

We recognise that there are opportunities for existing projects to amend their approach or refocus their support to respond to the current situation. These will be considered by WEFO on a case by case basis. In the first instance you should contact your Project Development Officer (PDO)/ Operations Officer (OO) setting out all of the changes that you anticipate and they will inform you of WEFO's decision.

15. Outcome reporting by beneficiaries of ESF employability projects/ operations where the achievement of the immediate result indicator, 'participants in employment upon leaving', will potentially be affected by the impact of COVID-19.

Where a participant is ready to leave an ESF intervention due to a job offer, however, cannot then commence the employment until COVID-19 restriction measures are relaxed/ removed. The beneficiary organisation can consider the following options:

- retain the individual as an 'active' participant i.e. do not exit them from the ESF supported intervention until they are less than 4 weeks away from a genuine employment start date, beyond the employer's COVID-19 shutdown. Where this option is taken the beneficiary organisation will need to ensure the 'active' participant is supported/ advised during the extended period, in order to justify treatment as an 'active' participant. Support/ advice could involve: continued engagement by the project mentor/ advisor to maintain the 'active' participant's

motivation and work preparedness/ work-ready status, sharpening up employability skills ready for the first few months in work.

- where necessary to exit a participant from the ESF intervention and employment does not commence within the required 4 week period, the immediate result indicator, 'participants in employment upon leaving', cannot be captured. However, it will be recognised as a valuable metric and can be captured via evaluations, surveys etc.

16. Upon preparing for project activity post easing of the COVID-19 lockdown measures, will beneficiaries be able to request structural fund support for costs associated with adaptation to project/ operation premises and the provision of Personal Protective Equipment (PPE)?

Any costs necessary for the delivery of an EU funded project/ operation are eligible where in line with the beneficiary organisations policy and with any relevant UK/ Welsh/ International guidance and/ or legal requirements on adaptations to project premises for the return of project staff and project activity post COVID-19.

Where a beneficiary's standard/ established policy exceeds UK/ Welsh/ International guidance and /or legal requirements, requests will need to be submitted to the assigned WEFO Project Development Officer/ Operations Officer for the project/ operation along with a robust justification as to why such adaptations are considered necessary for the delivery of the project/ operation. WEFO will address such requests on a case by case basis.

However, beneficiaries will need to be mindful that any necessary adaptations to premises/ additional consumables etc.; that are deemed eligible by WEFO will need to be funded via existing project budgets.

16a. Is the provision of office furniture (i.e. desks, chairs) for home working an eligible cost?

Beneficiary organisations will have statutory obligations in ensuring the Health & Safety of its employees therefore the expectation is that the costs of purchasing items that allow staff to work from home safely are covered by the organisation's core expenditure. Where requested from EU funds, WEFO would expect there to be an organisational policy in place supporting the provision of desks to **all** staff, not just those funded

by EU Structural Funds. The provision of office furniture can therefore only be considered eligible on an exceptional basis and where a business case to support this is provided

If the purchase of desk(s) is deemed as eligible to the operation then consideration must be given the following:

(a) that the desk is used for the delivery of the EU operation, if the staff member undertakes work on anything else other than the EU operation then the pro-rata cost of the desk must be allocated to the operation accordingly;

(b) there will be no increase in cost(s) to the operation, these cost(s) will be funded via existing budgets;

(c) the cost(s) will be paid at the agreed intervention rate for the operation and

(d) that all purchases are recorded appropriately on the operation's asset register.

Annex G - Guidance for Contracting Authority beneficiaries to consider for the purchase of supplies, services, and works needed to address the Covid-19 crisis

(Note: only applicable to Welsh beneficiaries)

Adapted from Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01) For the full guidance please use this link: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN)

Please also refer to the WEF0 COVID-19 Conditions for Support and Frequently Asked Questions at Annex F.

Note to beneficiaries: WEF0 originally published the guidance held within this Annex G, 16 April 2020. **For clarification, beneficiaries should only consider following this guidance for buying goods or services that are needed as a direct result of the Covid-19 pandemic.**

1. COVID-19 is a health crisis that requires swift and smart solutions and agility in dealing with an immense increase of demand for similar goods and services while certain supply chains are disrupted.
2. In the first instance, beneficiaries should approach their WEF0 Project Development Officer to discuss any proposed changes to their procurement activity as a result of the Covid-19 pandemic. Each case will be reviewed on an individual basis, however this document pulls together some of the information and guidance available for beneficiaries to use around procuring during the Covid-19 pandemic.
3. Options and flexibilities under the public procurement framework
4. Public buyers have several options they can consider:
 - a. Firstly, in cases of urgency they can avail themselves of possibilities to **substantially reduce the deadlines** to accelerate open or restricted procedures.
 - b. Should those flexibilities not be sufficient, **a negotiated procedure without publication** can be envisaged. Eventually, even a direct award to a preselected economic operator could be allowed, provided the latter is the only one able to deliver the required supplies within the technical and time constraints imposed by the extreme urgency.
 - c. In addition, public buyers should also consider looking at **alternative solutions and engaging with the market.**

5. This guidance focusses especially on procurements in cases of extreme urgency, which enable public buyers to buy within a matter of days, even hours, if necessary.
6. The **negotiated procedure without publication** allows public buyers to acquire supplies and services within the shortest possible timeframe. Under this procedure, as set out in Art. 32 of Directive 2014/24/EU (the 'Directive') (2), public buyers may negotiate directly with potential contractor(s) and there are no publication requirements, no time limits, no minimum number of candidates to be consulted, or other procedural requirements. No procedural steps are regulated at EU level. In practice, this means that authorities can act as quickly as is technically/physically feasible – and the procedure may constitute a de facto direct award only subject to physical/technical constraints related to the actual availability and speed of delivery.
7. In addition, Article 72(1)(c) of the Directive also allows for **contract modifications without a new procurement procedure** in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50% of the value of the original contract or framework agreement. In fact, this provision allows for the modification of contracts when such modification results from circumstances which the contracting authority could not foresee.
8. Art 72(1)(e) of Directive 2014/24/EU allows for non-substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms.
9. In order to speed up their procurements public buyers may also consider to:
 - contact potential contractors in and outside the EU by phone, e-mail or in person,
 - hire agents that have better contacts in the markets,
 - send representatives directly to the countries that have the necessary stocks and can ensure immediate delivery,
 - contact potential suppliers to agree to an increase in production or the start or renewal of production.
10. However, confronted with situations of an exceptional increase in the demand of similar goods, products and services coupled with a significant

disruption of the supply chain, it may be physically/technically impossible to procure using even the fastest available procedures. If so, public buyers may consider engaging with the market and looking for alternative innovative solutions.

11. Public buyers are fully empowered under the EU framework to engage with the market and in matchmaking activities. There are various ways to interact with the market to stimulate the supply and for the medium term needs, the application of urgent procedures could prove a more reliable means of getting better value for money and wider access to available supplies.

12. Choice of procedures and deadlines under the EU public procurement framework – especially in cases of urgency and extreme urgency

13. For contracts falling within the scope of the Directive, the contracting authority can choose to award the contract following an open or a restricted procedure (Article 26(2) of the Directive)

a. For **open procedures** subject to the Directive, a deadline of 35 days for the submission of tenders applies (8).

b. In the case of **restricted procedures**, the Directive foresees a deadline of 30 days for the submission of requests to participate followed by an additional deadline of 30 days for the presentation of tenders (9). This last deadline may, where the national legislation has implemented this option, be agreed between sub-central contracting authorities, such as regional or local authorities, and the participants; if an agreement cannot be reached, then a minimum deadline of 10 days may be applied (10).

14. **In addition, in both open and restricted procedures, these deadlines may be shortened:**

(1) either in case of a prior information notice not used as a means of calling for competition, but which included all the information required for the contract notice in Section I of Part B of Annex V and was sent for publication between 35 days and 12 months before the date on which the contract notice was sent;

(2) or in case of urgency duly substantiated by the contracting authority and that renders impracticable the applicable time limit (see point 2. hereafter).

In cases of urgency – shortened deadlines:

15. If urgency requires it, the Directive foresees a substantial reduction of the general deadlines: under the open procedure, the deadline for the submission of tenders may be reduced to 15 days in cases of duly justified urgency (11); under the restricted procedure, the deadline to submit a request for participation may be reduced to 15 days (12) and to submit an offer to 10 days (13). This allows for a speedy award of the contract.
16. Using an ‘accelerated’ open or restricted procedure complies with the principles of equal treatment and transparency and ensures competition even in cases of urgency. In cases of urgency that render the applicable time limits under normal circumstances impracticable, contracting authorities may shorten the deadlines, which are applicable to an open or a restricted public procurement procedure in line with the Directive.

Procedure	Minimal Regular deadlines	Minimal Shortened deadlines
Open Procedure	35 days	15 days
Restricted procedure (step 1: Request for participation)	30 days	15 days
Restricted procedure (step 2: Submission of the tender)	30 days	10 days

In cases of extreme urgency – negotiated procedure without publication

17. With the ‘negotiated procedure without publication’, Union law provides an additional tool, which will allow for a faster awarding of contracts to provide for COVID-19 pandemic related needs.
18. Contracting authorities may award public contracts by a negotiated procedure without publication ‘insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.’ (Article 32(2)(c) of the Directive).
19. As contracting authorities derogate in this case from the basic principle of the Treaty concerning transparency, the European Court of Justice requires that the use of this procedure remains exceptional. All the

conditions have to be met cumulatively and are to be interpreted restrictively.

20. Each contracting authority will have to evaluate whether the conditions for using such a 'negotiated procedure without prior publication' are met. It will have to justify its choice of such a procedure in an individual report (19). In the individual assessment of each case the following cumulative criteria will have to be fulfilled:

- a. *Events unforeseeable by the contracting authority in question* - The specific needs for hospitals, and other health institutions to provide treatment, personal protection equipment, ventilators, additional beds, and additional intensive care and hospital infrastructure, including all the technical equipment could, certainly, not be foreseen and planned in advance, and thus constitute an unforeseeable event for the contracting authorities.
- b. *Extreme urgency making compliance with general deadlines impossible* - It cannot be doubted that the immediate needs the hospitals and health institutions (supplies, services and public works) have to be met with all possible speed. (Whether this makes it impossible to respect even the very short deadlines of the accelerated open or restricted procedure (15 and 10 days respectively to submit the offers) will have to be assessed on a case-by-case basis. [For more detail on this, see the full guidance])
- c. *Causal link between the unforeseen event and the extreme urgency* - For the satisfaction of the immediate needs of hospitals and health institutions within a very short timeframe the causal link with the COVID-19 pandemic cannot reasonably be doubted.
- d. *Only used in order to cover the gap until more stable solutions can be found* - Negotiated procedures without prior publication may offer the possibility to meet immediate needs. They cover the gap until more stable solutions can be found, such as framework contracts for supplies and services, awarded through regular procedures (including accelerated procedures).

PPN 01/20 and PPN 02/20 – Procurement Policy Notes from UK Government

21. PPN 01/20 and PPN 02/20 are UK Government Cabinet Office Policy Notes which the Finance Minister for Wales has confirmed will both apply to Wales, and as such will be taken into consideration by WEFO when and if they are applicable.
22. Link to PPN 01/20: [Procurement Policy Note 01/20: Responding to COVID-19 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/procurement-policy-note-01-20-responding-to-covid-19)
23. UK Government Cabinet Office Policy Note - Supplier relief PPN02 /20. Are there any changes to procurement rules as a result of COVID 19? Can I release advance payments to my suppliers to ensure continuity once the crisis is over? Link to PPN 02/20: [Procurement Policy Note 02/20: supplier relief due to coronavirus \(COVID-19\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/procurement-policy-note-02-20-supplier-relief-due-to-coronavirus-covid-19)
24. Due to the current COVID-19 crisis it may be that advance payments to suppliers are unavoidable, in order to support those suppliers at risk to ensure that they are better able to cope and resume normal service delivery and fulfil their contractual obligations when the crisis is over. Therefore payments in advance for services as part of an approved contract & which are applied in line with the Cabinet Office Policy Note will be eligible for support.
25. From an eligibility perspective, as noted in the FAQ, WEFO eligibility rules already provide options for advanced payments for goods. Section 7.3.4 notes that: If you are required to pay for goods or services in advance, including deposits, you may include these costs in you claim to us as a 'paid' cost but only where:
- *these are the standard business terms of the supplier or contractor and is at their request or unavoidable; and*
 - *to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or*
 - *to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).*
26. All beneficiaries in taking this approach will also need to ensure that they have a full justification for any advance payments and that they record/document & maintain all decisions taken and reasons for doing so, **thereby ensuring a robust audit trail for all the decisions taken for**

making such advance payments and which will potentially form the basis of future audits by WEFO/ WG/ WAO and/ or the EC.

Note to beneficiaries: Beneficiaries must still comply with all applicable EC, UK and Welsh laws/ government policies when letting contracts partly funded by the EU funds. When following any of the above procedures, please remain aware of the importance and need to record and document all decisions taken and reasons for doing so, and keep the records for future audit purposes.

If you should experience any impact on your procured contract/ procurement process as a result of Coronavirus (COVID-19), please refer to your relevant WEFO contact for further advice.

ANNEX H - EU Exit Transition & Post Transition Period and EU Structural Funds 2014-20 Programmes: FAQs

This FAQ aims to provide beneficiaries of Structural Fund operations with further detail on how the EU Exit transition & post transition period may directly impact on the running of existing operations. However, it is important to note that, for the majority of EU funded operations, there will be very little change after the end of the transition period on 31 December 2020.

Under the terms of the Withdrawal Agreement, which was agreed between the UK and EU in late 2019, the UK will continue to participate in EU programmes funded through the current 2014-2020 Multiannual Financial Framework. This includes all European Structural and Investment Funds (ESIFs):

- European Regional Development Fund (ERDF)
- European Social Fund (ESF)
- European Territorial Cooperation (ETC) programmes
- Ireland Wales programme
- European Agricultural Fund for Rural Development (EAFRD)
- European Maritime and Fisheries Fund (EMFF).

This means that there is no change in the existing arrangements for beneficiaries of current EU-funded projects. This applies to all aspects of managing projects including the submission and payment of claims, verification checks and, importantly, retention of relevant records.

Further information can be found at [Brexit and EU funded projects](#).

1. What is the transition period and when will it end?

As part of the Withdrawal Agreement agreed between the UK and EU in late 2019, the UK formally left the European Union on 31 January 2020 and entered into what is called a 'Transition Period' (sometimes called implementation period) while the UK and the EU negotiate the future relationship. Under the terms of the transition, most EU law continued to apply to the UK which meant that not much changed in terms of the UK's relationship with the EU. At the end of the transition period on the 31 December 2020, there are likely to be some changes that may impact on some existing EU funded operations.

2. Will anything change in terms of delivering the Structural Fund Programmes post transition period?

No, there will be no change to the existing arrangements for the current EU funded operations. As referenced in Article 138 of the [Withdrawal Agreement \(on GOV.UK\)](#), all operations will continue to receive EU funding

under the normal rules and you should continue to deliver your operation as you currently do. Under the terms of the Withdrawal Agreement, which was signed in January 2020, the UK will remain in the 2014-2020 ESIF programmes with EU funding until December 2023, when they will be closed.

No changes are required to your existing Funding Agreement and all obligations arising from those Funding Agreements will continue to remain in effect.

3. Will operations continue to be funded post transition period?

Yes, beneficiaries will continue to receive EU funding over the lifetime of operations and within the dates agreed in your delivery profile. Any changes to these dates will need to be discussed and agreed with your assigned WEFO Project Development Officer (PDO). In order to assist with/ enable the orderly closure of the 2014-20 programmes, the majority of operations supported by WEFO will complete by June 2023. There are some exceptions, however, these are minimal. You should continue to use WEFO Online to submit claims and update information.

4. Will existing rules and conditions continue post transition period?

Yes, all existing rules and conditions will continue to apply post transition and that is a requirement of the Withdrawal Agreement between the EU and UK. This includes the ESI regulations themselves, procurement, state aid and GDPR. You should continue to refer to the same WEFO eligibility rules and guidance documents and follow all applicable EU law.

5. Operations currently being developed

If you are working on potential operations, you should continue to develop your plans with us.

6. Will the General Data Protection Regulation (GDPR) still apply post transition period?

During the transition period the GDPR continued to apply to the UK and there was a requirement to continue to follow existing law and guidance. As from 1 January 2021, the GDPR has been brought into UK law (with minor amendments to make it function properly in a UK-only context) & is now termed 'UK GDPR'. The Data Protection Act 2018 will continue to apply. The UK Government has said that transfers of data from the UK to the European Economic Area (EEA) will not be restricted. This means that data protection law and standards will continue, much as before, and the flow of data both within the UK and from the UK to the EU will not be affected. Therefore, most operations will be unaffected after the transition period. See response below for data transferred from outside of the UK.

7. What about restrictions on the transfer of data from EU/EEA to the UK?

In June 2021, the EU adopted adequacy decisions which enabled personal data to continue to flow freely between Europe and the UK for a period of up

to four years. This followed a 6 month interim period which also allowed for the free-flow of data.

Beneficiaries must therefore continue to follow (a) the EU data protection law (as at 31 December 2020) and (b) the procedures/ processes currently in place for reporting/ providing such data to WEFO.

For information, please find below hyperlinks to (a) the Information Commissioner's Office (ICO) statement in response to the adequacy decision, (b) the European Commission's announcement on adoption of the adequacy decisions.

[ICO statement in response to the EU Commission's announcement on the approval of the UK's adequacy](#)

[Commission adopts adequacy decisions for the UK \(europa.eu\)](#)

This will mostly affect operations in the Ireland Wales programme. WEFO has notified beneficiaries of these operations and, if necessary, will ensure that appropriate safeguards are established and maintained in order to enable continued data flow.

8. What will happen to the public procurement rules post transition period?

EU public procurement rules must continue to apply to all EU funded operations after 31 December 2020. Therefore, in order to be able to meet the related requirements, beneficiaries must continue to advertise contracts that exceed the specified thresholds and publish notices on the Official Journal of the European Union (OJEU) and Tenders Electronic Daily (TED). The European Commission has confirmed that the UK will continue to have access to the OJEU and TED until the end of the Programmes. Beneficiaries must therefore continue to advertise these contracts/ publish award notices via Sell2Wales and, to ensure these procurements are advertised on OJEU and TED, beneficiaries will need to tick the 'EU funded' box when completing the contract notice creation form on the Sell2Wales system.

January 2022 update: From 1 January 2022, any EU funded procurement must apply the new UK thresholds as set out in the [Procurement Policy Note](#) on GOV.UK.

This means that, along with the application of the revised thresholds, contracting authorities must also now include VAT within their contract value estimates when establishing whether procurement thresholds are reached. This is because the UK is now an independent member of the Government Procurement Agreement (GPA) and sets their own thresholds in accordance with the standard GPA methodology adopted by non-EU GPA members. The exclusion of VAT in threshold values is an internal EU measure and which is no longer appropriate to be applied in the UK after EU Exit. As the UK is no longer a Member State, the EU is no longer required to publish the sterling value of any revised thresholds. Therefore, it is no longer practicably feasible

for UK beneficiaries of EU funds to comply with the requirement to follow the thresholds set out in the EU directives and they should instead follow the new UK thresholds as outlined in the above PPN. Beneficiaries based within Southern Ireland, and in receipt of support from the Ireland Wales Programme, will need to continue to adhere to the EU thresholds/ directives when undertaking/ applying respective procurement policies/ processes.

July 2021 update: Sell2Wales has issued a [news item](#) (external link) confirming that, from July 2021, any new procurements for EU funded projects will be published on OJEU, TED and Sell2Wales only (these procurements will not appear within the UK 'Find a Tender Service' (FTS)). Legal advice has confirmed that this action is required in order to avoid a breach of Article 52 of the EU Public Procurement Directive 2014/24EU, i.e. contract notices must be published on OJEU and TED before any publication at national level (FTS), unless 48-hours has elapsed from the notice being issued to OJEU and TED. Publishing on FTS in advance or at the same time as the OJEU and TED will constitute a breach of Article 138 of the Withdrawal Agreement.

For EU funded operation procurements that are below the EU threshold and which will be advertised/ awarded by contracting and non-contracting authorities as from 1 January 2021. Beneficiaries will still need to adhere to the EU Treaty principles of transparency, non-discrimination and equal treatment as well as adhering to their own established procurement policies and WEFO's minimum standards (as noted at Section 36 of 'WEFO Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020' and Section 25 of Ireland Wales Co-operation Programme 2014-2020 Programme eligibility rules and guidance'). Any breach of these could result in WEFO applying a financial correction as outlined within the Commission Decision of 19.12.2013 entitled, 'Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement'.

For information - details on public procurement policy can be located via the [Sell2Wales website](#) (for Welsh beneficiaries) or [gov.ie – Office of Government Procurement \(www.gov.ie\)](#) (for Irish beneficiaries) .

9. Will State Aid rules continue to apply to my operation post transition period?

As set out in the Withdrawal Agreement, our continued participation in the EU Structural Fund Programmes is dependent on the continued adherence to applicable EU Law, this includes State Aid rules. Therefore, the EU State Aid rules will continue to apply to our Programmes post transition period and you must continue to comply with the current State Aid Rules for the duration of your operations and up until closure.

The UK Subsidy Control Regime which became operational as from 1 January 2021 will have no impact on EU funded programmes/ rules and in

line with the Subsidy Control Act 2022, support provided via EU funds is not subject to the additional requirements of the UK Subsidy Control Regime. Therefore, EU state aid rules, including de-minimis, must continue to be applied to EU Programmes.

For operations that have already been approved and have State aid cover (including state aid schemes that were originally due to expire at the end of 2020. Please note these schemes, in the majority of cases have now been extended until 31 December 2023), the rules and the applicable State aid cover continue to apply to the entirety of the delivery of the operation.

All operations approved from 1 January 2021 and that require State aid cover, inclusive of de-minimis cover, will receive a funding agreement referencing the applicable State aid cover e.g. Welsh Government GBER scheme, Higher Education, Further Education and Local Authority led GBER schemes (where such schemes exist and/ or have been raised by UK Government), cover via the Coronavirus Response Investment Initiative (CRII)/ CRII+ State Aid Temporary Framework, etc;. Where beneficiaries introduce new activity into already approved structural fund supported operations and for which new State aid cover is required, WEFO will again issue a new funding agreement referencing the applicable State aid cover. In terms of the various elements of State Aid cover, please see additional information provided below:

Welsh Government/ WLGA/ HE & FE GBER Registered Schemes as from 1 January 2021

Welsh Government (WG) State Aid Unit is currently re-registering all WG GBER schemes & assisting in the extension of all WLGA/ HE & FE led GBER schemes, extending their duration until 31 December 2023. Beneficiaries will therefore be able to continue to use these GBER schemes for their operations approved by WEFO from 1 January 2021 and will need to ensure continued compliance with the requirements of each GBER scheme – as currently exercised.

COVID-19 State Aid Temporary Framework Scheme:

The EC published a Temporary Framework for State Aid measures on 19 March 2020 (with subsequent updates 3 April, 8 May) to accommodate the flexibilities afforded by the EC via the Coronavirus Response Investment Initiative (CRII) and subsequently CRII+. The scheme was originally extended until June 2021, with a subsequent extension granted to June 2022. The European Commission has confirmed that the scheme will not be extended beyond 30 June 2022. Please see attached European Commission news article:

https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2980

De-minimis Scheme

Beneficiaries of EU Programmes will need to continue to abide by the previous requirements associated with de-minimis aid i.e. (a) ensuring aid recipient does not receive aid including any 'Small Amounts of Financial Assistance' (SAFA) or 'Minimal Financial Assistance' (MFA) received under the UK Subsidy Control Regime that will exceed the de minimis threshold over a 3 year fiscal period and (b) providing aid recipient with details of the value of the de-minimis aid being awarded.

10. Will EU citizens still be eligible for operations delivered by the European Social Fund?

Anyone who can evidence their legal right to live/work in the UK would meet the basic eligibility rule for ESF funding whether they come from the EU or rest of world and that will continue to apply.

EU, EEA or Swiss citizens, resident in the UK by 31 December 2020, will need to apply to the EU Settlement Scheme to continue living in the UK. This requirement will also be applicable where you qualify as a family member of an eligible person of Northern Ireland – further details of the qualification criteria can be found in the [EU Settlement Scheme](#) (external link). The deadline for this is 30 June 2021.

Please note this requirement does not, in the majority of cases, apply to Irish citizens as they are not required to request permission to enter/remain in the UK. There are some exclusions and details of these can be found within the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020, Part 1, Section 2](#) (external link).

After 1 January 2021, EU participants can also provide confirmation of their EU settlement scheme/ status to confirm their eligibility for ESF support. This will only apply to EU participants recruited onto ESF operations from 1 January 2021 and a retrospective exercise on current/ approved ESF operations/ participants will not be required.

The following presentation explains some of the practicalities about how the [EU Settlement Scheme](#) (external link) will work and the evidence beneficiaries may be required to collect to determine participant eligibility:

The main points are:

- Successful applicants will receive digital proof of their status through an online service: [gov.uk/view-prove-immigration-status](https://www.gov.uk/view-prove-immigration-status). A physical document will not be provided, not unless you are from outside the EEA and do not already have a biometric residence card. Progress of applications can be tracked online

- Both pre-settled status and settled status will enable a successful applicant to continue to live, work and study in the UK beyond 30 June 2021

11. Will EU document retention periods still apply post transition period.

Yes, the same document retention requirements will continue to apply and you should not destroy any documentation until advised to do so by WEFO in writing, as referenced in both the Funding Agreement and WEFO eligibility rules – Section 5.1.4.1 Document Retention and Record Retention Periods.

12. Will verification and audits continue as usual after the transition period?

Yes, all current verification and audits will continue as usual after the transition period. This includes WEFO's Management Verification Team, European Funds Audit Team, European Commission auditors and European Court of Auditors. You will still be required to maintain all relevant documentation and comply with all audit requirements.

13. (Ireland Wales specific question) Can a UK Lead Beneficiary continue to undertake all the existing functions and responsibilities or should we now look to find a lead partner from a Member State?

The Withdrawal Agreement between the UK and EU means that the UK will continue to participate in current programmes until the end. UK organisations acting as lead beneficiaries in operations should therefore continue to undertake all functions and responsibilities as at present.

Beneficiaries, particularly those in the public sector, may have recently received a letter from H M Treasury (Dear Accounting Officer) concerning, 'Managing Public Money', DAO 02/ 21, dated 15 January 2021. The letter advises that as the UK has completed its transition from the European Union (EU), then as from 1 January 2021 public bodies no longer need to adhere to EU policies, frameworks, processes in managing public funds. This does not apply to the EU Structural Fund Programmes as per the terms of the Withdrawal Agreement (Article 138). Therefore, all beneficiaries in receipt of support from the EU Structural Funds must continue to comply with EU laws and requirements as stated within their funding agreements for the duration/ entirety of their operations and inclusive of the required document retention periods.

If you have any further queries, please discuss them with your PDO in the first instance.

ANNEX I – EU Structural Funds 2014 to 2020: Procurement Contract Modifications - additional guidance for WEFO beneficiaries/ project partners

This note is designed to give WEFO beneficiaries/ project partners further guidance on contract modifications that may be required throughout the delivery of ESF and ERDF funded operations. It sits alongside and forms part of the following national rules for Structural Funds:

- [‘Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020’](#),
- [Ireland Wales Co-operation Programme 2014-2020 Programme eligibility rules and guidance](#)

The current economic climate in the UK (and wider) has brought about some market volatility, particularly in the construction sector, and is having several impacts on contracts, such as unforeseen price increases and significant disruption in supply chains.

In the first instance, in order to mitigate against the potential impacts, beneficiaries/ project partners are advised to consider the following:

- Include contingencies where possible in your ITT and Specifications to allow for percentage price increases or alternative products if the supply chain is disrupted once the contract has started.
- Consider using Early Contractor Involvement principles when contracting, e.g. two stage route and Design & Build approaches.
- Use benchmarking for showing up to date costs, in order to show that value for money was obtained.
- Identify potential risks upfront, wherever possible, and how these will be managed throughout the contract.

Contracting Authorities – Over OJEU (Irish beneficiary) and/ or UK Public Procurement thresholds (Welsh beneficiary). (Please note OJEU thresholds changed as from 1 January 2022. In addition, and following the UKs exit from the EU, procurement thresholds in the UK are now known as Find a Tender Service (FTS) thresholds. These were set for the UK on 1 January 2022 and are inclusive of VAT when calculating the estimated value of a contract to determine whether the regulations apply. Beneficiaries/ project partners will need to ensure compliance with the new thresholds for any procurements that commenced as from this date. Beneficiaries based within Southern Ireland, and in receipt of support from the Ireland Wales Programme, will need to continue to adhere to the EU thresholds/ directives when undertaking/ applying respective procurement policies/ directives).

All beneficiaries/ project partners who are contracting authorities (i.e. regulated by public procurement legislation) must comply with the UK Public Contract Regulations 2015 (Wales) and European Union (Award of Public Authority Contracts) Regulations 2016, European Union (Award of Contracts by Utility Undertakings) Regulations 2016, and European Union (Award of Concession Contracts) Regulations 2017 (Ireland). For any contract modifications:

- Regulation 72 of the UK Public Contract Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016 will apply, with
- Regulation 97 being the equivalent for European Union (Award of Contracts by Utility Undertakings) Regulations 2016, and
- Regulation 43 being the equivalent for European Union (Award of Concession Contracts) Regulations 2017

The EU Commission has made it clear, at the outset of the Covid-19 pandemic, that the EU public procurement framework (which the UK Public Contract Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016 aligns with) provides the necessary flexibility for public buyers to buy products and services compliantly within the rules set out in the directives. In the same way, contract modifications will need to be made in line with the allowances outlined in Regulation 72 of the Public Contracting Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016, and beneficiaries/ project partners are advised to carefully consider which option is applicable to their contract modification, to document how they made the decision, and to keep a record of all decisions and information considered when making the decision. Beneficiaries/ project partners are also advised to consider whether VAT should be included when extending the value of a contract and particularly where reliance will be placed upon the use of Regulation 72(5)(a). Appropriate authorisation (subject to the beneficiary's/ project partners own procurement policy) of any modifications should also be fully documented.

It is important that beneficiaries/ project partners retain full evidence to confirm which part of Regulation 72 they have relied upon for the contract modification, including where there have been any price increases as a result of the current market situation. Further guidance on Regulation 72 can be located at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560262/Guidance_on_Amendments_to_Contracts_-_Oct_16.pdf,

and

<https://www.gov.ie/en/publication/c23f5-public-procurement-guidelines-for-goods-and-services/>

Contracts outside the scope of public procurement legislation (private sector and below OJEU (Irish beneficiary) and/ or UK Public Procurement thresholds (Welsh beneficiary)

Whilst there is no requirement for these contracts to follow the Public Contract Regulations, beneficiaries/ project partners are still reminded of the requirement to comply with the EU Treaty principles of non-discrimination, equal treatment and transparency when letting and managing any procured contracts. This means that any contract modifications over and above what was originally tendered for must be genuine and the reasons must be sufficiently documented. We would also not expect these costs to be significant in value. As a general rule we would not expect such costs to exceed 50% of the total contract value, however each modification would be considered on a case by case basis and must be supported by robust evidence to support any modifications.

Although not an exhaustive list, we would expect modifications to fall into at least one of the following categories:

1. Genuinely unforeseen – costs that could not have been factored in during the initial tender exercise for justifiable reasons
2. Additional necessary costs where it can be evidenced the initial scope of the contract has not been altered and another contractor would not have been awarded the work if the additional work had been in the original procurement.
3. A change which was provided for in the initial tender documents, i.e. does not include additional work/costs which other bidders could have potentially tendered for had they been included in the initial tender exercise.
4. Unable to change contractor due to work that has been undertaken as part of the procurement – the delivery of the initial contract means that it is not genuinely possible for another contractor to do the additional works due to being unable to work with the equipment that has been installed, or the service that has been delivered through the original contract, without considerable costs being made or inconvenience.

Where there is any doubt that the above cannot be evidenced then beneficiaries/ project partners should consider going out to tender for any additional work/expenditure that arises throughout delivery. Where in doubt please contact your WEFO Project Development Officer or Ireland Wales Operations Officer for further advice.

It is vital that all records are retained to support any contract modifications and that these are made available to WEFO/SRA/WG officials and/or WG/EU auditors.

In all cases, we would usually expect to see a variation report, or similar, which records that a modification has been fully considered, along with the potential impacts, and for the modification to be signed off with appropriate authorisation (subject to the beneficiary's own procurement policy) at the time it was undertaken.

The information set out in this document is neither legal advice nor statutory guidance and is not intended to be exhaustive. Nor is it intended to override existing legal obligations applicable to Welsh and/ or Irish Public Sector contracting authorities – contracting parties should seek their own

independent legal advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases.