FFA

FORUM FISHERIES COMMITTEE
ONE HUNDRED AND TWENTIETH MEETING

29 OCTOBER 2021

Agenda Item:	**8**
Paper No:	**FFC120-WP.06**
Title:	**Update on EU Ineligibles**

Summary

There are no changes to the recoverable amount of ineligibles on the EU DEVFISH II Project since the last FFC meeting. The Secretariat has progressed with the following since ARC20:

a) Recognition of a provision of EU ineligibles in our books for FY20-21;
b) Joint CROP letter to the EU requesting that recovery orders be delayed for at least 6 months to allow its members to be apprised and to agree on a repayment option;
c) Investment of the General Fund Reserves where the interest income could potentially be utilised in future to help repay the ineligibles.

Pacific ACP Leaders' at their meeting in September, 2021 discussed the outstanding matter of EU ineligible expenses by the various CROP agencies and encouraged CROP agencies to consult with their governing councils on an agreed way forward.

Recommendation

The Committee is invited to:

i. Note the update provided by the Secretariat;

ii. Provide guidance on how best to approach this matter noting the decision taken by PACP Leaders;

iii. Agree for the Secretariat to enter into a formal discussion with EU on the options available to FFA and reiterate its firm stance on the matter; and

iv. Agree that the repayment option will only be tabled to the EU with FFC endorsement.

1. Update on ineligibles for DEVFISH II Project

1.1 The estimated ineligible amount still stands at EUR 531,628.67. There has been no change since the update in ARC 20.

1.2 FFC118 resolved that the ineligible amount be provided for in our books. On 30 June 2021, a provision of EUR 531,628.67 (USD 640,359.02) was recorded. The provision recognizes that there is a potential liability for FFA that could result in the outflow of funds equivalent to that amount.

1.3 On 21 May 2021, a letter was sent by the CROP Chair, the PIFS Secretary General Dame Meg Taylor to request the EU delegation not to formally issue any recovery orders for at least 6 months. This would provide enough time for each CROP agency to consult its membership and its Governing Council. This was further reiterated by the FFA Director General through a letter on 24 May 2021 to the EU Ambassador to the Pacific.

1.4 The EU Ambassador had responded to the request on 26 May 2021, acknowledging receipt of the letter and advising that the request has been referred to Brussels and instructions will be communicated as soon as it is received. FFA has yet to receive any further communication from the EU.

1.5 On 21 July 2021, USD 2.1m was invested with BSP Solomon Islands at the rate of 1.75% per annum. FFA had initially forecasted a rate at 2% however, due to the low economic activity caused by the pandemic in the local market, this was the best rate on offer. The term deposit is for 12 months and upon maturity, we expect a return of close to USD 38,000 with an option to renew, preferably a higher rate.

1.6 On 28 July, the EU Ambassador in a courtesy meeting with the Regional Authorizing Officer (RAO) – the PIFS SG, verbally acknowledged the request by PIFS not to formally action recovery orders on the pre-information letters for at least 6 months. The EU confirmed their readiness to look into the request but highlighted the need to resolve the matter sooner rather than later because the matter has taken more than four years to resolve. The EU reiterated that repayment is deemed necessary, and a repayment plan should be agreed with the European Union Delegation in the Pacific (EUD). EUD further stated that equivalent of the recovered amount may be recommitted through projects to regional organisations concerned.

1.7 Based on the 6 months requested, the EU may issue the final recovery order as early as December 2021.

2. Repayment option on ineligibles for DEVFISH II Project.

2.1 FFA Members were presented with repayment options at the ARC20 meeting in May 2021. These options are presented again in Annex II for information. Based on the FFC118 outcomes, the Secretariat continues to maintain a firm stance refuting the EU's position with respect to the ineligibles on the basis that the EU has acknowledged on various occasions that there was no fraud or misappropriation of EU funds and outcomes were delivered successfully.

2.2 Based on the meeting between the RAO and the EU Ambassador to the Pacific on 28 July 2021, the Ambassador has alluded to the possibility of recommitting the recovery amount through projects. An option that SPC is keen on pursuing.

3. Pacific ACP Leaders' Decision

3.1 At their meeting held on 30 September 2021, Pacific ACP Leaders *"Encouraged CROP agencies to* consult *with Members and their respective Governing Councils to agree on a proposed way forward including the development of a collective repayment plan on EU ineligibles and through a CROP working group to negotiate, coordinate and facilitate repayment"*. To date this CROP Working group has not advanced and the Secretariat is awaiting advice from PIFS on the establishment of the working group and how this work shall be progressed.

3.2 In recognising FFA Members position on the non-repayment, the Secretariat is requesting guidance from Members on how best to approach this matter noting the decision taken by PACP Leaders.

4. Update on the ineligibles with SPC

4.1 No further work required for FFA. SPC is now pursuing to clear the ineligible balances directly with the EU. Throughout this process, FFA has maintained its stance that while the Secretariat will continue to provide support in this area to reduce the ineligibles, it is not liable for any recoveries.

ANNEX 1

Order of Events

Further to the updates provided to previous FFC Meetings, the table below provides a chronology of events since July 2019 till the date when this paper was submitted.

Date	Correspondence	Content
1 July 2019	Letter from EU Delegation for the Pacific to FFA	● Noted the negative response from Commissioner Mimica letter of 26th June 2019. ● Requested a proposal for repayment plan for the identified ineligible amount of Euro 813,219.98. ● Noted that after the final recovery order is issued with a repayment date that failure to make payment shall result in interest being incurred on the principal amount
15 July 2019	Letter from DG to EU Delegation for the Pacific	● Acknowledged letter and stated that we had not rec'd the response from Commissioner Mimica and were not in a position to respond regarding a repayment proposal. ● Also advised that we needed to discuss this matter with FFA members at their next meeting in November
2 August 2019	Letter from EU Delegation for the Pacific	● Advised that EU financial regulations do not allow for a political waiver and that it is was not possible to wait for the next FFC meeting and that they would issue a final recovery order following discussion with HQ by 15 August 2019
13 August 2019	PACP Leaders Decision	● PACP Leaders agreed to reply to the EU to ask them to reconsider a waiver, and that the Chair would make the request in person. ● PACP Leaders also "agreed that the fall-back option would be to seek a deferral until the next EU funding round".
15 August 2019	Bilateral Meeting between FFA Secretariat and EU in the margins of PIF Leaders Summit in Tuvalu	● Acknowledgement of successful delivery of programmes and no suggestion of mismanagement of funds. ● Agreement to allow for one last attempt to clarify expenditure. ● Acknowledgement of the further request by Leaders for a political waiver, and that such a waiver is possible under the EU's financial regulations.
26 September 2019	Letter from Chair of PACP leaders, PM of Tuvalu, Hon Kausea Natano to Commissioner Mimica	● Request for reconsideration of the Commission's decision in July. ● Outlined the efforts by the regional agencies in their engagement, constructive dialogue with the EU to reach common resolution on the findings of the ex-post audits.
17 January 2020	FFA submitted additional documents to the EU	● Through the efforts of FFA, additional documents were able to be sourced that were not initially sent including clarifications of other submitted documents.

21 January 2020	Response letter from Commissioner Mimica communicated to FFA	● Acknowledged the joint efforts to reduce the amount of ineligible.. ● Briefly outlined the Commission's responsibilities towards the European Parliament and the EU member states. ● Under those grounds, the Commission could not respond positively for a full waiver of the ineligible expenditures.
9 March 2020	FFA received response on its submission of the additional documents	● FFA was advised by the EU delegation in Suva that an additional EUR 263,133.93 of transactions have been accepted and are now eligible.
5 May 2020	Letter from the Chair of PACP, PM of Tuvalu, Rt Hon Kausea Natano	● The letter was directed to the newly appointed European Commissioner for International Cooperation and Development. ● The letter requests for a deferment of the recovery payment(s) until the next funding cycle (11th EDF).
30 September 2020	FFA submitted additional documents to the EU	● Documents related to ineligibles where transactions were reported by SPC but were incurred by FFA. ● This related to 3 contracts where SPC was the lead Agency.
30 November 2020	FFA second submission on additional documents to EU	● Documents related to ineligibles where transactions were reported by SPC but were incurred by FFA and followed from the submission made on 30 September 2020.
15 January 2021	Final submission of additional documentation and clarification.	● Documents related to ineligibles where transactions were reported by SPC but were incurred by FFA and followed from the submission made on 30 September 2020.
23 February 2021	Outcomes of review were communicated by EU to FFA regarding the SPC – FFA ineligibles	● Related SPC FFA ineligibles
4 May 2021	EU issued final pre-information letters for recoveries	● the EU issued final pre-information letters for recoveries to relevant CROP agencies giving them 30 days to provide comments on the matter, and failure to do so will result in issuance of debit notes by the EU.
21 May 2021	Letter by SG – PIFs to request for a delay in the issuing of the recovery orders	● The Secretary General, in consultation with CROP agencies, wrote to the EU on 21 May 2021 requesting that recovery orders are not issued for at least six months from the date of dispatch. This is to also provide each CROP agency with the time required to inform its membership and Governing Councils, and accord both the EU and CROP agencies the opportunity to finalize current discussions on a mutually agreed solution. This letter is pending a formal response from the EUD.
28 July 2021	Meeting between the EU Ambassador and the RAO	● EUD verbally acknowledged a request by PIFS not to formally action recovery orders on the pre-information letters for at least 6 months. The EU confirmed their readiness to look into the request but highlights the need to resolve the matter sooner than later for it has taken more than four years. The EU reiterated that repayment is deemed necessary, and a repayment plan should be agreed with EUD. EUD further stated that equivalent of the recovered amount can be recommitted through projects to regional organizations concerned.

ANNEX 2

Possible repayment plan discussed in ARC20

3.1 After careful consideration of all repayment options that were presented in AC19, the Secretariat has narrowed this down to the following repayment options for consideration by the ARC members to fund the repayment of the ineligibles from income sources in the General Fund. Donor Funds will not be used to pay this liability.

3.2 Specifically, the General Fund income sources that the Secretariat is suggesting to cover the payment of this liability are: interest income, program support fee and member contribution.

3.3 Based on our cash flow forecast, the option to be offered to the EU and to be included in the response to the pre-information letter due on June 4, is a 15-year repayment period with annual repayment of US$43,200. If the EU decides otherwise or re-negotiates on the term, then the minimum repayment period recommended is 9 years with an annual repayment of US$71,500. This is what we can afford with limited sources of funds that can be accessed to settle this liability.