FORUM FISHERIES COMMITTEE
118th Meeting

FFA

11-14 May 2021

Agenda Item:	
Paper No:	**FFC118-INFO.18**
Title:	**Update on EU Ineligibles**

Summary

FFA, to date, has completed all its final reviews and submissions on the ineligibles that were incurred for the DEVFISH II Project (final submission made in January of 2020) and also for the ineligibles between SPC and FFA (final submission in January of 2021).

Following the two negative responses to the PACP Leaders request for a political waiver, a third letter was sent in May 2020 by the Chair of PACP States requesting for a deferment of recovery payment(s) until the next programming cycle. No response has since been received on this.

Recommendation

The Committee is invited to:

i. Note efforts by FFA in reducing the ineligibles
ii. consider and discuss options presented for a potential repayment.
iii. Agree to
   a. FFA awaiting the decision on the letter sent by Chair of PACP; and
   b. FFA to provide another update once the amended Recovery Order has been received from the EU.

1. Update on ineligibles for DEVFISH II Project

The estimated recoverable amount still stands at EUR 531,628.67. There has been no changes or discussion on this with the EU since AC18. FFA has yet to also receive the amended Recovery Order, for the revised amount.

As agreed by AC18, FFA will await the outcome of the request letter sent in May 2020 by the PACP states chair before taking any further decision regarding the ineligibles.

FFA's external auditors, KPMG, during the external audit for the financial year ending 30 June 2020, were advised of FFA's position on this. The Auditors have highlighted this issue in the notes to the accounts

2. Update on FFA – SPC ineligibles

Since AC 18, FFA has initiated discussions with SPC to re-open the matter with the EU with the aim of maintaining / strengthening our relationship with SPC as key implementing partner. As an overview, the ineligibles related to 3 projects (see below) where SPC was the lead agency (contract was signed between SPC and EU).

A deadline was set for the 30th of September 2020 for any additional documents to be submitted. However, following the EU's review of what was submitted on 30th September, FFA Secretariat made two additional submissions, in November 2020 and January 2021. The major issue related to insufficient documents but, where applicable, the Secretariat provided additional documents and clarifications to documents already sent.

Submission of additional documents has now closed and despite every effort made to remove all the ineligibles, EU has accepted only a further **EUR 106,752 as eligible expenditures.** The table below represents movements and outstanding ineligibles.

Project	EU records			FFA records			Difference
	Initial ineligibles	Accepted	Remaining ineligible	Initial ineligibles	Accepted	Remaining ineligible	
SCIFISH	479,962.29	0	479,962.29	479,962.29	0	479,962.29	0.00
SCICOFISH	182,316.00	99,000.00	83,316.00	146,201.00	99,000.00	47,201.00	36,115.00
DEVFISH 2	7,752.00	7,752.00	0.00	7,752.00	7,752.00	0.00	0.00
Total	**670,030.29**	**106,752.00**	**563,278.29**	**633,915.29**	**106,752.00**	**527,163.29**	**36,115.00**

Note: Amounts are in EUR.

The difference of EUR 36k is related to unspent funds that remain in FFA. This will be reimbursed once the matter is cleared.

3. Revisiting the options for repayment of recoveries under the DEVFISH II ineligibles.

FFA has exhausted all avenues to reduce the ineligibles on the DEVFISHII project. EU has communicated that they will issue amended Recovery Orders before negotiation/discussion on repayment terms take place.

Process by EU for recovery:

While we await for the response to the PACP Chair's letter to the EU Commissioner sent in May last year, it is prudent for the FFA Secretariat to raise the issue with the Audit Committee to continue to seek feedback on options the Secretariat may take when we receive the Recovery Order. The financial standards require that a liability (payable to EU) will need to be recorded in our books i.e. provision made for the Recovery Order amount while discussing ***with the EU*** on the payment options.

EU and FFA can consider a few options:

- Enter into a recovery repayment plan, which will require a bank guarantee for the recovery amount and interest will accrue;
- Full repayment – all done and no further discussion;
- EU may offset the amount against any new or existing payment requests for existing projects. This will require co-financing by the organisation for the same amount.

The recommended option is to enter into a recovery repayment plan over a period of time where FFA will not default.

Possible options that could be considered for the settlement of EU ineligibles:
Below is the list of some options that may be considered for the settlement of the EU ineligibles.

Option	Overview
Default position which is to wait for the decision on the PIFs Leaders recent letter to the EU to draw on the future EDF	● This is pending approval from the EU and this is the collective approach being taken by the CROP agencies. ● A risk factor that may need to be considered with this option is that if approval is granted, it may not necessarily mean that future funds will cover the recovery amounts. There may still be financing elements involved (like co-financing) on future projects to recover the ineligible amounts
Co-financing on current or future EU projects	● May ultimately be the case if the option above is agreed. ● The recoverable amount is offset from the advance payments on activities for EU projects and FFA co-finances either in activities or funding at the same amount. ● Risk factor – maybe complex when administering and has the potential to attract additional ineligibles.
Negotiation of a type of "debt swap concept"	● This is currently being led and negotiated by SPC. ● The recovery order would be repaid in full but the EU would sign another project with the organisation with a contract value that is equivalent to the amount paid. ● Risk – FFA will need to pay upfront (impacting FFA's reserves) and there might be other conditions attached to this arrangement

Draw from project management fees of current EU project to reimburse EU	• Project management fees of current EU projects are set aside to cover for the ineligible amount. Repayment is to be set out over the life of the current projects. • Risk – this is dependent on the successful delivery of the projects and that all expenditures are considered to be eligible under the current project. • Risk – FFA will still need to cover the overheads for the project.
Draw from investments (term deposits) - interest income	• Especially in this COVID situation, there are funds that are unspent. Where possible, FFA has invested unspent funds to earn interest with the aim to counter exchange rate fluctuations and also inflation on activity costs. This could also be added into this mix. • Risk – from donor to donor, there are different treatments for this. Not all donors may agree to this.
Offset of costs incurred by FFA	• FFA has spent a significant amount of time and resources in trying to complete and finalise this audit. • This will require high level negotiations at PIFs level.

Annex 1:

Order of Events
Further to the updates provided to the AC18, the table below provides a chronology of events since July 2019 till March 2020.

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 ineligibles expenditures. ● 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. ● Note: FFA Secretariat is yet to receive the amended recovery order.
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 incurred by FFA. ● This relates 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 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