



**GOVERNMENT  
OF MALTA**



# ACCESS TO EMPLOYMENT 2021-2027 IMPLEMENTATION AND GUIDANCE NOTES

**Aid Scheme part-financed by the European Union**

Operational Programme 'Fostering the socioeconomic wellbeing of society through the creation of opportunities for all and investment in human resources and skills' Cohesion Policy 2021-2027.



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## CHAPTER 1: INTRODUCTION

### 1.1 Scope of the Guidance Notes

The Guidance Notes assist Employers when applying for grants under the 1st Call of the Access to Employment Scheme (A2E) 2021-2027. The Scheme is co-financed by the European Social Fund+ (ESF+), the Maltese Government and the Employers and falls under Malta's Operational Programme 'Fostering the socioeconomic wellbeing of society through the creation of opportunities for all and investment in human resources and skills' for the 2021-2027 Programming Period.

Through this Scheme, funds are awarded<sup>1</sup> to Employers<sup>2</sup> for the recruitment of disadvantaged, severely disadvantaged and disabled persons.

The European Social Fund + (ESF +) aims is to support the policy objective for "A more social Europe – Implementing the European Pillar of Social Rights" including employment.

All applications must abide by the Implementation and Guidance Notes valid at the time of application, which may be periodically reviewed, updated, and amended. These can be found on Jobsplus website [www.jobsplus.gov.mt](http://www.jobsplus.gov.mt).

### 1.2 Rationale of the Scheme

The Access to Employment Scheme will provide employment aid to employers in Malta and Gozo to encourage the recruitment of the more challenged amongst job seekers, unemployed and inactive. The scheme will be:

- Enhancing opportunities to access the labour market and providing work experience to those furthest away from gainful occupation.
- Bridging the gap between labour market supply and demand.
- Increasing social cohesion.

### 1.3 State Aid Rules

With regards to those entities that carry out an economic activity within the meaning of Article 107 TFEU, the Scheme will be implemented in line with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), as amended and as may be subsequently amended (hereinafter referred to as GBER).

### 1.4 Available Budget and Duration of the Scheme

The 1<sup>st</sup> Call of the Scheme will be launched on the 24<sup>th</sup> of January 2023.

The Scheme is demand driven, and grants will be awarded on a first-come first-served basis subject that all eligibility criteria have been met. The budget for the 1<sup>st</sup> Call of the Scheme is €3 million.

Subject to the availability of funds, the last date of submission of applications is by **end December 2023** and recruitment must take place by **end December 2023**. In case the budget is fully committed, Jobsplus reserve the right to close the scheme before the deadline without any public notification.

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<sup>1</sup> Subject to certain terms and conditions

<sup>2</sup> With the exception of local councils, public entities, Government Departments and when the Government has majority (over 50%) shareholding in the applicant entity.

## 1.5 Main Parties involved in the Implementation of the Access to Employment Scheme

### 1.5.1 Jobsplus

The overall responsibility for the management and implementation of the Access to Employment Scheme lies with Jobsplus, hereinafter referred to as the Intermediate Body (IB).

### 1.5.2 The Beneficiary

The Beneficiary hereinafter is referred to as the Employer.

- a) In the case of the Access to Employment Scheme, the Beneficiary is the Employer benefiting from the employment aid when recruiting an eligible participant based on a Grant Agreement.
- b) The Beneficiary is responsible for the implementation of the employment activity in line with the terms and conditions of the Grant Agreement and of these Guidance Notes. **The Beneficiary should always be guided by the principles of good governance, sound financial management, fairness, and transparency.**
- c) The list of Employers benefiting from aid schemes funded through the European Social Fund+ will be published on the Jobsplus website [www.jobsplus.gov.mt](http://www.jobsplus.gov.mt).

### 1.5.3 The Line Ministry

The Line Ministry, that is the Ministry for Finance and Employment (MFE), reserves the right to conduct unannounced monitoring visits on a sample basis to ensure that the employment of the participant is ongoing as per application submitted and corresponding Grant Agreement.

## CHAPTER 2: ELIGIBILITY OF APPLICATIONS

Complete applications are evaluated by an Evaluation Committee, against the eligibility criteria listed in this Chapter. The criteria have been approved by the Monitoring Committee in line with Article 40(2) of Regulation 2021/1060 of the European Parliament and of the Council of 24<sup>th</sup> June 2021.

### 2.1 Eligibility of the Employer

The Applicant must meet all the eligibility criteria to benefit from this Scheme. Eligible applicants cover all employers irrespective of their legal form with the exception of local council, public entities, Government Departments and when the Government has majority (over 50%) shareholding in the applicant entity.

With regards to the State Aid option of this Scheme applicable to entities that carry out an economic activity within the meaning of Article 107 TFEU, no assistance will be granted to those undertakings and/or sectors expressly excluded from receiving aid in line with Article 1 of the General Block Exemption Regulation.<sup>3</sup>

#### 2.1.1 Eligibility Criteria for Employers

Only applications meeting all the eligibility criteria for Employers will be approved for funding.

- a) **Complete documentation:** The Applicant must present an application form filled in with all relevant details and documentation.
- b) **Recruiting a new employee:** The Employer must recruit new employees (or keep in employment newly registered disabled person) subject to eligibility in line with Section 2.2.2 g below). Such definition

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0651-20210405>

implies that in the case of an entity with economic activity there must be at least one person in the Employer's organisation who is engaging a different person through the A2E Scheme<sup>4</sup>.

- c) In the case of **undertakings**, where the **recruitment does not represent a net increase, compared with the average over the previous twelve months** in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy. A definition of an Undertaking can be found in 'Annex 2: Definition of Terms' of these Guidance Notes.
- d) **Incentive effect**: as long as the Employer has submitted an application prior to the engagement of the participant or within one month from the date of engagement of the newly engaged employee the application will be considered to have an incentive effect. The incentive effect criterion will not be applicable in case an employer is applying for wage subsidy for an employee who is kept in employment after he/she is registered as RDP.
- e) **Project implemented within / for the direct benefit of the eligible territory**: The Employer must be registered with the eligible territory (Malta and Gozo) whilst the project is to be implemented within the eligible territory or for its direct benefit.
- f) In the case of undertakings, when recruiting an employee, every **Undertaking must be financially sound**, i.e.: Any of the circumstances mentioned in the definitions section below (refer to Annex 2), would render it as an **"Undertaking in Difficulty"**<sup>5</sup>. In line with Commission Regulation (EU) N<sup>o</sup>651/2014 and subsequent amendments.  
In line with the amendments to the GBER introduced through Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, it is possible for aid to be granted to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 31 December 2021.
- g) Applicant is **not in an exclusion situation** in accordance with Article 136(1) and Article 141(1) of 2018/1046 of the Financial Regulation and CPR Article 73(2)(i).
- h) Eligibility criteria for **Selected Operation** must be implemented in line with:
  - a. **The Charter of Fundamental Rights of the European Union.**
  - b. **The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).**

When applying for the Access to Employment Scheme it is also understood that the Applicants that are public or limited liability companies have their Annual Reports and the Audited Financial Statements<sup>6</sup> filed with the competent authority for a financial year that falls within three years from the year of the application<sup>7</sup>. The IB will conduct the necessary checks to confirm the composition and size of the undertaking. Verifications are also carried out to determine if an undertaking with an economic activity is in financial difficulty. This will be ascertained through the Jobsplus database, information obtained through the competent authority and other sources.

If the latest updated records are not available, the IB will request such documents from the applicant.

**Failure to present the relevant documents within a stipulated timeframe, may lead to the rejection of the application.**

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<sup>4</sup> This is not applicable for entities without an economic activity, the first person can be employed through the scheme.

<sup>5</sup> In the case of a transfer of business Jobsplus will re-perform the undertaking in difficulty check and the grant may be revoked.

<sup>6</sup> Audited Financial Statements should be provided for all linked and subsidiary Organisations.

<sup>7</sup> If the audited statements are not yet available on the relevant entity platform a copy of the receipt confirming that the accounts were submitted is to be provided.

## 2.2 Eligibility of the Participant

Only application meeting all the eligibility criteria for Participants will be approved for funding.

### 2.2.1. Target Groups

The following tables list the eligible target groups, level and duration of financial assistance.

#### Disadvantaged Persons

Target Group	Client Group	Duration of Financial Assistance
1	Any person of age 24 and over who has been unemployed / inactive for the previous 6 months.	52 weeks
2	Any unemployed person of age between 15 to 24 who previously participated and completed any of the Jobsplus Schemes and is recruited for the first-time following completion of such initiatives.	52 weeks
3	Any person who is living as a single adult who has one or more dependants and is not in full-time employment	52 weeks
4	Any person of age 24 and over who has not attained an upper secondary educational or vocational qualification (ISCED 3), who does not have a job.	52 weeks
5	Any person older than 50 years who does not have a job.	52 weeks

#### Severely Disadvantaged Persons

Target Group	Client Group	Duration of Financial Assistance
6	Any person who has been unemployed / inactive for the previous 12 months and who belongs to one of the disadvantaged target groups (3) to (5).	104 weeks
7	Any person of age 24 and over who has been unemployed / inactive for the previous 24 months.	104 weeks

#### Disabled Persons

Target Group	Client Group	Duration of Financial Assistance
8	Any person who is a registered disabled person under national law <sup>8</sup> .	156 weeks

### 2.2.2 Eligibility Criteria for Participants

- a) Participant must fall under any one of the above-mentioned Target Groups<sup>9</sup>
- b) All participants under Target Groups 6 and 7 must have been unemployed/inactive for the previous 12 months or 24 months respectively.
- c) Participants must not have been employed with the Undertaking within the previous 12 months.

<sup>8</sup> National Law refers to Jobsplus RDP Register

<sup>9</sup> The IB reserves the right to revise the target group identified at application stage and select the most appropriate.



- d) **Shareholders and Directors** of the Undertaking will not be eligible to benefit from the Access to Employment Scheme if they take up employment within the same Undertaking.
- e) **Persons occupying official positions** with the NGOs and Social Partners will not be eligible to benefit from the Access to Employment Scheme if they take up employment within the same NGOs and Social Partners.
- f) The participant cannot be a Self-employed individual. Only employees engaged with the self-employed are eligible.
- g) For Target Client Group 8 (Registered Disabled Persons), the following scenarios will be considered eligible:
  - i. RDP Unemployed, or
  - ii. RDP in part-time employment (refer to point i below), or
  - iii. RDP who is in full time or part time employment but registered as disabled worker after the launch of the Access to Employment Scheme 2021-2027. The same company which will continue to employ him/her may receive support under Target Group 8, starting from the moment when a grant agreement is issued.
- h) An employer can apply **only once for the same participant** under the Access to Employment Scheme 2021-2027 with the same Undertaking.
- i) A participant under Target Group 3 and 8 who is in part-time employment may still be eligible for subsidy if the employment is changed from part-time to full-time (40 hours per week). Applicant would be eligible for the additional 20 hours.
- j) **Foreign participants:**
  - i. Non-EU nationals who hold one of the below statuses are eligible for the A2E scheme:
    - a. Freedom of Movement by Marriage
    - b. Third Country National (TCN) Family/EU Dependent
    - c. Individuals holding an international protection:
      - i. Subsidiary Protection
      - ii. Specific Residence Authorisation
      - iii. Refugee<sup>10</sup>
      - iv. Temporary Humanitarian Protection
  - ii. UK nationals who were residing in Malta till 31<sup>st</sup> December 2020 are eligible for the Access to Employment Scheme on condition that they provide evidence that they entered the country prior 1<sup>st</sup> January 2021<sup>11</sup>.

### 2.3 Employment Retention Period following the Subsidy Period.

In line with Articles 32(4) and 33(4) of Commission Regulation (EU) No 651/2014, as amended, workers shall be entitled to continuous employment for a minimum period consistent with national legislation.

Furthermore, for ALL target groups, the Employer must retain in employment the recruited person for a further period (as per table below) following the subsidised period. Such retention period will be checked against Jobsplus database.

Duration of Subsidy	Retention Period
52 weeks	17 weeks
104 weeks	34 weeks
156 weeks	52 weeks

<sup>10</sup> As per EU Directive 2011/95/EU - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN>

<sup>11</sup> As per Brexit – Government of Malta: Readiness Action Plan - <https://www.gov.mt/en/Documents/Brexit%20-%20Government%20Readiness%20Action%20Plan%20WEB%20SINGLE%20PAGES.pdf>

The IB will retain the prerogative to reimburse the undertaking only for the weeks completed in full in case the grant period or the retention period is not respected. For case scenarios please refer to FAQs available on [Jobsplus website](#).

## 2.4 Eligible Cost<sup>12</sup>

Eligible costs for the recruitment of disadvantaged workers and for the employment of workers with disabilities under the Access to Employment Scheme will be paid for the periods indicated for each of the above target/client groups to cover part of the basic wage cost for part-time or full-time employment. The standard rates of Unit Costs<sup>13</sup> based on 20 / 40 hours per week will be published by Jobsplus on its website. The rate may be revised annually to include the increase in cost of living.

In the case of employers that are undertakings that carry out an economic activity within the meaning of Article 107 TFEU, the following aid intensities must be respected:

- In the case of recruitment of disadvantaged and severely disadvantaged workers, the aid intensity shall not exceed 50% of the eligible costs.
- In the case of aid for the employment of workers with disabilities, the aid intensity shall not exceed 75% of the eligible costs.<sup>14</sup>

## CHAPTER 3: APPLYING FOR THE ACCESS TO EMPLOYMENT SCHEME

### 3.1 Application Process

The A2E Applications will be processed on a first come first served basis. Complete application with supporting documentation (*if applicable*) must be received by the A2E Unit either pre-employment or within one month from the date of engagement of the newly engaged employee<sup>15</sup>. Applications submitted and not respecting this timeframe will not be considered eligible.

Employers can employ the participant **at their own risk** prior to the formal approval by Jobsplus. The latter, however, will not be held responsible for any loss sustained by the applicant should the applicant be deemed ineligible. Complete and dated applications, together with all supporting documentation (if any) must be submitted in full. Applications are to be submitted electronically.

- a. Applicants are required to use the latest official application and supporting documentation found on the Jobsplus website [www.jobsplus.gov.mt](http://www.jobsplus.gov.mt).
- b. Delegated persons will be able to liaise with the Access to Employment Unit with any queries or clarifications pertaining to the application.
- c. An automated acknowledgement notification will appear once the Employer submit the online application.

### 3.2 Evaluation Process

Access to Employment Scheme applications are evaluated by an Evaluation Committee, for which the employer will receive feedback regarding eligible within approximately fifteen days from receipt of **complete** documentation. Both the Employer and the participant must be eligible for the application to proceed to Grant Agreement Stage.

<sup>12</sup> Eligible Cost maybe revised by increasing C.O.L.A. in the coming years.

<sup>13</sup> Such costs are in line with the simplified cost options as set out in Regulation (EU) No 2021/1064 of the European Parliament and of the Council

<sup>14</sup> Same rates will apply for all types of entities.

<sup>15</sup> This is not applicable when an employer will be applying for already employed persons who become RDP after the launch of the scheme.

- i. An acceptance notification is issued in the case of eligible applications together with a Grant Agreement. A grant agreement will be issued either on the acknowledgment date or the engagement date, whichever date came latest.
- ii. A Non-Acceptance notification is issued in the case of ineligible applications, followed by an Appeal form. In such cases the Employer has the right to submit an appeal to the Appeals Board within **10 working days** from the date on the non-Acceptance letter. The appeal should include a detailed explanation by the Employer, which can be considered during the appeals process. If the appeal is upheld, the consideration of the application will proceed. **Late Appeals will not be accepted.** The decision of the Appeals Board will be final for the purpose of the scheme.

### 3.3 Signing the Grant Agreement

The Employer must submit the below when signing the Grant Agreement.:

1. Jobsplus official **engagement form** for the eligible participant if it's not already submitted.
2. The **Financial Identification Form** <sup>16</sup>
3. **Employment Contract**

### 3.4 Conditions of Employment for participants of the Access to Employment Scheme.

When engaging employees through the Access to Employment Scheme, the Employer must ensure that the conditions of employment are in line with the Employment and Industrial Relations Act of 2002. 'Conditions of Employment' including wages; the period of employment; hours of work and leave; and any conditions related to the employment of any employee under a contract of employment. This also includes any benefits arising from terms of engagement; terms of work participation; manner of termination of any employment agreement; and the mode of settling any differences, which may arise between the parties to the agreement. It does not include professional ethics arising from any professional relationship between an employer and an employee.

For further details you can kindly contact the [Department of Industrial and Employment Relations](#).

## CHAPTER 4: FINANCIAL MANAGEMENT AND PAYMENTS

Reasonable care shall be taken by the Access to Employment Unit to ensure that the payment process is not unduly delayed. The Access to Employment Unit shall not be held responsible for delay or loss due to reasons beyond its control. It is the responsibility of the Beneficiary to ensure that claims for reimbursement together with relevant documentation are sent duly completed and correctly.

### 4.1 Payment Procedures and Reimbursement

As part of the Payment and Reimbursement Procedures, the Access to Employment Unit within the IB will be responsible to ensure that the:

- a) Claims for reimbursement made by the Beneficiary are correct.
- b) No Cash Payments were issued<sup>17</sup>; and
- c) Employment has been effected.

#### 4.1.1 Proof of Fulfilment of Conditions

**The Beneficiaries must pay from their own funds the total expenditure incurred by either cheque or direct banking. No cash payments are allowed.** Prior to the authorisation of payment by the EU Payments Unit,

<sup>16</sup> The original Financial ID Form needs to be submitted once. [to be re submitted at reimbursement stage if different from the FIF submitted at application stage]. Also, the account number in the FIF should belong to the Company/Organisation (i.e. not a personal account of a director). In case of partnership, this should be a joint account.

<sup>17</sup> The pay slips and the proof of payments may be requested.

Jobsplus will be requesting the below supporting documentation to verify that all the conditions of the Grant Agreement and these Guidance Notes have been adhered to. All necessary documents can be found and downloaded from [Jobsplus website](#).

#### 4.1.2 Access to Employment Wage Costs Reimbursement Documentation

The Beneficiaries must complete and submit the following documentation to claim for reimbursement:

- a) A **Claim for Reimbursement Request Form**: This must be filled in for each participant and has to be signed by both the Employer's Project Leader/delegated person; and by the participant if he/she is still in employment with the Employer.
- b) A copy of the **Financial Identification Form (FIF)** to enable direct payment of the grant (to be submitted if different from the FIF submitted at application stage).
- c) The **Common Immediate Result Indicator of Participant Form** to capture the effects on the participant brought about by the Scheme, i.e., change in situation of participant.

Other **documentation** may be requested at any time for additional verification purposes.

Checks may be carried out by Jobsplus officials or any other relevant authority to clarify and certify the correctness and the eligibility for the grant, even following the execution of payment.

#### 4.1.3 Payment timeframes

The subsidy will be paid to the Beneficiary quarterly, twice annually or once, following premature termination of the Grant Agreement.

Claims for Reimbursement are expected to be processed by Jobsplus within a timeframe of three months from receipt of complete reimbursement documentation and any clarifications sought. Jobsplus shall not be held responsible for any delay due to reasons beyond its control. It is the responsibility of the Employer to ensure that all the relevant documentations is correct and sent in time in order not to slow down the reimbursement process.

Once the Access to Employment Unit is satisfied that reimbursement of expenses incurred is in accordance with the Grant Agreement and also in line with other conditions that may have been subsequently agreed with the Beneficiary, a request for payment will be forwarded to the Strategy and Implementation Division, EU Payments Unit within the Ministry responsible for European Funds. Jobsplus will not be held liable for delays in the approval process or for any overturning of its approval for payment.

#### 4.2 Double Funding

To avoid double funding of wage costs by other Community or National schemes, Jobsplus reserves the right to share all information regarding the Access to Employment Scheme with other public entities/public authorities to ensure that no other public funds are made available to the Beneficiary in respect of the same employment. Funding of basic full wages for the same employment from any other sources is strictly prohibited.

With regards to assistance granted to undertakings that carry out an economic activity within the meaning of Article 107 TFEU, the rules on cumulation as outlined in Article 8 of the GBER will be respected.

#### 4.3 Employers subject to Recovery of Community and National Funds

The Beneficiary is responsible to notify Jobsplus if the Beneficiary is or becomes at any time subject to any recovery of funds procedures either in Malta or in any other Member State; any outstanding recovery orders

following a previous Commission decision declaring an aid granted by Malta illegal and incompatible with the internal market, that are still in place would exclude the Employer from receiving aid.

The Beneficiary in an exclusion situation and if in the affirmative, reimbursement will not be processed but will be rejected/retained on hold in accordance with Article 136 (1) and Article 141 (1) of 2018/1046 Financial Regulation and CPR Article 73(2)(i).

## CHAPTER 5: MONITORING

### 5.1 Monitoring Structures

#### 5.1.1 Monitoring by the Beneficiary

The Beneficiary has the responsibility of ensuring effective monitoring of the employment for which aid has been granted. The responsibility of the Employer extends beyond the achievement of results but entails also monitoring of the physical implementation. It is up to the Employer to choose the most appropriate tool to ensure effective and timely monitoring. The IB may request photographic evidence of physical implementation for use in communication and publicity initiatives.

#### 5.1.2 Physical on-the-spot check by Jobsplus

Jobsplus monitoring officers will conduct monitoring visits during physical implementation to ensure that the respective employment parameters are being met by the Employer. Each monitoring visit will be documented by a monitoring report and photographic evidence (the latter may be used for publicity purposes).

Unannounced monitoring visits will be conducted at the sole discretion of Jobsplus. In the absence of successful monitoring visit Jobsplus reserves the right to cancel the grant and recover any funding paid.

#### 5.1.3 Participation in Monitoring and Evaluation Activities

The Beneficiary accepts to participate in and contribute to all monitoring and evaluation activities organised by Jobsplus, the Managing Authority<sup>18</sup>, the European Commission as well as other Authorities.

## CHAPTER 6: AUDIT AND CONTROL

### 6.1 Internal Control (at the Employer's Premises)

Officials from the Managing Authority<sup>19</sup>, the IB and other horizontal stakeholders<sup>20</sup> and audit bodies will also have the right of access to all information related to the funded operation. This will include (but will not be limited to) the performance of documentary and monitoring reports to monitor compliance with the Grant Agreement, with the horizontal priorities of publicity, state aid, equal opportunities, the environment and sustainable development, evaluation and with the prevailing EU Regulations for Structural Funds.

The Beneficiary understands that Jobsplus reserves the right to implement preventive and detective control mechanisms to combat fraud and corruption. Jobsplus is also committed in transmitting cases to the competent authorities for investigations and sanctions.

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<sup>18</sup> The Managing Authority (MA) is the body responsible for the overall management of the EU Cohesion Policy. The MA is the Planning and Priorities Co-ordination Division within the Ministry responsible for European Funds.

<sup>19</sup> The Planning and Priorities Co-ordination Division (PPCD) within the Ministry responsible for European Funds.

<sup>20</sup><https://fondi.eu/>

The Beneficiary shall be solely responsible to ensure that to the best of its knowledge, no funds invested in this Operation by such Employers are of illicit origin, including products of money laundering or linked to the financing of terrorism.

## 6.2 First Level of Control & On-the-Spot Checks (Jobsplus and other Authorities)

Management verifications shall be carried out by Jobsplus, the Managing Authority, the Certifying Authority<sup>21</sup> and other Authorities to ensure that the employment is real and in line with the Grant Agreement and complies all throughout its implementation, with Community and National rules (e.g., State Aid, protection of the environment, equal opportunities, and publicity).

**Jobsplus may conduct three types of checks:**

- a) **Physical On-the-Spot Checks (Monitoring)** – These will be carried out on all Beneficiaries to ensure that the employment of the new participant under the Access to Employment Scheme has been affected and is in line with the Grant Agreement.
- b) **Desk-Based On-the-Spot Checks** – On a sample basis, more in-depth checks may be carried out on the Beneficiary; in terms of retention of documents and checks related to national insurance contributions. Further documents may be requested from the Employers in order for Jobsplus to conduct these checks.
- c) **Desk-Based Documentary Checks** – This will be carried out on all Beneficiaries to ensure that documents are correct.

It should be noted that these checks are NOT audits but administrative and physical verifications. Jobsplus will co-ordinate such checks. Any queries that may arise from such spot checks are submitted to the Beneficiary's Project Leader/ Delegated Person and should be answered within the stipulated deadline.

Jobsplus shall inform the Beneficiary at least one working day in advance that a Desk-Based On-the-Spot Check will be carried out. Physical On-the-Spot Checks may be carried out unannounced by the IB.

The following are some of the verifications that may be carried out by the IB during the Physical or Desk-Based On-the-Spot Checks:

- The new employment is being carried out as per Grant Agreement.
- Regulations on information and publicity were followed.
- All necessary documentation has been retained.
- Compliance with Community and National rules (e.g., State Aid, protection of the environment, equality of opportunities and publicity) has been met all throughout the implementation of the operation.

The Beneficiary should note that the following documents form an integral part of the project dossier to be retained by the Employer/Project Leader and which may be checked during the On-the-Spot Checks:

- Copy of the Application Form and related documentation.
- Grant Agreement and Addenda/Corrigenda.
- Copies of all Access to Employment Scheme claims / documentation related with reimbursement.
- Access to Employment Scheme poster affixed at a location readily visible to the public, such as the entrance area of a building.

The Managing Authority and other Authorities may also carry out these same or other checks.

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<sup>21</sup> The Certifying Authority (CA) is responsible for certification process of EU funds. The CA is the EU Certifying Authority within the Ministry responsible for European Funds.

### Follow-up Action to the On-The-Spot Check

Following an on-the-spot/monitoring check, Jobsplus/MA/CA shall fill out an OTS report (outlining findings and where necessary follow-up/recommendations<sup>22</sup>) which shall be signed by a representative of the Beneficiary, or a representative of the Institution contracted by the Beneficiary and the officer performing the check.

Any follow-up action is to be undertaken by the Beneficiary within a stipulated deadline. Failure to do so may result in suspension of the grant or potential recovery of funds if already paid.

Jobsplus undertakes a follow-up spot check if necessary.

### 6.3 Second Level of Control

The 2<sup>nd</sup> level of control refers to audits (of systems and operations) that are carried out by the local and foreign audit bodies. The Internal Audit and Investigations Department (IAID) is the designated Audit Authority as per regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy. IAID is the main entity responsible for the proper functioning of the management and control system of the operational programme and to audit an appropriate sample of operations on the basis of the declared expenditure. Their audits are carried out on an ongoing basis throughout the EU Funding Programming Period; therefore, documents are to be retained for **ten years** from 31<sup>st</sup> December of the year in which the last payment has been made to the Beneficiary. (*i.e., the mandatory documentary retention period as per Grant Agreement*). The AA may notify the Employer of the audit at least one day in advance.

Other organisations, including the National Audit Office (NAO), the European Commission and the European Court of Auditors, may undertake audits on their projects. Entities such as the State Aid Monitoring Board (SAMB) and/or the VAT Department may also carry out checks on the project in order to ensure that the project is being implemented in accordance with State Aid regulations and VAT regulations.

The Beneficiary must ensure that all relevant documentation is made available to the auditors and provide all necessary support to the auditors in carrying out their work.

Findings' reports and follow-ups may be distributed by the AA to Jobsplus, the Managing Authority and the Certifying Authority. The AA may organise additional follow-up audits as required.

### 6.4 Preparing for Audit Visits (applicable to all audits)

As part of their preparation for an audit, Beneficiaries should ensure that:

- All persons (including technical personnel) within the Beneficiary involved in the implementation of the operation being audited are available during the audit.
- All documentation has been filed, to facilitate easy access during the audit. The auditors may ask for copies of all documents that are in file.
- It is important to note that auditors are not required to give notice prior to site visits.

Typically, auditors will seek to examine the following documentation during an audit visit:

#### a) Employment Documents:

- Electronic Acknowledgment
- Acceptance Notification
- Application Form and relevant documentation
- Grant Agreement between the IB and the Employer
- Any addenda / corrigenda to the Grant Agreement

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<sup>22</sup> Where applicable.

- Employment Contract
- Engagement Form

**b) Information and Publicity:**

- Verification of compliance with compulsory EU information and publicity requirements during employment period (such as scheme posters hanging in a prominent place within the Employer’s premises)

**c) Implementation Documents:**

- Copy of Claim for Reimbursement Form submitted.

### 6.5 Follow-Up to an Audit

Once an audit is concluded, the auditors will compile a report with all findings and any recommendations. Should there be the need for any clarifications the auditors will seek feedback from both the IB and the Employer.

### 6.6 Closure

Beneficiary should note that projects can be audited even after completion of the project implementation. In view of this all-project documentation must be retained by the Beneficiary for **ten years** from 31<sup>st</sup> December of the year in which the last payment has been made to the Beneficiary.

## CHAPTER 7: COMPLIANCE WITH COMMUNITY POLICY

### 7.1 General Principles

The Beneficiary should ensure compliance with Community Policies namely, State Aid requirements (where applicable), equal opportunities, and non-discrimination, equality between men and women, and sustainable development.

EU funds will be offered on terms and conditions, which will be stipulated in the Grant Agreement. In accepting the offer of EU funds, the Beneficiary will take on responsibility for compliance with these terms and conditions.

The implementation is subject to audits by both National and European Bodies. Officials from the Managing Authority<sup>23</sup>, the Intermediate Body<sup>24</sup> and other horizontal stakeholders will also have the right of access to all information related to the activity funded. This will include (but will not be limited to) the performance of documentary and physical on-the-spot checks to monitor compliance with the Grant Agreement, with the horizontal priorities of publicity, state aid, equal opportunities, the environment and sustainable development, evaluation and with the prevailing EU Regulations for Structural Funds.

It is important to note that European Structural and Investment Funds are public funds. In this regard, if the employment is eligible for funding, the Beneficiary will be bound by the principles of good governance, sound financial management and the relevant national regulations pertaining to public funds.

#### 7.1.1 State Aid Requirements

With regards to undertakings, EU State Aid rules apply to the Access to Employment Scheme<sup>25</sup> as it involves direct financial support from the public sector to commercial enterprises or organisations carrying out an economic activity. It is important to note that if an aid recipient (i.e., the Employer) is found to be in breach of

<sup>23</sup> The Planning and Priorities Co-ordination Division (PPCD) within the Ministry responsible for European Funds

<sup>24</sup> Jobsplus

<sup>25</sup> Applicable only for those enterprises who are engaged in an economic activity.



State Aid requirements, the funds will be recovered from the Employer possibly together with interests and fines.

### 7.1.2 Equal opportunities, non-discrimination and equality between men and women

It is important to note that every Beneficiary is required to take a pro-active approach to Equal Opportunities. The Beneficiary must ensure that Equal Opportunities are taken into consideration at all stages of the Access to Employment Project Implementation. Equal Opportunities should be understood to cover not just gender discrimination but also discrimination based on racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

The Beneficiary is expected to have in place the necessary safeguards to prevent any form of discrimination based on sex, racial and ethnic origin, religion or belief, age, disability, or sexual orientation as referred in terms of Chapter 452 and Chapter 456 of the Laws of Malta.

## CHAPTER 8: REPORTING ON IRREGULARITIES

### 8.1 How to Detect an Irregularity

Irregularities are mainly detected through the various checks and audits carried out by the different entities. Irregularities may also be detected through other means, including controls and audits; receipt of grievance or complaint (anonymous or not), and/or public domain information.

### 8.2 Reporting an Irregularity

If an irregularity is detected, the Employer has the duty to **IMMEDIATELY** report the irregularity to the Project Leader of the Access Scheme to Employment Scheme within Jobsplus.

### 8.3 Financial Recoveries

In cases where an irregularity necessitates recovery of funds, the person/organisation detecting such irregularity must ensure that recovery procedures are initiated immediately.

### 8.4 Financial Corrections

It is important to note that failure to comply with rules and regulations can result in irregularities, which, in turn, could lead to financial corrections. In certain cases, the recovery can be up to 100% of the amount paid.

## CHAPTER 9: INFORMATION AND PUBLICITY

### 9.1 Publicity

- a) In order to enhance transparency regarding the use of the Scheme's Funds, and in line with the transparency requirements under the GBER, general details of the operation such as: the name of the Employers; the title of the operations and the amount of public funding allocated to each operation may be published.
- b) The IB will provide a publicity poster to the Employer showing the funding sources of the Scheme. The applicant must affix this poster in a prominent place within their premises.
- c) The Beneficiary shall ensure that the participants being subsidised under the Access to Employment Scheme have been informed about the operation's source of funding.

- d) The IB may request the Employer to collaborate in the organisation of events or promotional activities, including networking and exchanges at both National and European level.

## 9.2 Data Protection

All data is collected and held by Jobsplus and/or transferred to official third parties in order to fulfil Jobsplus functions, including publicity and research and other Community obligations according to Law and in line with the provisions of the Data Protection Act<sup>26</sup> and the General Data Protection Regulation<sup>27</sup>.

Beneficiaries should disclose correct and accurate data to Jobsplus. An Employer has the right to access all data relating to the applicant's grants as well as to request that any incorrect data is rectified. An Employer has the right to access all data relating to the grant and should inform every new employee of what personal data they are disclosing to the authorities.

## CHAPTER 10: CLOSURE AND RETENTION OF DOCUMENTS

Beneficiaries should note that projects could be audited even after completion of the Grant Agreement Implementation period. Every Beneficiary benefiting under the Access to Employments Scheme is obliged to **keep all documents** related to the operation, **for up to 10 years** from the date on which the last payment under the scheme has been made. **(i.e., the mandatory documentary retention period as per Grant Agreement).** Employers are required to maintain documents in their original or copy format (*as applicable*). Refer to Section 6.4 for details of the documents that may be checked during audit visits.

## FINAL NOTE

Jobsplus is considering various other simplification procedures, once any are approved by the competent Authorities.

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<sup>26</sup> Data Protection Act, Cap 586 of the Laws of Malta

<sup>27</sup> General Data Protection Regulation (GDPR) (EU) 2016/679

## Annex 1: Premature Terminations of the employment under the Access to Employment Scheme

- FAQs to guide the Employer and/or participant on how to proceed in particular circumstances are available on Jobsplus website ([www.jobsplus.gov.mt](http://www.jobsplus.gov.mt)).
- The Beneficiary will be refunded only in respect of the weeks completed in full during the Access to Employment Scheme i.e., if the participants have worked 25.6 weeks on the scheme the Employer will only be eligible to be refunded for 25 weeks.
- Termination reasons and the respective termination date will be taken from the actual termination form submitted to Jobsplus according to Chapter 594 Employment and Training Services Act Part V Article 40.

## Annex 2: Definition of Terms

- The **'employer'** also refers the beneficiary; is the one who will be receiving the subsidy in relation to the employment of new employees through the scheme.
- An **'undertaking'** is considered to be any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed. This includes Autonomous Undertakings, as well as all partner and linked organisations related to the applicant employer such as Partner Undertakings and Linked Undertakings.
- An **'autonomous enterprise'** is any enterprise, which is not classified as a partner enterprise within the meaning of 'partner enterprise' or as a linked enterprise within the meaning of 'linked enterprises' as explained below.
- The **'headcount'** corresponds to the number of annual work units (AWU), i.e., the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:
  - a) employees.
  - b) persons working for the enterprise being subordinated to it and deemed to be employees under national law.
  - c) owner-managers.
  - d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

- The **'Legal Name of Employer'**:
  - a) The legal name of the employer as registered under the law applicable to its establishment. E.g., Employers registered under the Companies Act – Chapter 387 of the Laws of Malta, should provide the name as registered with the Registrar of Companies.
  - b) Employers, who are not vested with a legal personality acquired through the law applicable to their establishment, e.g., Associations, are to include the name as registered under the Second Schedule of the Civil Code (Chap. 16 Laws of Malta).
  - c) Self-employed/Sole Traders should include the name of the self-employed person.
- **'Linked enterprises'** are enterprises which have any of the following relationships with each other:
  - a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise.
  - b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise.
  - c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association.
  - d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of the definition of 'partner enterprises' are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in the definition of 'partner enterprises', are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

- **'Net increase in the number of employees'** means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions.
- **'Partner enterprises'** refers to all enterprises which are not classified as linked enterprises within the meaning of 'linked enterprises' and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of 'linked enterprises', 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).
- **Staff headcount and financial thresholds determining enterprise categories.**
  1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
  2. Within the SME category, a small enterprise is defined as an enterprise which employees fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
  3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed the EUR 2 million.
- **'subsidy'** means a sum of money that the Employer will be eligible to receive when participating in the Access to Employment Scheme ;
- **'Undertaking in difficulty'** means an undertaking in respect of which at least one of the following circumstances occurs:
  - a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU and 'share capital' includes, where relevant, any share premium.
  - b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.
  - c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
  - d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee or has received restructuring aid and is still subject to a restructuring plan.

- e) In the case of an undertaking that is not an SME, were, for the past two years:
- i. the undertaking's book debt to equity ratio has been greater than 7.5 and
  - ii. the undertaking's EBITDA interest coverage ratio has been below 1.0.
- **'Wage cost'** means the total amount actually payable by the Employer in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, childcare and parent care cost.
  - **'Worker with disabilities' / 'registered disabled persons'** means any person who is recognised as a worker with disabilities under national law<sup>28</sup>.



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<sup>28</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8718&l=1>