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ANNEX 1

**ANNEX**

*to the Commission Decision*

**amending Decision C(2013) 1573**

**on the approval of the guidelines on the closure of operational programmes adopted for assistance from the European Regional Development Fund, the European Social Fund and the Cohesion Fund (2007-2013)**

## Glossary

In the interests of clarity and readability, the following terms have been used throughout these guidelines.

<i>The General Regulation</i>	Council Regulation (EC) N° 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999
<i>The ERDF Regulation</i>	Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999
<i>The ESF Regulation</i>	Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999
<i>The Implementing Regulation</i>	Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund
<i>Programme</i>	Operational Programme as defined in Article 2 of the General Regulation
<i>Priority</i>	Priority Axis as defined in Article 2 of the General Regulation

# GUIDELINES ON CLOSURE 2007-2013

## **1. CLOSURE GENERAL PRINCIPLES**

These guidelines apply to the closure of programmes under the Structural Funds (ERDF, ESF) and the Cohesion Fund implemented in accordance with the General Regulation for the 2007-2013 period. Experience from the closure of programmes co-financed under 2000-2006 period was taken into account in preparation of these guidelines.

Closure of programmes concerns the financial settlement of outstanding Union's budgetary commitments through payment of the final balance to the competent authority of each programme or recovery of sums unduly paid by the Commission to the Member State and/or decommitment of any final balance. It also concerns the period until which all the Commission's and Member States' rights and obligations remain valid in respect of assistance to operations. The closure of programmes does not prejudice the Commission's right to impose financial corrections.

## **2. PREPARATION FOR CLOSURE**

### **2.1. Trainings**

The Commission, in close cooperation with the Member States, will provide guidance through seminars/trainings to be organised in the run-up to closure.

### **2.2. Amendment of Commission decisions for programmes**

A request for an amendment of a decision for a programme, including amendment of the financing plan to transfer funds between the priorities of the same programme under the same objective and components of the objective and the same Fund<sup>1</sup>, can be submitted up until the final date of eligibility of expenditure which is 31 December 2015.

However, in the view of timely preparation of the closure, the Commission recommends the submission of the request for an amendment by 30 September 2015. The final date of eligibility of expenditure, or the deadline for submission of closure documents will not be extended because of the time necessary to process the amendment request.

Any request for amendment of the financing plan involving a transfer between Structural Funds (the sum of ESF and ERDF must remain the same before and after transfer and the transfer can only concern the commitments of current and future years indicated in the financing plan of the programme) or between programmes should be submitted by 30 September 2013, in order to allow for sufficient time for the decision to be adopted before 31 December 2013<sup>2</sup>. Annual commitments beyond 31 December 2013 will not be changed.

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<sup>1</sup> This is to ensure that the provisions of Article 22 of the General Regulation are respected.

<sup>2</sup> In line with Article 33(2) of the General Regulation, the Commission adopts a decision for the revision of a programme no later than 3 months after the submission of the formal request from the Member State.

### **2.3. Amendment of Commission decisions for major projects**

A request for amendment of a decision for a major project (including a major project to be phased) can be submitted up to the final date of eligibility<sup>3</sup>.

In analogy to programme amendments, Member States should take into consideration when submitting their requests for amendments that, according to Article 56(1) and Article 89(1) of the General Regulation, there is no possibility to extend either the final date of eligibility of expenditure, or the deadline for submission of closure documents. Accordingly, the Commission recommends submitting the request for an amendment by 30 September 2015 in order to allow the Commission enough time to conduct a thorough assessment of the amendment request.

Member States should communicate to the Commission by 30 June 2015 a list of major projects which they propose to divide into phases in line with section 3.3 of the guidelines. The second phase should be eligible for financing from Structural Funds and/or Cohesion Fund under the 2014-2020 period and it should be implemented and completed within the 2014-2020 period. A phased project is considered as a whole and will only be regarded as completed once both phases have been implemented within their respective timeframes. The Commission will assess the Member States' proposals with a view to agree on the revised timetables for completion of the major projects and to amend the decisions of the already approved projects (see COCOF note 12/0047/02).

## **3. ELIGIBILITY OF EXPENDITURE**

### **3.1. Final date of eligibility of expenditure and applicable rules**

In accordance with Article 56(1) of the General Regulation the final date for eligibility of expenditure paid by the beneficiaries is 31 December 2015. In line with Article 78(1) of the General Regulation, eligible expenditure is expenditure paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries according to the conditions governing the public contribution. This means that except for state aid, where the public contribution needs to be paid by the date of submission of the final payment claim to the Commission, there is no regulatory deadline for the payment of the public contribution to beneficiaries. However, in the case of financial engineering instruments, the public contribution shall be paid to the beneficiary by the end of the eligibility period. Expenditure paid by beneficiaries must be supported by receipted invoices or accounting documents of equivalent probative value.

There is no other regulatory deadline imposed neither for the selection of projects by the managing authority, nor for legal and financial commitments at national level.

The following expenditure is also eligible:

- expenditure referred to in Article 56(2) of the General Regulation, in Article 7(4) of the ERDF Regulation and in Article 11(3) of the ESF Regulation;
- expenditure referred to in Article 78(6) of the General Regulation, in the context of financial engineering instruments (see section 3.6 of the guidelines);
- expenditure referred to in Articles 49 to 53 of the Implementing Regulation;

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<sup>3</sup> An earlier submission may be considered adequate if it is necessary to assure effective reprogramming of resources not used within a major project decision.

- state aid expenditure fulfilling the condition of Article 78(1) second subparagraph of the General Regulation (see section 3.8 of the guidelines).

Withdrawals of irregular amounts from payment claims made to the Commission are considered definitive. It is not permitted to reintroduce previously withdrawn irregular expenditure into payment claims except if the irregular amounts were later found out to be regular and eligible<sup>4</sup>.

### **3.2. Specific eligibility rules applicable to major projects**

In accordance with Article 39 of the General Regulation, a major project is deemed an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and whose total cost exceeds EUR 50 million<sup>5</sup>.

For cases where the Commission decision on a major project has been adopted before the modification of the major projects threshold for environment projects (i.e. before 25 June 2010<sup>6</sup>), the project is considered to be a major project, even if its total cost does not exceed EUR 50 million<sup>7</sup>.

An approved major project should be considered as eligible and functioning provided the two following conditions are met:

- the project has been completed: activities foreseen have been actually carried out<sup>8</sup> as foreseen in the Commission decision on the major project;
- the project is in use<sup>9</sup>.

National authorities should ensure that by the date of submission of the closure documents the co-financed major project is completed as defined above (unless section 3.3 of the guidelines applies), thus enabling it to achieve the goals of the priority or priorities to which it relates and to fulfil its purpose and function. The information submitted by the Member State in the final report should enable the Commission to reach the conclusions in this respect.

### **3.3. Specific rules for phasing of major projects over two programming periods**

As explained in COCOF note 12/0047/02, in order to limit the risk of incomplete (and thus ineligible) major projects, the Commission recommends that a list of phased major projects is established and agreed between the Commission and the Member States concerned.

This list should be included in the final report of the programme concerned (see section 5.2.7 of the guidelines).

In order to request formally the phasing of a major project, a Member State should submit either a major project application which foresees phasing of the major project over two periods or a request for

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<sup>4</sup> C.f. point 3 of COCOF note 10/0002/02.

<sup>5</sup> Regulation (EU) No 539/2010 of the European Parliament and of the Council of 16 June 2010 amending Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as regards simplification of certain requirements and as regards certain provisions relating to financial management.

<sup>6</sup> Date of entry into force of Regulation (EU) No 539/2010.

<sup>7</sup> See as well footnote 13 under section 3.5 of the guidelines.

<sup>8</sup> No further activity required to complete the operation, works completed and received in conformity with the requirements foreseen by the national legislation, see COCOF note 08/0043/03.

<sup>9</sup> This is without regard to the performance. Nevertheless significant under-performance need to be highlighted and strategies should be developed to overcome them.

amendment of the corresponding Commission decision in accordance with the procedures applicable to the amendment of Commission decisions for major projects (see section 2.3 of the guidelines).

The Commission may accept requests for phasing major projects over two periods if the following conditions are met:

- the project was not approved by the Commission as a major project (infrastructure or productive investment) under the programming period 2000-2006
- the project has two clearly identifiable phases from a physical and financial point of view. The physical scope of each phase and its corresponding financial allocation should be duly described and the description should form part of the audit trail. The financial allocation of each phase should be established by reference to the physical elements of each phase in order to avoid that the same expenditure is declared twice to the Commission.
- the second phase of the project is eligible for financing from Structural Funds and/or the Cohesion Fund under the 2014-2020 period<sup>10</sup>;
- while reducing the financial allocation to the project in the 2007-2013 period (first phase), a request for major project amendment will maintain the original overall objective of the major project that needs to be achieved within the 2014-2020 period and make reference to the second phase of the project (including its expected time of completion).

Moreover, at closure, a Member State should ensure that the following conditions are met:

- the Member State should indicate in the final implementation report (see section 5.2 of the guidelines) that the necessary legal and financial commitment was made in order to complete and render operational the second phase (and thus the entire project) under the 2014-2020 period;
- the Member State should provide a list of all phased major projects to be included in the corresponding programmes concerned under the 2014-2020 period.

The second phase of the project shall comply with all applicable rules of the 2014-2020 period.

When the Member State is unable to complete a project, render it functional and put it into operation, a financial correction to recover unduly paid sums may be applied.

### **3.4. Specific rules for phasing of non-major projects over two programming periods**

The principle of phasing, as explained in section 3.3 of the guidelines, can also be applied for non-major projects (with the exception of financial engineering instruments). In the context of shared management, the Member State should ensure that the following conditions are met before it applies the phasing principle:

- the project was not selected by the Member State under the programming period 2000-2006
- the total cost of each project amounts to at least EUR 5 million;
- the project has two clearly identifiable phases from a physical and financial point of view. The physical scope of each phase and its corresponding financial allocation should be duly described and the description should form part of the audit trail. The financial allocation of each phase should be established by reference to the physical elements of each phase in order to avoid that the same expenditure is declared twice to the Commission.
- the second phase of the project is eligible under Structural Funds and/or the Cohesion Fund under the 2014-2020 period<sup>11</sup>.

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<sup>10</sup> Financing from other Union instruments can be considered provided all conditions of phasing of major projects specified in section 3.3 of the guidelines are fulfilled.

<sup>11</sup> Financing from other Union instruments can be considered provided all conditions of phasing of non-major projects specified in section 3.4 of the guidelines are fulfilled.

The second phase of the project shall comply with all applicable rules of the 2014-2020 period.

The Member State should indicate in the final implementation report (see section 5.2 of the guidelines) that a necessary legal and financial commitment was made in order to complete and render operational the second phase (and thus the entire project) under the 2014-2020 period.

When the Member State is unable to complete a project, render it functional and put it into operation, a financial correction to recover unduly paid sums may be applied.

In the context of closure, it is not necessary to communicate a list of such projects spanning over two programming periods to the Commission, but, upon request, the Member States should be able to provide such a list (see section 5.2.7 of the guidelines). In any event, the Member State should quantify in the final implementation report (see section 5.2 of the guidelines) the overall amount involved in all such phased projects expressed as the total certified expenditure paid out and corresponding Union contribution.

### **3.5. Non-functioning projects<sup>12</sup>**

At the time of the submission of the closure documents, Member States have to ensure that all projects included in the programme closure are functioning, meaning completed and in use, so considered as eligible<sup>13</sup>.

The Member State may decide, exceptionally and on a case-by-case basis, provided that adequate justification exists, to include expenditure paid for non-functioning projects in the final statement of expenditure. In doing so it should take into account the reasons why a project is non-functioning and it should verify that the financial impact of the project justifies this special treatment by examining if all the following conditions are met:

- the total cost of each project amounts to at least EUR 5 million; and
- the Funds' contribution to these non-functioning projects cannot be more than 10% of the total allocation for the programme.

By including the expenditure paid for non-functioning projects in a final statement, a Member State commits to complete all such non-functioning projects not later than two years after the deadline for submission of the closure documents and to reimburse the Union co-financing allocated in case of non-completion of such projects by the two year deadline.

The Member States have to provide, with the final report, a list of such non-functioning projects retained in the programme (see section 5.2.8 of the guidelines). Thereafter, the Member State should monitor these non-functioning projects closely and report to the Commission on a six-monthly basis on projects already completed, as well as on the measures taken including milestones in order to complete the remaining projects.

Within two years of the deadline for submitting the closure documents for the programme concerned the Member State should provide the necessary information on the completion and operational aspect of these projects retained in the programme. In case such projects are non-functioning by this deadline, the Commission will proceed with the recovery of the funds allocated to the whole project. If the

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<sup>12</sup> Including major projects (which are not phased over two programming periods).

<sup>13</sup> A project, which fulfilled the requirement of Article 57 but is no longer functioning at the time of the closure of the programme, shall not be considered as a non-functioning project.

Member State does not agree with the recovery, the Commission will proceed with a financial correction according to Article 99 of the General Regulation<sup>14</sup>.

### **3.6. Specific eligibility rules applicable to financial engineering instruments under Article 44 of the General Regulation**

According to Article 78(6) of the General Regulation, eligible expenditure at closure is the total of the following items:

- (1) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development;
- (2) any payments for investment in enterprises from financial engineering instruments for enterprises;
- (3) any guarantees provided including amounts committed as guarantees by guarantee funds;
- (4) any loans or guarantees for repayable investments from funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing;
- (5) eligible management costs and fees.

Since the final application for payment must be submitted by 31 March 2017, and no additional expenditure can be declared after 31 March 2017, closure for the purpose of Article 78 (6) is to be understood as the final date for submission of payment applications. In order for the audit authority to have sufficient time to carry out its work for the closure declaration, the application for payment of the final balance and the final statement of expenditure should be submitted to the audit authority well in advance (it is recommended that these documents are provided to the audit authority at least three months before the deadline of 31 March 2017).

For the expenditure to be considered eligible at closure, national authorities must have assurance that the contribution paid to the final recipient is used for its intended purpose. However, it is not necessary for the final recipient to have completed the implementation of an investment activity supported by the financial engineering instrument by the submission of closure documents.

In line with Articles 44 and 78(6) of the General Regulation, eligible expenditure at closure are the investments made from operational programme contribution to the final recipients and the eligible management costs and fees. Resources returned to the financial engineering instruments from investment in final recipient are not considered to be operational programme contribution anymore. Such resources should be treated in accordance with Article 78(7) last indent of the General Regulation in order to ensure the revolving effect of programme contributions invested by the financial engineering instruments in final recipients. However reuse of these resources for further investments, which is not subject to any deadline, cannot be declared as eligible expenditure at closure.

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<sup>14</sup> Judgements of the Court of First Instance confirm that the Commission is entitled to apply financial corrections in case of non-functioning projects See Case T-60/03 "*Regione Siciliana c/ Commission*" (Rec. 2005, P. II-04139), where the Court of first instance confirmed the grounds for making a financial correction taken by the Commission on the basis of Article 24 of Regulation (EC) No 4253/88 because of absence of functionality of the project co-financed (in particular paragraphs 82, 83 and 99-102 of the ruling).

### *3.6.1. Eligibility of expenditure and the programme contribution in case of guarantees*

In case of guarantees, the amount of eligible expenditure at closure is the value of the guarantees provided, including amounts committed as guarantees. Without prejudice to paragraph 1.1.7 of COCOF note 10/0014/05 of 8 February 2012<sup>15</sup>, the provisions on guarantees in section 4.1 of the same note apply.

### *3.6.2. Eligibility of management cost and fees*

Management costs or fees incurred and paid by 31 March 2017 are eligible pursuant to Article 78(6)(d) of the General Regulation, within the limits set out in the Article 43(4) of the Implementing Regulation and in line with section 2.6 of the COCOF note 10/0014/05 of 8 February 2012.

### *3.6.3. Eligibility of capitalised interest rate subsidies and guarantee fee subsidies used in combination with financial engineering instruments*

Interest rate subsidies and guarantee fee subsidies can be considered to be a part of the financial engineering instrument and of the repayable investment, in the sense of Articles 44 and 78(6) of the General Regulation, only when associated and combined with ERDF or ESF loans or guarantees in a single financing package.

Payments for interest rate subsidies or guarantee fee subsidies can be claimed at closure of the programme under Article 78(6) of the General Regulation once the subsidies are drawn down. Eligible expenditure is the payment of interest rate subsidies or guarantee fee subsidies to the financial intermediary or the final recipient regarding loans or guarantees which are outstanding.

Capitalised interest rate subsidies or guarantee fee subsidies due to be paid after the submission of the final payment application can be declared as eligible expenditure under Article 78(6) of the General Regulation in relation to loans or other risk-bearing instruments whose duration extends beyond the submission of the final payment application, provided that the following four conditions are respected:

- interest rate subsidies or guarantee fee subsidies are associated and combined with ERDF/ESF loans or guarantees in a single financing package;
- interest rate subsidies or guarantee fee subsidies are in respect of loans or other risk-bearing instruments disbursed for investments in final recipients by 31 March 2017;
- capitalised interest rate subsidies or guarantee fee subsidies are calculated by 31 March 2017 as the total of discounted payment obligations; and
- the total amount of capitalised interest rate subsidies or guarantee fee subsidies is transferred to an escrow account held in the name of the managing authority or of the body that implements financial engineering instrument with financial institutions in Member States.

Any residual resources left in the escrow account (including subsidies which were not paid due to defaults or early repayments and any accrued interests) should be used in accordance with Article 78(7) of the General Regulation as legacy resources in line with paragraph 9.2.7 of COCOF note 10/0014/05 of 8 February 2012.

The managing authority should separately declare eligible expenditure related to the capitalised interest rate subsidies or guarantee fee subsidies in the final report.

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<sup>15</sup> Paragraph 1.1.7 was introduced for the first time in the COCOF note 10/0014/04 of 21 February 2011.

### *3.6.4. Possible reductions of eligible expenditures*

#### 3.6.4.1. Arrangement fees paid by final recipient and overlapping with eligible management costs and fees

As explained in paragraph 2.6.17 of COCOF note 10/0014/05 of 8 February 2012, if arrangement fees or other administrative costs of the financial engineering instrument charged to final recipients overlap with the management costs or fees declared as eligible expenditure for reimbursement from the Structural Funds, the corresponding amount should be deducted from eligible expenditure claimed from the Structural Funds in accordance with Article 78(6)d of the General Regulation.

#### 3.6.4.2. Interest generated by payments from the programme

In line with paragraph 5.1.6 of COCOF note 10/0014/05 of 8 February 2012, interest generated by payments from the programme to the financial engineering instrument, including holding funds, which are attributable to the Structural Funds' contribution and which at the partial or final closure of the programme have not been used in accordance with the provisions of Article 78(6) and the first subparagraph of Article 78(7) of the General Regulation, should be deducted from the eligible expenditure.

### **3.7. Revenue generating projects**

In line with Article 55 of the General Regulation, for revenue-generating projects, the maximum eligible expenditure is the funding gap calculated for the project (current value of the investment cost less the current value of the net revenue).

In line with COCOF note 07/0074/09, new or additional deductions of net revenues generated by the projects subject to Article 55 of the General Regulation should be made at the latest at the time of submission of the closure documents for the programme, if one of the following conditions are fulfilled:

- (a) certain new sources of revenue have not been taken into account in the calculation of the funding gap and/or new sources of revenue appeared after the calculation of the funding gap<sup>16</sup>;
- (b) there are changes in the tariff policy which impact on the funding gap calculation;
- (c) net revenues were generated for projects for which it was objectively not possible to estimate in advance the revenue generated by the investment and therefore no funding gap had been calculated initially.

The managing authority should calculate the contribution these projects are entitled to. Eventually existing net revenue should be deducted by the certifying authority from the expenditure declared to the Commission, at the latest by 31 March 2017 in accordance with Article 89(1) of the General Regulation.

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<sup>16</sup> If a project generates from already calculated sources income, this income can be higher or lower than envisaged, but it would not require a recalculation of the funding gap (unless it has been underestimated on purpose, which would be considered as an irregularity).

### **3.8. State aid and eligibility of expenditure**

In accordance with Article 78(1) of the General Regulation, as regards aid schemes within the meaning of Article 107(1) TFEU (formerly Article 87 of the Treaty) in order to be eligible, in addition to the payment being made by the beneficiaries, the public contribution corresponding should have been paid to the beneficiaries by the body granting the aid before the submission of the closure documents.

The advances paid to the beneficiaries by the body granting the aid should be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest on 31 December 2015.

### **3.9. Accession of Croatia**

As Croatia joined the Union in July 2013, towards the end of the 2007-2013 period, the Accession Treaty provides for the arrangements and modalities to be applied in the case of Croatia in the context of implementation of the Structural Funds (Chapter 7 of Annex III to the Accession Treaty<sup>17</sup>).

The deadline for automatic decommitment as established in Article 93(1) of the General Regulation will be the third year following the year of the commitment (N+3). Moreover, the end date for eligibility of expenditure is extended by one year for Croatia's programmes under the convergence objective and the programmes falling under the cross-border cooperation component of the European territorial cooperation objective where Croatia is one of the participants. Therefore, the final date of eligibility for these programmes will be 31 December 2016 and the deadline for submission of closure documents will be 31 March 2018. These deadlines will also be applicable to those Member States participating in the cross-border cooperation programmes with Croatia and only in relation to the cross-border co-operation programmes. All related deadlines, such as the ones for the amendment of Commission decisions, will be adapted accordingly.

Major projects under the IPA framework (projects with the total cost equal to or exceeding EUR 10 million) will be treated as major projects approved under the General Regulation as of the day of accession.

## **4. SUBMISSION OF CLOSURE DOCUMENTS**

### **4.1. Closure documents**

For the payment of the final balance, Article 89(1) of the General Regulation stipulates that Member States must submit an application for payment for each programme which consists of the following three documents ("closure documents"):

- (1) an application for payment of the final balance and a statement of expenditure in accordance with Article 78;
- (2) a final implementation report for the programme, including the information set out in Article 67;
- (3) a closure declaration supported by a final control report referred to in Article 62.

Member States shall ensure that the financial information contained in all the above documents, as well as in SFC 2007, is aligned.

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<sup>17</sup> OJ L 112, 24.04.2012.

## **4.2. Deadline for submission of closure documents**

The closure documents should all be submitted by 31 March 2017 as stipulated in Article 89(1) of the General Regulation, covering also the operations suspended due to legal proceedings or administrative appeals. Member States should continue transmitting regularly interim payment claims even when the total of pre-financing and interim payments has reached 95% of the contribution from the Funds to the programme. In order to facilitate the work of the audit authority, it is recommended that Member States submit the last interim payment claim by 30 June 2016<sup>18</sup>.

The Commission will send a letter to Member States two months prior to the deadline for submission of the closure documents for a programme informing them of the consequences of the late submission of the closure documents.

All three documents are part of the closure package. The Commission will automatically decommit that part of commitment for which the Commission has not received any of the closure documents referred to in section 4.1 of the guidelines by 31 March 2017. In such a case, the closure of the programme will be carried out based on the last information available to the Commission (latest interim payment and statement of expenditure, latest admissible annual implementation report and latest admissible audit control report).

The failure to submit the final implementation report and the closure declaration reveals a serious deficiency in the management and control system of the programme which puts at risk the Union contribution already paid to the programme. Therefore, in case of failure to submit these documents, the Commission might proceed with a financial correction in accordance with Article 99 of the General Regulation.

The submission of documents should be carried out only electronically and no paper submission will be accepted. This is in line with the provisions of Articles 66(3) and 76(4) of the General Regulation and Articles 40(1)(c) and 40(1)(e) and 40(2)(j) of the Implementing Regulation. The Commission will consider that the documents have been received on time if the relevant information has been submitted, validated and sent in SFC. Once all the documents have been sent, the Member States will receive an SFC acknowledgement of receipt which states the time and date the documents were sent.

In June 2016, the Member States are not required to submit the annual implementation report for the year 2015, with the exception of the data on financial engineering instruments in accordance with Article 67(2)(j) of the General Regulation.

In December 2015, the Member States should submit the last annual control report.

## **4.3. Changing documents after the deadline for their submission**

Member States will not be allowed to modify any of the closure documents listed under Article 89(1) of the General Regulation after the deadline for their submission (31 March 2017), except for correcting clerical mistakes and in the situations described below.

In relation to the statement of expenditure and the application for payment of the final balance, Member States cannot revise these documents to submit new expenditure but can revise figures downwards by withdrawing expenditure.

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<sup>18</sup> In order to ensure that the audit authority is able to cover the expenditure declared in 2016 and in view of the deadline of 31 March 2017 for the submission of the closure declaration.

The Commission may request that a Member State corrects the application for payment of the final balance or the statement of expenditure insofar as this involves the submission of supplementary information or the making of technical corrections where such supplementary information and corrections relate to expenditure submitted to the Commission before the deadline for submission. In this event, the Commission will give the Member State two months to carry out the correction. If the correction is not made within the two-month period, the Commission will proceed with closure on the basis of the available information.

#### **4.4. Availability of documents**

According to Article 90 of the General Regulation, the managing authority ensures that all the supporting documents regarding expenditure and audits on the programme concerned are kept available for the Commission and the Court of Auditors for a period of three years following the date of closure of the programme, as communicated by the Commission in accordance with Article 89(5) of the General Regulation.

The three-year period could be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

The managing authority should make available to the Commission on request a list of all functioning operations for the full period of three years following the closure of the programme.

### **5. CONTENT OF CLOSURE DOCUMENTS**

#### **5.1. Certified statement of final expenditure, final payment application**

##### *5.1.1. General principle*

A certified statement of final expenditure, including a final payment application, should be drawn up in the form set out in Annex X to the Implementing Regulation.

The statement of expenditure should also identify the total amount of eligible expenditure relating to regions receiving transitional assistance.

Discrepancies between the payments from the Union to the priority and the effective Funds contribution to the operations co-financed under that priority could occur. This is a consequence of the flexibility that the managing authorities have in applying different co-financing rates to individual operations as stated in Article 53(4) of the General Regulation.

However, in accordance with the principle of sound financial management of the Funds, the amount of public contribution (as declared in the 'certified statement of final expenditure') paid or to be paid to beneficiaries should be at least equal to the contribution paid by the Commission to the programme and in accordance with Article 80 of the General Regulation the Member States should ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full.

According to Article 77(12) of the General Regulation, the Union contribution through payment of the final balance shall not exceed by more than 10% the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme. However, the Union contribution through payment of the final balance shall not exceed the public contribution declared and the maximum amount of assistance from each Fund to each programme.

### *5.1.2. Financial Management for certain Member State concerned by Regulation (EU) No 1311/2011 (Top-up)*

Article 77(2) of the General Regulation (as amended by Regulation (EU) No 1311/2011) allows the Commission to pay under specified conditions an increased amount for each payment claim submitted by the Member States threatened with serious difficulties with respect to their financial stability. This increased amount is calculated by applying a top-up of 10 percentage points on the applicable co-financing rate.

For the purpose of calculating interim payments and payments of the final balance after the Member State ceased to benefit from the financial assistance, the Commission should not take into account the increased amounts paid to a Member State for the period it benefited from the top-up.

However, the Union contribution should not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority as laid down in the decision of the Commission approving the programme. As specified in point 10 of these closure guidelines, for multi-objective programmes, the public contribution declared and the maximum amount of assistance will be capped at the level of the objectives, according to the provisions of Article 22 of the General Regulation.

### *5.1.3. Recoveries (including after submission of closure documents) and irregularities*

At closure, the annual statement that needs to be sent via SFC2007 (in accordance with Annex XI to the Implementing Regulation) by 31 March 2017 and covering the year 2016, will be treated as follows:

- the amounts indicated in Annex XI(2) as "pending recoveries" should be included in the final payment application, however they will not be paid, but will constitute an outstanding commitment for the Commission. When proceedings have been launched for the recovery of expenditures declared, the related amounts shall be declared under pending recoveries. They shall not be declared under operations suspended for legal and administrative reasons<sup>19</sup> since these cases shall cover only amounts that the Member State was not able to declare. The Member States should inform the Commission of the outcome of the pending recoveries.
- for the amounts declared under Annex XI(3) as "irrecoverable amounts", where the Member State requests the Union's share to be borne by the general budget of the European Union, the Commission will carry out an appropriate examination of each case. In this respect it will either (a) inform the Member State in writing about its intention to open an enquiry in respect of that amount or (b) request that the Member State continue the recovery procedure or (c) accepts that the Union's share is borne by the general budget of the European Union.
- A commitment will remain open for the amounts declared under Annex XI(3) for which the Commission has requested further information, opened an inquiry in respect of that amount or requested that the Member State continues the recovery procedure.

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<sup>19</sup> As laid down in Article 95 of the General Regulation the exception to the automatic decommitment applies to amounts that the certifying authority has not been able to declare to the Commission because of operations suspended because of a legal proceeding or an administrative appeal having suspensory effect, whereas, as indicated above, pending recoveries relate to amounts that are declared to the Commission.

- Member States should ensure that the amounts indicated in Annex XI(3), for which Member State has not requested the Union to take its share of the loss are deducted from the certified statement of final expenditure<sup>20</sup>.

Nevertheless any amounts recovered after closure should be paid back to the Commission.

## **5.2. Final implementation report**

### *5.2.1. General principle*

The final report should include the information described in Article 67(2) of the General Regulation. It should have the same structure as the annual implementation report since both documents are based on the same template provided in Annex XVIII to the Implementing Regulation. It should present aggregated data and information for the whole of the implementing period.

### *5.2.2. Admissibility, acceptance and deadlines*

The General Regulation does not provide any deadline for the admissibility check of the final report. Nor does it make provision of what happens in case a report is not admissible. Moreover, it refers to an admissible report as one which contains all the necessary information referred to in Article 67(2). Taking into account that the acceptance of the final report is also made against the provisions of Article 67(2), then admissibility and acceptance can be considered as the same in the context of the closure exercise and the two terms should be used interchangeably.

Therefore, the Commission has five months from the date of the receipt of the final report to confirm its admissibility or provide comments to Member States in case it is not satisfied with its content and ask for it to be revised. The final report will only be accepted if all the comments from the Commission have been addressed.

The General Regulation foresees the timeframe for the Commission to provide its comments to the Member States but does not provide a timeframe for the response from the Member State. It is therefore necessary to establish a framework for the dialogue between the Commission and the Member State.

Once the Commission has provided comments on the final report, the Member State will be given two months to respond and provide the necessary information. In case the Member State cannot comply with this deadline, it should inform the Commission accordingly and the deadline may be extended for another 2 months.

In case the Member State is not able to improve the final report, the Commission will reject it and will carry out closure on the basis of the available documents. At the same time, the Commission may apply financial corrections in the context of Article 99 of the General Regulation.

The objective is to have the final report revised and accepted by the Commission within 1 year of the date of its receipt.

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<sup>20</sup> Procedures with regard to withdrawals and recoveries are further detailed in the guidance note to certifying authorities on reporting and withdrawn amounts, recovered amounts, amounts to be recovered and amounts considered irrecoverable, applicable to 2007-2013 period and the remainder of the 2000-2006 period (COCOF note n°10/0002/00).

### 5.2.3. *Reporting on the top-up*

The Member States benefiting from the derogation referred to in Article 77(2) of the General Regulation have to report on the use of the amounts paid as top-up and detail any complementary measures taken to ensure that these amounts targeted in particular projects which promote competitiveness, growth and employment.

### 5.2.4. *Reporting on major projects*

If a major project is co-financed by more than one programme, all programmes concerned should include references/reporting to the specific project at stake.

The Member State should confirm in the final report that the major projects are completed and are in use (unless section 3.3 of the guidelines apply) and that they have been implemented in accordance with the corresponding Commission decisions. Moreover the Member States, as foreseen in Annex XVIII to the Implementing Regulation, should provide a list of completed major projects with the following information:

- their date of completion;
- the total final investment costs of these projects, including their sources of financing<sup>21</sup>;
- their key output and result indicators, including, where relevant, the core indicators laid down in the Commission decision on the major project<sup>22</sup>.

The list should be provided using the template in Annex I to the guidelines.

The Member States should provide in the final report information of any significant problems encountered in implementing major projects and measures taken to overcome them.

Moreover, the Member States should indicate any change in the indicative list of major projects provided in the programme.

This information should enable the Commission to assess the compliance of the implemented project with the Commission decision.

The Commission will assess the reasons and consequences of the eventual non-compliance of the implemented major projects with the Commission decision (financial and/or physical implications) and may apply a financial correction (on the basis of Articles 99 and 100 of the General Regulation and as further detailed by Commission Decision C(2011)7321).

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<sup>21</sup> As indicated in the template provided in point H.2.2 of Annexes XXI and XXII to the Implementing Regulation.

<sup>22</sup> The detailed guidelines concerning concept of indicators has been included in the Working document n°2 'Indicative Guidelines on Evaluation Methods: Monitoring and Evaluation Indicators'.  
Output indicators relate to activity. They are measured in physical or monetary units (e.g., length of railway constructed, number of firms financially supported, etc.).  
Result indicators relate to the direct and immediate effect on direct beneficiaries brought about by a programme. They provide information on changes to, for example, the behaviour, capacity or performance of beneficiaries. Such indicators can be of a physical (reduction in journey times, number of successful trainees, number of roads accidents, etc.) or financial (leverage of private sector resources, decrease in transportation cost, etc.) nature.

### 5.2.5. Reporting on FEIs

Article 67(2)(j) of the General Regulation specifies the information that has to be provided in the final report as part of the closure package:

- A description of the financial engineering instrument and implementation arrangements;
- Identification of the entities which implement the financial engineering instrument, including those acting through holding funds;
- Amounts of assistance from the Structural Funds and national co-financing paid to the financial engineering instrument;
- Amounts of assistance from the Structural Funds and national co-financing paid by the financial engineering instrument.

The final report should provide, by way of narrative, a summary description of the financial engineering instrument(s) and implementation arrangements. For the purpose of final reporting, the "implementation arrangements" should be interpreted in a broad sense in order to satisfy the general objective of providing a balanced overview of financial engineering instruments' performance during the 2007-2013 period.

The final report should contain the following information:

- (1) the number and type of funds established during the programming period;
- (2) the identity of national co-financing providers and type of national co-financing (loan, in kind contribution). Any co-investment funds should be clearly identified;
- (3) date of signature and the duration of funding agreements underpinning operation;
- (4) information on selection procedure for the holding fund manager, funds' managers and final recipients;
- (5) types of products offered and final recipients targeted;
- (6) information on withdrawals of programme resources from FEIs;
- (7) amount of capitalised interest rate subsidies and guarantee fee subsidies (as referred to in section 3.6.3);
- (8) interest generated by payments from the programme and attributable to the Structural Funds;
- (9) a brief overall assessment of fund performance in terms of its contribution to the achievements of the objectives of the programme and the priority concerned;
- (10) information on legacy including:
  - (a) value of legacy resources (residual funds and value of investments and participations recorded before the submission of closure documents) attributable to ERDF/ESF resources,
  - (b) the date of winding up (as envisaged in the funding agreement) and accrual of legacy,
  - (c) the information on the reuse of legacy resources attributable to the Structural Funds specifying the competent authority which is responsible for managing legacy resources, the form of reuse, the purpose, the geographic area concerned and the envisaged duration;
- (11) to the extent that financial instruments encountered particular difficulties and/or failed to reach the principal objectives contained in their respective business plans, the final report

should contain a brief summary of the principal reasons for such difficulties and the nature, timing and effectiveness of any remedial action undertaken by (as appropriate) the managing authority, Holding Fund manager or fund manager.

Additional numerical information should be provided using the reporting template in Annex II of the guidelines.

#### *5.2.6. Reporting on results*

During the implementation period, the Member States were asked in the context of the annual implementation reports to include, in accordance with Article 67(2) of the General Regulation, detailed information on the progress made in implementing the programme. This includes information by priority in relation to their specific, verifiable targets, using the indicators referred to in the programme.

Furthermore, the Member States, in the context of the assessment of the annual implementation reports, were asked to explain any divergence/progress against the agreed targets and change targets which were inappropriately set.

Nonetheless, performance targets should be maintained as much as possible in order to avoid a downgrading of the interventions. The Member States in their request for modification should ensure that the revised targets are accurate, especially if the targets were not properly set in the first place. However, targets should not be changed to adapt to performance, i.e. the objective is not to amend the target to equate to actual performance.

At closure, in case the reported indicators in the final report appear to divert significantly (i.e. by more than 25%) from the targets set in the programme, then the Member State should provide an explanation and a justification of why the target has not been met and why corrective actions have not been taken during the implementation period. This should take a form of a short summary of 3 pages at maximum.

#### *5.2.7. Phasing of projects*

The Member States should provide a list of major projects phasing of which has been accepted through an amending Commission decision as projects to be phased between the 2007-2013 and 2014-2020 periods (see section 3.3 of the guidelines). This list should follow the template provided in Annex III to the guidelines. The Member States should provide a list of non-major projects to be phased (see section 3.4 of the guidelines) on request using the template in Annex IV to the guidelines.

#### *5.2.8. Non-functioning projects*

The Member States should submit a list of non-functioning projects with the final report (see section 3.5 of the guidelines on non-functioning projects) using the template in Annex V to the guidelines.

#### *5.2.9. Use of interests*

According to Article 83 of the General Regulation, any interest generated by the pre-financing, at whichever level it might be (central body, intermediate body), is being regarded as a resource for the Member State in the form of a national public contribution, and shall be used for operations decided by the managing authority within the given programme.

For global grants (Article 43(c) of the General Regulation) the rules governing the use of any interest accruing is included in the provisions of the agreement concluded between the Member State or the managing authority and the intermediate body(ies).

#### *5.2.10. Reporting on the respect of the financial allocation ceilings*

The Member States shall provide in the final implementation report, financial information on the expenditure declared against the ceilings laid down in the Regulation (i.e. ceilings for transitional and non transitional areas, the breakdown between operational costs and investment costs under the specific allocation for outermost regions, the breakdown between the ESF and ERDF type of expenditure and technical assistance).

### **5.3. Closure declaration**

#### *5.3.1. General principle*

In accordance with Article 62(1)(e) of the General Regulation, the closure declaration is prepared by the audit authority and submitted to the Commission at the latest by 31 March 2017. It assesses the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which is supported by a final control report.

The closure declaration should be based on all the audit work carried out by, or under the responsibility of, the audit authority in accordance with the audit strategy, as provided in Article 18(3) of the Implementing Regulation. This work includes the audits carried out by the audit authority after 1 July 2015 (Article 62(d)(i) of the General Regulation) and the final control report should include the related information. This means that the audit authority should report on the basis of the audit work carried out until 1 July 2015 and also on the audit work carried out between 1 July 2015 and 31 December 2016. The audits of operations carried out by the audit authority in accordance with Article 16 of the Implementing Regulation during this period will cover the expenditure declared in 2015 and 2016<sup>23</sup>.

Article 18(3) of the Implementing Regulation also foresees that the closure declaration and final control report is drawn up in accordance with the model set out in Annex VIII to the Implementing Regulation. Where the report covers more than one programme or Fund, the information is broken down by programme and by Fund<sup>24</sup>. The audit authority should submit a closure declaration by programme. In case the Member States defined a common system covering more than one programme, the audit authority may submit a single closure declaration for the programmes that are part of that system, if the opinion is the same for all those programmes.

For European territorial cooperation objective programmes, the closure declaration and final control report should cover the whole of the programme and all programme expenditure eligible for contribution from the ERDF as provided in Article 18(3) of the Implementing Regulation.

Following Article 18(4) of the Implementing Regulation, if there is a limitation in the scope of examination or if the level of irregular expenditure detected does not allow the provision of an

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<sup>23</sup> In order to ensure that the audit authority is able to cover the expenditure declared in 2016 and in view of the deadline of 31 March 2017 for the submission of the closure declaration, it is recommended that the certifying authority submits the last interim payment claim by 30 June 2016, at the latest, thus ensuring that after this date no new expenditure will be declared to the Commission before the submission of the final payment application.

<sup>24</sup> Point 1, third bullet point of Annex VIII to the Implementing Regulation.

unqualified opinion in the closure declaration, the audit authority should give the reasons and estimate the scale of the problem and its financial impact.

The procedures for the preparation of the closure declarations were provided to the Commission in the context of the compliance assessment exercise, as results from Article 23(e) of the Implementing Regulation. Any subsequent modifications to those procedures should be communicated to the Commission in the context of the annual control reports.

In case the Member State has applied for partial closure (COCOF note 08/0043/03) during the programming period, the audit authority should disclose in the final control report any irregularities detected after the partial closure and concerning operations subject to partial closure; in this case, the audit authority should also confirm in the final control report that the financial corrections applied by the Commission under Article 99 were net, as established by Article 88(3) of the General Regulation.<sup>25</sup>

### 5.3.2. *Admissibility, acceptance and deadlines*

According to Article 89(3) of the General Regulation, the Commission should inform the Member State of its opinion on the content of the closure declaration within five months of the date of its receipt; the closure declaration should be deemed to be accepted in the absence of observations by the Commission within that five-month period.

As with the dialogue procedure established for the final report, once the Commission has provided comments on the closure declaration, the Member State will be given two months to respond and provide the necessary information. In case the Member State cannot comply with this deadline, it should inform the Commission accordingly and the deadline may be extended for another 2 months, except where further audit work is requested to the Member State, in which case the deadline can be extended to the period considered necessary to conclude this work. The closure declaration will only be accepted if all the comments from the Commission have been addressed.

The objective is to have the closure declaration revised and accepted by the Commission within one year of the date of its receipt, except for those cases that the request for further audit work requires a longer period.

The failure to submit the closure declaration reveals a serious deficiency in the management and control system of the programme which puts at risk the Union contribution already paid to the programme in the meaning of Article 99 of the General Regulation. The submission of a closure declaration which does not assess properly the validity and regularity of the underlying transactions covered by the final statement of expenditure might lead to the same conclusion.

In such cases and when the closure declaration discloses irregularities or systems deficiencies not corrected before closure, the Commission may consider the possibility of launching a financial correction procedure under Articles 99 and 100 of the General Regulation and as further detailed by the Commission Decision C(2011)7321 of 19 October 2011.

Specific guidance on the preparation and contents of the final control report and closure declaration is set out in Annex VI to these guidelines.

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<sup>25</sup> Article 88(3) has been amended by Regulation 539/2010, and the correction must not be a net correction in case of detection and correction by the Member State itself.

## **6. TECHNICAL ASSISTANCE**

### **6.1. Calculation of the technical assistance ceiling at closure**

Article 46 of the General Regulation sets out technical assistance ceilings. These ceilings are applicable both at the level of the total amount allocated by objective and at the level of programmes. The respect of these ceilings shall be ensured during the implementation of a programme, when amending an operational programme or reducing its allocations due to decommitments. However, according to Article 77 (12) of the General Regulation (as amended by Regulation (EU) No 1297/2013), an excess in the amount of eligible expenditure paid and declared for technical assistance activities could be used in line with the provisions outlined under point 5.1.1 last paragraph.

### **6.2 Use of 2007-2013 technical assistance for preparatory activities of the 2014-2020 programming period**

The technical assistance of programmes in the 2007-2013 period is governed by Article 46 of the General Regulation. According to Article 46(1) of the General Regulation it is possible to finance preparatory activities for the 2014-2020 period. However, these preparatory activities should be materially eligible under the 2007-2013 Union and national eligibility rules and should also fulfil the selection criteria of the programme concerned. In addition, there should be a clear demonstrable link between the proposed activities and the preparations within the Member State for the 2014-2020 period.

Nonetheless, it should be underlined that the primary purpose of the technical assistance of the current period is for the management and the implementation of the 2007-2013 programmes.

## **7. DECOMMITMENTS**

### **7.1. Automatic decommitment**

All amounts concerning operations not declared at closure will be decommitted, except for the amounts that the certifying authority has not been able to declare because of operations suspended due to legal proceedings or an administrative appeal having suspensory effect (Article 95 of the General Regulation) or for reasons of force majeure<sup>26</sup> (Article 96(c) of the General Regulation).

The Member State should indicate in the final report on implementation and in the closure declaration the amount relating to these two types of situations, which could not be declared at the time of submission of the closure documents.

### **7.2. Making appropriations available again**

Pursuant to Article 157 of Council Regulation (EC) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, decommitted appropriations may be made available again in the event of manifest error attributable solely to the Commission.

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<sup>26</sup> Force majeure has been defined by the European Court of Justice as being subject to circumstances that are abnormal, unforeseeable, beyond the control of the one who invokes it and that could not be avoided despite all diligence (Case 296/86, *McNicholl* [1988] ECR-1491 and, more recently, (Joined Cases T-61/00 and T-62/00 *APOL v Commission*).

## **8. OPERATIONS SUSPENDED DUE TO A LEGAL PROCEEDING OR AN ADMINISTRATIVE APPEAL HAVING SUSPENSORY EFFECT**

For each operation that is the subject of a legal proceedings or an administrative appeal having suspensory effects, the Member State must decide, before the deadline for submission of the closure documents for the programme, whether the operation should be (wholly or partly):

- withdrawn from the programme and/or replaced by another eligible operation before the deadline;
- retained in the programme.

The exception to the automatic decommitment applies to amounts that the certifying authority has not been able to declare to the Commission because of operations suspended due to a legal proceeding or an administrative appeal having suspensory effect, whereas, as indicated above, pending recoveries relate to the amounts that are declared to the Commission.

For those retained operations (Article 95 of the General Regulation), the Member State should inform the Commission of the amount that could not be declared in the final statement of expenditure, so as to keep a commitment open.

When requesting the application of Article 95 of the General Regulation, the Member State should fulfil the following three conditions:

- a) prove that there is a legal proceeding/an administrative appeal with regard to a specific operation;
- b) demonstrate that the legal proceeding or the administrative appeal has suspensory effect;
- c) justify the amounts, which will reduce the amounts potentially concerned by automatic decommitment.

The suspension does not extend the final date of eligibility of expenditure as stated in Article 56(1) of the General Regulation.

The maximum amounts remaining to be paid by the Commission from the Member State in respect of the suspended operations constitute an outstanding commitment until the responsible national authorities deliver a final decision.

The Member State should therefore keep the Commission informed of the outcome of the legal proceedings or administrative appeal. Depending on the outcome of the legal proceedings, further payments will be made, the recovery of amounts already paid will be carried out or payments already made will be confirmed. In case of irrecoverable amounts, the Commission might, on request of the Member State agree by decision that the Union share of the loss should be borne by the budget of the European Union and proceed to a further payment.

A list of suspended projects retained in the programme should be provided using the template of Annex VII to the guidelines.

## **9. PAYMENTS SUSPENDED**

The issues underlying any suspension or interruption of interim payments on-going at closure (Article 92 of the General Regulation) will be reviewed in the context of the assessment of the closure

declaration. The payment of the final balance will be calculated by the Commission taking into account, if applicable, the financial corrections to be imposed upon the Member State in accordance with Articles 99 and 100 of the General Regulation.

## **10. CALCULATION OF THE FINAL CONTRIBUTION**

At the level of the priority axis,

(1) the Union contribution through payments including the final balance shall not exceed, for each Fund, the amount resulting from applying the co-financing rate, established under the latest financing plan in force, to the declared eligible expenditure. For Member States benefiting from a temporary increase of co-financing of interim payments and payments of the final balance (10% top-up) in accordance with the derogation under Article 77 (2) of the General Regulation (as amended by Regulation (EU) No. 1297/2013)<sup>27</sup>, the Union contribution shall be increased by an amount corresponding to 10 percentage points above the co-financing rate applicable to each priority axis but not exceeding 100% to be applied to the amount of eligible expenditure newly declared in each certified statement of expenditure submitted as long as a Member State meets one of the conditions laid down under Article 77 (2) of the General Regulation (as amended by Regulation (EU) No. 1297/2013) or until the end of the programming period, where, after 21 December 2013, a Member State meets one of the conditions laid down under Article 77 (2) of the General Regulation (as amended by Regulation (EU) No 1297/2013);

(2) the Union contribution resulting from point (1) shall not exceed, by more than 10%, the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme.

At programme level,

(3) the Union contribution shall not exceed the public contribution declared,

(4) and the maximum amount of assistance to the operational programme as laid down in the decision of the Commission approving the operational programme.

For multi-objective programmes, the public contribution declared and the maximum amount of assistance will be capped at the level of the objectives, according to the provisions of Article 22 of the General Regulation<sup>28</sup>. An example of a final contribution calculation for a multi-objective programme is set out in Annex VIII to these guidelines.

## **11. THE EURO**

Article 81 of the General Regulation sets out the arrangements on the use of the euro in the budgetary management of the Structural Funds which are applicable at closure.

For financial engineering instruments, provisions of paragraph 2.8.2 of COCOF note 10/0014/05 of 8 February 2012 as revised following the entry into force of Commission Regulation (EC) No 1236/2011, apply.

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<sup>27</sup> Subject to compliance with procedure specified in Article 77(3) of the General Regulation.

<sup>28</sup> The application of the flexibility of 10% for the calculation of the final balance will not be limited by the application of other regulatory ceilings (e.g. ceilings for transitional and non-transitional areas, the breakdown between operational costs and investment costs under the specific allocation for outermost regions, the breakdown between the ESF and ERDF type of expenditure and technical assistance).



**Annex II**

**Template 1: Financial Engineering Instruments operations implemented with Holding Fund (sections marked with \* are optional)**

No.	Required information/data	Required data/information format	Comments
<b>I. Description and identification of the entities which implement the financial engineering instrument at the level of the Holding Fund (Article 67(2)(j)(i&amp;ii) of Council Regulation (EC) No 1083/2006)</b>			
I.1	<b>Holding Fund</b> (name and registered place of business)	text	
I.2	<b>Legal status of the Holding Fund</b>	////////////////////////////////////	
	independent legal entities governed by agreements between the co-financing partners or shareholders separate block of finance within a financial institution	radio button ☉ ☉	
I.2.1*	name, legal status and registered place of business of co-financing partners	text	*
I.3	<b>Holding Fund manager</b>	////////////////////////////////////	
	European Investment Bank (EIB)	radio button ☉ ☉ ☉ ☉	
	European Investment Fund (EIF)		
	financial institution other than the EIB/EIF		
other body			

I.3.1	Name, legal status and registered place of business of other body	text	
I.4	<b>Procedure for selecting the Holding Fund manager</b>	////////////////////////////////////	
	award of a public contract in accordance with applicable public procurement law	radio button <input type="radio"/> <input type="radio"/> <input type="radio"/>	
	award of a grant (in the meaning of Article 44, second paragraph, point (b) of Council Regulation (EC) No 1083/2006)		
	award of a contract directly to the EIB or the EIF		
I.5	<b>Date of signature of funding agreement with Managing Authority</b>	DD/MM/YYYY	
I.6	<b>Number of financial engineering instruments implemented under this specific Holding Fund</b>	number	
<b>II. Description and identification of the entities which implement the financial engineering instrument (Article 67(2)(j)(I &amp; ii) of Council Regulation (EC) No 1083/2006)</b>			
II.1	<b>Financial engineering instrument</b> (name and registered place of business)	text	
II.2	<b>Attributable to Article 44, first paragraph (a), (b) or (c) of Council Regulation (EC) No 1083/2006?</b>	////////////////////////////////////	
	(a) financial engineering instruments for enterprises	radio button <input type="radio"/> <input type="radio"/> <input type="radio"/>	
	(b) urban development funds		
	(c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable		

	energy in buildings, including in existing housing		
II.3	<b>Type of financial product offered by the financial engineering instrument to the final recipients</b>	////////////////////////////////////	
II.3.1	equity	clicking box <input type="checkbox"/>	
II.3.2	loan	clicking box <input type="checkbox"/>	
II.3.3	guarantee	clicking box <input type="checkbox"/>	
II.3.4	other product (interest rate subsidies, guarantee fee subsidies and equivalent measures)	clicking box <input type="checkbox"/>	
II.4	<b>Financial engineering instrument manager</b> (its name, legal status and registered place of business)	text	
II.5	<b>Procedure for selecting the financial engineering instrument manager</b>	////////////////////////////////////	
	award of a public contract in accordance with applicable public procurement law	radio button <input type="radio"/> <input type="radio"/> <input type="radio"/>	
	award of a grant (in the meaning of Article 44, second paragraph, point (b) of Council Regulation (EC) No 1083/2006)		
	award of a contract directly to the EIB or the EIF		
II.7	<b>Legal status of the financial engineering instrument</b>	////////////////////////////////////	
	independent legal entities governed by agreements between the co-financing partners or shareholders		
	separate block of finance within a financial institution		

radio button

<b>III. Amounts of assistance from the Structural Funds and national co-financing paid to the financial engineering instrument (Article 67(2)(j)(iii) of Council Regulation (EC) No 1083/2006)</b>			
<b>III.1</b>	<b>Amounts of assistance to the financial engineering instrument from all Operational Programmes</b>		
III.1.1	Operational Programme	text (CCI n°+title)	
III.1.2	Priority axis	text	
III.1.3	Contribution to the Holding Fund	%	
<b>III.2</b>	<b>Amounts of assistance to the Holding Fund from this specific Operational Programme</b>		
<b>III.2.1</b>	<b>Amounts of assistance from the Structural Funds</b>		
III.2.1.1*	ERDF amounts of assistance committed in the funding agreement (in EUR)	number (amount)	*
III.2.1.2	ERDF amounts effectively paid to the Holding Fund (in EUR)	number (amount)	
III.2.1.3*	ESF amounts of assistance committed in the funding agreement (in EUR)	number (amount)	*
III.2.1.4	ESF amounts effectively paid to the Holding Fund (in EUR)	number (amount)	
<b>III.2.2</b>	<b>Amounts of national co-financing</b>		
III.2.2.1*	National public co-financing committed in the funding agreement (in EUR)	number (amount)	*
III.2.2.2	National public co-financing effectively paid to the Holding Fund (in EUR)	number (amount)	

III.2.2.3*	National private co-financing committed in the funding agreement (in EUR)	number (amount)	*
III.2.2.4	National private co-financing effectively paid to the Holding Fund (in EUR)	number (amount)	
<b>III.3*</b>	<b>Amounts of other assistance paid to the Holding Fund outside Operational Programme (in EUR)</b>	number (amount)	*
<b>III.4</b>	<b>Management costs and fees paid to the Holding Fund ( in the meaning of Article 78(6)(d) of Council Regulation (EC) No 1083/2006) (in EUR)</b>	number (amount)	
<b>III.5</b>	<b>Amounts of assistance from the Holding Fund</b>	////////////////////////////////////	
III.5.1*	Amounts of Holding Fund resources legally committed to the financial engineering instrument (in EUR)	number (amount)	*
III.5.2	Amounts of Holding Fund resources effectively paid to the financial engineering instrument (in EUR)	number (amount)	
III.5.3	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
<b>III.6</b>	<b>Management costs and fees paid to the financial engineering instrument by the Holding Fund ( in the meaning of Article 78(6)(d) of Council Regulation (EC) No 1083/2006) (in EUR)</b>	number (amount)	
<b>IV. Amounts of assistance from the Structural Funds and national co-financing paid by the financial engineering instrument (Article 67(2)(j)(iv) of Council Regulation (EC) No 1083/2006)</b>			
<b>IV.1</b>	<b>Amounts of assistance paid to the final recipients through loans (per financial product)</b>		
IV.1.1	Name of product	text	

IV.1.2*	Number of final recipients supported, per type:	////////////////////////////////////	*
IV.1.2.1*	large enterprises	number	*
IV.1.2.2*	SMEs	number	*
IV.1.2.2.1*	out of which micro-enterprises	number	*
IV.1.2.3*	individuals	number	*
IV.1.2.4*	urban projects	number	*
IV.1.2.5*	other	number	*
IV.1.3*	Number of loan contracts signed with final recipients	number	*
IV.1.4*	Total loan amount committed in contracts signed with final recipients (in EUR)	number (amount)	*
IV.1.4.1*	out of which Operational Programme contribution	number (amount)	*
IV.1.5	Total amounts of assistance for loans effectively paid to the final recipients (in EUR)	number (amount)	
IV.1.5.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.1.6	Date of signature of funding agreement with Holding Fund	DD/MM/YYYY	
<b>IV.2</b>	<b>Amounts of assistance paid to the final recipients through guarantees (per financial product)</b>	////////////////////////////////////	
IV.2.1	Name of product	text	
IV.2.2*	Number of final recipients supported, per type	////////////////////////////////////	*
IV.2.2.1*	large enterprises	number	*

IV.2.2.2*	SMEs	number	*
IV.2.2.2.1*	out of which micro-enterprises	number	*
IV.2.2.3*	individuals	number	*
IV.2.2.4*	urban projects	number	*
IV.2.2.5*	other	number	*
IV.2.3*	Total amounts of assistance blocked for guarantee contracts signed (in EUR)	number (amount)	*
IV.2.4	Total amounts of assistance blocked for guarantee contracts for actually disbursed loans (in EUR)	number (amount)	
IV.2.4.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.2.5*	Number of loans actually disbursed in relation to guarantees contracts	number	*
IV.2.6	Total value of loans actually disbursed in relation to guarantees contracts (in EUR)	number (amount)	
IV.2.7	Date of signature of funding agreement with Holding Fund	DD/MM/YYYY	
<b>IV.3</b>	<b>Amounts of assistance paid to the final recipients through equity/venture capital (per financial product)</b>	////////////////////////////////////	
IV.3.1	Name of product	text	
IV.3.2*	Number of final recipients supported, per type	////////////////////////////////////	*
IV.3.2.1*	large enterprises	number	*
IV.3.2.2*	SMEs	number	*

IV.3.2.2.1*	out of which micro-enterprises	number	*
IV.3.2.3*	urban projects	number	*
IV.3.2.4*	other	number	*
IV.3.3*	Number of investments made in line with agreements signed	number	*
IV.3.4	Total amount of investments effectively made in line with agreements (in EUR)	number (amount)	
IV.3.4.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.3.5	Date of signature of funding agreement with Holding Fund	DD/MM/YYYY	
<b>IV.4</b>	<b>Amounts of assistance paid to the final recipients through other type of financial product (per financial product)</b>	////////////////////////////////////	
IV.4.1	Name of product	text	
IV.4.2*	Number of final recipients supported, per type	////////////////////////////////////	*
IV.4.2.1*	large enterprises	number	*
IV.4.2.2*	SMEs	number	*
IV.4.2.2.1*	out of which micro-enterprises	number	*
IV.4.2.3*	individuals	number	*
IV.4.2.4*	urban projects	number	*
IV.4.2.5*	other	number	*
IV.4.3	Total amount effectively paid to the final recipients (in EUR)	number (amount)	

IV.4.3.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.4.4*	Number of products effectively provided to the final recipients	number	*
IV.4.5	Date of signature of funding agreement with Holding Fund	DD/MM/YYYY	
<b>IV.5</b>	<b>Indicators</b>	////////////////////////////////////	
IV.5.1*	Number of jobs created or safeguarded	number	*

**Annex II**

**Template 2: Financial Engineering Instruments operations implemented without Holding Fund** (sections marked with \* are optional)

No.	Required information/data	Required data/information format	Comments
<b>II.A Description and identification of the entities which implement the financial engineering instrument</b> (Article 67(2)(j)(I & ii) of Council Regulation (EC) No 1083/2006)			
II.1	<b>Financial engineering instrument</b> (name and registered place of business)	text	
II.2	<b>Attributable to Article 44, first paragraph (a), (b) or (c) of Council Regulation (EC) No 1083/2006 ?</b>	////////////////////////////////////	
	(a) financial engineering instruments for enterprises	radio button <input type="radio"/> <input type="radio"/> <input type="radio"/>	
	(b) urban development funds		
	(c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing		
II.3	<b>Type of financial product offered by the financial engineering instrument to the final recipients</b>	////////////////////////////////////	
II.3.1	equity	clicking box <input type="checkbox"/>	
II.3.2	loan	clicking box <input type="checkbox"/>	
II.3.3	guarantee	clicking box <input type="checkbox"/>	
II.3.4	other product (interest rate subsidies, guarantee fee subsidies and equivalent measures)	clicking box <input type="checkbox"/>	

<b>II.B Description and identification of the entities which implement the financial engineering instrument (Article 67(2)(j)(I &amp; ii) of Council Regulation (EC) No 1083/2006)</b>		
II.4	<b>Financial engineering instrument manager</b> (its name, legal status and registered place of business)	text
II.5	<b>Procedure for selecting the financial engineering instrument manager</b>	////////////////////////////////////
	award of a public contract in accordance with applicable public procurement law	radio button <input type="radio"/> <input type="radio"/> <input type="radio"/>
	award of a grant (in the meaning of Article 44, second paragraph, point (b) of Council Regulation (EC) No 1083/2006)	
	award of a contract directly to the EIB or the EIF	
II.7	<b>Legal status of the financial engineering instrument</b>	////////////////////////////////////
	independent legal entities governed by agreements between the co-financing partners or shareholders	radio button <input type="radio"/> <input type="radio"/>
	separate block of finance within a financial institution	
II.6	Date of signature of funding agreement with Managing Authority	DD/MM/YYYY
<b>III. Amounts of assistance from the Structural Funds and national co-financing paid to the financial engineering instrument (Article 67(2)(j)(iii) of Council Regulation (EC) No 1083/2006)</b>		
III.1	<b>Amounts of assistance to the financial engineering instrument from all Operational Programmes</b>	

III.1.1	Operational Programme	text (CCI n°+title)	
III.1.2	Priority axis	text (n°)	
III.1.3	Contribution to the financial engineering instrument	%	
<b>III.2</b>	<b>Amounts of assistance to the financial engineering instrument from this specific Operational Programme</b>	////////////////////////////////////	
<b>III.2.1</b>	<b>Amounts of assistance from the Structural Funds</b>	////////////////////////////////////	
III.2.1.1*	ERDF amounts committed in the funding agreement (in EUR)	number (amount)	*
III.2.1.2	ERDF amounts effectively paid to the financial engineering instrument (in EUR)	number (amount)	
III.2.1.3*	ESF amounts committed in the funding agreement (in EUR)	number (amount)	*
III.2.1.4	ESF amounts effectively paid to the FEI (in EUR)	number (amount)	
<b>III.2.2</b>	<b>Amounts of national co-financing</b>	////////////////////////////////////	
III.2.2.1*	National public co-financing committed in the funding agreement (in EUR)	<b>number (amount)</b>	*
III.2.2.2	National public co-financing effectively paid to the financial engineering instrument (in EUR)	number (amount)	
III.2.2.3*	National private co-financing committed in the funding agreement (in EUR)	number (amount)	*
III.2.2.4	National private co-financing effectively paid to the FEI (in EUR)	number (amount)	

<b>III.3*</b>	<b>Amounts of other assistance paid to the financial engineering instrument outside Operational Programme (in EUR)</b>	number (amount)	*
<b>III.4</b>	<b>Management costs and fees paid to the financial engineering instrument ( in the meaning of Article 78(6)(d) of Council Regulation (EC) No 1083/2006) (in EUR)</b>	number (amount)	
<b>IV. Amounts of assistance from the Structural Funds and national co-financing paid by the financial engineering instrument (Article 67(2)(j)(iv) of Council Regulation (EC) No 1083/2006)</b>			
<b>IV.1</b>	<b>Amounts of assistance paid to the final recipients through loans (per financial product)</b>	////////////////////////////////////	
IV.1.1	Name of product	text	
IV.1.2*	Number of final recipients supported, per type:	////////////////////////////////////	*
IV.1.2.1*	large enterprises	number	*
IV.1.2.2*	SMEs	number	*
IV.1.2.2.1*	out of which micro-enterprises	number	*
IV.1.2.3*	individuals	number	*
IV.1.2.4*	urban projects	number	*
IV.1.2.5*	other	number	*
IV.1.3*	Number of loan contracts signed with final recipients	number	*
IV.1.4*	Total loan amount committed in contracts signed with final recipients (in EUR)	number (amount)	*

IV.1.4.1*	out of which Operational Programme contribution	number (amount)	*
IV.1.5	Total amounts of assistance for loans effectively paid to the final recipients (in EUR)	number (amount)	
IV.1.5.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
<b>IV.2</b>	<b>Amounts of assistance paid to the final recipients through guarantees (per financial product)</b>	////////////////////////////////////	
IV.2.1	Name of product	text	
IV.2.2*	Number of final recipients supported, per type	////////////////////////////////////	*
IV.2.2.1*	large enterprises	number	*
IV.2.2.2*	SMEs	number	*
IV.2.2.2.1*	out of which micro-enterprises	number	*
IV.2.2.3*	individuals	number	*
IV.2.2.4*	urban projects	number	*
IV.2.2.5*	other	number	*
IV.2.3*	Total amount of assistance blocked for guarantee contracts signed (in EUR)	number (amount)	*
IV.2.4	Total amounts of assistance blocked for guarantee contracts for actually disbursed loans (in EUR)	number (amount)	
IV.2.4.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.2.5*	Number of loans actually disbursed in relation to guarantees contracts	number	*



IV.4.2.1*	large enterprises	number	*
IV.4.2.2*	SMEs	number	*
IV.4.2.2.1*	out of which micro-enterprises	number	*
IV.4.2.3*	individuals	number	*
IV.4.2.4*	urban projects	number	*
IV.4.2.5*	other	number	*
IV.4.3	Total amount effectively disbursed to the final recipients (in EUR)	number (amount)	
IV.4.3.1	out of which amounts of assistance from the Structural Funds (in EUR)	number (amount)	
IV.4.4*	Number of products effectively provided to the final recipients	number	*
<b>IV.5</b>	<b>Indicators</b>	////////////////////////////////////	
IV.5.1*	Number of jobs created or safeguarded	number	*



**Annex IV**

**Guidelines on Closure 2007-2013**

**Summary table of phased projects (non-major projects)**

**(to be attached to the final report on request by the Commission)**

OP TITLE						
CCI NUMBER						
PRIORITY	PROJECT REFERENCE	PROJECT TITLE	NAME OF THE BENEFICIARY / RECIPIENT	CERTIFIED EXPENDITURE PAID <sup>1)</sup> (in EUR)	UNION CONTRIBUTION (in EUR)	TO BE COMPLETED UNDER 2014-2020 FROM OP <sup>2)</sup>

1) The total certified expenditure actually paid out for the project

2) The name of the 2014-2020 OP under which the second phase of the project will be completed

**Annex V**

**Guidelines on Closure 2007-2013**

Summary table of non-functioning projects  
(to be attached to the final report)

OP TITLE					
CCI NUMBER					
PRIORITY	PROJECT REFERENCE	PROJECT TITLE	NAME OF THE BENEFICIARY / RECIPIENT	CERTIFIED EXPENDITURE PAID <sup>1)</sup> (in EUR)	UNION CONTRIBUTION (in EUR)

1) The total certified expenditure actually paid out for the project

## Annex VI

### Guidance on preparation for the final control report and closure declaration

#### **11. PREPARATION FOR CLOSURE**

In preparation for closure, the managing authorities and intermediate bodies should:

- Analyse the final expenditure claims from all beneficiaries in relation to expenditure incurred up to the end of 2015.
- Complete management checks under Article 60(a) and (b) of the General Regulation and Article 13 of the Implementing Regulation to verify eligibility and regularity of expenditure.
- Satisfy themselves that the final expenditure declaration for the programme (to be submitted to the certifying authority well in advance of the deadline of 31 March 2017) has been, and can be, reconciled with the records in the accounting system for the programme and that there is an adequate audit trail down to the level of the final recipient both for Union and national funds.
- Verify in the final expenditure declaration for the programme the amounts of public contribution actually paid to beneficiaries, in accordance with Article 78(1) and 80 of the General Regulation.
- Ascertain whether the conditions set out in this Article 78 bis are met, namely in regard to advances paid to beneficiaries (as regards State aid within the meaning of Article 107(1) TFEU (formerly Article 87 of the Treaty) and to financial engineering instruments (as defined in Article 44 of the General Regulation).
- Verify that all errors/irregularities have been corrected, in respect of:
  - Management checks carried out under the provisions above-mentioned;
  - Systems audits carried out by the audit authority and audits of operations carried out under Article 16 of the Implementing Regulation;
  - Verifications carried out by certifying authority
  - Audits by other national bodies;
  - Audits by European Commission;
  - Audits by European Court of Auditors

It should be noted that many of the above points are the completion of tasks, which need to be carried out regularly during the implementation of programmes.

In preparation for closure, the certifying authority should:

- Draw up application for payment of the final balance and a statement of expenditure in accordance with Article 78 of the General Regulation.
- Ensure that there is sufficient information from the managing authority to be able to certify the accuracy, eligibility and regularity of the amounts declared.

- Satisfy themselves that the conditions under Article 61 (points (b) to (f)) of the General Regulation are respected, namely that amounts recovered are repaid to the general budget of the European Union prior to the closure of the operational programme or, if this is not the case, that they have been taken into account in the final declaration of expenditure.
- Satisfy themselves that all errors/irregularities have been corrected and findings and recommendations of audits fully implemented.
- Request further information and/or undertake own verifications where necessary.
- Draw up the final statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts, to be provided by 31 March 2017, in line with Article 20(2) and Annex XI of the Implementing Regulation.
- It is important that the application for payment of the final balance and a statement of expenditure, is submitted to the audit authority well in advance (e.g. at least three months before the deadline of 31 March 2017) so this body has sufficient time to carry out its work for the closure declaration<sup>29</sup>
- Draw up annex to the statement of expenditure on financial engineering instruments and state aid as foreseen in Article 78a of the General Regulation

At closure, the audit authority should:

- Verify if the work done by the managing authority/intermediate bodies and certifying authority in preparation for closure has adequately covered the points identified above.
- Ensure that there is sufficient and reliable information from the managing authority, intermediate bodies and certifying authorities to be able to provide an opinion on whether the final statement of expenditure presents fairly, in all material respects, the expenditure paid under the operational programme, that the application for payment of the final balance of the Community contribution to the relevant programme is valid and that the underlying transactions covered by the final statement of expenditure are legal and regular.
- Verify that all errors/irregularities have been corrected, in respect of:
  - Management checks carried out under the provisions above-mentioned;
  - Audits of operations carried out under Article 16 of the Implementing Regulation;
  - Audits by other national bodies;
  - Audits by European Commission;
  - Audits by European Court of Auditors
- Ensure that all the errors detected by the audit authority in the context of its audit of operations are analysed in accordance with Commission's guidance on treatment of errors disclosed in annual control reports<sup>30</sup>. In particular, *"in the case of a systemic*

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<sup>29</sup> The final statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts would be prepared in the beginning of 2017. In any case, it should be submitted to the audit authority in time to allow this entity to perform necessary additional verifications.

<sup>30</sup> COCOF note n°11-0041-01-EN of 07/12/2011.

*irregularity, the Member State shall extend its enquiries to cover all operations liable to be affected*<sup>31</sup>.

- Verify whether the certifying authority has complied with the conditions under Article 61 (points (b) to (f)) of the General Regulation, namely that amounts recovered are effectively deducted prior to the closure of the operational programme.
- Verify whether the certifying authority has drawn up the final statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts in line with Article 20(2) and Annex XI of the Implementing Regulation. The audit authority should check whether the data contained in the statement is supported by the information contained in the certifying authority's system and contains all the irregularities subject of a financial correction until closure. The final control report should disclose the results of audit authority's checks in this regard and its conclusion on the reliability and completeness of the certifying authority's statement to be submitted under Article 20(2). In case the final statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts is not considered reliable and/or incomplete by the audit authority this will be considered a serious deficiency of the management and control system, and it might be subject to financial corrections.
- Verify in particular the following with regard to the final statement of expenditure and request for final payment:
  - The correct presentation of the documents;
  - The correctness of the calculations;
  - The reconciliation of the final statement to declarations of the managing authority and intermediate bodies;
  - Compatibility with the applicable financial tables of the last decision in force;
  - Correspondence with the financial information, including information on irregularities, in the final report on execution of the programme.
  - The correct implementation of the deductions related to withdrawals and recoveries mentioned in the corresponding statements on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts (annex XI of the Implementing Regulation).
- Verify the presence in the statement of expenditure of Annex on financial engineering instruments and state aid as foreseen in Article 78a of the General Regulation.

In the final control report, the audit authority should describe the work done in regard to the aspects above-mentioned and consider the following:

- If the audit authority uses the work of another national body to carry out systems audit or audit of operations, the audit authority should have full reliance on the quality of the work done by this body and this should be clearly mentioned in the final control report. If the audit authority does not have such reliance, the final report should disclose the measures taken to address this problem and conclude on whether this gives the audit authority reasonable assurance that the audit work has been performed in line with the Community and national Regulations and with internationally accepted audit standards.
- The final control report should provide information on the follow-up of irregularities.

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<sup>31</sup>

Article 98(4) of the General Regulation

- The final control report should disclose by programme (and by Fund, where applicable):
  - the annual total projected error rates disclosed each year in the annual control reports (or the revised error rate, if any, for the annual control report 2015) (column D of table for declared expenditure and sample audits);
  - the annual total projected error rate resulting from the audits of operations carried out between 1 July 2015 and 31 December 2016 and covering the expenditure declared in 2015 and 2016 (column D);
  - the quantification of the risk per year (column E) resulting from: (i) the application of the total projected error rate (as presented in the annual control report) to the population; or (ii) the application of a projected error rate or a flat rate agreed with the Commission following its assessment;
  - other expenditure audited per year (column H), i.e. expenditure from complementary sample and expenditure for random sample not in the reference year and the related amount of irregular expenditure (column I);
  - the sum of all financial corrections applied by the Member State (amounts on withdrawals and recoveries disclosed by the Member State under annex XI of the Implementing Regulation ) on the basis of the total expenditure paid by beneficiaries (column F);
  - the residual risk amount for each reference year (column G), resulting from the deduction of all the financial corrections mentioned in the previous point (column F) from the quantification of the risk column E);
  - the residual risk rate at closure, corresponding to the sum of the annual residual risk amounts divided by the sum of the total expenditure declared at closure. ( $K = G/A$ )
- The opinion of the audit authority in the closure declaration should be drafted taking into account the Commission's guidance on treatment of errors disclosed in annual control reports. This means in particular that the audit authority may disclose an unqualified opinion if the residual risk rate at closure is below the materiality level (2% of the expenditure declared). A qualified opinion is deemed appropriate in case this risk rate is equal or above 2%, unless the Member State takes the necessary corrective measures<sup>32</sup> (as foreseen in section 5.3 and 5.4 of the mentioned guidance) on the basis of that risk rate, before submission of the closure declaration to the Commission.
- The "table for declared expenditure and sample audits" to be presented in point 9 of the final control report is as follows.

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<sup>32</sup> In order to obtain a non-qualified opinion corrective measures will have to assure that the residual risk rate is below the material level

TABLE FOR DECLARED EXPENDITURE AND SAMPLE AUDITS

Reference year	Fund	Reference (CCI no)	Programme	Expenditure declared in reference year (A)	Expenditure in reference year audited for the random sample (B)		Amount and percentage (error rate) of irregular expenditure in random sample <sup>[33]</sup> (C)		Total projected error rate <sup>[34]</sup> (D)	Quantification of the risk <sup>[35]</sup> (E)	Financial corrections applied by the MS on the basis of the total expenditure paid by beneficiaries <sup>[36]</sup> (F)	Residual risk amount (G= E-F)	Other expenditure audited (H) <sup>[37]</sup>	Amount of irregular expenditure in other expenditure audited (I)	Total expenditure audited cumulatively <sup>[38]</sup> as a percentage of total expenditure declared cumulatively (J) = [(B)+(H)]/A	
					Amount <sup>[39]</sup>	% <sup>[40]</sup>	Amount	%								
2007																
	ERDF	2007xx1														
	ERDF	2007xx2														
Subtotal for year 2007 (in case of common system, same Fund)																
2008																
	ERDF	2007xx3														
	CF	2007xx3														
Subtotal for year 2008 (in case of common system different Funds)																
...																

<sup>33</sup> Where the random sample covers more than one Fund or programme, the information on the amount and percentage (error rate) of irregular expenditure is provided for the whole sample and cannot be provided on programme/Fund level.

<sup>34</sup> The concept of total projected error rate is explained in section 4.4 of the Commission's guidance on sampling (COCOF\_08-0021-03\_EN of 04/04/2013)..

<sup>35</sup> The quantification of the risk per year (column E) results from: (i) the application of the total projected error rate (as presented in the annual control report) to the population; or (ii) the application of a projected error rate or a flat rate agreed with the Commission following its assessment

<sup>36</sup> The total of column (F) should be coherent with the amounts on withdrawals and recoveries disclosed by the Member State under annex XI of the Implementing Regulation.  
<sup>37</sup> Expenditure from complementary sample and expenditure for random sample not in the reference year (for further guidance see COCOF note n° 09-0004-01-EN of 18/02/2009 on annual control reports and opinions).

<sup>38</sup> Includes both expenditure audited for the random sample and the other expenditure audited.

<sup>39</sup> Amount of expenditure audited.

<sup>40</sup> Percentage of expenditure audited in relation to expenditure declared to the Commission in the reference year.

2016															
<b>TOTAL</b> <sup>[41]</sup>															
<b>Residual risk rate at closure</b> <b>(K) = (G)/(A)</b>															

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<sup>41</sup> The annual amounts reported under column (A) should be equal to the amounts disclosed in the respective Annual Control Report under table 9. The total of the column (A) should be the equal to the total amount presented at closure in the certificate and statement of expenditure and application for final payment.



## Annex VIII

# Guidelines on Closure 2007-2013

### Example of Calculation at the level of the programme and the priority axis for a multiobjective programme

Financial Plan								Final declaration of expenditure		Calculation at the level of the priority axis			Calculation at the level of the programme	
Priority	Eligible Total	EU (Fund Contribution)	National Counterpart	National Public	National Private (*)	Public /Total	Cofin Rate	Total expenditure	Public Contribution	Calculated Fund Contribution (1)	Flexibility limit	Amount retained at priority level (2)	Capping to Public Contribution (3)	Capping to Fund Contribution (4)
	$A = B + (z)$	B	$(z) = (x) + (y)$	(x)	(y)	P / T	$C=B/A$	D	E	$F=C*D$ or $C*E$	$H=B+B*10\%$	$J=\min(F,H)$	$K=\min(J,E)$	$L=\min(K,B)$
Priority 1	95,000	81,000	14,000	14,000	0	P	85%	100,000	100,000	85,263	89,100	85,263		
Priority 2	60,000	45,000	15,000	15,000	0	P	75%	54,000	54,000	40,500	49,500	40,500		
Priority 3	61,000	52,000	9,000	9,000	0	P	85%	64,000	64,000	54,557	57,200	54,557		
<b>Objective COM</b>	<b>216,000</b>	<b>178,000</b>	<b>38,000</b>	<b>38,000</b>	<b>0</b>			<b>218,000</b>	<b>218,000</b>	<b>180,321</b>	<b>195,800</b>	<b>180,321</b>	<b>180,321</b>	<b>178,000</b>
Priority 4	800	600	200	150	50	T	75%	720	580	540	660	540		
Priority 5	7,000	6,000	1,000	800	200	T	86%	8,000	6,200	6,857	6,600	6,600		
Priority 6	27,000	20,000	7,000	5,000	2,000	T	74%	24,000	19,200	17,778	22,000	17,778		
<b>Objective CONV</b>	<b>34,800</b>	<b>26,600</b>	<b>8,200</b>	<b>5,950</b>	<b>2,250</b>			<b>32,720</b>	<b>25,980</b>	<b>25,175</b>	<b>29,260</b>	<b>24,918</b>	<b>24,918</b>	<b>24,918</b>
<b>Programme</b>	<b>250,800</b>	<b>204,600</b>	<b>46,200</b>	<b>43,950</b>	<b>2,250</b>			<b>250,720</b>	<b>243,980</b>				<b>Final result at programme level</b>	<b>202,918</b>

(\*) To be completed only when priority axes are expressed in total costs

(1) The amount resulting from applying the co-financing rate, established under the latest financing plan in force, to the declared eligible expenditure

(2) Capping to the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme increased by 10%

(3) Capping to the public contribution declared

(4) Capping to the maximum amount of assistance from each Fund to the operational programme as laid down in the decision of the Commission approving the operational programme