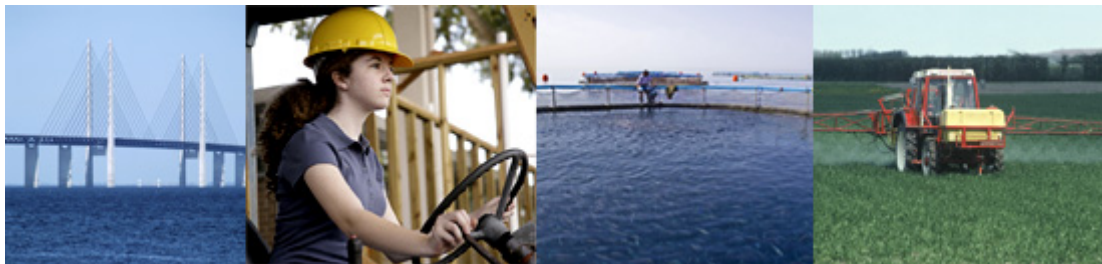


"Towards a Successful Closure of Structural Funds 2000-2006 Programmes"

**Seminar for managing and paying authorities
and winding-up bodies**

Brussels, 15 September 2008



**CLOSURE OF
STRUCTURAL FUNDS 2000-2006 ASSISTANCE**

**REGISTER OF
QUESTIONS AND ANSWERS**

Final version: 19 December 2008

"This is a working document prepared by the Commission services. On the basis of the applicable Community law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of Cohesion policy on how to interpret and apply the Community rules in this area. The aim of the working document is to provide the Commission's services' explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However, this guidance is without prejudice to specific rules of individual Funds on particular points and to the interpretation of the Court of Justice and the Court of First Instance or evolving Commission decision-making practice.

The current register has been prepared for the purpose of the seminar "Towards a Successful Closure of Structural Funds 2000-2006 Programmes" based on questions submitted by the Member States to the European Commission. Information set out in the answers does not in any event prevail over or is of prejudice to rules set out in relevant Community legislation as well as to position established in Commission's guidelines."

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1. CLOSURE OF STRUCTURAL FUNDS 2000-2006 ASSISTANCE

This register provides interpretations, in particular, on questions related to the following issues:

- key documents and timetable for the closure of Structural Funds 2000-2006 assistance;
- treatment of the certified statement of final expenditure, including the final payment application;
- examination of the final report;
- examination of the winding-up declaration;
- detailed tasks of all Commission and external actors involved in the procedures.

1.1. Closure General Principles

- (1) **When is a programme treated as closed: when the final report is acknowledged by the Commission as admissible and satisfactory or when the allocations are transferred by all the funds?**

We would refer you to point 1 of the 'Guidelines on closure of assistance (2000-2006) from the Structural Funds', C(2006) 3424 (hereinafter referred to as Closure Guidelines), which provides that "closure of assistance covers the financial settlement of outstanding Community commitments through payment of the balance of the commitment to the appointed authority or the issue of a debit note and decommitment of any final balance, as well as the period until all the Commission's and Member State's rights and obligations have been extinguished in respect of assistance or operations. Final settlement does not prejudice the Commission's right to impose financial corrections."

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| <p>(2) Quels éléments sont impératifs pour l'archivage des dossiers?</p> <p>(3) Quelle est la date limite de conservation des pièces des dossiers Leader+ pour les groupes d'action locales (GAL), les maîtres d'ouvrage et l'autorité de gestion?</p> |
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Les dispositions pertinentes pour l'archivage des dossiers sont l'article 38, paragraphe 6, du règlement (CE) n° 1260/1999, l'article 7 du règlement (CE) No. 1685/2000 et son annexe I, qui donne une liste indicative de ces documents.

Ces pièces constituent la base de la piste d'audit et doivent donc comprendre tous les éléments qui ont permis de justifier des dépenses auprès de la Commission.

Conformément à l'article 38, paragraphe 6, du règlement (CE) n° 1260/1999, le délai de conservation des pièces justificatives est de trois ans après le paiement du solde par la Commission (plus précisément paiement du solde ou émission d'une note débit et dégageant de tout solde, voir détail dans la réponse à la question 1). Ce délai est suspendu soit en cas de poursuites judiciaires, soit à la demande dûment motivée de la Commission.

- (4) **Les règles applicables aux différentes interventions cofinancées par le FEDER: les procédures de clôture relatives à INTERREG seront-elles différentes de celles des autres interventions?**

Non. Cependant, voir la note COCOF 07/0078/02.

- (5) **Closing a programme which involves a non-Member State is a challenge. Is it possible to get some more guidelines on all of the 7 steps on how to successfully close such programmes?**

While there are specific rules for programmes with operations involving third countries (for example, Rule 12 of the Annex to Regulation (EC) No 1685/2000), there are no additional closure requirements for such programmes.

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1.2. In the run-up to closure

(a) *Modification of the Commission decision*

- (6) **Is it possible to change the total amount allocated for the programme with no increase in the Community share if there is a shortage of funds to finance the commitments taken? If yes, what procedures should be followed in order to increase the national co-financing for the measures? What is the deadline for changes related to the increase of national co-financing for the programme?**

As point 2.1 of the Closure Guidelines explained, Member State had until 31 December 2006 to lodge requests to modify the financing plans of operational programmes. It is thus too late for Member States to request modification of the financial plans of the operational programmes. However, it is possible for Member States to declare eligible expenditure over and above what set out in the final version of the financial plan annexed to the operational programme if, for example, there is an increase in national co-financing for the programme.

(b) *Modification of the programme complements*

- (7) **Taking account of the fact that during 2008 the measures will be completed during different periods of time, in order to avoid several requests for modification, we would ask for the possibility to concentrate the variations in one or two provisions? (at Monitoring Committees mid and end year), in order to use the resources from the closed measures to the ones still open, before the approval of each variation.**

Member States can group adjustments to the financial plans of programme complements.

However, the Member State should take into account the date of eligibility when programme complements are amended (see CDCR document n°CDRR-03-0013-00-EN).

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| <p>(8) What is the deadline for the programme complement changes related to redistribution between the measures in the same fund?</p> <p>(9) Is it necessary that European Commission approves the changes of Programme Complement before the end of 2008?</p> <p>(10) Which is the final date for modification of the programme complement: 31 December 2008 or 30 April 2009?</p> <p>(11) Est-il nécessaire d'effectuer une modification du complément de programmation si l'on procède à des glissements de montants entre mesures sans changer le montant de l'axe prioritaire?</p> <p>(12) Nous demandons à la Commission de confirmer si nous avons bien compris qu'il est possible de changer le complément de programmation et le tableau</p> |
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financier de celui-ci jusqu'au 31 décembre 2008, l'éligibilité ne présentant pas de problèmes pour les projets en cours et pouvant précéder la date d'approbation du Comité de suivi adoptant la modification.

The final date for the modification of the programme complement is the final date of eligibility for the programme, as set out in the Decision approving the programme.

The Commission will calculate the final payment on the basis of the last version of the programme complement financial table, which must be in full compliance with the financial table annexed to the operational programme. It is thus in Member States' interests to adapt the programme complement financial table to reflect as closely as possible actual expenditure on operations and the real co-financing rate. As set out in point 2.2 of the Closure Guidelines, transfers between measures within the same Fund will be possible until the final date of eligibility of expenditure, provided the financial plan of the Commission decision does not require to be modified. Once the programme complement has been modified, pursuant to Article 34(3) of Regulation (EC) No 1260/1999, it must be submitted to the Commission for information within one month of its approval by the monitoring committee.

Commission also refers to Section 8(a) of the Closure Guidelines, which states that the Commission will not cap payment at the measure level in the programme complement financial table.

- (13) Should final compensations between measures within the same priority be considered as modifications of the programme complement with the consequent procedures or could these modifications be made at closure without any formal modulation?**

It is quite normal that the expenditure made until the eligibility deadline to a certain extent differs from the last version of the financial table annexed to the programme complement. It is this difference which justifies the flexibility at priority axis level and compensations between measures (see also 342). Final compensations between measures within the final payment claim are part of the flexibility provided at closure and do not require any modification of the programme complement that are in any case impossible after the final date of eligibility of expenditure.

- (14) In the period from 31 December 2008 to 30 April 2009, will it be possible to modify the Docup in measures concerning infrastructure if the modification is not affecting the financial plan of the programming complement?**
- (15) Provided that expenditure deadline is 31 December 2008, while State aid measures can spend until 30 April, 2009, may the latter deadline apply for the final modification of the whole programme's financial plan?**
- (16) When a programme complement contains State aid measures, the later date (30 April 2009) prevails, giving, thus, the possibility to modify the overall programme complement until 30 April 2009. Could you please confirm that**

the modifications of the programme complement until 30 April 2009 apart from the measures including State aid actions may also concern the measures not including State aid actions?

(17) According to the Closure Guidelines, changes of the programme complement may be made until the final date of eligibility (provided that the final programme complement, including the financial table annexed to it, is consistent with the Commission Decision approving the assistance, including the financial table annexed to the decision). As far as we understand, the date of approval by the monitoring committee is decisive. Are there any recommendations to send the information on an amended programme complement a couple of months before the final date of eligibility so that the Commission can check it and, where necessary, ask for amendments (of the financial plan)? If according to the Commission Decision approving our operational programme 2000-2006, "the final date of eligibility for expenditure is 31 December 2008. For expenditure of the bodies distributing financial aid according to Art. 9 l) of Reg. 1260/1999 [state aid], this date is postponed to 30 April 2009". Does this mean that the programme complement can be amended until 30 April 2009?

(18) In an Operational Programme dates of eligibility of expenditure are as follows:

- Final date of eligibility for aid schemes expenditure and aids granted by bodies designated by the Member States: 30 April 2009

- Final date of eligibility for other type of expenditure: 31 December 2008

Having regard to Guidelines, point 2.2, third paragraph: "Other modifications or the programme complement, [...] may be approved by the Monitoring Committee until the final date of eligibility of expenditure of the programme". What is the final date to approve a modification to the programme complement which do not require modification of the financing plan? Could you confirm that in such a case the final date of approval of a modification to the programme complement is: 30 April 2009?

(19) For programmes with State aid, is the deadline for the modification of the programme complement 31 December 2008 or 30 April 2009? If the answer to the previous question is 30 April 2009, our second question would concern measures without State aid in a programme with State aid. Namely, can Funds be moved from measures without State aid to measures with State aid in the same programme after 31 December 2008?

Changes to the programme complement financial table can be made until the final date of eligibility of expenditure for the programme. Where a programme contains operations subject to different final dates of eligibility, such as grants and state aid, the latter or last of these dates will be deemed to be the deadline for changes to be made to the programme complement. This means that for programmes involving State aid changes to the programme complement financial table can be made up to and including 30 April 2009. Such changes can include

modifications of co-financing rates and transfers between measures containing state aid and aids granted by bodies designated by the Member States and other measures. It should be recalled, however, that this does not alter the final dates of eligibility for state aid and aid granted by bodies designated by Member States and other operations, that remain as fixed in the programme.

Once a programme complement has been modified, it should be submitted to the Commission for information within one month of its approval by the Monitoring Committee (Article 34(3) of Regulation (EC) No 1260/1999).

- (20) Concerning the State aid expenditure, the final date of eligibility of expenditures is the 30 April 2009 for both the final beneficiary and the final recipient. Could you please confirm that the final recipient of a State aid is able to make expenditures until 30 April 2009 and, in case of successful payment from the final beneficiary's end, they are eligible?**
- (21) Can also the final beneficiary (project holder) make payments until 30 April 2009 for measures to which State aid schemes apply, provided that the beneficiary carries out his payment also until 30 April 2009. Is this true although following the 'n+2' rule no funds from the programming period 2000-2006 should be available any more in 2009?**
- (22) For the aids: two conditions have to be met, respectively the aid granted according to Art. 87 and that the final beneficiary is the body which grants the aid or is only one condition enough? Are the "exemptions" considered as granted according to Art 87 and thus eligibility is only to 30 April 2009? What are the expenses relative to aid regimes that we could report: only the expenses of the final beneficiaries, while the ones with final destination need to be committed before 31/12/2008, so the suppliers' bills paid before 31 December 2008? Or is the final deadline moved entirely to 30 April 2009?**
- (23) La date limite d'éligibilité du 31 décembre 2008 est-elle applicable aux dépenses des bénéficiaires ultimes ou aux états récapitulatifs des organismes relais?**
- (24) The decision to approve the programme foresees that for state aid regimes the payments by the final beneficiaries can be executed until 30 April 2009: for the justifications for the expenditure (bills) - can these be dated until 30 April 2009 or do they have to have the deadline of 31 December 2008?**

It is confirmed that, as regards State aid and aid granted by bodies designated by the Member States, the final date of eligibility of expenditure for both the final beneficiary and the final recipient is 30 April 2009. In theory, the bills can be dated and paid by the final beneficiary until 30 April 2009. However, from a practical point of view, a sufficient period should be foreseen by final beneficiaries to process and pay the bills before the deadline of 30 April 2009. That was the purpose of the four additional months for State aid and aid granted by bodies designated by the Member States.

There is no 'n+2 exercise' at the end of 2008 as regards the 2006 commitment (see answers to questions under point h) of Chapter 1.6 of the current register).

- (25) Is it possible to approve a final version of the financial plan of the programme complement with a higher private component than what is stated in the operational programme financial table?**

No, the Member State can declare more expenditure but the financial plan of the programme complement must be in full compliance with the financial plan annexed to the Commission decision on the operational programme.

- (26) Is there a maximum amount that can be shifted between measures of the Programme Complement?**

As indicated in point 2.2 of the Closure Guidelines, transfers between measures within the same Fund and the addition of new measures is possible until the final date of eligibility provided the financing plan annexed to the Commission decision does not require to be modified. There is no limit on amounts, provided that the conditions set out in point 2.2 of the Closure Guidelines are respected.

- (27) It is clear that the final date for the modification of the programme complement is the final date of eligibility for programme. Is it necessary for the managing authority to do modification of the programme complement (to change amounts among measures within priority) when the Commission will use 2 % flexibility between priorities?**

For example, we have priority 1 and four measures (1.1, 1.2, 1.3, 1.4). In measure 1.1, we will exceed the amount allocated in these measures (e.g. about 105%). In measure 1.2, we will not exceed the amount allocated in this measure (e.g. we will reach only 95 % of allocated amount). In measure 1.3, we will not exceed the amount allocated in this measure (e.g. we will reach only 90 % of allocated amount). In measure 1.4, we will exceed the amount allocated in this measure (e.g. about 110 %). Will the Commission take into account the whole amount of the priority or will there be any cuttings because of exceeding amount allocated in measures? The whole priority 1 would have expenditures fulfilled 100 %, the total amount allocated in priority will not be exceeded.

Is it really necessary to prepare modification of the programme complement when it is not possible to predict our final expenditures now? Finally, we would like to be assured that there will not be any cuttings by the Commission when we will exceed the amount allocated in measures and that the Commission will take account expenditures within priorities not exceeding in individual measures.

(28) For the calculation of the financial participation at priority axis level, there are some procedures foreseen for the application of the 2% flexibility rule. Can we proceed with the modification of the programme complement financial plan until the end in order to present the certified declaration for the final expenditure?

Section 8 of the Closure Guidelines sets out how **the Commission** will calculate the final payment. Member States do not need to modify their financial tables to benefit from the 2% 'flexibility'. What Member States should do is declare all eligible expenditure and the Commission will then follow section 8, including but not limited to the following: (i) not capping payments at measure level but respecting the co-financing rate defined in the programme complement, and (ii) paying up to 102% at priority level, without of course paying more than what is due at programme level. Thus, the Member State can certify all the expenditure incurred at measure and priority level, even if it goes beyond the total amounts in the financial tables of the Commission decision and those of the programme complement. See also the answer to questions 9-14.

An example of the final contribution calculation is set out in Annex 3 to the Closure Guidelines.

(29) Do programme complements need approval from the monitoring committee to shift money between measures or change co-financing rates?

Yes, the approval of the monitoring committee is necessary for any modification of the programme complement (Article 34(3) of Regulation (EC) No 1260/1999).

(30) Would the modulation of EU contribution's intensity would somehow be possible?

The co-financing rates at the measure level can always be changed - that is the purpose of the programme complement. Any change must follow the usual rules as set out in Point 2.2 of the Closure Guidelines. It is possible to change the EU rate of expenditure at measure level in both ways (up and down), for example, if it is too low in one measure and too high in another measure within the priority.

(31) In the case of a significant gap between targeted values and the actual realisation when measuring programme's realisation and result indicators, is it appropriate to modify the programming complement in order to adjust target values?

When there is a significant gap between targeted values and actual realisation the programme complement should not be modified. It is required to explain in the final report why the targets were not achieved in order to draw some lessons from the past.

(c) *Commitments to operations*

- (32) **Jusqu'à quand peut-on reprogrammer les opérations?**
- (33) **Si le dernier engagement annuel dans le cadre d'un programme a lieu en 2006 et que la date finale d'éligibilité des dépenses est le 31 décembre 2008, des engagements peuvent-ils être souscrits à l'égard de projets après le 31 décembre 2006?**
- (34) **Would it be possible to add new projects into the investment plans? What would be the conditions for those actions?**
- (35) **At the 84th and 85th meetings of the Committee for Development and the Conversion of the Regions (CDCR), the Irish delegation asked whether the commitments for projects could be made after the last annual commitment from the Community budget to a programme. For example, if the last annual commitment into a programme occurs in 2006 with a final date for the eligibility of expenses being 31 December 2008, could commitments be made to projects after 31 December 2006.**

Sauf règles nationales plus strictes et spécificités liées aux aides d'état, le règlement (CE) n° 1260/1999 ne prévoit aucune échéance particulière pour un engagement budgétairement et juridiquement contraignant. Par conséquent, un engagement peut en théorie être effectué par les autorités responsables du programme jusqu'à la date finale d'éligibilité des dépenses. Toutefois, dans la pratique, les engagements devront être effectués assez tôt pour permettre aux bénéficiaires finals de procéder aux opérations et d'exécuter les paiements au plus tard à la date finale d'éligibilité des dépenses (voir point 2.3. des Lignes directrices relatives à la clôture des interventions (2000-2006) des Fonds structurels).

- (36) **Taking into account the particularity of the project implementation, it is presumed that the precise need for additional funding may become obvious only at the end of the period. For each single project owner the need for additional financing (including the proportion between structural funds and national co-financing) may be different. Is there a need to change the support contract because of this reason? In what way it should be accomplished? What procedures should be followed? Is it possible to include in the contracts the clause that the proportion between the Community funds and national financing may be adjusted taking into account the real situation, while reducing the number of inter-institutional consultations and saving the time?**

The terms of Article 32(1) of Regulation (EC) No 1260/1999 and of Regulation (EC) No 1685/2000 need to be respected, especially as regards the requirement that expenditure declared must correspond to payments effected by the final beneficiaries, supported by receipted invoices or accounting documents of equivalent probative value. It is a matter for the Member State how it complies with these provisions and how it manages its contracts with 'project owners'.

Modifying individual contracts may be one way in which Member States do this. It should be recalled that the amount declared in the "Community" column of the expenditure table is the expenditure incurred by final beneficiaries which is attributable to the Fund.

- (37) Is it acceptable to finance finished projects retrospectively from Structural Funds?**
- (38) Can an intervention initially programmed with the provision of the private entity participation be substituted with another project already committed with resources from the commune starting with the date of eligibility of expenditure?**

There are significant risks in applying retroactive co-financing within Structural Funds programmes to completed or nationally-financed projects which had no previous link with the programme, and it is for this reason not recommended by the Commission.

The risks arise because of the difficulties for managing authorities in establishing that Article 9(2)(b)(ii) of Regulation (EC) No 438/2001 has been complied with in respect of such projects. That Article provides that declarations of expenditure by the paying authority to the Commission may contain only expenditure on projects "*[which were selected] for funding in accordance with the selection criteria and procedures [of a programme concerned] and have been subject to Community rules throughout the period during which the expenditure was incurred.*"

Thus, in respect of such projects, the managing authority has to ensure that all applicable rules (such as selection in accordance with the selection criteria, public procurement, publicity, eligibility, management and control provisions, etc.) have been respected. Where the managing authority is not sure that all the relevant regulatory provisions (EU and national) have been complied with, the relevant project should not be considered for co-financing under the operational programme.

- (39) Is it possible to move money between the measures of the Technical Assistance priority?**

Yes, provided that there is no transfer between Funds and that Rule No 11 of Regulation (EC) No 1685/2000, as amended, is complied with (the Structural Fund amount for some kinds of technical assistance expenditure defined under point 2.1 of the above mentioned Rule is capped). In any event, Section 2.2 of the Closure Guidelines has to be complied with.

- (40) What happens with unspent Technical Assistance funds for programmes which do not continue in 2007–2013?**

If the question concerns a technical assistance programme: they will be decommitted at the closure of the programme just like all other unused funds. If the question concerns a technical assistance measure: unused funds can be

transferred to another measure within the same priority axis until the end of the eligibility period.

- (41) Les dépenses nécessaires - imputées au budget "Assistance technique" - pour les opérations de clôture telles que le recueil d'indicateurs de réalisation et leur résultat, pourront-elles avoir lieu et être payées effectivement après le 31 décembre 2008 ou le 20 avril 2009 et avant ce délai de clôture des 15 mois? Si non, devraient-elles être effectuées sur le budget Assistance technique des programmes 2007-2013?**
- (42) Which costs are eligible as closure costs of 2004-2006 European Union Structural Funds programming period?**

The conditions for using 2007-13 technical assistance to cover costs incurred for closure of 2000-06 programmes are set out in COCOF Note 07/0021/02.

Rule 11 of the Annex to Regulation (EC) No 1685/2000 sets out the categories of expenditure that are eligible from technical assistance, including in respect of closure.

Regarding the costs incurred after the eligibility deadline, some of them can be covered by programmes in the new programming period. The expenses on the technical assistance budget after the end of eligibility date may be covered by the new programming period.

Regarding the types of the costs for closure, these can cover any audit final report, personal costs linked to the closure of 2000-2006 operational programmes (ultimate verifications and controls, elaboration of the closure documents, archiving expenditure, etc).

- (43) Pour les programmes de coopération qui cessent d'exister ou dont les autorités de gestion ne sont plus les mêmes et dont il n'est plus possible d'imputer des frais au nouveau programme, les coûts de secrétariat dont les paiements sont effectués après la date du 31 décembre 2008 peuvent-ils être inclus?**
- (44) Peut-on considérer comme éligibles des dépenses engagées au 31 décembre 2008 mais non payées à cette date, comme par exemple des audits de projets, la sécurité sociale des frais de personnel?**
- (45) Can new programmes (2007-2013) use INTERREG III TA budget to cover INTERREG IV TA work?**
- (46) Can old programmes (2000-2006) use INTERREG IV TA money for some activities of INTERREG III?**

The conditions for using 2007-13 technical assistance to cover costs incurred for closure of 2000-06 programmes, including INTERREG programmes, are set out in COCOF Note 07/0021/02.

(d) Final date of eligibility of expenditure

- (47) With respect to point 2.5.1 of the closure guidelines, how is the final date of eligibility to payment of State aid to apply?**
- (48) How to apply the final date of eligibility to payment of state aid?**
- (49) In case of programmes where there are both transitional and core areas the dates for the final date of eligibility of expenditures differ (e.g. 31 December 2007 and 31 December 2008 respectively). When exactly would Member State need to submit the report? Is it just one report for both areas at the later dates possible (i.e. April 2008 or April 2009 for programmes with State aid grants) or do we need two reports?**
- (50) Where a programme contains operations subject to aid schemes, and consequently different final dates of eligibility of expenditure, should the latter of these dates be deemed to be the final date of eligibility for the calculation of the time period for submission of all closure documents? Would this latter submission date apply to the whole programme, the Fund in question, or only the operations supported by an aid scheme? Or should there be a separate declaration for operations supported / not supported by aid schemes?**
- (51) Dans le cadre de notre programme, dans la mesure « Prime de transition professionnelle » une prime, considérée comme une aide d'Etat compatible avec le traité CE, est accordée aux entreprises qui engagent des travailleurs défavorisés. Est-il exact que la prolongation de la date finale d'éligibilité du 30-04-2009 pour cette mesure vaut pour tout le programme?**
- (52) According to the Decision approving our Docup, "... This deadline is extended to 30 April 2009 for the expenditure borne by the bodies granting aid ex art. 9, 1) of Regulation (EC) No 1260/1999". Concerning aid in which the Docup identifies the Region concerned as final beneficiary, is the deadline for the eligibility of the expenditure 30 April 2009 as well?**
- (53) Can internal regional structures which directly grant aid with the region identified as final beneficiary be regarded as bodies granting aid ex art. 9, 1) of Regulation (EC) No 1260/1999 for which according to the decision approving the operational programme the final date of eligibility of expenditure 30 April 2009?**
- (54) Our region considers internal structures as bodies granting aid. The question is important in order to ensure within 31 December 2008 the correct approach toward expenditure eligibility deadline for measures including aid to enterprises through different procedures and the consistency between the programming documents – operational programme and programme complement – and their implementation.**

(55) Il semble clair que la date d'éligibilité des dépenses en cas de régimes d'aide (selon ce qui est prévu dans les décisions concernant le programmes régionaux et les Docup) est le 30 avril 2009 pour "les dépenses effectuées par les organismes octroyant les aides au sens de l'article 9.1 du règlement (CE) n° 1260/1999".

Parmi ces organismes qui octroient des aides peut-on considérer aussi les structures de l'administration régionale chargées de l'octroi des aides ou bien la différente date d'éligibilité se réfère seulement aux cas où les Régions ou le Ministère aient confié l'octroi des aides à des organismes externes sur base d'une convention "ad hoc"?

(56) Selon l'article 9, 1) du règlement (CE) n° 1260/1999, "dans le cas des régimes d'aides au sens de l'article 87 du traité et dans le cas d'octrois d'aides par des organismes désignés par les Etats membres, les bénéficiaires finals sont les organismes qui octroient les aides".

Une Municipalité est elle-même Autorité de Gestion, ainsi que bénéficiaire final des mesures concernant la concession et la liquidation des aides "de minimis", le programme ne prévoyant pas le recours aux organismes intermédiaires.

Par conséquent, je vous demande d'éclaircir si la date finale d'éligibilité des dépenses au 30 avril 2009 est également valable pour les aides octroyées par la municipalité, en tant que bénéficiaire final des mesures concernées.

(57) Is the extension of the final date of eligibility to 30 April 2009 also valid for measures in which global grants were used in order to implement State aids co-financed from ERDF?

Article 30(2) of Regulation (EC) No 1260/1999 provides that the final date of eligibility of expenditure set out in the decision (which is 30 April 2009 for payment of State aid and of aids granted by bodies designated by Member States relates to payments made by the final beneficiary, which is in this case the body granting the aid. It will be a matter of fact which is the body that actually grants the aid and can only be established and further examined on a case-by-case basis, having regard to all relevant facts. Where a body acts as managing authority or intermediate body, and also as final beneficiary, its expenditure as final beneficiary should be eligible until 30 April 2009 for State aid or in the case it is a body designated by the Member State to grant some aids and until 31 December 2008 for other expenditure.

As indicated in point 3.3.4 of the Closure Guidelines, where a programme contains operations subject to different final dates of eligibility of expenditure for a Fund, the latter or last of these dates will be deemed to be starting point for the calculation of the fifteen month time period for submission of closure documents (including the certified statement of final expenditure) for that Fund. This rule applies only for the purpose of calculation of the period for submission of closure documents. It does not affect the final date of eligibility of expenditure in the programme, as this will remain 30 April 2009 for State aid and aids granted by

bodies designated by the Member States, and 31 December 2008 for other expenditure.

The final date of eligibility of 30 April 2009 will apply to a global grant if it involves the granting of State aid or aids granted by bodies designated by the Member States.

Separate final reports do not need to be submitted if there are 'transitional and core areas' in a programme.

- (58) The indicative table for state aids is included in the operational programme and not in the programme complement. In the case where for the regime (not notified) other dispositions different to the ones for 2006 occur, does the table have to be modified? The final date for the eligibility of expenditure for the programme is fixed as a Community decision generally for 31 December 2008 and 30 April 2009 for the bodies that are granting the aids. Taking this into consideration, we are asking whether the modifications to the programme complement can follow the same terms of reference.**

As set out in point 2.4.3 of the Closure Guidelines, if a Member State wishes to modify an existing aid scheme to comply with the new State aid rules (for example, to extend its duration, to adapt the aid intensity to new regional aid ceilings as defined in the applicable regional aid map, to modify the final beneficiary or to switch from large companies to SMEs), the programme complement should be modified, and in, particular, the State aid table should be updated to demonstrate the continued lawful application of the scheme under State aid rules.

In the event that the changes made are consistent with the description of the initial aid scheme in the assistance originally approved by the Commission, and the title of that scheme is maintained (to facilitate its identification), no modification of the initial Commission decision on the Structural Funds intervention will be necessary. The Commission should be informed of this change within one month and should be sent a modified 'State aid table', as well as a copy of either the Commission approval letter of the modified State aid, for notified aid, or of the summary information transmitted in compliance with the transparency rules under the relevant block exemption regulation, where the aid is exempted from the notification obligation under a block exemption regulation.

In other cases, including where a Member State wishes to introduce a new aid scheme or change the objective of the existing scheme, a programme modification and formal Commission decision will be necessary.

- (59) Peut on préciser l'interprétation de cette partie du règlement de clôture : "La date ultime finale d'éligibilité est le 31 décembre 2008 ou le 30 avril 2009 pour les dépenses encourues par les organismes qui octroient les aides au sens de l'article 9 point 1) du règlement (CE) n° 1260/1999". Qui sont les organismes qui octroient les aides?
- (60) En ce qui concerne le point 2.5.1 des Lignes directrice de clôture qui porte sur la date limite d'éligibilité des dépenses, peut-on appliquer la date limite d'éligibilité du 30 avril 2009 à un régime d'aides accordé par un organisme intermédiaire régional (par décret repris dans l'annexe au complément de programmation), pour les paiements effectués par les organismes locaux récepteurs dudit régime d'aides?
- (61) Le délai supplémentaire de 4 mois accordé pour l'éligibilité des « dépenses encourues par les organismes qui octroient les aides au titre de l'article 9, point 1), du règlement (CE) n° 1260/1999 (c'est-à-dire les régimes d'aide au sens de l'article 87 du traité et les aides octroyées par des organismes désignés par les Etats membres, les bénéficiaires finals étant les organismes qui octroient les aides) » [lignes directrices point 2.5.1.] concerne-t-il les organismes gestionnaires de subvention globale?
- (62) Les lignes directrices prévoient au point 2.5.1. Date finale d'éligibilité des dépenses :« ...Dans la pratique, la date finale ultime d'éligibilité indiquée dans les décisions est généralement le 31 décembre 2008, ou le 30 avril 2009 pour les dépenses encourues par les organismes qui octroient les aides au titre de l'article 9, point 1), du règlement (CE) n° 1260/1999 (c'est-à-dire les régimes d'aide au sens de l'article 87 du traité et les aides octroyées par des organismes désignés par les États membres, les bénéficiaires finals étant les organismes qui octroient les aides). Les États membres doivent préciser dans le complément de programmation, à l'intention de la Commission, si l'aide a été accordée par des organismes qu'ils ont désignés. » Les bénéficiaires de subvention globale sont ils concernés par ce point (date limite d'éligibilité au 30/04/2009)?
- (63) La date limite d'éligibilité établie par les décisions d'approbation des programmes opérationnels est le 30 avril 2009. Cette date peut-elle s'appliquer aux paiements des bénéficiaires finals qui octroient des subventions aux personnes ou autres organismes (publics, ONG, etc.), sans qu'elles représentent constituent formellement des régimes d'aide tels que prévus par l'article 87 du Traité?
- (64) Expenditure committed by the bodies giving the aids - does this mean that also the expenses of final beneficiaries (the enterprises that do not receive the aid) can have a date later than 31 December 2008?

(65) The Closure Guidelines state under point 2.5.1 that “the final date of eligibility of expenditure is generally 31 December 2008, or 30 April, 2009 for expenditure incurred by bodies granting the assistance under Article 9(1) of Regulation (EC) No 1260/1999.”

There are some operational programmes projects implemented through grant schemes, which means that there are final beneficiaries designated by the managing authorities, which grant the aid to final recipients. After discussing this subject with the paying authority and managing authorities of various operational programmes as well as abroad we are still not completely sure if we could apply Article 9(1) of Regulation (EC) No 1260/1999 for these projects.

Could you please provide us with the information whether the final date of eligibility of expenditure 30 April, 2009 could be applicable for our grant schemes and if not are there any other cases which this rule would apply to and which cases they are?

L'article 9, point 1), du règlement (CE) n° 1260/1999 précise deux types d'organismes qui octroient les aides et qui sont considérés comme bénéficiaires finaux : (1) les organismes qui octroient les aides au sens de l'article 87 du traité, (2) les organismes désignés par les Etats membres pour octroyer des aides. Les aides allouées à ces deux types d'organismes sont reversées à des destinataires ultimes, en charge de la mise en œuvre des opérations individuelles.

Cependant dans le cas (2) ci-dessus, il est important de distinguer la notion de bénéficiaire final au sens de l'article 9, point 1) du règlement (CE) n° 1260/1999 de celle plus générale d'"organisme intermédiaire". Cette distinction est particulièrement pertinente dans le cas d'une subvention globale. L'organisme intermédiaire peut être chargé de certaines activités liées au programme. Il n'est cependant pas nécessairement qualifiable "d'organisme désigné par l'Etat membre pour octroyer des aides". Seule l'analyse de chaque cas d'espèce permettra de déterminer la nature de l'organisme en fonction des tâches qui lui ont effectivement été attribuées.

Compte tenu des implications importantes liées à l'identification des bénéficiaires finaux, le point 2.5.1. des Lignes directrices sur la clôture demande aux Etats membres de préciser dans le complément de programmation les aides accordées par des organismes qu'ils ont désignés (cas (2) ci-dessus).

Si l'organisme intermédiaire régional est un organisme désigné par l'Etat membre qui octroie l'aide, il sera considéré comme le bénéficiaire final et la date finale d'éligibilité pour ses paiements d'aide sera le 30 avril 2009.

(66) In accordance with Article 30(2) of Regulation (EC) No 1260/1999, the final date for eligibility of expenditure relates to payments made by the final beneficiaries. Does that imply that expenditure which is actually paid out by the final beneficiaries before the final date for eligibility of expenditure (before 31 December 2008) will be eligible to declare to the Commission if its eligibility is checked by the national authorities and included in the final payment application after the final date for eligibility of expenditure (after 31 December 2008)?

(67) Does the paying authority need to make all payments by 31 December 2008?

Payments by the competent authority can take place after the final date of eligibility, which refers to payments made by the final beneficiary.

(68) Grants to individuals from a public body (for example, vouchers) can be considered as aid regarding the date to take into account for the expenditures paid by beneficiaries?

Yes, provided that the public body has been designated by the Member State (see answer to questions 59-65).

(69) In a technical assistance programme, what is the final date of eligibility of expenditure for payments or actions regarding the operations of bodies granting State aids taking into account that these bodies will operate and grant aids at least until 30 April 2009?

(70) Peuvent les dépenses relatives aux activités de vérification/contrôle ayant pour objet les dépenses effectuées par les organismes octroyant les aides (au sens de l'article 9.1 du règlement n° 1260/1999) bénéficier de la même date postposée du 30 avril 2009?

(71) As it concerns the costs of technical assistance for the support regarding measures for state aid, taking into account that the final admissibility day for such a measure is 30/04/2009, could we consider this date as the one to technical assistance expenditure or do we have to respect the 31 December 2008?

In a technical assistance programme, the final date of eligibility, as set out in the decision adoption the programme, should be 31 December 2008.

It should be recalled that it is possible to charge expenditure of certain administrative tasks related to the granting of aid to the priority under which aid is granted and for which the final date of eligibility will be 30 April 2009.

(72) Quelle sera la dernière date possible de l'appel de fonds?

(73) A quelle date peut-on réaliser le dernier appel de fonds permettant de prendre en compte les dépenses des groupes d'action locales (GAL), considérant une date d'éligibilité arrêtée au 31 décembre 2008?

Une demande de paiement intermédiaire peut être transmise à la Commission dans le courant du mois de janvier 2009 ou au plus tard à la date finale de présentation des documents de clôture. Il est à noter que le total cumulé des paiements (acomptes et intermédiaires) effectués par la Commission ne dépassera pas 95 % de la participation Communautaire (voir article 32, paragraphe 3, du règlement (CE) n° 1260/1999).

(74) Nous confirmez-vous que la date finale d'éligibilité des dépenses est le 31 décembre 2008 pour les dépenses des groupes d'action locales (sauf à considérer qu'ils constituent des organismes intermédiaires) et le 30 avril 2009 pour les dépenses du bénéficiaire final?

Conformément à l'article 3 de la décision de la Commission C(2001)2094 du 07/08/2001, la date finale d'éligibilité des dépenses est fixée au 31 décembre 2008. Elle se réfère aux paiements réalisés par les bénéficiaires finals (voir article 30, paragraphe 2, du règlement (CE) n° 1260/1999).

La prise en compte de la date du 30 avril 2009 pour les dépenses du bénéficiaire final nécessiterait une modification de la décision de la Commission, conformément au point 2.5.2 des Lignes directrices.

(75) Some confusion has arisen regarding certain closure deadlines for our two regional operational programmes 2000-2006. Perhaps you could confirm, in respect of the agriculture, rural development and forestry measures in these programmes the following dates and say where provision can be found for them: final date of eligibility of expenditure = normally 31 December 2008 but 30 April 2009 in the case of the measure Area Based Rural Development Initiative where Area Based Groups are defined in the Programme Complement as Final Beneficiaries? Is the deadline for submission of final EAGGF Guidance Fund documents (certified statement of final expenditure, final report, winding-up declaration) now 15 months after above final date of eligibility i.e. normally 31/03/2010?

(76) For the regional operational programmes, the final date for the eligibility of expenditure is generally 31 December 2008. However, the Decision which approves the Regional Operational Programme Sicily says that, in the case of expenditure incurred by bodies granting assistance under article 9(l) of regulation (EC) No 1260/1999, the date is 30 April 2009.

The Managing authority asks if the operations financed by the EAGGF – Guidance can be considered as such, and therefore if the 30 April 2009 could be taken as final date for the eligibility of expenditure.

Following the adoption of Regulation (EC) No 1437/2007 the deadline for the submission of closure documents related to the EAGGF has been extended to fifteen months after the final date of eligibility of expenditure, in line with the deadline applicable to the other Funds.

The operations co-financed by EAGGF – Guidance can be divided in two types: operations receiving Community support within the scope of Article 36 of the Treaty ("agricultural" aids), to which – pursuant to Article 51 of Regulation (EC) No 1257/1999 – Articles 87 to 89 of the Treaty shall not apply, and other rural development operations ("non-agricultural" aids), to which Articles 87 to 89 of the Treaty shall apply.

As far as "agricultural" aids are concerned, if they are granted by bodies designated by the Member State within the meaning of Article 9(1) of Regulation (EC) No 1260/1999, the final date of eligibility laid down in the decision approving the relevant operational programme will, as a general rule, be 30 April 2009.

For the other rural development measures ("non agricultural" aids), there are no exemption or peculiarity.

- (77) **In the case of *de minimis* aid, what is the final date of eligibility of expenditure?**
- (78) **Pour ce qui est du délai limite de l'éligibilité, envisage-t-on le même type de traitement pour les aides *de minimis* que pour les aides d'état?**
- (79) **We would like to know if the deadline of 30/04/2009 is in force for every aid, even those granted according to Regulations (EC) No 68/2001 (aid to training), No 69/2001 (*de minimis*), No 70/2001 (aid to SMEs) and aid for the employment.**
- (80) **Eligibility of expenditure until the 30 April 2009 for Aid Schemes, i.e. for the Structural Funds projects there are cases of "block exemption" aids. Is it possible that the final beneficiary giving the aid may do so after the 31 December 2008?**

Because *de minimis* aid is considered as an aid scheme pursuant to Article 87 of the Treaty for the of Article 9(1) of Regulation (EC) No 1260/1999, the final date of eligibility of *de minimis* aid is 30 April 2009. Likewise, 30 April 2009 is the final date of eligibility for aid covered by block exemption regulations given that block exempted aids fall under Article 87 of the Treaty.

- (81) **Can the payments relative to technical assistance actions that finish after 31 December 2008 be undertaken after 31 December 2008?**
- (82) **Does expenditure, related to the closure of 2000-2006 financing period proceedings, incurred after the final eligibility date, i.e. 31 December 2008, will be eligible for financing and declaration to the EC under the new Structural Assistance in 2007-2013?**

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| <p>(83) Is it possible to make the payments for the consulting activities relative to the verification and the closure of the programme that can be achieved only after 31 December 2008?</p> <p>(84) How is it possible to finance technical assistance tasks of the 2000-2006 programmes incurred after the final date of eligibility by the technical assistance of programmes for the 2007-2013 period?</p> |
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The final date of eligibility of expenditure related to technical assistance programmes, priorities and measures is 31 December 2008 (but see the response to question 79).

Expenditure of technical assistance tasks relating to the 2000-2006 programming period which is paid by the final beneficiary after the final date of eligibility applicable for that period is not eligible under the 2000-2006 programme. However, such tasks can be financed as the technical assistance of programmes for the 2007-2013 period under certain conditions, set out note COCOF/07/0021/02 of 27 March 2007. As regards the ERDF and the ESF, those costs will be eligible under the 2007-2013 technical assistance allocations of the Member States provided that:

- they are incurred after the final date of eligibility of expenditure under an intervention of the 2000-06 programming period;
- their eligibility is assessed on a case-by-case basis, in the light of the specific features of each new operational programme and its overall consistency with previous programmes; there should therefore be a clear and demonstrable link between a programme of the 2007-2013 period and that of the 2000-2006 period in terms of geographical scope, field of intervention or administrative systems regarding management and control (2007-2013 programmes mainstreaming Equal and Urban Community Initiatives of the 2000-06 period are considered to represent the link);
- national eligibility rules establish their eligibility.

If these conditions are not met, the corresponding expenditure post-2008 (for example, on closure) should be funded from national funds.

- (85) For technical assistance measures, the final beneficiary is the regional administration and the expenditure declared eligible is equal to the amount paid by the administration itself. Can the expenditure for services before 31 December 2008 but winded-up during 2009 be imposed to 2000-2006 programmes?**

It depends on the timing of the payment by the final beneficiary, i.e. before or after the final date of eligibility of expenditure. Only payments by the final beneficiary on or before the final date of eligibility are eligible for 2000-2006 programmes.

- (86) Reference is being made to COCOF note document N° 07/0021/01 pertaining to the financing of expenditure related to closure work on the 2000-2006 programming period from the Technical Assistance 2007-2013. In view of the fact that EAGGF (guidance) and FIGF funds were part of 2000-2006 period, it follows that closure costs relating specifically to these two funds are also eligible under the TA 2007-2013? Our question is whether these costs are to be charged to ERDF or ESF 2007-2013 or whether they are to be charged to the EAFRD/EFF fund respectively?**

As regards the EAGGF, the question about the eligibility of certain costs for the closure (ex post evaluations, audits and preparation of final reports) of the 2000-2006 period which were incurred after the final date of eligibility is answered by Article 13(1) of Regulation (EC) No 1320/2006 laying down transitional rules to rural development support. Therefore, costs for ex post evaluations, audits and preparation of final reports incurred after the final date of eligibility are eligible under the EAFRD (2007-2013). For expenditure incurred before the final date of eligibility, the provisions in Article 13(2) of the same Regulation apply.

As far as the FIGF is concerned, some technical assistance tasks related to the closure of the FIGF programmes such as certain audit costs (including the preparation of the winding -up declaration), costs related to the preparation of the final implementation reports, archiving of supporting documents etc, would be eligible under the 2007-2013 technical assistance allocation of the Member States from the EFF provided that:

1) They are incurred after the final date for the eligibility of expenditure for the 2000-2006 period and after the starting date of eligibility of the 2007-2013 programmes.

2) There is a clear and demonstrable link between a programme of the 2007-2013 period and that of the 2000-2006 period in terms of geographical scope, or field of intervention, or administrative systems regarding management and control; therefore their eligibility will be assessed on a case by case basis in the light of the specific features of each new operational programme and its overall consistency with previous programmes.

3) National eligibility rules do not exclude their eligibility.

A detailed reply was provided to the Member States by the Commission on this issue with the EFFC note (document No 14/2007/final -EN, October 2007).

(87) Pour le FEOGA, est-il possible de confirmer l'application de la norme qui permet d'imputer au FEADER les dépenses d'évaluation ex post et les audits et le rapport final du programme 2000-2006?

Exact à condition qu'elles soient conformes à l'article 66, paragraphe 2, deuxième alinéa du règlement (CE) n° 1698/2005 (limite de l'assistance technique en deçà 4% du montant total du programme), et qu'une disposition à cet effet ait été prévue dans le programme.

(88) Peut-on saisir des factures et les certifications de service fait correspondants après le 31 décembre 2008?

(89) Pourra-t-on déclarer des dépenses après le 31 décembre 2008, acquittées au plus tard au 31 décembre 2008, mais pour lesquelles la certification de service fait n'interviendra que lors des premières semaines de 2009?

La date du 31 décembre 2008 concerne l'éligibilité des dépenses des bénéficiaires finals. La seule obligation qui s'impose pour la participation des Fonds est donc que la dépense ait été payée (et décaissée) par le bénéficiaire final avant cette date.

La "certification de service fait" par l'autorité de gestion est donc soumise aux règles nationales pertinentes. Néanmoins, conformément aux dispositions des articles 4 et 9 du Règlement (CE) 438/2001, les systèmes de gestion et de contrôle doivent permettre de s'assurer de la remise des produits des produits et services co-financés et la réalité des dépenses déclarées avant la transmission à la Commission de la demande de paiement correspondante.

(90) Financial aspects of the projects. In the case where the operations foresee public works for which the beneficiaries declare and certify the payments, when can we consider a project concluded? When the dates for the payments (orders, commitments) of the final beneficiaries are before 31 December 2008, independent of the time elapsed between the date of payment by the beneficiary and the date where the enterprises carrying out the work/consultants/suppliers actually receive the money? Is it mandatory that the last payments from the Regional Administration to the Final Beneficiary occur before 31 December 2008 and before the final certification of expenses? For the projects with regional contribution (projects financed by the region for private entities or enterprises) is it enough that the date of the regional commitment is prior to 31 December 2008, without taking into consideration when the beneficiaries receive the money in reality?

(91) Jusqu'à quand peut-on prendre en compte les cofinancements perçus par les bénéficiaires? Au 31 décembre 2008? Ou jusqu'au dernier appel de fonds (rapport de clôture)?

- (92) Is it possible after 31 December 2008, to make payments for activities (works, etc.) undertaken before 31 December 2008 for which it was not possible, for several reasons, to make the payment despite the fact that the commitment was done and the right to pay the service provider has reached the deadline?**
- (93) Article 30(2) of Regulation (EC) No 1260/1999 states that the final date of eligibility shall relate to payments made by the final beneficiaries. Therefore, it is understood that all expenditure paid by the final beneficiaries to the "ultimate" recipients by 31 December 2008 (or by 30 April 2009 in the case of state aid schemes) can be included, whereas the eligibility checks, payments by the national authorities to the final beneficiaries, and the subsequent declaration of expenditure to the Commission, can be done afterwards. Is it possible to carry out the eligibility checks, to pay the relevant amounts to final beneficiaries and to declare these amounts to the Commission in 2009?**

Payments by the final beneficiary after 31 December 2008 (where that is the final date of eligibility), even for activities before 31 December 2008 are not eligible under the 2000-2006 programmes.

However, the competent national authorities may pay the amounts due to the final beneficiaries after 31 December 2008, if these payments reimburse expenditure paid out by the final beneficiary before 31 December 2008.

The competent authorities may carry out eligibility checks, make payments to final beneficiaries and declare payments to the Commission in 2009. (See answers to questions 90 and 92.) Payments by the paying authority to the final beneficiary must, pursuant to Article 32(1) of Regulation (EC) No 1260/1999, be made as soon as possible and in full.

- (94) Le délai de production des factures acquittées au 31 décembre 2008 au plus tard est-il un délai impératif?**

La date finale d'éligibilité concerne le paiement des factures par le bénéficiaire final. La date finale d'éligibilité, qui est fixée dans la décision d'attribution des Fonds, est une date contraignante pour les dépenses.

- (95) Une dépense payée par le bénéficiaire final au 31 décembre 2008, mais encaissée postérieurement par le fournisseur peut elle être considérée comme éligible?**
- (96) Regarding to the eligibility date is it correct that the payments made by final beneficiary by 31 December 2008 are received on the bank account of the final recipient after the final date of eligibility (i.e. 31 December 2008)?**
- (97) What date is considered as the date in which expenditure is paid? At the seminar it was said it is the date on which the bank account of the beneficiary is debited. E.g. a beneficiary pays by cheque certain expenditure. The cheque is delivered to the creditor by 31 December 2008. However the**

creditor deposits the cheque in his bank on 15 January 2009. The cheque is debited in the bank account of the beneficiary on 16 January 2009. In such a case what was said at the seminar seems to be quite wrong. Another example: a beneficiary orders a transfer to his bank to the creditor account on 31 December 2008. The bank executes the transfer on 2 February 2009. In this case what was said at the seminar also seems to be quite wrong.

- (98) Une question concernant le paiement par chèque a été posée lors du séminaire à Bruxelles, mais il subsiste le doute suivant: si l'on tient compte du fait que le débit du compte ne se produit pas au moment de l'émission du chèque mais lorsqu'on touche ce chèque, si le débit se produit après la date limite d'éligibilité mais que le chèque a bien été émis avant, est-ce admissible? Dans le cas qui nous préoccupe, le débit du compte sera d'office postérieur à la date d'éligibilité. Si cette situation n'est pas admissible, le paiement par chèque sera problématique: l'organisme payeur ne peut avoir l'assurance que le chèque sera touché à temps.)

La dépense doit être payée par le bénéficiaire final au 31 décembre 2008, ce qui signifie que la dépense en question doit avoir été débitée du compte du bénéficiaire final avant ou à cette date. Il n'est pas nécessaire que le compte du fournisseur ait été crédité avant le ou le 31 décembre 2008.

Making an order to pay or handing over a cheque before or on the final date of eligibility are therefore not sufficient, as the money has to leave the final beneficiary's account before or on that date.

- (99) Many major public works projects in the roads and rail sectors are due to be completed in the last months of 2008. The final acceptance procedure for such projects is generally cumbersome and may span beyond the 31 December 2008 deadline. Expenditure may therefore have to be actually paid in 2009 although the project has been completed in due course. A possible solution to avoid the creation of bridge projects would be for the final beneficiary to declare the expenditure and pay the money to the contractant on a blocked account till the completion of the acceptance procedure. Is such a solution compatible with the Community Support Framework rules in the 2000-2006 period? Would this solution require some specific conditions to be met? Is there an alternative solution?
- (100) Are payments made against invoices, before 31 December 2008, and subject to bank guarantees eligible? We note that these payments relate to deliverables on a specific contract that will be delivered/completed in early 2009. Is there any differentiation for the case of contract of works vs. services?

The final date of eligibility of expenditure, as stated in the Commission decision for the current period, is 'the final date'. Any payments effected after that date will not be eligible under the 2000-2006 programming period.

The Commission's services consider that use of 'blocked accounts' or 'payment for future work against a bank guarantee' are not acceptable ways of proceeding in

the circumstances described. Accepting such practices would undermine the programming approach for the Structural Funds. In addition, both Article 32(1) of Regulation (EC) No 1260/1999 and Rule No. 1 of Regulation (EC) No 1685/2000, as amended, require that payments are supported by "receipted invoices or accounting documents of equivalent probative value". In addition, Article 4 of Regulation (EC) No 438/2001 requires managing authorities to verify the delivery of co-financed products and services and the reality of expenditure claimed. One possible solution would be to set internal deadlines that will ensure that the acceptance procedure is completed for as many public works as possible. Another solution would be to include the projects in the programming documents for 2007-2013 in accordance with Section 6 of the Closure Guidelines, or to finance them with national funds only.

(101) Quand et dans quelles conditions seront analysés et traités un éventuel dégageant d'office sur la tranche annuelle 2006?

Les Etats membres ont jusqu'à l'échéance fixée pour la présentation des documents de clôture pour justifier de l'utilisation de la tranche annuelle 2006. Au cas où un des documents de clôture n'est pas présenté alors la Commission procédera au dégageant des montants qui n'ont pas été utilisées.

(e) *Extension of the deadline for the eligibility of expenditure*

(102) Which are today the reasons to justify an extension of the deadline (after 31 December 2008) in order to finalise an intervention foreseen by a programme?

(103) According to the Guidelines (2.5.2) the deadline for eligibility of expenditure may be extended in exceptional cases, such as for example force majeure. In which other cases may the deadline for eligibility of expenditure be extended and what procedures have been foreseen for this case?

Pursuant to Article 30(2) of Regulation (EC) No 1260/1999, the final date of eligibility of expenditure may be extended by the Commission at the duly justified request of the Member State in accordance with Articles 14 and 15 of the same Regulation.

In addition, the deadline for eligibility of expenditure may be extended in exceptional cases by the Commission for cases of force majeure which has serious repercussions for the implementation of operations supported by the Structural Funds or manifest error attributable solely to the Commission, in response to a specific and properly grounded request by the Member State. Guidance on the meaning of force majeure and the need for a causal link between the force majeure and implementation of assistance is set out in points 2.1 and 2.2 of Appendix 1 of the Closure Guidelines.

The request must be submitted before the final date of eligibility and be accompanied by information justifying the extension. The Commission will examine each request on a case-by-case basis.

In the event that the deadline for eligibility of expenditure is extended, the deadline for submission of the closure documents will be extended accordingly.

- (104) Etant donné que notre programme opérationnel a obtenu une prorogation de la date limite d'éligibilité des dépenses jusqu'au 31 décembre 2009 (un an de plus à cause des circonstances exceptionnelles), le temps prévu pour présenter les documents du Rapport Final sera 6 mois ou 15 mois? La date limite pour présenter le rapport final est le 31 décembre 2009?**

Si la date finale d'éligibilité pour le programme a été prorogée d'un an, le délai de 15 mois pour présenter les trois documents de clôture commencera à courir à partir de la nouvelle date finale d'éligibilité.

- (105) Les évolutions du contexte socio économique et les modifications de la politique sociale et du marché du travail ont eu un impact important sur la conception et le financement des actions FSE entraînant d'importants retards dans la mise en œuvre des programmes. Il est donc demandé de proroger la clôture des projets 4 mois au-delà de la date initialement prévue du 31 décembre 2008, ce délai supplémentaire de 4 mois étant nécessaire pour une réalisation correcte de la liquidation et de la vérification des déclarations de dépenses pour les projets encore en cours.**

Il apparaît à l'analyse de vos demandes de modification que leur but n'est pas de prolonger la durée de mise en œuvre des projets au-delà du 31 décembre 2008, mais de disposer de quatre mois supplémentaires afin de pouvoir procéder à la vérification des dépenses déclarées puis au versement du solde final aux porteurs de projets. La Commission est d'avis que cet objectif peut être atteint de manière différente, dans le cadre des marges de manœuvre importantes déjà offertes par les règlements correspondants.

En effet, la date finale d'éligibilité des dépenses correspond à la date ultime à laquelle les dépenses, correspondant à des activités réalisées, doivent être effectivement encourues et payées par le bénéficiaire final. En pratique, cela signifie que le bénéficiaire final peut transmettre toutes les pièces justificatives à l'autorité de gestion après cette date finale d'éligibilité. De plus, les tâches de vérification et de contrôle effectuées par l'autorité de gestion (article 4 du règlement 438/2001) peuvent également être effectuées après cette date finale d'éligibilité.

Or, la date finale ultime d'éligibilité indiquée dans les décisions est généralement le 31 décembre 2008, ou le 30 avril 2009 pour les dépenses encourues par les organismes qui octroient les aides au titre de l'article 9, point 1), du règlement (CE) n° 1260/1999 (c'est-à-dire les régimes d'aide au sens de l'article 87 du traité et les aides octroyées par les organismes désignés par les Etats membres, les bénéficiaires finals étant les organismes qui octroient les aides).

Deux cas peuvent donc se produire :

- soit le bénéficiaire final correspond à la définition de la première partie de l'Article 9 (1): "organisme et entreprise, public ou privé, responsable de la

commande des opérations". Dans ce cas, par exemple un organisme mettant en œuvre un marché public ou qui reçoit une subvention publique pour mettre en œuvre son projet, le bénéficiaire final sera également considéré comme le destinataire "ultime" de l'aide : la date finale d'éligibilité sera le 31 décembre 2008, les dépenses du projet correspondant aux activités réalisées devant être acquittées avant cette date. Par contre, les dépenses acquittées peuvent être déclarées postérieurement au 31 décembre 2008 à l'autorité de gestion, qui les vérifiera et les certifiera donc après cette date.

- soit le bénéficiaire final correspond à la définition d'organismes désignés qui octroient les aides au sens de l'article 9 (1): en dehors des régimes d'aide, cela correspond en général au cas d'un organisme désigné entre l'autorité de gestion du programme et les destinataires ultimes de l'aide qui mettent effectivement en œuvre les projets. Cet organisme désigné pour octroyer les aides est le bénéficiaire final et devrait être désigné comme tel dans le complément de programmation. Dans ce cas, la date finale pour acquitter les dépenses est le 30 avril 2009, tant pour les dépenses du bénéficiaire final (le paiement des aides individuelles aux destinataires ultimes)¹, que pour les dépenses des destinataires ultimes. Le bénéficiaire final peut déclarer les dépenses acquittées et transmettre toutes pièces justificatives à l'autorité de gestion après la date du 30/04/2009.

Il en découle que deux délais d'éligibilité, au 31/12/2008 ou au 30/04/2009, peuvent exister au sein d'un même programme, en fonction du type de bénéficiaire concerné.

Il est donc d'une extrême importance de définir clairement dans le complément de programmation qui est le bénéficiaire final afin de savoir lequel des deux délais d'éligibilité lui est applicable, et en particulier de préciser que les organismes qui approuvent les aides sont désignés par l'Etat Membre pour octroyer ces aides, si tel est le cas.

La définition des catégories de bénéficiaires finals se trouve dans les différents compléments de programmation (conformément à l'Article 18.3.b) du règlement (CE) N° 1260/1999), mais celle-ci est en partie générale et éventuellement non actualisée. Il est donc fortement conseillé de revoir ces définitions et de les compléter le cas échéant, dans le cadre d'une modification des compléments de programmation, afin d'y énumérer les organismes concernés. Une liste complète des organismes désignés vous permettra de justifier la date finale d'éligibilité des dépenses pour ces organismes, en cas d'audit communautaire.

Par ailleurs, dans le cas de EQUAL le bénéficiaire final est déjà défini au niveau des partenariats de développement selon N° 25 des Lignes directrices de l'initiative communautaire EQUAL (2000/C 127/02).

¹ Voir règle d'éligibilité 1, point 1.2, du règlement (CE) n° 448/2004 de la Commission

(f) Venture capital and loan funds, and guarantee funds

- (106) According to standard 9, point 2.7 could the evaluation be undertaken by the funds manager or does it have to be done by a third party and formally sent to the Commission? Please confirm if such an evaluation can be considered apart from the funds multiplier defined at the moment of the constitution of the funds.**

In accordance with point 2.7 of rule 9 in the Annex to Regulation (EC) No 1685/2000, as amended, the managing authority must determine the eligible amount on the basis of an independent audit. Of course, the foreseen multiplier must be taken into account.

- (107) The eventual residual quota of the funds has to be reused according to the means of intervention of the funds, respectively for different lines of intervention in order to support the development activities of the SMEs (revolving funds to maintain the endowments, lost funds? etc)? In this regard, at the moment of the closure, does the managing authority have to have a formally adopted measure sent to the Commission?**

As stated in point 2.5.4 of the Closure Guidelines, pursuant to point 2.6 of Rule 8 of the Annex to Regulation (EC) No. 1685/2000 returns to venture capital and loan funds that are attributable to the Structural Funds' contributions must be re-used for SME development activities in the same eligible area. Similarly, pursuant to point 2.5 of Rule 9 of the same Annex, in respect of guarantee funds, any part of the Structural Funds' contribution left over after the guarantees have been honoured shall be re-used for SME development activities in the same eligible area. Arrangements should be made by the managing authority to ensure that these rules are respected after closure, but it is not necessary to send formally adopted measures to the Commission.

Any sums paid by the Commission in respect of venture capital funds, loan funds and guarantee funds which exceed the eligible expenditure for such funds, as calculated in accordance with point 2.8 of Rule 8 and point 2.7 of Rule 9, shall be reimbursed to the Commission.

- (108) Please provide us with clear statement concerning investment into agricultural holdings (EAGGF). Should that kind of project be treated strictly as defined in the Regulation (EC) No 1257/1999 or the rules about revenue, generated during the period of implementation and monitoring of those projects, or should the rules defined in Regulation (EC) No 1260/1999 be respected as well, concerning the generation of revenues?**

Articles 4 to 7 of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), as amended, defines the measure investment in agricultural holdings.

In accordance with Articles 35 and 36 of the same Regulation the Community support for this measure is financed under the EAGGF Guidance section in areas covered by Objective 1 and as a result, Council Regulation 1260/1999 shall apply as supplemented by specific rules contained in Council Regulation 1257/1999, as amended.

- (109) Taking into account that, at closure, the admissible expenditure from the funds is represented by the amount of the capital needed to cover the guarantees, including the expenses for the management, we are asking whether the given guarantees are admissible in a 1 to 1 report, respectively for EUR 1 gurantees EUR 1 certifiable amounts.**
- (110) In relation with the specificity of operations linked to the guarantee fund, there is need for an exemplification of the means to treat them at the moment of the closure of interventions.**

See Rule 9 in the Annex to Regulation (EC) No 1685/2000. In particular, Point 2.7 of that Rule states that the eligible expenditure of a guarantee fund at closure of the operation shall be determined by an independent audit.

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1.3. Documents to be submitted at closure

(a) Closure Documents

- (111) The closure documents have to be sent within 15 months after the Commission decision (final eligibility date for expenditure 31 December 2008): do the documents have to be sent all together, or is it possible to send the final payment claim together with the declaration of expenditure at an earlier date?**

Closure documents can be submitted together or separately as well. Member States have to make sure, however, that information contained in the different closure documents is coherent and that all three documents are submitted to the Commission within 15 months after the final date of eligibility of expenditure.

- | |
|---|
| <p>(112) In the case that closure documents submitted to the Commission contain errors and the submission deadline has not been exceeded, is it possible for the Member State to re-submit them? If yes, is there a limitation in the kind of errors that can subsequently be corrected?</p> |
|---|

The Member States can correct any errors in the closure documents up to and including the deadline for their submission. After that date, errors can be corrected at the request of the Commission (see point 3.5 of the Closure Guidelines and Article 37(1) of Regulation (EC) No 1260/1999).

- (113) Which closure document should include information of the interest received by member state from recoveries, which is used for co-financing of the projects, and how detailed should the information be (on the level of a fund, measure or project)?**

The Appendix to the statement of expenditure should include this information, pursuant to Annex II to Regulation (EC) No 438/2001. This information has to be provided at measure level.

- (114) What is the basis for joint documents required in 2000–2006 when closing INTERREG III programmes?**

See the guidance document on the closure of INTERREG programmes (COCOF 07/0078/02).

- (115) Should the EU-10 programmes which expanded to include another country after accession include information on PHARE CBC projects or only on the ERDF ones?**

Final reports should refer to Structural Funds only. The reporting on PHARE CBC projects is subject to the requirements of the corresponding PHARE regulations.

(b) Closure by Fund

- (116) Is it recommended to make one common final report on implementation including: ERDF, ESF, EAGGF, FIFG (Point 4.2 of the Closure Guidelines), or it would be better to do it fund by fund (Point 3.2 of the Closure Guidelines)?**
- (117) La clôture s'opère-t-elle par fonds ou par programme? Notre rapport de clôture devra bien concerner l'objectif 2 dans son ensemble?**
- (118) If a Member State decides to close SF programme for 2000-2006 at once by all the funds, is it necessary to delivery the final implementation report by each fund individually and the final report for the whole programme or the required information could be plugged into one final report for the whole programme?**
- (119) If there is one programme covering four funds, should the managing authority submit four final reports each on fund and the final report for the programme, containing information on the reports on each fund, or should only one final report on programme containing information on each fund be submitted?**

It is up to the Member State to decide whether one single final report is prepared covering all the Funds concerned or separate final reports by Fund. In the latter case, as set out in point 3.2.2 of the Closure Guidelines, the Member State should still submit with the last of its final reports by Fund a final report for the programme. This final report for the programme must contain the final reports by Fund as well as the information required for the programme as a whole by Regulation (EC) No 1260/1999, by other applicable regulations and by Annex 1 to the Closure Guidelines.

- (120) If a Member State decides to close SF programmes for 2000-2006 by each fund individually, the allocations will also be transferred by each fund without the delivery of the General Final Report or nonetheless, the allocations are transferred by all the funds only after the receipt of the Final Single Programming Document Implementation Report?**

See points 3.2.1 and 3.2.2 of the Closure Guidelines: the Commission may pay the final balance for a Fund if it has received the final payment application, winding-up declaration and a final report for the Fund.

The Member State should still, however, submit with the last of its final reports by Fund a final report for the programme otherwise the final payment of the last Fund will not be paid.

(c) *Deadline to submit closure documents*

- (121) Les décisions objectif 2 pour la période 2000-2006 prévoient comme date d'éligibilité pour les organismes qui octroient les aides la date du 30 avril 2009. Est-ce que cette date ne change pas la date de soumission du rapport final du programme (30 juin 2009, soit 2 mois après le 30 avril), dont le délai de 15 mois courrait donc uniquement à partir de la date limite des paiements effectués par les bénéficiaires finals autres que ceux déjà mentionnés (31 décembre 2008).**
- (122) Within what deadline should closure documents be presented the case where a measure or sub-measure is reported to 30 April 2009? (6 or 15 months after the last eligibility date?) Is it expected to extend deadline for submission of closure documents for the EAGGF programmes?**
- (123) Due to differing and confusing opinions between Member States, we would need the Commission's position whether the deadline for EAGGF closure is extended (interpretation of EC regulation No 1437/2007 art.1 section 8) and stays 15 months like for other funds (Regulation (EC) No 1083/2006 Art.105 section 3, Regulation (EC) No 1198/2006 Art. 103 section 2)?**

Conformément aux dispositions de l'article 105 (3) du règlement 1083/2006 et de l'article 103(2) du règlement 1198/2006, pour le FEDER, le FSE et l'IFOP, les documents de clôture doivent être soumis à la Commission au plus tard quinze mois après la date finale d'éligibilité des dépenses fixée dans la décision de la Commission accordant la participation des Fonds. Si un programme contient des opérations dont les dates finales d'éligibilité des dépenses sont différentes, la dernière de ces dates est considérée comme la date de référence pour le calcul du délai de présentation des documents de clôture.

Following the adoption of Regulation (EC) No 1437/2007, the deadline for the submission of closure documents related to the EAGGF Guidance Section is likewise fifteen months after the final date of eligibility of expenditure. The Closure Guidelines have been adjusted accordingly.

- (124) Pour les programmes plurifonds quel est le délai pour la présentation des documents de clôture (6 ou 15 mois après le 31 décembre 2008)?**

Le délai de présentation des documents de clôture est 15 mois après la date finale d'éligibilité du programme.

- (125) Peut-on envisager un traitement prioritaire du dossier de clôture Leader+ au niveau de l'analyse et du paiement du solde final de la part de la Commission européenne?**

Les documents de clôture sont traités en fonction de leur ordre d'arrivée au sein des services de la Commission.

Toutefois, compte tenu de la date ultime de présentation des documents de clôture (31 mars 2010), les dossiers reçus avant cette échéance pourront éventuellement bénéficier d'un traitement plus rapide. Il est donc recommandé de transmettre les trois documents de clôture avant ce délai.

(d) Annual implementation report

- (126) Is it necessary to present an annual report 2008 and a final report, or can one document have both functions?**
- (127) If a Member State decides to close SF programmes for 2000-2006 by each fund individually and delivers the EAGGF Report till 30 June 2009, is it necessary to deliver the annual report for the year 2008 for other funds (ESF, EADF, FIFG)? How about the annual report for the year 2009?**

As set out in point 3.3.7 of the Closure Guidelines, annual reports for the years before the final full calendar year of the programme should be submitted. However, as indicated in point 3.3.6 of the Closure Guidelines, no annual implementation report is required to be provided for the final full calendar year of the programme (generally 2008), provided that the final report contains a separate section on implementation of the programme during that year and any period that falls before the final date of eligibility of expenditure for the programme (possibly first months of 2009).

- (128) The 2008 annual implementation report is to be included in the final report under Chapter 9. Could you confirm what level of detail is required for the 2008 annual implementation report? Is it possible to provide information on Chapters 4, 5 and 6 and omit all other Chapters, as the socio-economic analysis and relevant figures will be covered in the main sections of the Final Report?**
- (129) If the annual report 2008 is included in the final report for the programme as a separate chapter, should it have exactly the same structure/content like the annual reports before?**

The 2008 implementation report should contain the information required for other years' implementation reports, as stated in Article 37 of Regulation (EC) No 1260/1999.

- (130) The annual implementation report 2008 is recommended to be part of the final report – but if it is not, do we have to send the annual report 2008 as a separate document by 30th June 2009?**

In this case, the 2008 implementation report should be submitted before the end of June 2009 (see Article 37(1) of Regulation (EC) No 1260/1999. However, Member States may decide to include this report in the final report which shall be submitted within fifteen months after the final date of eligibility expenditure at the latest, provided that 2008 is the last full calendar year before the closure of the programme.

(e) Annual control report

(131) The last annual control report and the winding-up declaration can be combined?

The last annual control report in respect of year 2008 is to be submitted before 30 June 2009. Everything after 31 December 2008 has to be reported on in the winding-up declaration.

(f) Consequences of late submission of one or more closure documents

(132) What happens if one Member State delivers closure documents late and delays the closure process?

For the ERDF and ESF, in accordance with Article 105(3) of Regulation (EC) No 1083/2006, if the Member State fails to submit any of the three closure documents within 15 months after the final date of eligibility of expenditure, partial sums committed for assistance will be automatically decommitted not later than 6 months after that deadline.

In the event that the final report for a Fund, including the information described in Article 37(2) of Regulation (EC) No 1260/1999 and in other applicable regulations, or the winding-up declaration for the Fund are not submitted, the Commission will carry out a financial correction, even where an automatic decommitment has already been carried out. Such a financial correction is not based on the lack of punctuality in failing to submit such documents before the applicable deadline, but rather the non-submission of these documents, which seriously hinders the Commission's assessment of the assistance and of the validity of expenditure that has been declared.

(g) Changing payment claims or the certified statement of final expenditure after the deadline for their submission

(133) How are you going to evaluate and what are the consequences of calculation inaccuracies related to financial adjustments due to, for instance, the use of Euro, EU and national financing ratio specified in the SPD, etc.?

(134) How will technical errors be corrected if spotted after submission of the documents?

Point 3.5 of the Closure Guidelines states that Member States will not be permitted to modify the final payment claim or certified statement of expenditure after the deadline for their submission. If a Member State submits such documents in advance of the deadline for their submission, it may request a change before the deadline of the submission of the closure documents or until the Commission decommitment if this is before the deadline of the submission of the closure documents. However, once the deadline has passed, Member States

will no longer be able to request changes, even where technical errors have occurred.

After that date, errors can be corrected only at the request of the Commission (see point 3.5 of the Closure Guidelines and Article 37(1) of Regulation 1260/1999). Changes due to technical errors may only be made in respect of expenditure submitted to the Commission before the deadline for submission. In such cases, the Member State is given two months in which to make the necessary correction.

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1.4. The final report

(a) *Format and content of the final report*

- (135) Quelles doivent être les différentes parties du rapport final?**
- (136) Are there major differences between programme annual and final reports? Is there a template for programme final report supported with a checklist? What are the objectives of the programme final report?**
- (137) Are there any guidelines for facilitating the drafting of a single final report (for example, templates for data)?**
- (138) What information should be reported in the annual report? Should the exit policy and the winding-up provisions including the reutilisation of the funds be described in the final report? What are the Commission views regarding the treatment of the legacy?**

In terms of the main issues to be addressed there are no substantial differences but while annual reports focus on implementation progress, the final report should also include an overview of the programme's achievements looking back over the whole period rather than only the last twelve months.

The final report should include the information described in Article 37(2) of Regulation (EC) No 1260/1999 and in other applicable regulations. Information to be presented in the final report is also set out in Annex 1 to the Closure Guidelines. The final report should include details of the total expenditure payable or actually paid out by the paying authority, which must correspond to payments effected by the final beneficiary, and the contribution of each Fund, by measure and by operation². Where certain operations are suspended by judicial or administrative proceedings at the time of submission of the final report, the nature and details and amounts involved in these proceedings should be set out in the final report. The final report should also include details of deductions of receipts pursuant to Rule 2 of the Annex to Regulation (EC) No 1685/2000. It should also contain information on the use of the interest generated by the payment on account. The amounts in the section on financial implementation should be consistent with the certified statement of final expenditure and the final payment application.

² For the European Social Fund and the European Agricultural Guidance and Guarantee Fund, details at operation level are not required in the final report, provided that the Member State makes them available to Commission services on request.

- (139) Section 4.2 of the Closure Guidelines deals with the final report and states that "The final report should also include details of deductions of receipts pursuant to Rule 2 of the Annex to Regulation (EC) No 1685/2000, as amended". However, Annex 1 of the guidelines sets out the requirements and a format for the final report, which does not include any reference to details on receipts. How is this information supposed to be reported on?**

This relates only to operations that have taken up the option within Rule 2 of the Annex to Regulation (EC) No 1685/2000, as amended that "no later than at the time of closure of assistance, they [receipts] are deducted from operations eligible expenditure". In other words, only the receipts that are deducted in full from the eligible expenditure at the time of closure shall be detailed in the final report and not the receipts that have been deducted by operations on an ongoing basis throughout the entire programming period 2000-2006.

- (140) Does the final programme report need to be approved by the Monitoring Committee? If so, which one? The old one (2000-2006) or the new one (2007-2013)?**

The report needs to be approved by the Monitoring Committee for the 2000-2006 period as required by Article 35(3)(e) of Regulation (EC) No 1260/1999.

- (141) Does Community Support Framework Managing Authority have to prepare final report on implementation the Community Support Framework? If yes, what should be the content? In our view, neither the respective Regulations, nor the Closure Guidelines foresee that final report has to be prepared at the level of Community Support Framework.**

No final report is necessary at the level of the Community Support Framework.

- (142) Au niveau de l'exécution financière, le rapport final de clôture comprend plusieurs tableaux financiers dont un tableau des performances financières par rapport au dernier plan de financement approuvé au moyen des indicateurs financiers (art 36 § 2, point c) avec mention, le cas échéant, des dégagements effectués. Les données à fournir dans ce dernier tableau ne paraissent pas explicites, notamment à la lecture de l'article visé du règlement (CE) n° 1260/1999. Pourrait-on avoir des précisions sur la nature de ces données à fournir, à l'aide éventuellement d'un tableau-type?**

En premier lieu, l'article 36 du règlement (CE) n° 1260/1999 impose une obligation explicite de suivi au moyen d'indicateurs physiques et financiers définis dans le programme opérationnel, le document unique de programmation ou le complément de programmation. Le point 2 de son paragraphe 2 prévoit le suivi de l'état d'avancement du plan de financement.

Il semble utile de rappeler que l'article 37, paragraphe 2, sous-paragraphe c) du règlement (CE) n° 1260/1999 prévoit que tous les rapports annuels d'exécution et tous les rapports finaux soumis à la Commission contiennent, en tant qu'un des éléments obligatoires, les informations relatives à l'exécution financière, y

compris les indicateurs financiers visés à l'article 36, paragraphe 2, point c) dudit règlement.

De plus, l'annexe 1, paragraphe 5, point b) des Lignes directrices relatives à la clôture des interventions (2000-2006) des Fonds structurels précise qu'en vertu de l'article 37, paragraphe 2, du règlement (CE) n° 1260/1999, le rapport final devrait comprendre les tableau(x) récapitulatif(s) présentant les performances financières par rapport au dernier plan de financement approuvé au moyen des indicateurs financiers (article 36, paragraphe 2, sous-paragraphe c) dudit règlement), avec mention, le cas échéant, des dégagements effectués conformément à la règle «n + 2».

Cela étant, en application du règlement précité, il est évident que chaque rapport final devra contenir les informations relatives aux indicateurs financiers tant sur la forme que sur le fond, tout comme les rapports annuels d'exécution liés au programme opérationnel concerné au cours de la période de programmation 2000-2006.

- (143) What should be included in the first part of the final report on socio-economic changes? Are there any guidelines from the Commission or is it up to each programme how to get and manage this information?**

As with the annual implementation reports, the Commission is interested in knowing whether there were any major changes detected and, if so, what the programme response was. If there were major changes, these should already have been detected and acted on.

- (144) Quelles sont les attentes de la Commission en ce qui concerne l'obligation du respect de la publicité dans le dossier de clôture?**

Aux termes du point 8(d) de l'annexe 1 des lignes directrices clôture, il est précisé que les mesures prises pour assurer la publicité de l'intervention auprès des bénéficiaires potentiels et de l'opinion publique (article 46 du règlement (CE) n° 1260/1999), en particulier en ce qui concerne le plan d'actions de communication établi dans le complément de programmation (point 3.1.1 de l'annexe du règlement (CE) n° 1159/2000.

(b) *Outputs, results and impacts of programmes*

- (145) Under Chapter 2 in the final report, do you expect a section detailing how the programme results have affected the development of the 2007-2013 programme?**

It is not a legal obligation but would represent good practice and desirable.

- (146) The indicators reported in the operational programme are classified into three categories: output, result and impact. Until when (or until what date) should the managing authority monitor the indicators?**

Monitoring of the indicators should continue until the final report for the programme is submitted to the Commission.

- (147) How to deal with the indicators if they are not met by the end of 2008?**
- (148) What are the consequences if one or more indicators are not achieved or cannot be measured?**
- (149) We would like to hear the Commission's opinion about monitoring indicators' progress analysis and evaluation of gaining aims that are defined in the Single Programming Document and the Programme Complement.**
- (150) We would like to hear from the Commission about the link between the project objectives and amount of ineligible expenditures. Is there some advices (proportions) for Member States, how to evaluate the extent of achieved project objectives and amount of ineligible expenditures?**

The final report has to explain the reasons why the indicators are exceeded, fulfilled or only partially reached as well as the lessons learned for the future. It is the state of advancement at the time of preparation of the final report that should be reported, and not the state of advancement at the end of 2008. The latest available data should be presented on the indicators.

- (151) For organisations which ran projects in the early part of the programme, produced the results and had claims paid, and have subsequently gone into liquidation without any contact details remaining, how does the Commission expect us to treat these?**

According to Article 7 of Regulation (EC) No 438/2001, the management and control systems must provide a sufficient audit trail.

- (152) The impact indicators that have as objective to verify the effects of the investments on the ground during a longer period of time should be available for the ex-post evaluation and at the same time included in the final report. How to approach this aspect?**

Article 43(2) of Regulation (EC) No 1260/1999 states the ex-post evaluation shall be completed not later than three years after the end of the programming period (end of 2009, for the purposes of this Article). The final report is due at the latest fifteen months after the final date of eligibility of expenditure. The final report is thus due after the ex-post report. There should therefore be no problem to include the impact indicators if they have been elaborated, quantified and made available. Monitoring is the responsibility of the Member States and therefore they are responsible to give actual figures for indicators in the programming documents. The Commission is aware that impacts need longer time period to develop but the

latest available data should be included in the final report (also indicating the cut off date. The report should explain why information of some impact indicators are not informed if this should be the case.

The ex post evaluation carried out by the Commission is at the policy level and is not an evaluation of all individual programmes. As a consequence, Member States should not expect to use the Commission ex post evaluation to complete the impact indicators of their programmes. The regulation does not prevent Member States to carry out their own ex post evaluation; in fact, the Commission encourages Member States to do so.

- (153) En ce qui concerne le rapport de clôture ou rapport final, et en particulier les aspects des impacts aussi bien sur les personnes que sur les systèmes, territoires et l'économie de la région et vu la conjoncture économique de cette année écoulée, quelles sont les orientations sur l'utilisation des indicateurs qui vont être proposées?**

The Commission will not propose additional guidance for the use indicators. Indicators will serve mainly accountability and evaluation purposes. For this, closure documents should contain the latest available actual values of output, result and impact indicators that appear in the operational programmes and single programming documents accompanied by explanation on reaching/missing/over-performing of the targets or on the reasons of the unavailability of data.

- (154) Nous aimerions un éclairage quant à l'inclusion dans les rapports finaux des données concernant les indicateurs d'impact, qui sont élaborés dans le cadre de l'évaluation ex-post. Puisque l'article 43 du règlement (CE) n° 1260/1999 établit que l'élaboration de l'évaluation ex-post est de la responsabilité de la Commission (en collaboration avec l'Etat membre et l'Autorité de gestion), il faut que celle-ci en fournisse les rapports, afin que les Autorités de gestion puissent inclure les indicateurs dans les rapports finaux. Dans le but de programmer le processus de clôture des programmes, quelles sont les prévisions de la Commission en ce qui concerne la date à laquelle les indicateurs d'impact seront disponibles?**

Dans notre programme Leader+, il est prévu de présenter les documents de clôture au cours des 9 premiers mois de l'année 2009; si la Commission utilise les délais maximum pour l'évaluation ex-post, nous ne pourrions disposer à temps des indicateurs d'impact.

Monitoring is the responsibility of the Member States and therefore they are responsible to give actual figures for indicators in the programming documents. We are aware that impacts need longer time period to develop but the latest available data should be included in the final report (also indicating the cut off date).

The closure of the programmes is not dependent on the ex post evaluation carried out by the Commission, which is at the policy level and is not an evaluation of all individual programmes. The regulation does not prevent Member States to carry out their own ex post evaluation; in fact, we encourage Member States to do so.

- (155) What happens in case a project has failed to reach its expected indicators/targets? Is there an official definition of when a project is considered complete (in terms of indicators achievement) or is it up to each Member State to take the relevant decision on a project by project basis?**

Point 6 of the Closure Guidelines indicates that when examining whether a project is finished or operational, regard should be had to the stated aims of the operation, the decision awarding assistance to the operation and any conditions related to the operation.

However, non-compliance with a given indicator does not necessarily mean that a project is not finished or operational. This can only be examined on a case-by-case basis, having regard to the indicators.

- (156) Could unfinished projects' indicators be accounted for in the final report?**

No, indicators on unfinished projects cannot be accounted for in the final report. Nevertheless, unfinished projects should be reported in an annex to the final report in a standard table (see Annex 1 of the current register).

- (c) *List of projects to be attached to the final report***

- (157) In the final report, is it possible to do the reporting at project level and not at the average level of the measure? Of course, the final report should include a list of the projects with the coordinates of the final beneficiaries.**

The Member State has to justify expenditure at operation level. The reporting is generally presented to the Commission at measure level, but it is also possible for a Member State to report at project level for major projects or for operation a Member State wants to highlight. As provided for in point 4.2 of the Closure Guidelines, the final report should include details of the total expenditure payable or actually paid out by the paying authority, which must correspond to payments effected by the final beneficiary and the contribution of each Fund, by measure and by operation. For the European Social Fund and the European Agricultural Guidance and Guarantee Fund, details at operation level are not required in the final report, provided that the Member State makes them available to Commission services on request.

- (158) Is the Managing Authority obliged to submit to the European Commission the list of all realised projects as well as the list of all unrealised and unfinished projects?**

As indicated in the immediately preceding response, details of contributions at the level of the projects are required for the ERDF and the FIFG.

In addition, as indicated in point 6 of the Closure Guidelines, the final report should also contain a list of unfinished or non-operational projects in a standard table (see Annex 1 of the current register). However, for the EAGGF, Guidance Section, details at operation level are not required in the final report, provided that the Member State makes them available on request.

- (159) Detail of ERDF operations - which is the information to submit for each operation in the report "projects' list"? All the information requested in Annex IV to Regulation (EC) No 438/2001? Only part of them? Or additional information? Is there a preset format for the amount of information to indicate on each operation and measure in the final execution report?**

It is not necessary to submit with the final report all the information requested in Annex IV to Regulation (EC) No 438/2001. Only the information mentioned in the Closure Guidelines should be submitted with the final report. The standard table to be used for the reporting on the project list can be found in Annex 1 of the current register.

- (160) Conformément au point 6 des lignes directrices, l'Etat-membre doit dresser dans le rapport final la liste des opérations par mesure qui ne sont pas terminées ou qui ne sont pas opérationnelles à la date de clôture du PO, aussi pour les opérations dont le cofinancement par des crédits communautaires au titre de la prochaine période de programmation est prévu. Dans cette liste peut-on inclure des grands projets autant que des projets ordinaires? Quelles sont les conditions pour inclure ces projets dans ladite liste sauf la condition de concerner les priorités et les buts de la prochaine période de programmation et de distinguer clairement l'objet physique et économique entre les deux périodes de programmation?**

On peut effectivement inclure des grands projets dans la liste des projets inachevés et il n'y a pas de condition supplémentaire pour les inclure dans cette liste.

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| <p>(161) Unfinished and non-operational projects at closure date: the projects to be included in the list reported in the final report have to be the ones not completed and not operational as of 31 December 2008, or could we consider as closure date the one of the report?</p> <p>(162) What kind of information should we provide the Commission with about the projects which will not be closed after the eligibility period?</p> |
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(163) How should we monitor and inform the European Commission about projects which will not be closed at the end of 2008 and according to the Regulations have to be finished and implement with national co-financing within two years?

The list of unfinished and non-operational operations at the time of closure have to be reported in a standard table, provided by the Commission, as an annex to the final report (see Annex 1 of the current register). The date for defining unfinished and non-operational operations is the final date of eligibility of expenditure. If a project has been finished or rendered operational with national financing after the final date of eligibility but before the date of submission of the final report, it does not need to be included on the list.

In respect of operations being finalised with national financing, the Commission should be advised by the Member State at the end of the two year period mentioned in section 6 of the Closure Guidelines whether operations have been finished and rendered operational. The onus is thus on Member States to monitor the projects on the list.

(164) If the list of projects, which are going to be financed in the upcoming financial period of 2007-2013, will not be finalized when the final report is submitted, to what extent it would be possible to change or expand that list and submit it to the European Commission afterwards?

The list of unfinished or non-operational operations has to be finalised before the submission of the final report.

(d) Unfinished and non-operational projects at the time of closure

(165) What does “unfinished” project mean: Projects with open audit findings or projects which do not deliver final reports on time? What will happen to projects which have not been closed?

(166) Definition of a completed project, i.e. infrastructure projects may be physically completed, but the amount due to the contractor may have not been fully paid due to retention that usually is paid out 6 to 12 months after completion. Do these projects need to be included in the unfinished projects list attached to the final report; What happens in cases of claims by the contractors, or accounts that are settled after 31 December 2008, or disputes that are not settled and court proceedings follow?

(167) What does it mean exactly "concluded/completed projects" and "operational project", with the details of different types of operations (public works, acquisitions of goods and services, financing for enterprises and private entities)?

(168) Which are the elements to be considered from a financial, procedural, physical and administrative point of view in order to qualify a project as closed and operational?

- (169) We would like a more precise definition of unfinished projects and non-operational projects that have to be eventually attached to the final execution report.**
- (170) What happens if a project should but does not finish its activities on time?**
- (171) What is the procedure if the criteria for selecting the project (and therewith the project indicators) are not reached after 5 years?**
- (172) What is the procedure for so-called unfinished projects? Should new co-financing contracts be signed for these projects? What is the procedure for transferring the aforementioned projects from the old into the new financial perspective?**
- (173) Préciser l'interprétation des opérations non terminées qui doivent être listées et qui seront financées sur 2007-2013: "pour chaque période, chaque opération doit être clairement explicitée, détaillée afin qu'elle soit scindée en 2 phases distinctes, financière et physique ou de développement (il n'est donc pas demandé un investissement « opérationnel » en tant que tel?). Bien entendu, l'éligibilité doit être totale sur le programme 2007-2013. Si la première partie n'est pas achevée ou non opérationnelle sur 2000-2006, les dépenses liées à son achèvement ou à sa mise en service peuvent être acceptées lors de la seconde période de programmation, sous réserve d'éligibilité et de cofinancement".**
- (174) Point 6 of the Closure Guidelines provides that it is possible to co-finance projects from funds of both: the single programming document and the new programming period 2007-2013. In this case the Member States have to prepare a detailed description of a project and to divide the project into at least two distinct identifiable financial and physical or developmental stages corresponding to the two 'forms of assistance' concerned. We are in the process of preparation for the single programming document closure. For a proper preparation, in case of the need, to finance the projects from the funds of the new programming period 2007-2013, we kindly ask you to clarify on how this possibility could be implemented: Are there any restrictions concerning the division of the single programming document projects financed from the funds of the single programming document and the new programming period 2007-2013 (e.g., is the division of all projects possible? Or is it possible to divide only infrastructure projects but not the projects related to provision of services (ESF projects) Are there any limitations related to the assistance granted to the project? Is there a possibility for dividing complex projects?).**
- (175) Are there any requirements for actions, procedures and documents set for the division of the single programming document projects between the two programming periods regarding their financing established by the Commission? In case the project is divided into two periods, will the expenditure of such divided projects under the single programming document be eligible and the Commission will not require refunding?**

- (176) Under what conditions is it possible to finance unfinished projects from the programming period 2000-2006 from the resources of the new programming period 2007-2013?**
- (177) What are the basic conditions for financing the unfinished projects of the 2000-2006 programming period under the 2007-2013 programming period – criteria for project selection, mechanism for "transfer of projects".**
- (178) Is it possible to partly close co-financed project from Community funds under the next programming period, if the project remains unfinished or non-operational (Guidelines on closure of assistance (2000-2006) from the Structural Funds, Point 6)? Or else, what would be the right procedure to close projects which only partly achieve the aims, objectives set. What would be expected action from the Member State side and what would be the Commission's reaction in different cases (from experience with closure)?**
- (179) If an intervention is not completed until the deadline of 31 December 2008 and cannot be completed on the expenses of the administration after this date, is there the possibility to close the intervention (for the yet not finished part) with the resources of the new programming period?**
- (180) What is the deadline for the period in which the uncompleted works need to be finished?**
- (181) Which is the cut-off date for deciding whether a project is unfinished or non-operational?**
- (182) Qu'entend-t-on par opérations non achevées ou non opérationnelles à la fin du programme?**
- (183) What action are to be taken by the managing authority if the beneficiary will not pay eligible expenditures till 31 December 2008 and therefore he will not finish the project financial realisation?**
- (184) Could you give a more precise definition of "two distinct stages" for moving a number of unfinished projects to the 2007-2013 programming period?**
- (185) Quelle sera la date limite pour la mise en marche des projets inachevés de la période antérieure qui vont être financés, dans une seconde phase différenciée, au cours de la période actuelle de programmation? Cette date va-t-elle être modifiée si le délai d'exécution de la seconde phase dépasse la limite réglementaire des deux ans qui suivent la présentation des documents de clôture?**

As set out in point 6 of the Closure Guidelines, the managing authority, intermediate body, paying authority and Member State have a duty to ensure the delivery of co-financed products and services and to ensure the reality and correctness of expenditure claimed, in accordance with the principles of sound financial management.

The Member State must set out in the final report a list of operations by measure that are unfinished or non-operational on the final date of eligibility of expenditure, having regard to the stated aims of the operation, the decision awarding assistance to the operation and any conditions related to the operation³. If a project has been finished or rendered operational with national financing after the final date of eligibility but before the date of submission of the final report, it does not need to be included on the list.

It is also possible to divide ESF operations between the two programming periods for Member States willing to finance unfinished 2000-2006 operations under the 2007-2013 operational programme. The usual division is based on a cut-off of the activities and related expenditure at the end of a specified month. At the beginning of the following month, activities and related expenditure will be funded via the new 2007-2013 operational programme. The key point of this division is to ensure a strict link between the activities and the expenditure.

(186) What is the procedure for so-called unfinished projects? Should new co-financing contracts be signed for these projects? What is the procedure for transferring the aforementioned projects from the old into the new financial perspective?

There is no procedure as such for inclusion of unfinished projects in the new programming period. Unfinished projects should fall within the scope of, and respect, all programming documents and rules for the new period.

(187) Nous voudrions savoir dans quelles mesures les opérations inachevées seront exclues ou pas par la Commission? Dans quels cas, les opérations pourront être acceptées et jugées totalement éligibles? Dans ce cas, les soldes versées après la date du 31 décembre 2008, pourront ils être pris en compte dans les dépenses finales éligibles? Merci de nous dire en conclusion si l'autorité de gestion a intérêt à augmenter ou réduire la liste des opérations inachevées.

(188) A ce sujet, pouvez-vous nous communiquer les critères d'appréciation concernant les opérations non achevées et non opérationnelles qui serait retenues comme éligibles à la période 2000-2006 postérieurement à la date finale d'éligibilité des dépenses?

En second lieu, pour les projets en retard (qui pourraient être jugés éligibles par la Commission) et qui ne pourraient pas être financés dans le

³ For the European Agricultural Guidance and Guarantee Fund, this list does not need to be provided with the final report, provided that the Member State makes it, and the other information set out in point 6, available to Commission services on request.

programme 2007-2013, pouvez-vous nous dire si l'autorité de gestion peut intégrer dans sa demande de solde, les dépenses prévues du 1er janvier 2009 jusqu'au terme de la demande de solde + 2 ans?

Enfin, dans quelle mesure, les versements intermédiaires qui auront été effectués pour des projets en retard, et jugés non éligibles par la Commission, pourraient-ils être maintenues dans les dépenses éligibles finales? Par exemple, pourrait-on maintenir une tranche fonctionnelle justifiée avant le 31 décembre 2008 alors que globalement, le projet retenu ne serait pas totalement achevé?

Les dépenses effectivement payées par le bénéficiaire final pour des opérations inachevées avant la date finale d'éligibilité peuvent être déclarées à la Commission. Cependant, comme le confirme le point 6 des Orientations sur la clôture, les opérations devraient être achevées soit avec un cofinancement Communautaire dans la nouvelle période de programmation soit avec un financement national. Des dépenses versées par les bénéficiaires finaux après la date finale d'éligibilité ne pourront pas être déclarées à la Commission au titre du programme pour la période 2000-2006.

Si l'opération n'est pas achevée soit avec un cofinancement Communautaire dans la nouvelle période de programmation soit avec un financement national dans le délai de deux ans, les Orientations sur la clôture précisent que la Commission prendra les mesures nécessaires afin de récupérer les crédits Communautaires.

(189) When is the EC going to submit the final version of table concerning unfinished or not operational project? Will that table be applicable for projects co-financed under ERDF as well?

The final version of the standard table can be found in Annex 1 of the current register. The table is applicable for the ERDF as well.

(190) Procedural and physical aspects of the project. In the case of infrastructure operations with regional "orchestration", with the works finished the 31 December 2008 but not yet verified and without a certification for good execution: within the framework of the 2007-2013 programming period, would it be possible to submit for Community co-financing only the trial costs and the verifications of the infrastructure projects undertaken by the executive body?

(191) Infrastructure projects (public works): is it possible to undertake partial closure for the non divisible projects by financial lots and by works for which it is not possible to make trials, or at the issuing of a "compliance execution" certificate according to national rules, and introducing an operational functionality concept by the measure responsible?

(192) In the case where the payments of the final beneficiary are relative to general expenses, can the responsible with the operation in the 2007-2013 framework make a new legal commitment for the not yet completed part of the project? For partial closure, could the responsible with the measure prepare a

detailed report of the operation in which to indicate the expenses to declare and certify under the 2000-2006 programme as compared to the ones in the 2007-2013 programme?

(193) ERDF major projects for which decision has been adopted in 2000-2006 not fully achieved during the programming period can, according to the guidelines for closure of 2000-2006 Structural Funds, either:

- be completed and rendered operational by the Member State, or**
- be included in 2007-2013 OP, provided they are consistent with it. In this case, the identification of the physical parts of the project and of the relative costs referring to each of the two periods must be provided for (this has usually happened in the past, in the final implementation report).**

As a consequence, we kindly ask your advice on the following questions:

(1) In case of a major project overlapping two periods (second case abovementioned), is a Commission Decision on the major project needed, in case of unchanged physical object and costs (i.e. no overall cost increase for the co-financed part of the project except for inflation rate)?

(2) If a difference in co-financing rates between the two programming periods takes place, does this imply the need of an additional decision?

The Guidelines on the closure of assistance (2000-2006) from the Structural Funds (point 6 on "Unfinished and non-operational projects at the time of closure") give the possibility to finance with the Funds operations overlapping the 2000-2006 and 2007-2013 programming periods under the following conditions: (i) the operation should be divided into at least two distinct, identifiable financial and physical or development stages corresponding to the two "forms of assistance" concerned, and (ii) if the first part of the operation is not completed or functional in the first programming period, expenses related to its completion or its becoming functional may be accepted in the second programming period, provided that the co-financing and eligibility conditions are met.

These provisions also apply to major projects.

A Commission decision will be necessary under Article 41(2) of Regulation (EC) No 1083/2006 for a major project overlapping the two programming periods, irrespective of whether the cost of the unfinished part of the major project under the 2007-13 programming period is below or above the financial thresholds applicable under Article 39 of Regulation (EC) No 1083/2006.

Finally, the application of different co-financing rates for the parts of the operation under each programming period can only result from a choice made by the national authorities. It must be recalled that although the decisions taken on the basis of Article 26 of Regulation (EC) No 1260/1999 approved a rate of assistance from the Funds to the 2000-2006 part of the major projects, decisions under Article 41(2) of Regulation (EC) No 1083/2006 will refer to the "amount to which the co-financing rate for the priority axis applies" i.e. to the maximum

amount of eligible expenditure under the 2007-2013 programming period, and not to the co-financing rate applicable to the remaining part of the major project.

- (194) How is a project defined as finished/operational? Should it be both financially and physically completed?**
- (195) What happens if a project is physically finished and operational but its final payment is due after the expiry of a guarantee period, which ends (i) beyond the deadline for eligibility (31 December 2008) but before the end of the “two-year” period and (ii) even beyond the “two-year” period? In both cases, is it necessary to inform the Commission of the final payment?**
- (196) As far as unfinished or non-operational projects are concerned - if the beneficiary does not finish the project within two years after submission of closure documents, the Closure Guidelines state: "For operations that have not been completed or rendered functional by end of that period, the Commission will take the steps necessary to recover Community funds". Will the Commission recover all Community funds engaged in that project or make it pro rata to only non operational phase of the project (if part of the project will be operational itself)?**

The following response is limited to reporting under Section 6 of the Closure Guidelines.

The Member State must set out in the final report a list of operations by measure that are unfinished or non-operational, having regard to the stated aims of the operation, the decision awarding assistance to the operation and any conditions related to the operation⁴.

Where a project has not been completed physically or is not operational at the time of submission of the final report, it should clearly be included in the list of unfinished projects.

Where a project has been physically completed and is operational with national financing after the final date of eligibility but before the submission of the final report, it does not need to be included on the list.

Where a project has been physically completed and is operational with the assistance of Structural Funds co-financing under the 2007-2013 programming period after the final date of eligibility but before the submission of the final report, it should be included on the list. This is to ensure transparent implementation and monitoring and to facilitate controls. Indeed, where projects from the 2000-2006 programming period are to be co-financed under the 2007-2013 programming period, as well as appearing on the list, Member States must ensure that the operation is divided into at least two distinct, identifiable

⁴ For the European Agricultural Guidance and Guarantee Fund, this list does not need to be provided with the final report, provided that the Member State makes it, and the other information set out in point 6, available to Commission services on request.

financial and physical development stages corresponding to the two forms of assistance concerned.

- (197) With regard to the commitment of the managing authority to finalise and achieve, on own expenses, all unfinished or non-operational projects within two years following the deadline for the presentation of the final report, we are asking whether the expenses relative to the programme could be the ones engaged directly by the final beneficiary before 31 December 2008 or the ones engaged until the date of the presentation of the above mentioned report.**

The deadline is the final date of eligibility of expenditure in this respect. After this date, payments by the final beneficiary are not eligible under the 2000-2006 programmes.

- (198) If an intervention that is not completed until 31 December 2008 and cannot be effectively concluded with the expenses of the national administration after this date, which is the amount not to be financed? Only the non-declared amount or the whole operation?**

As set out in Point 6 of the Closure Guidelines, for operations that have not been completed or rendered functional by end of that period, the Commission will take the steps necessary to recover Community funds. If a project is not complete/operational, then it is not eligible, and so should be removed by the Member State. If it is left in and still not operational after closure (following the managing authority's follow-up controls) then the whole co-financing should be returned to the Commission. The causes and solutions for incomplete/non-operational projects should be described in the final report.

- (199) If an intervention is not finished or not put into practice before 31 December 2008, but it can be finished on the expenses of the administration after this date, what is the deadline to improve the finalisation/putting into practice?**

- (200) When does the “two-year” period for completion begin?**

As set out in point 6 of the Closure Guidelines, the Member State should undertake to complete or render operational, at its own expense, all unfinished or non-functional operations not later than two years after the deadline for submission of the final report. The Member State should advise the Commission at the end of this two-year period whether each such project has been completed or rendered functional. For operations that have not been completed or rendered functional by end of that period, the Commission will take the steps necessary to recover Community funds.

- (201) Comment peut-on combiner le délai de deux ans pour achever à ses frais les opérations non terminées avec la date limite pour la présentation à la Commission du Rapport Final, soit 6 mois(dans le cas de prorogation) ou 15 mois après la clôture du programme opérationnel?**

Le délai de deux ans pour achever des opérations court à partir de la date limite pour la soumission du rapport final.

(e) Operations suspended due to judicial or administrative proceedings

- (202) We would like to know whether the “operation” mentioned in Article 7 of the Closure Guidelines is the same as the project? If it is so, in case judicial proceedings are applied not to the entire project, but only to the part of the project, which has no significant impact on the implementation of the project, is it recommended to deduct from the programme all expenditure of the project or only a share of expenditure in respect to which judicial proceedings are going on?**

The term "operation" can mean "project" (see Article 9(k) of Regulation (EC) No 1260/1999). It is indicated in point 7 of the closure guidelines that for the operation subject to a judicial procedure the Member State has to decide, before the deadline for the submission of the certified statement of expenditure and the final report, whether the operation should wholly or partly be withdrawn. If judicial proceedings are applied not to the entire operation, but only to the part of the operation, only the expenditure related to the part of the proceedings covered by the judicial proceedings should be deducted. The deduction should concern all the expenditure of the operation only if the final beneficiary has infringed an obligation that is fundamental for the proper operation of the Fund.

- (203) Please comment what is the meaning of “replacement operations”**

If the national authorities do not have the assurance that the expenditure related to one operation is legal and regular, they may replace that operation with another operation provided that the replacement operation complies with all applicable Community and national regulatory provisions and has been subject to all the required control procedures to guarantee the regularity of the expenditure. Such provisions and rules include, but are not limited to:

- (i) Respect for the period of eligibility for the category of activity: In each programme decision, the exact starting date for the eligibility for all expenditure in the programme is established. Where activities not previously covered by the scope of the programme are introduced, the exact starting date for the eligibility for those activities is laid down in the modified Commission decision.

- (ii) Respect of the selection criteria laid down in the programme documents: The national authorities must ensure equal treatment of project promoters in the use of Community funds.
- (iii) Compliance with all generally applicable Community rules and rules that are a specific condition of EU co-financing, including:
 - Compliance with EC law, especially the public procurement Directives, State aid rules and environmental requirements, should be verified.
 - Co-financed operations should respect the provisions of Regulation (EC) No 1159/2000 on information and publicity actions.
 - Article 29 of Regulation (EC) No 1260/1999 should be respected (i.e. revenue-generation, maximum rates of assistance) in establishing the rate of assistance.
 - The rules on the eligibility of expenditure (Regulation (EC) No 1685/2000, as amended) should be observed.
- (iv) Application of the procedures for financial management and control, including the need to comply with:
 - Audit trail requirements (Article 7 of Regulation (EC) No 438/2001),
 - Article 4 of Regulation (EC) No 438/2001, concerning systematic checks by management on the expenditure declared, including on-the-spot checks,
 - Article 10 of Regulation (EC) No 438/2001 concerning independent audit, and
 - All other relevant conditions.

(204) What does ‘withdrawal’ mean? Does it mean that some activities can be cancelled from co-financing by ERDF?

(205) What is the procedure for notifying the EC for the withdrawal of an operation?

‘Withdrawal’ of an operation means that it is not treated as part of the programme and will not receive any co-funding from the Funds. See Point 7 of the Closure Guidelines for further details. Payment claims should be modified accordingly to take out expenditure related to the withdrawn projects.

The procedure for reporting a withdrawn operation due to an irregularity is the same as in the case of any irregularity. Therefore, the list of irregularities to be included (see summary table in Annex 2 to the current register) in the winding-up declaration has to be filled in accordingly. The irregularity may be considered as closed.

(206) Should ‘withdrawn’ project be reported to OLAF?

If the project and related expenditure will be withdrawn from the declaration of expenditure, if it concerns an irregularity which is covered by the Commission Regulation (EC) No 1681/94, as amended, it should be reported to OLAF and

should be followed until the case is closed. Payment claims have to be modified accordingly in order to take out expenditures with regard to the withdrawn operations. Therefore it should be indicated in the list of irregularities that should be joined to the winding-up declaration.

- (207) Which is the cut-off date for stating whether a project is suspended?**
- (208) Does the “two-year” period for the completion of these proceedings apply? If yes, when does it start for these cases?**
- (209) Operations which are the object of a suspension due to judicial or administrative proceedings that the managing authority would like to keep in the programme: - in the case where the judicial proceeding concerning an operation can be solved before the final date of eligibility of expenditure (31 December 2008 or 30 April 2009) and the period required for the completion of the operation does not allow for the completion of the intervention and the certification of expenditure within the eligibility date limits, is there a period foreseen when the managing authority could complete the intervention and thus insert the certification of expenditure in the certified statement of final expenditure even if the expenses occurred at a later date than 31 December 2008 or 30 April 2009?**
- (210) In the case where the judicial proceeding concerning an operation is concluded after the final date of eligibility of expenditure but before the deadline for the submission of closure documentation, is there a period during which the managing authority could finish the intervention, and thus insert the expenditure certification in the final certification of expenditure, even if the expenditure occurred at a later date than 31 December 2008 or 30 April 2009 for aid schemes?**
- (211) In the case where the judicial proceeding concerning an operation is solved after the deadline for the submission of closure documentation, is there a time limit within which the managing authority has to inform the Commission and the Member State of the result of the above mentioned judicial proceedings? Is there a deadline to complete the intervention and to submit a payment request having as objective the certified expenditure for the operation?**

The rules applicable to the closure of operations suspended due to judicial or administrative procedures are set out in paragraph 7 of the closure guidelines and have to be distinguished from those related to unfinished and non-operational projects (paragraph 6 of the closure guidelines). Indeed, operations suspended due to judicial or administrative procedures do not have to be completed no later than two years after the deadline for submission of the final report, and the additional time allowed to finish such projects needs to be assessed on a case-by-case basis, depending on the consequences of the suspensory effect on them (whether they delay implementation and/or payments), and the duration of the suspension.

Given the uncertainty linked to the results of the legal proceedings, it is the Member State's responsibility to decide, when drawing-up the closure documents,

whether the corresponding projects should be withdrawn (and replaced by another operation possibly from 'over-programming') or retained in the programme.

Pursuant to Article 105(3) of Regulation (EC) No 1083/2006, the amounts related to the operations which have been retained in the programme will be disregarded in calculating the amount to be decommitted at closure.

(f) Programme monitoring

(212) How will the sustainability of project results be monitored?

(213) What happens with monitoring change of ownership rights in programmes which will not continue in 2007 – 2013?

In accordance with Article 30(4) of Regulation (EC) No 1260/1999, it is the obligation of the Member State to monitor all operations for five years after the date of the decision of the competent national authority and design the characteristics of their monitoring systems to fulfil this requirement. It is up to Member States to decide which structure will take over the responsibilities of the follow-up for programmes which will not continue in 2007-2013.

(214) What particular action should be taken in case the evident loss, theft or damage established during post-implementation on-site inspection of the project site after two or more years have passed when doing and there is?

The following will apply if the loss, theft or damage constitutes an irregularity. The treatment of irregularities is always the same whether the irregularity is found before or after the closure of programme. In accordance with Commission Regulation (EC) No 1681/1994 as amended, the case should be notified to OLAF as an irregularity if the damage caused amounts to more than the notification thresholds and the case must be treated and follow-up appropriately by the Member State.

If the loss, theft or damage constitutes an irregularity, the case has to be reported and treated appropriately, in accordance with Commission Regulation (EC) No 1681/94 as amended. Appropriate treatment of irregularities means the follow-up of judicial and administrative procedures including the recovery of the unduly paid amounts by the beneficiary. The recovered EC contribution has to be reimbursed to the EC budget, independently of the reporting threshold.

(215) Concerning the change of the ownership (without changing the nature, the purpose and the objectives of the project), is that kind of project eligible for the co-financing or the sources already allocated to the beneficiary have to be paid back by the beneficiary?

Article 30(4) of Regulation (EC) No 1260/1999 is only applicable if both conditions a) and b) of that Article are met. Thus, if there is a change of ownership, but this does not affect its nature or implementation conditions or does not give a firm or public body an undue advantage, Article 30(4) will not apply. Where both conditions are met, Member States have to inform the Commission of any such modification and Article 39 of Regulation (EC) No 1260/1999 will apply.

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1.5. The winding-up declaration

(a) *Format and content of the winding-up declaration*

(216) What kind of information concerning control do we need during the closure of the programme?

Annex II of the Closure Guidelines explains in detail the requirements for information to be included in winding-up declarations.

(217) Is it possible to submit one single declaration on closure of assistance except for EAGGF Guidance Section? In compliance with Point 3.3.1 of the Closure Guidelines and Point 2 of the Annex 2 to the Guidelines a separate declaration is submitted for to the EAGGF Guidance Section (“In exceptional cases where for institutional reasons it is not possible for a Member State to submit a single declaration for a Fund, the Commission may upon the request of the Member State agree on arrangements for multiple declarations to be provided”). What should be the contents of this application?

It is possible to have one single winding-up declaration for a programme, even for a multi-fund programme. As set out in point 2 of Annex 2 of the Closure Guidelines, in the case of multi-fund programmes, the Member State may submit a separate declaration for each Fund. In exceptional cases where for institutional reasons it is not possible for a Member State to submit a single declaration for a Fund, the Commission may at the request of the Member State agree arrangements for multiple declarations to be provided. Any winding-up declaration submitted must comply with the requirements set out in Annex 2 of the Closure Guidelines.

In case multiple declarations are provided by Fund, a global conclusion (as foreseen in the model of Annex III of Regulation 438/2001) for the Fund also needs to be provided.

(218) In 2000-2006 is it possible to submit a partial winding-up declaration covering all the projects which have been closed satisfactorily? If so what should be the content of this document and how to integrate it with the overall programme winding up declaration?

Partial winding-up declarations on projects which have been closed satisfactorily are not accepted for the 2000-2006 programming period. The winding-up declaration is to be established at the programme level, possibly by Fund but not at the operation level.

(219) How many months in advance does coordination with the winding-up body need to take place?

The Commission advises Member States to plan and fix deadlines in agreement with all the competent authorities at least one year before the deadline for submission of closure documents.

(b) Article 4 verifications and Article 10 checks

(220) Will there be conclusions drawn from the EC and 2nd level intermediary body audit findings during the five-year period after project end? What is the role of the 1st level intermediary body?

The first level intermediary body controls, we understand to refer to the management verifications (Article 4 of Regulation (EC) No 438/2001).

The second level intermediary body controls, we understand to refer to sampling checks (Article 10 of Regulation (EC) No 438/2001).

The managing authority of each programme has the responsibility to ensure compliance with Article 30 (4) of Regulation (EC) No 1260/1999. If Member State authorities detect cases where the requirements of Article 30 (4) have not been met through Article 4 verifications, the Article 10 sample checks (Regulation (EC) No 438/2001) or through other means, the Member State is obliged to take appropriate action, including those required in Article 39(1) of Regulation (EC) No 1260/1999. The Member State must report to the Commission on substantial modifications as required in Article 30(4) of Regulation (EC) No 1260/1999 and, if appropriate, in accordance with Article 3 of Regulation (EC) No 1681/1994, as amended.

(221) Les opérations peuvent être enregistrés dans les "15 mois - 1 jour" suivant le 31 décembre 2008. En est-il de même pour les contrôles 5%?

Dans la théorie il est possible d'enregistrer des opérations éligible dans la déclaration finale des dépenses dans les "15 mois – 1 jour". Cependant, dans la pratique les contrôles relatifs a ces opérations y compris ceux prévus à l'article 10 du règlement (CE) 438/2001 doivent avoir été réalisés avant la rédaction de la déclaration de clôture.

(222) Point 1.3 of the Annex 2 to the Closure Guidelines stipulates that a body responsible for sample checks under Article 10 of the Regulation where checks have identified a rate of error above 2 per cent of the expenditure checked, considers carrying out further checks to better determine and quantify the extent of the problem.

How in the view of the European Commission this requirement should be implemented in respect of errors which were identified by the bodies responsible for sample checks under Article 10 of the Regulation prior to

publishing of the Guidelines on Closure of Assistance and should the aforementioned bodies carry out further actions/tasks due to this? (This requirement was not formulated and, as the practice shows, it was not done or it was done not under requirements established in these Guidelines).

There were no such requirements in the beginning of the programming period 2000-2006, therefore, they were not included into methodologies and other legal acts regulating checks under Article 10. How is it suggested to ensure the requirements laid down in the Guidelines? Where checks carried out have indicated a problem of a systemic character, carry out further checks of an appropriate nature to determine and quantify the extent of the problem.

Where checks have identified a rate of error above 2% of the expenditure checked, consider carrying out further checks to better determine and quantify the extent of the problem.

In accordance with Article 10(2) of Regulation (EC) No 438/2001, the Member State is obliged to carry out checks covering at least 5% of the total eligible expenditure. Point 3.7 of Annex 2 to the Closure Guidelines specifies that the error rate resulting from the sample checks under Article 10 of Regulation (EC) No 438/2001 should in particular be taken into account for determining the frequency of errors/irregularities with reference to a level of materiality which should not generally exceed 2% in order to be consistent with the methodology of the Court of Auditors and the practice of the closure of the 1994-1999 programming period.

In the light of the above, the final error rate of the 5% checks foreseen in Article 10 can only be calculated at the end of the programming period after all the checks have been carried out. Consequently, the methodology applied before the adoption of Closure Guidelines, if sufficient to ensure compliance with Article 10 of Regulation (EC) No 438/2001, has no impact on the necessary steps to follow as regards section 1.3 of Closure Guidelines in case the error rate above 2% is established.

- (223) First level control at project level is the key to detecting errors and ineligible expenditure. Is there an exhaustive ‘project closure checklist’ that first level controllers can use to carry out this control as effectively as possible to ensure the closure process can be smooth and quick?**

There is no check list available. It is up to Member States to draw it up in line with the guidance document CDRR-06-002-00 of 21 December 2005 on Article 4 of Regulation (EC) No 438/2001.

- (224) How should the managing authority fulfil its supervisory role if Article 4 (Regulation (EC) No 438/2001) checks have been outsourced?**

The managing authority must oversee and supervise the management and control systems in the programme. This must be ensured through proper guidance from the managing authority to the outsourced services, which must also satisfy itself

that all Article 4 verifications were effective e.g. through control reports e.g. by reviewing the outsourced checks. The responsibility for the correctness of the checks remains at the managing authority.

(225) What is the deadline within which it is possible to make a regularisation of anomalies identified for Article 10 controls?

All irregularities should be regularised before the presentation of the winding-up declaration if possible. It should be recalled that in accordance with Article 3 of Regulation (EC) No 1681/1994, as amended, all respective irregularities have to be reported to OLAF. Information on corrected irregularities, pending recoveries and ongoing judicial and administrative proceedings should be included in the winding-up declaration. The national authorities have to ask partial closure for cases that have been suspended on account of legal proceedings, for which they have decided to include the involved amounts in the final payment claim to be presented to the Commission.

As set out in section 7 of Closure Guidelines and in point 1.2 of Annex II thereof, the Member State must attach a summary table of all irregularities, both those communicated to OLAF and those not communicated, in the winding-up declaration.

(226) Should each measure been checked by Article 10 (sample check) performers at least once during the programming period?

(227) Should second level control be carried out in each measure?

Article 10(2) and (3) of Regulation (EC) No 438/2001 explain the extent of coverage expected of Article 10 sample checks:

In cases, where one or several measures should not be covered by any checks over the programming period, it is advised that the winding-up body in its audit opinion justifies the particular circumstances and explains why the assurance on the legality and regularity of the expenditure is not affected by the absence of control of the particular measure.

(228) Pouvez-vous nous confirmer si un échantillon spécifique doit être constitué et analysé pendant la période de 15 mois? Dans l'affirmative, quels sont les critères de sélection à retenir (pourcentage, période couverte,...)?

As long as the Member State fulfils the requirements of Article 10 of Commission Regulation (EC) No 438/2001, there is no particular further requirement for specific sampling for the 15 month period after the end date of eligibility and before the closure of programmes. However, the winding-up body may consider it necessary to carry out additional controls to obtain reasonable assurance of the correctness, legality and regularity of the expenditure in accordance with Article 16 of Regulation (EC) No 438/2001, especially when the Article 10 checks have identified a high error rate as foreseen in point 1.2 of Annex 2 to the Closure Guidelines.

- (229) Who should ensure that all findings detected by second level control have been implemented: The managing authority or second level controllers?**
- (230) How was the problem of second level controls after a project's closure and before the programme closure solved?**

In accordance with Article 39(1) of Regulation (EC) No 1260/1999, it is the responsibility of the Member State to ensure the follow-up of any irregularities found at appropriate level. As a general rule, follow-up might be ensured by the level above that affected by the irregularity. Systemic errors may require action and supervision at several levels.

Ultimately, the winding-up body will have to satisfy itself that all audit findings have been satisfactorily treated.

- (231) What happens if second level control (sample check of operations) has not been carried out each year and a sample audited was smaller than the required 5%?**

With reference to Article 10 of Commission Regulation (EC) No 438/2001, the Member State is required to spread the checks throughout the whole period. Additional audit can be carried out at the end of the programme and before the submission of the winding-up declaration until the 5% level is reached. If the audit body does not fulfil the requirements of Article 10 of Regulation (EC) No 1260/1999, the Winding-up body will not be able to provide a positive overall assurance as to the validity of the request for payment of the final balance and the final certificate of expenditure. In such a case, the Commission may ask further checks to be carried out with the view of clarification and rectification of the lack of controls. In case the Member State does not satisfactorily comply with this obligation, the Commission may initiate a financial correction.

- (232) If a systemic error is detected in a number of projects, is it possible to avoid this error or reduce its impact by replacing all projects affected by the error? Does the programme have to recover all the money from these projects?**

In theory, the operations could be replaced by other eligible projects which are not affected by the systemic error. In accordance with Article 3(2) of Regulation (EC) No 448/2001, when the systemic error affects an entire measure, the operations cannot be replaced by the projects of the same measure. In accordance with Article 38(1)(e) and Article 39(1) of Regulation (EC) No 1260/1999, the Member State must take responsibility for correcting irregularities and making the financial corrections required.

All Community funds paid out to operations and declared to the Commission as withdrawn from the programme will have to be deducted from the payment claim to the Commission.

- (233) What should be done if the secretariat and/or managing authority is not happy with the work and the conclusions of the second level control body**

after the contradictory procedure on the audit findings? Can the managing authority overrule the second level control?

No, the managing authority cannot overrule the conclusions of the Article 10 control. At the closure it is the winding-up body that has to review its findings if irregularities have been addressed in a satisfactory manner. If the winding-up body finds that irregularities have not been addressed adequately, in accordance with point 5(c) of Annex III to Commission Regulation (EC) No 438/2001, this finding has to be signalled in the winding-up declaration. In accordance with Article 38(1)(f) of Regulation (EC) No 1260/1999 Member States may attach their own conclusions to the final certificate of expenditure if they consider it necessary.

(c) Systemic errors and irregularities

- (234) Recovery from project partners at the closure stage initiated by the winding-up body may be very time consuming. How much do Member States need to do in order to prove to the Commission that the irregularity is irrecoverable? What needs to be done? What is the role of the national law in this case? At which stage and how will the European Commission decide on how to treat the lost funds?**
- (235) Could you explain the necessary action that should be undertaken by member state in case some audit findings are still open, but they do not affect eligibility of expenditure?**
- (236) According to Regulations in case of insolvency of final beneficiary and it is impossible to recover any amount which was paid to him, there is a possibility to share financial loss between EC and member state. Is there any deadline to resolve such a cases, should it be done till submission of final payment claim?**

It is the responsibility of the Member State to do all that is necessary to recover the irregularities within a reasonable deadline. According to the European Court of Justice ruling, a reasonable deadline should be four years for cases linked to administrative procedures and eight years for cases with judicial proceedings. The national legislation on recoveries is applicable for Community contribution as well. All the information has to be registered in the debtors' ledger. If and when the Member State considers that some irregularities are not recoverable, the procedure described under Article 5 of Commission Regulation (EC) No 1681/94, as amended, has to be followed. As stated in Article 5(2) of Regulation 1681/1994 where the Member State considers that an amount can not be recovered, it shall inform the Commission. The information provided must be sufficiently detailed to allow the Commission to decide on the financial consequences to the Community budget. The Commission will decide either in the framework of the closure of the programme, if all information is available in order to proceed to the closure, or later, following a request from the Member State concerned.

The annex to the statement of expenditure on recoveries should contain information only on recoveries carried out. Information on amounts awaiting recovery or that are irrecoverable should be provided in the winding-up declaration (see point 1.2(a) of Annex 2 to the Closure Guidelines).

- (237) In the cases where an amount cannot be totally recovered, a special report need be prepared for informing the Commission – is this applicable also for the cases where recovery by the Commission has been achieved (through deduction of the amount from subsequent application for payment) and the loss will be incurred at national level?**

The closure of all cases has to be notified to OLAF through the reporting mechanism as described in Article 5 of Regulation (EC) No 1681/1994, as amended. However, if the amounts concerned have already been deducted from a payment application, the cases could be reported as finalised at this stage and no special report in accordance to Article 5.2 Regulation (EC) No 1681/1994 would be necessary. The Commission has to be informed for analysis purposes under Article 5.1 of the aforementioned Regulation and the information has to be included in the summary table of irregularities which is to be annexed to the winding-up declaration (see Point 3.6 of Annex II of the Closure Guidelines).

- (238) With regard to irregularities and recoveries: do you need to report problems detected and corrected before certification of payment?**

All irregularities for the programme and the period, even deleted and corrected before certification of payments, have to be reported in a summary table annexed to the winding-up declaration. All irregularities have to be declared to OLAF in accordance with Article 8 of Regulation (EC) No 438/2001 and Regulation (EC) No 1681/1994. Exceptions are laid down in last subparagraph of Article 3(1) and Article 12 of Regulation (EC) No 1681/1994.

- (239) In case of withdrawn operations with a value inferior to the OLAF communication threshold (EUR 10 000 according to Regulation (EC) No 2035/2005), we would like to ask for the confirmation of the possibility to maintain them in the final declaration for unrecovered expenditure without relating this? (ex. art 5, para 2, règlement (CE) n° 1681/94).**

All expenditure related to withdrawn operations has to be withdrawn from the declaration of expenditure. It has to be noted that Article 5 of Regulation (EC) No 1681/94 continues to be applied for all irregularities below the threshold of EUR 10 000 but above EUR 4 000 notified before 28 February 2006 pursuant to Article 2 of Regulation (EC) No 2035/2005.

- (240) What should be the closure procedure for projects for which irregularities were discovered that are below EUR 10 000? How to assure, that the intermediate bodies report to the managing authority also about these irregularities? Are there any existing control lists which would define and rank the mentioned irregularities and would facilitate the closure procedure?**

A distinction should be made on before and after the amendment of the Regulation (EC) No 1681/1994 when the notification threshold was increased from EUR 4000 to EUR 10 000.

All irregularities have to be recorded by the Member State in a debtors' ledger and the share of EU funding has to be paid back to the Commission for any amounts recovered from final beneficiary. The Member State has to report on these amounts annually in March every year.

- (241) In the case of an '*avis motivé*' or of an infringement procedure that is applied to an entire measure and not to a single operation, how to undertake the financial closure of the measures concerned?**

Infringement procedures and reasoned opinions ('avis motivés') are not mentioned in Article 31(2) of Regulation (EC) No 1260/1999 as leading to a suspension of the period for automatic decommitment. However, in Council Document 8362/99 ADD/1, in statement 16 on Article 31(2) and Article 32(3)(f), the Commission and the Council declared that they "consider that the reference to a judicial procedure in the third subparagraph of Article 31(2) also includes infringement proceedings initiated pursuant to Article [226 EC]."

Thus, where a reasoned opinion is issued or infringement proceedings launched, the amounts committed, in respect of an operation or measure concerned, will not be decommitted at closure. The Member State should address to the Commission a request for partial closure of the programme at the latest on the submission of the final payment application. Since the payments in question are suspended and the situation is followed by the Commission, the maximum amounts concerned will constitute an outstanding commitment until the final decision on the infringement is delivered.

- (242) If a Member State deducts immediately the amount of the irregularity from the next Interim Payment Application submitted to the Commission, i.e. recovery of EU funds has been achieved, is it necessary to proceed with the submission of the Article 5 reports every quarter, up until the national funds are recovered by the Member State?**

(243) Where the method adopted by a Member State is to immediately subtract the irregular amounts from the subsequent Application for Payment submitted to the Commission even before it recovers the amount at national level, thus ensuring that EU funds are recovered immediately, what are the Member State's responsibilities apart from the submission of the Article 3 communication to OLAF? What are the obligations on closure in terms of reporting?

The Commission would expect all irregularities to be registered in a debtor's ledger by the Member State and the amounts recovered to be reported in an annex to the relevant payment request and expenditure declaration. At closure of an operation, the winding-up declaration should include a list of any irregularities with details of follow-up of the cases even those withdrawn from the certification of expenditure.

Any irregular amount (including amounts withdrawn) above the notification threshold should be reported to OLAF and followed to the finalisation of the case.

(244) Do we have to proceed as established in Regulation (EC) No 1681/94 even in case of recoveries further to beneficiary abandon of financing or solely in the case of recoveries of administrative nature?

Yes, all irregularities have to be reported to OLAF in accordance with the provisions of Article 3 of Commission Regulation (EC) No 1681/94.

(245) What needs to be done in case of qualified opinion by the winding-up body and a materiality level of more than 2%?

See points 3.5, 3.6, 3.7 and 4.3 of Annex 2 of the Closure Guidelines for detailed information in this respect.

(246) How detailed information on remedial actions or steps taken in case of material weaknesses the Commission expects in the summary of results of system audits and sample checks previously performed? Is it appropriate only to indicate that adequate recommendation was made and it was implemented?

The winding-up body should confirm that all irregularities have been satisfactorily treated and also give details on how each of the irregularities have been treated (for example, amounts withdrawn from expenditure declarations, communications to OLAF, etc.). The reasons why the cases are open and why they do not affect the eligibility of expenditure should be explained and justified.

The Commission can confirm that it is appropriate to indicate that adequate recommendations have been made and that they have been implemented.

(247) Unfortunately at the moment winding-up body does not have access to the OLAF database. At closure, will it be enough to give references to letters sent with irregularities reports to the European Commission?

In accordance with Annex 2 of the Closure Guidelines, the winding up declaration has to include a table listing all irregularities with reference numbers of the cases reported to OLAF (Point 3.6). Normally, this summary table is prepared by the Paying Authority, who is obliged to keep a debtors' ledger with reference numbers of all irregularities reported to OLAF (Point 1.2). The winding-up body should not have any problem in accessing the information relating to the reference numbers of OLAF.

- (248) What should be done in case where the error rate is higher than 2% but only because of one particularly bad project (or a very small number of individual cases)?**

As stated in Point 3.7 of Annex 2 of the Closure Guidelines, when determining frequency, a distinction may be drawn between categories of error of different importance (formal/substantive, financial impact, systemic nature ...). The Commission proposes to apply international audit standards in this respect. Specific justification should be provided in case a higher error rate is accepted by the winding-up body (see point 3.7 of Annex 2 to the Closure Guidelines).

- (249) Les autorités communautaires vont-elles émettre une résolution officielle de clôture du programme opérationnel pour chaque porteur de projet, en indiquant la correction de l'exécution de celui-ci, y compris celle des audits qui auraient pu être réalisés?**

The Commission will communicate to the Managing Authority the closure letter containing the final calculation of the balance to be paid. It is up to the Member State to define the procedure of communication of the formal closure of the programme to the final beneficiaries or final recipients.

- (250) When does the requirement of reporting of the irregularities stop?**

- (251) Given that insolvencies do not have to be notified any more, is it nevertheless necessary to include the project and/or the contributions to the project into the overview of recoveries (see point 4.1.1. second last paragraph of the Closure Guidelines). By this overview, it is intended to communicate to the Commission any recoveries also after the closure of the programme and to repay to the Commission any amount resulting from recoveries. However: as insolvencies do not have to be notified any more, but still constitute irregularities, in which way is the procedure according to Article 5 (2) of Regulation (EC) No 1681 carried out? Which steps have to be undertaken? How does the Commission deal with these cases in the final expenditure declaration?**

Irregularity reporting is an obligation which should always be done for amounts wrongly paid. However, if not provided otherwise, reporting could be stopped three years after the final closure of the programme (obligation of keeping the documents) for administrative irregularities, while for cases of “suspect of fraud” the corresponding limitation period to be taken into account is determined by national provisions (criminal procedures).

- (252) From 1 January 2006, bankruptcies are only considered as irregularities when fraud. Therefore no need to notify them to OLAF. What about normal bankruptcies: the amount lost (irrecoverable at closure) will be borne by whom? How should Member States notify them in the closure documents?**

Since the entry into force (1 January 2006) of Regulation (EC) No 2035/2005 amending Regulation (EC) No 1681/1994, there is no obligation to report cases of bankruptcy of the final beneficiary and/or the final recipient, except from irregularities preceding a bankruptcy and cases of suspected fraud. However, Member States have to include all cases in the debtors' ledger and to give all relevant information for any projects that have not been finalised in the winding-up declaration and in the final report in order to allow the Commission to treat the cases in the framework of the closure procedure. The amounts corresponding to community contribution resulting from recoveries of insolvencies cases should be reimbursed to the Community budget independently of the obligation of reporting or not.

Irregularities reported to OLAF in accordance with Article 3 of Regulation (EC) No 1681/94, as amended by Regulation (EC) No 2035/2005 should be mentioned in the winding-up declaration, together with aggregate data on irregularities which have not been communicated because they fall within the exceptions laid down in last subparagraph of Article 3(1) and Article 12 of Regulation (EC) No 1681/1994. It should be stated whether there is any financial impact (i.e. whether the irregular expenditure has been withdrawn and replaced by regular expenditure, or the amount recovered and deducted from expenditure declared, or whether there is an amount still to be recovered). The winding-up body has to give an opinion on whether the errors and irregularities have been treated in satisfactory way.

For irregularities falling below the threshold, which therefore were not subject of communication to OLAF, there is the presumption that there was no fault or negligence on the part of the Member State and the Community contribution toward such expenditure can be paid at closure. This presumption may be rebutted by evidence from audits or other sources of fault or negligence which could give rise to the conclusion that such expenditure should not be co-financed.

- (253) Can the expenditure for the 2007-2013 programming period be submitted by an authority who has not yet recovered irregularities from the former programming period?**

Without prejudice to national provisions applicable on recoveries for the ERDF, the ESF and the FIFG yes, however, it has to be noted that it is expected that the Member States follow up the irregularities and recover the irregular amounts after the closure of the operational programmes. After recovery, the Member State shall repay the irregular payments recovered to the Commission.

(d) Financial corrections

- (254) Dans quelle mesure les contrôles éventuels qui peuvent avoir lieu jusqu'à une période de trois ans après la clôture vont-ils affecter les compensations d'exécution entre axes?**

The Commission services recalculate the sums due taking into account audits and overbooking and including flexibility where this is applicable.

It should be noted that there are two types of financial corrections. Flat-rate corrections (relating to systemic problems) will always have a net impact (net recovery from Member state), they will be applied to the final amount of the Community contribution. However, in the case of punctual corrections (relating to individual projects or expenditure), it may be possible in some cases where the Member State agrees to correct the irregular expenditure itself to do a recalculation of the final payment, where compensation between priority axes or overbooking could be taken into account.

- (255) Comment la Commission envisage-t-elle de régler les cas de litiges entre autorités de gestion ou de paiement avec les auditeurs en ce qui concerne les déclarations de dépenses certifiées, notamment dans les cas où les auditeurs, conformément aux recommandations de la Commission (selon les auditeurs), appliqueraient des déductions forfaitaires non étayées, non justifiées?**

Any disagreements between national authorities should be solved at national level. The winding-up bodies may modify their own audit opinions following new information provided by managing authorities or intermediary bodies. In general, however, the Commission will respect the winding-up opinion.

- (256) If the Commission carries out a financial correction to a programme/Fund – is the financial correction counted on the basis of total expenditure declared to the Commission or on the basis of the total allocation?**

For example: the paying authority declares expenditure amounting to 110% of the allocation. The Commission is going to carry out a correction of 5%. To which amount will the correction of 5% refer?

1) Will the 5% be applied to the expenditure declared of 110%, i.e. in the following way: $5\% * 110 = 5,5$? As a result after applying correction we obtain: $110\% - 5,5\% = 104,5\%$ of allocation. As the Commission cannot pay the final balance exceeding the amount provided for in the programme, then it pays 100% of the allocation to a Member State, OR

2) will the 5% be applied to the allocation: $100\% - 5\% = 95\%$? As a result, will the Member State receive 95% of the allocation even if 110% of the allocation has been declared?

After the discussion with representatives of other Member States, the conclusion is that the Commission applies the solution 1), i.e. the correction

is applied to the amount of expenditure declared by a Member State to the Commission even if it amounts to a larger sum than the allocation. Is that actually correct?

- (257) Just to confirm what was said during seminar - If the Member State over-certifies expenditure to the Commission - for example 110% of available allocation and after that there will be necessity to apply financial corrections due to systemic error - for example 5% of allocation - will it mean that Member State still have 105% of eligible expenditure certified to the Commission and finally it will obtain 100% of allocation?**

The financial correction in case of systemic errors is calculated on the amount of the Community fund due to be paid to the beneficiaries.

Flat-rate and extrapolated financial corrections will always have a net impact, and therefore option 2) is always applied. However, in the case of punctual corrections the irregular expenditure could be replaced by other declared expenditure not affected by irregularities.

- (258) How should we evidence any financial correction in the projects after its closure in 2009 and later?**

Any case of irregularity above the thresholds has to be reported to OLAF in accordance with Regulation (EC) No 1681/1994.

All recoveries have to be registered and followed-up in the debtors' ledger and the share of EU co-funding has to be paid back to the Commission for any amount recovered from final beneficiary.

(e) *Responsibilities of the winding-up body*

- (259) For the technical assistance activities where the winding-up body gets financial support, is it appropriate the winding-up body not to check these activities and mention it as scope limitation in the report of the examination of the statement of final expenditure? Or should winding-up body ensure external audit for such activities?**

- (260) Do other counties use external experts for financial and public procurement controls? What are the conditions?**

The managing authority and the audit authority can outsource management verifications (Art 4 of Commission Regulation (EC) 438/2001) and system audits and sample checks (Art 10 of Commission Regulation (EC) 438/2001). However, each of these authorities must contract the tasks itself and they have to supervise the controls carried out by the outsourced of audit and control bodies as they remain the responsible for the controls.

Public procurement and financial issues are normally part of the normal Article 4 management verifications and Article 10 audits.

As to the conditions of such outsourcing; the objectives and the scope of the contract have to be decided by the managing authority or the audit authority and the work must be supervised. In principle the tasks of the controls can be delegated, but the responsibility cannot be delegated. In addition, any contracts done by public bodies have to respect the legislation on public procurement.

(261) How detailed should be the examination the statement of final expenditure performed by the winding-up body?

The extent of work expected of the winding-up body is detailed in Annex II of the Closure Guidelines. Briefly, the winding-up body should carry out sufficient work allowing it to give assurance on the legality and regularity of the total expenditure declared to the Commission.

(262) There are measures of technical assistance priority, where the winding-up body gets financial support. Is it appropriate the winding-up body not to check these measures and mention it as scope limitation in the report of the examination of the statement of final expenditure? Or should the winding-up body ensure external audit for such measures?

The winding-up body should ensure independent audit of measures where itself is a beneficiary of support.

(f) *INTERREG and URBAN*

(263) The Annex of the INTERREG closure guidelines calls for monitoring by the Paying Authority not just that payments have been made to Lead Partners but also that Lead Partners have made all payments to their partners. Are there any guidelines available on how to monitor payments to partners?

There are no guidelines. One programme recommended that first-level control checks should include as a standard element a check that these payments have been made. At the end of the operations it may be possible to use project declarations and a sample check.

(264) With regard to INTERREG, is it possible for each Member State to submit a partial winding up declaration covering its territory in the programme and then for the winding-up body to combine all the partial declarations and submit it to the Commission as a programme winding up declaration? How to deal with it in case there are no previous agreements between the Member States in the programme about how to write down the winding up declaration? Are there guidelines and templates available?

Reference is made to the Guidance Note on closure of INTERREG III programmes COCOF 07/00782/02 on winding-up declaration. This makes clear that there should be a single winding-up declaration per programme.

(g) *Audit plans*

(265) Is there a plan for the Court of Auditors or the Commission audit unit for an audit plan ready yet?

The Commission may carry out closure audits to assess the reliability of the work realised by the winding-up and audit bodies. The scope and coverage of these audits will be decided on the basis of risk analysis.

The Commission has no information on the closure audit plan of the Court of Auditors.

(h) After closure

(266) The regional capital will cease its function as managing authority URBAN II at the end of the programming period 2000-2006. Since there will be no comparable body on communal level in the following programming period, it is not totally clear whether the regional capital can still publicly assume its function as "managing authority". What is the Commission's view on this situation?

(267) How should authorities deal with post-closure management of a 2000-2006 programme if a programme does not continue in 2007-2013? For example, resolving 2000-2006 issues in case the Commission or Court of Auditors audit the programme after closure.

(268) How many staff did the old Member States leave to ensure a proper closure of the old programming period (on each institutional level from the intermediate body to the paying authority)?

The managing authority has to fulfil all its responsibilities in respect of the programme until the closure of the programme. After closure, it is up to Member States to decide which structure will take over the responsibilities of the follow-up.

(269) What kind of requirements in the field of control (on the spot and system) does European Commission propose for the managing authority after the closing programme in 2009 and later?

In accordance with Article 4 of Regulation (EC) No 438/2001 the managing authority is obliged "to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to ensure compliance with the terms of the relevant Commission decision under Article 28 of Regulation (EC) No 1260/1999 and with applicable national and Community rules on, in particular, the eligibility of expenditure for support from the Structural Funds under the assistance concerned, public procurement, State aid (including the rules on the cumulations of aid), protection of the environment and equality of opportunity. The procedures shall require the recording of verifications of individual operations on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies."

After the closure of a programme, the Member State has to ensure the treatment of any irregularities found, the recovery of the undue amounts from the beneficiary and to repay those amounts to the Commission.

- (270) We have one question relating to closure of the Neighbourhood Programmes. During the programming period 2000-2006, we received in total 411 applications and not all of them were approved. Until now we are keeping these applications but as the number of files is very big, we are thinking what to do when the programme ends. We assume that these could be utilised, as nobody has ever requested information on not approved applications. Therefore we would like to ask for clarification on what the usual practice is and whether the documents should be kept for further audits, especially from the Commission.**

In accordance with Article 38.6 of Regulation (EC) No 1260/1999, the responsible authorities have to keep the documents for three years after the payment of the final balance for the programme. Unsuccessful projects applications are evidence necessary (although not sufficient) to demonstrate the proper functioning of a key element of the management and control system, namely the selection of projects. The programme authorities should also comply with the Regulation (EC) No 2355/2002 amending Commission Regulation (EC) No 438/2001.

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1.6. The certified statement of final expenditure and final payment application

(a) *Format and content of the statement of final expenditure and final payment application*

(271) We would like to know whether the final payment application and the certified statement of expenditure to be submitted to the European Commission have to include all expenditure incurred and paid (i.e. recognised as declarable to the EC) to approach the level under the single programming document or the amount planned under the single programming document?

It is in the interests of Member States to declare and certify all eligible expenditure, whether this is greater or not than what is in the single programming document. The Commission will calculate its final contribution in accordance with Point 8 of the Closure Guidelines.

(272) Is it required to present the advance payment separately in the final payment claim?

No, this is not a requirement.

(273) Comment vont se traiter les subventions globales dans le processus de clôture des interventions?

Sur le principe général, il n'y a pas de traitement spécial des subventions globales quant aux règles de calcul mentionnées au point 8 des lignes d'orientation sur la clôture. Cependant, en application de l'article 27(2) du règlement 1260/1999, le recours à une subvention globale doit être mentionné dans la décision correspondante de participation des fonds. Il est donc nécessaire que les Etats Membres s'assurent qu'il n'y ait pas de contradiction entre les règles de calcul mentionnées dans les lignes directrices clôture et le contenu de la décision du programme ou les documents de programmation eux-mêmes.

(274) According to point 8 of note CDRR-01-0069-01 of the European Commission " expenditure declared by the final beneficiary to the managing authority or paying authority or intermediate body must relate to actual expenditure by the final recipients supported by receipted invoices or documents of equivalent probative value. Therefore payments of advances by final beneficiaries cannot be included in expenditure declared to the Commission unless the final beneficiary has established that the final recipient has used the advance to defray actual expenditure."

Furthermore, Commissioner Barnier in the note No 26777 dated 14 May 2003 recalls the European Commission's position: "if an advance payment was used to cover actual expenditure, this expenditure is eligible to Structural Funds".

The principle highlighted indicates that every payment of advance becomes eligible to Structural Funds, provided it is actually borne by the recipient. It needs to be clarified how the cost shall be spread among co-financing parts in particular for a measure included in the financial plan without participation of private actors.

The demanded clarification concerns the conditions to which a payment of advance made by final beneficiary and justified by the recipient shall be spread among the co-financing parts provided that the financial plan of the measure does not include its participation: should invoices justify having priority to the payment of advance or should they be considered in proportion of the aid to the total investment?

For a better comprehension, consider the following example: the financial plan of the concerned aid measure includes only public expenditure (the private participation is zero), though the final recipient (the enterprise) is bound by the public notice to co-finance 40% of its investment (the expenditure certified by the managing authority will be, however, only the grant, which is 60% of the total investment). For a total investment of EUR 100.000 an enterprise receives from the final beneficiary (granting body) EUR 60.000 as advance payment which it fully spends and justifies with receipted invoices before 30 April 2009 (final date of eligibility of expenditure). At that date, having not completed the investment, the enterprise commits in concluding it and justify its 100% within the following 2 years.

According to the above information, which amount of expenditure may the managing authority certify at the closure of the programme: EUR 60.000 which is the total payment of advance granted to the enterprise or its 60%, which is the co-financing rate indicated in the public notice?

First of all, it is correct to highlight the fact that payments of advances by final beneficiaries cannot be included in expenditure declared to the Commission unless the final beneficiary has established that the final recipient has used the advance to defray actual expenditure.

In addition, it must be recalled that pursuant to Rule No 1.2 in Annex to Regulation (EC) No 448/2004, in the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by the Member States, payments of aid by final beneficiaries must be justified by reference to the conditions and objectives of the aid. Given that in this case, the final recipient is bound by the public notice to co-finance 40% of its investment and we understand that it has not done so, we do not understand on what basis payment of 100% of the public

funding should be made. In addition, the best way to ensure that the conditions and objectives of the grant are respected is to apply the co-financing rate in the public notice on actual expenditure.

(275) Do programmes need to make final payments to projects as soon as possible? What is the Commission position about it?

Pursuant to Article 32 (1) of Regulation (EC) No 1260/1999, the paying authority has to ensure that final beneficiaries receive payment of their contribution, including the final payment, from the Funds as quickly as possible and in full. No deduction, retention or further specific charge which would reduce these amounts is to be made.

- (276) How long will it take the Commission to pay the programme the final payment after the submission of the closure documents?**
- (277) How long is the delay counting from the submission of the final payment claim for the Commission to make the final payment?**
- (278) We would like to ask for a typical example from the experience of the last programming period of a time period necessary for Commission to make the final payment after the satisfactory closure documents were received by the Commission.**
- (279) A quelle date sera effectué le paiement du solde final par la Commission européenne?**

The Commission will make the final payment within a reasonable period following receipt of satisfactory closure documents.

(b) *Interim payments*

- (280) We would also like to be clear about the possibility to send applications for interim payment to the EC exceeding the 95% of the contribution form the Funds or should we include the exceeding amount only into the final application for payment? Of course we are aware of the fact that EC will pay through interim payments only up to 95% of the contribution.**
- (281) The Commission will pay up to 95% of the total contribution per Fund. When does the Commission stop paying to the Member State in terms of timing? Will the Interim Applications submitted beyond 31/12/2008 be paid by the Commission (provided 95% has not been reached yet) or will these be accumulated in the final payment?**
- (282) A partir du 1er janvier 2009, et avant l'envoi de la déclaration finale des dépenses, sera-t-il possible de continuer à remettre des déclarations partielles et demander des remboursements jusqu'au seuil de 95%?**
- (283) In the case where the previous payment request is only partially reimbursed and where the certified expenditure at the end of the intervention cover the**

amounts already declared but not executed?, the final payment request should include the amounts excluded precedently or would the Commission introduce take care of introducing the non-admitted previous expenditure?

- (284) Interim payment claims submitted to the Commission after 31 December 2008 (provided that the total declared expenditure is below the 95% of the programme amount) shall be processed by the Commission in normal course and Member States shall be reimbursed with the relevant amounts as usual. Is this correct or shall these interim payment claims remain open until the repayment of the final payment claim?
- (285) According to Article 30(2) of Regulation (EC) No 1260/1999, the final date for the eligibility of expenditure relates to payments made by the beneficiary. Does this mean that the regularity and legality of this expenditure can be checked after the final date of eligibility and that the payment authority can reimburse the money to the final beneficiary after the final date of eligibility? Can interim payment claims be sent to the Commission after the final date of eligibility (but of course before the deadline for submission of the closure documents)?
- (286) Certificates of expenditures may be submitted to the Commission before the closure and after the collection of the maximum amount 95% of the co-financing (amortization of the advance payments). Could you please confirm the validity of the above mentioned certifications of expenditures concerning the 2000-2006 programmes?

While, as a general rule, the Member State can certify expenditure exceeding 95% of the contribution of the Fund, pursuant to Article 32 of Regulation (EC) No 1260/1999, prior to closure the Commission cannot pay the Member State more than 95% of the total assistance available for the intervention in question by means of the payment on account and interim payments. The unpaid balance must therefore be at least 5% of the total assistance (and could be more, depending on the amount of interim payments sought by the Member State). Therefore, interim applications submitted before 31 December 2008 are paid by the Commission provided the 95% threshold is not reached. As well, starting with 2009 and before sending the final payment declaration, the applications for interim payment will be paid until the 95% threshold.

It has to be noted at the same time that in accordance with Article 105 (3) of Regulation (EC) No 1083/2006, the whole of the unpaid balance will be automatically decommitted in case any of the three closure documents is not submitted to the Commission before the applicable deadline, i.e. within fifteen months after the final date of eligibility of expenditure.

- (287) Les paiements UE étant plafonnés à 95%, comment procéder aux versements des subventions pour les opérations terminées en décembre 2008?**

This is a matter for Member States as reimbursement by the Commission of the remaining 5% can only take place at closure.

(c) *Ineligible expenditure, recoveries*

- (288) What will be the Commissions position if the final statement of expenditure and final report on implementation include expenditure which is ineligible according to winding-up declaration?**

The amount will either be deducted if the Member State agrees to do so, or a financial correction procedure will be initiated by the Commission.

- (289) Point 4.1.1 of the Closure Guidelines states that “Member State must inform the Commission of recoveries made between the submission of the final expenditure declaration and payment claim and the final payment by the Commission, so that the Commission can deduct them”.**

The question was on the procedure how the deduction of a recovery would be made by the Commission in case the final statement of expenditure submitted by the Member State declares expenditure in higher amount than is the commitment in the financial plan (i.e. the final statement of expenditure contains over-contracted expenditure either at the level of priority, or at the level of the whole programme).

According to Point 3.5 of the Closure Guidelines, the Member State is not allowed to change the final statement of expenditure after its submission to the Commission, nevertheless, the Member State is obliged to inform the Commission on the recoveries made after the submission of the final statement of expenditure. In case the final payment has not been paid to the Member State yet, will the Commission itself deduct the reported recovery from the relevant measures of the submitted final statement of expenditure (therefore the basis for the calculation of final payment by the Commission would be reduced) and the recalculate the final payment due? Or the Commission will just deduct the amount of recovery directly from the final payment calculated on the basis of the original statement of expenditure (which would then remain untouched)?

The difference between these two methods is significant in case the final statement of expenditure contains the over-contracted expenditure (exceeding the allocation either for the priority or for the programme). In the first case, the recovery could be (partly or fully) offset by the over-contracted expenditure and the impact on the final payment could be zero. In the second case, regardless the over-contracted expenditure, there would be always negative impact on the final payment due. Similarly, the same question is relevant to the recoveries notified to the Commission after the final payment was already paid to the Member State.

Example of deduction of recoveries

Let's assume we have financial plan as follows:

Total	National	EU
1000	250	750

We submitted the final expenditure declaration as follows (it is over-contracted):

Total eligible expenditure	National	EU
1200	300	900

We exceeded the limit in the financial plan, so although in the final declaration is declared 900 EUR, we can ask only for 750 EUR as total. Let's assume that we have already obtained 95 % in advance and interim payments ($95 \% * 750 = 712,5$ EUR) and the calculation of the final payment made by EC is therefore 37,5 EUR ($750 * 5\%$).

EXAMPLE 1

Before this final payment is paid by EC, we receive recovery in the amount of 10 EUR (= 7,5 the EU part and 2,5 national co-financing). We inform EC on this (but we ourselves are not allowed to change the final expenditure declaration – see chapter 3.5 of Closure Guidelines). How will EC proceed:

Re-calculates the final payment as follows:

Total eligible expenditure	National	EU
1190 (1200 – 10)	297,5 (300 – 2,5)	892,5 (900 – 7,5)

Even after deduction of the recovery from the final statement of expenditure, we still exceed the limit of 750 EUR as given in the financial plan, and our claim for final payment remains the same – 37,5 EUR. (This is because we

declared more expenditure than was in financial plan and therefore even after taking off the wrongly used expenditure (the recovery) we still have enough „correct“ expenditure that enable us to use the whole commitment of 750 EUR in total).

or

A) deducts the recovery from the previously calculated final payment (on the basis of the original final statement of expenditure)

$$37,5 - 7,5 = 30 \text{ EUR}$$

QUESTION 1: will the final payment calculated by EC be 37,5 or 30 EUR?

The difference given by the calculation is very important and the Czech Republic has to prepare to one or the other alternative. Therefore we kindly ask you for clear answer.

EXAMPLE 2

Let's assume that the final payment of 37,5 EUR was paid to the Member State. After that we receive recovery in the amount of 10 EUR (= 7,5 the EU part and 2,5 national co-financing). We inform EC on this.

The EC will proceed:

A) EC re-calculates the final payment as follows:

Total eligible expenditure	National	EU
1190 (1200 – 10)	297,5 (300 – 2,5)	892,5 (900 – 7,5)

Even after deduction of the recovery from the final statement of expenditure, we still exceed the limit of 750 EUR as given in the financial plan and the final payment calculated by EC based on the original statement of expenditure remains the same – 37,5 EUR. (This is because we declared more expenditure than was in financial plan and therefore even after taking off the wrongly used expenditure (the recovery) we still have enough „correct“ expenditure that enable us to use the whole commitment of 750 EUR in total). As we have already obtained the 37,5 EUR, the effect will be zero.

B) EC establishes the recovery order to Member state in the amount of 7,5 EUR

QUESTION 2: will EC in this case establish a recovery order in the amount of 7,5 EUR or there will be no recovery order because of the calculation given above in case A)?

(290) Comment procéder et traiter les reversements qui ne seront pas effectifs au 31 décembre 2008? Ou après la date d'envoi du dossier de clôture?

1) Before closure by the Commission

With the exception of flat-rate corrections (see response to question 254), the Commission recalculates the payment according to the flexibility rules in point 8 of the Closure Guidelines deducting the amounts to be recovered in the measures involved. If there is overbooking, we can have two possible issues:

- a) Nothing to recover as the overbooking fully offsets the expenditure to be deducted, or
- b) An amount to recover because the overbooking was not so large as to fully offset the amount to be deducted.

2) After payment of the final balance by the Commission

According to the third paragraph of point 4.1.1 of the Closure Guidelines stipulates that Member States have to inform the Commission of the recoveries effected and, if necessary, repay the Structural Funds contribution to the Commission.

When the Commission is informed of recoveries made after closure, the Member state will not need to repay the recovered amount if it is lower or equal to the overbooked expenditure still not taken into account for the final payment.. If the recovered amount is higher, the difference must be paid back to the Community budget.

(291) If a final statement of expenditure and payment application include the expenditure of irregularities and outstanding recoveries, will the Commission accept the final statement of expenditure and make the payment of the balance? Will adding irregularities and outstanding recoveries to the final statement of expenditure delay the process of the payment of the balance?

Where a declaration of expenditure contains irregularities, the Commission will proceed with the full closure of the programme. At closure, any RAL is decommitted and any potential recoveries are recorded in the Commission accounts as receivables and followed up by the Commission on the basis of the information provided by the Member State.

However, where the declaration of expenditure contains irregularities, the Commission may decide, on a case by case basis, to withhold the payment of the corresponding amounts, in light of its appreciation of the risks related to the closure case, until the amount in question is recovered by the Member or declared irrecoverable in accordance with Article 5(2) of Regulation (CE) No 1681/1994.

Member States have to inform the Commission of recoveries made between the submission of the final expenditure declaration and payment claim and the final

payment by the Commission, so that the Commission can deduct them. Such cases will have been identified in the closure documents as cases under legal proceedings or concerning unresolved irregularities. Potential recoveries still open at closure are recorded in the Commission's accounts as receivables. Member States must therefore also inform the Commission of recoveries effected after submission of the final expenditure declaration and after closure of the programme and repay the Structural Funds contribution to the Commission. Where a declaration of expenditure contains cases of judicial or administrative appeal which have suspensory effects, the maximum amount to be paid by the Commission or recovered from the Member State in respect of the suspended operations constitute an outstanding commitment for the Commission and the Member State until the responsible national authorities deliver a final decision (see answers given to questions 207-211 for more details).

(292) Do projects have to be included in the final expenditure declaration if there is an insolvency but the project is not operational yet?

The corresponding expenditure of a non operational project due to the bankruptcy/ insolvency of the final beneficiary and/or recipient could be included in the final payment claim.

A bankruptcy/insolvency constitutes an irregularity and will be treated in line with reply given in question 252.

(293) Do projects have to be included in the final expenditure declaration if there is an insolvency but the project is operational?

Yes, where the project is operational, the corresponding eligible expenditure can be included in the final payment claim.

This is without prejudice to the obligation to apply Article 30(4) of Regulation (EC) No 1260/1999, where relevant.

(294) According to point 7 of the Closure Guidelines irrecoverable amounts previously declared to the EC resulting from irregularities below the reporting threshold can be included in the final declaration of expenditure and will not be subject to the examination provided for by Art. 5 (2) of the Regulation (EC) No 1681/94. What documentation should be required from Managing Authority with this regard? Should these amounts be separately calculated in the statement of expenditure?

(295) If the recovery order below 10 000 EUR will be hopeless, will the Commission share the expenditure with the member state without special report, as irregularities below 10 000 EUR should not be reported to Commission?

According to Regulation (EC) No 1681/94, as amended, Member States are not obliged to submit a special report for irrecoverable amounts below EUR 4 000 (for irregularities reported before 28 February 2006) and EUR 10 000 (for irregularities reported after this date). For these cases, Commission will not carry out a detailed examination and there is no need to send to the Commission the

relevant documentation, unless the latter expressly asks for it. Nevertheless, national authorities have to keep the same documents as they do for Article 5(2) cases.

However, as stated in point 1.2 (a) of Annex II to the Closure Guidelines, the winding-up declaration, in its summary table, must clearly identify all irrecoverable amounts above the threshold set out in Article 12 of Regulation (EC) No 1681/1994 and aggregate data on the cases subject to exceptions laid down in last subparagraph of Article 3(1) and Article 12 of Regulation (EC) No 1681/1994.

The sentence referred to in the penultimate paragraph of Point 7 of the Closure Guidelines establishes that the Commission will not carry out an examination of each and every individual irrecoverable amount below EUR 10.000. Article 5(2) of Regulation (EC) 1681/1994 does not require the Member State to submit a special report for individual irrecoverable amounts below EUR. 10.000. However, Article 5(2) of Regulation (EC) 1681/1994 will in any case be the legal basis allowing the Commission to decide on sharing the financial consequences with the Member State of any irrecoverable amount. The Commission is thus entitled to refuse sharing the financial loss if unjustified including of irregularities both above and below EUR10.000.

- (296) According to Point 4.1.1 of the Closure Guidelines, potential recoveries still open at closure are recorded in the Commission's accounts as receivables. Point 4.2 of the Closure Guidelines states that the nature and details and amounts involved the judicial or administrative proceedings (potential recoveries still open) should be set out in the final report. What should be the structure of the information on receivables given by the Member State in the final report?**
- (297) Please, could you provide examples of summary tables of the recovered amounts or to be recovered according to document CDRR-05-0012-01?**
- (298) Should the final statement of expenditure include information of all recoveries made throughout the period or only information of the recoveries that are made during last quarter?**

All recoveries have to be included. The standard table to be used in this respect can be found in Annex 2 of the current register.

In addition, the list of operations suspended due to administrative or legal proceedings should be annexed to the final report in the form according to Annex 1 to the current register).

- (299) What are the conditions to consider a recovery as hopeless? When should the member state send a special report to the Commission or will the Commission ask for a special report?**

(300) What is the deadline for recovering the irregularity found out by the Managing Authority during the first level control of the final payment claim in January 2009?

By its knowledge of each individual case, the Member State is best placed to decide when and whether a special report under Article 5(2) of Regulation (EC) No 1681/94, should be submitted. The fact that the legal proceedings are lengthy is not a sufficient reason in itself to claim in a special report that an amount is not recoverable or not expected to be recovered.

(301) How often should the Member State report to the Commission of the recoveries that are made after submission of closure documents?

(302) How often should the member state make prepayments to the Commission of the recoveries that are made after the payment of the balance by the Commission?

(303) How often should the member state report to the Commission of the irregularities that are discovered after submission of closure documents?

(304) Comment gérer et suivre les ordres de recouvrement après le 31 décembre 2008 et jusqu'à quand?

In accordance with the provisions of Article 3 (1) of Commission Regulation (EC) No 1681/94, it is an obligation of the Member State to report to the Commission on recoveries every time they occur. For irregularities that have been subject of initial administrative or judicial investigations, the report is required to be made during the two months following the end of each quarter.

As set out in point 4.1.1 of the Closure Guidelines, Member States must, in accordance with article 5(1) of Regulation (EC) No 1681/1994, inform the Commission of recoveries effected after submission of the final expenditure declaration and after closure of the programme and repay the Structural Funds contribution to the Commission if appropriate (see responses to questions 289-290).

(305) In the programming period 1994-1999 the following distinction was made as to insolvencies: in cases where payments to final beneficiaries had already been made, the Commission included these in the final payment. In cases where payments had not been made yet, a partial closure of the programme was done. As to the liability, the following was agreed: if the region had made payments to the final beneficiary still after the opening of the insolvency proceeding, the Commission did not participate in the losses, in other cases the EU budget did bear the ERDF contribution as far as the Member State could not be proved to be liable. Will the Commission proceed in the same way for the programming period 2000-2006?

For 2000-2006, the Commission reserves the right to assess such issues on a case-by-case basis. The Commission can confirm that payments made to the final beneficiaries still after the opening of the insolvency proceeding, should not be borne by the Community budget.

(d) Calculation of the final contribution

- (306) If the programme declares higher public or private expenditure than in the final approved financial tables, will the Commission cut excess amounts in the respective priority?**
- (307) If payments to a programme have previously been capped because of, for example, excess private funding at the priority level but at closure there is no problem at the programme level, how and when will the correction in payments be made?**
- (308) The CDRR minutes of the 15 March 2006 meeting (CDRR-06-0014-00) outlines, for the ERDF, the impact of not respecting the ratio of national public and private expenditure at programme level. The UK would like confirmation that this applies to the ERDF only and that the requirement to respect the ratio of national public and private co-financing at programme level does not apply to the other Structural Funds?**
- (309) If there is a requirement for the intervention rates of national public and private funding to be respected for the other structural funds at what is this the rate of intervention assessed? E.g. national or priority? What are the financial implications (if any) of the intervention rates between public and private not being respected?**
- (310) Will private expenditure exceeding the amount indicated in the financial plan lead to a curtailment of EU grant and will such a reduction apply at measure or at priority level?**

As stated by DG REGIO at the CDCR meeting of 15 March 2006, ERDF will apply full flexibility between the national sources of funding at measure and priority levels, provided that, at programme level, the public expenditure provided for in the decision is met by Fund. In that case there will be no capping of excess private funding for the purpose of calculating the ERDF contribution. In the case where the private expenditure exceeds the financial plan and the public expenditure is lower (i.e. there is a substitution between public and private), ERDF will cap the excess private expenditure at priority (and measure for the purpose of calculating the ERDF contribution) level. This capping may or may not lead to a reduction of the EU grant, depending on the expenditure declared for the respective measures.

Other Structural Funds will apply full flexibility between the national sources of funding without the pre-condition set for ERDF.

(311) Calculation of ERDF contribution: at the moment of the closure of a 2000-2006 programme, will the ERDF contribution be calculated at measure or at axis level?

(312) Comment est effectué le calcul du solde à percevoir?

As set out in point 8 of the Closure Guidelines, the Community contribution should not exceed, for each Fund separately, the smallest amount at each of the following levels:

- (1) At measure level, the smaller of the two following amounts:
 - (a) the amount produced by applying to the declared eligible expenditure the rate of Community co-financing established under the final form of the financing plan for the measure; or
 - (b) the amount declared in the certified statement of final expenditure as being the Community contribution to the final beneficiary (paid and to be paid to the final beneficiary);it being understood that, for the calculation of the final contribution, the Commission will not cap the amounts under (a) and (b) at the level of the corresponding amounts at measure level in the financing plan of the programme complement;
- (2) At priority level, the Community contribution stated in the financing plan of the last decision approved by the Commission increased by 2%, regardless of allocations to transitional areas and non-transitional areas;
- (3) At programme level, the assistance granted, separately for transitional areas and non-transitional areas.

An example of a final contribution calculation is set out in Annex 3 to the Closure Guidelines.

(313) What is the programme co-financing rate in relation to the priority co-financing rate?

(314) What happens if programme financial tables are based on an average rate but the final declared expenditure does not match this rate?

The co-financing rate is only relevant at measure level. Even if it can be calculated, no co-financing rate is set for the programme or the priorities in the financial plan included in the Commission decision on the programme.

(315) If a given priority includes one measure regarding “grants” and one measure regarding “contracts” and a transfer of funds is to be made from the one to the other, what is the deadline for this transfer?

(316) For measures regarding “grants”, can the co-financing rates change until 30 April 2009?

In accordance with point 2.2 of the Closure Guidelines, transfers between measures within the same Fund and the addition of new measures will be possible until the final date of eligibility provided the financing plan does not require to be modified.

The distinction between "grants" and "contracts" is too unclear to base an answer on such a terminology. However, in case different eligibility dates apply for the two measures, transfers between those measures are permitted until the latter of the two eligibility dates.

(317) What happens with co-financing if a programme reallocates funds between measures with different ERDF grant rates e.g. from 75%-25% to 50%-50%? Is it possible to just reallocate co-financing or do programmes need to add co-financing to have the same rates?

As set out in point 2.2 of the Closure Guidelines, the final programme complement, including the financial plan annexed to it, shall be consistent with the Commission decision approving the assistance, including the financial plan annexed to the Commission decision. The possibility provided in point II.1.1 of the Commission’s Communication of 25 April, 2003 on the simplification, clarification, coordination and flexible management of the structural policies 2000-06, C(2003) 1255, to adjust, in the programme complement, the public/private funding breakdown by priority in the financing plan of the Commission decision, is not open to Member States after 31 December 2006.

(318) Y aura-t-il une tolérance sur le montant de la maquette des zones en soutien transitoire?

(319) Quelles sont les conséquences si la réalisation finale est différente de la dernière maquette validée par la Commission?

(320) During the presentation in the seminar on 15 September 2008, a simplified final payment calculation was presented. This showed a programme with only one priority where one measure faced a restriction due to the transitional/non transitional split. Is the transitional/non transitional split maintained at priority level within a multi priority programme or is it at programme level. The information we have seems to suggest that it would be at total programme level and not at individual priority level. Is that correct?

Les enveloppes "soutien nominal" et "soutien transitoire" doivent être respectées au niveau du programme.

It is quite normal to have a final execution which differs slightly from the last financial table. It is this difference which justifies the 2% flexibility at priority axis level. The Commission will make the final calculation based on the last declaration of certified expenditure and the last programme complement. However, Member States can change their programme complement until the final date of eligibility in order to adjust it to real execution.

The Member State should make its calculations already taking into account the flexibility principle, otherwise the Commission will pay the smallest of the amounts, i.e. the one requested by the Member State as due and the one calculated by the Commission.

The split is maintained at programme level as set out in point 8 of the Closure Guidelines.

(e) Over-commitment, principle of flexibility

- (321) What does flexibility mean?**
- (322) Please detail the expenditure margin of 2% by axis.**
- (323) In order to completely use the funds, the absorption of Community funds has to take place at the level of the measure or of the axis? If the spending has to be done by axis, does this imply a major flexibility in terms of compensation between measures?**
- (324) Please, could you explain how it is possible to recover the over-booking of the finished projects, respectively the projects that have declared more than the financial plan for the non-closed annualities, as we could not ask the ERDF accreditation for overbooking?**
- (325) Quelles sont les possibilités d'utilisation de la règle de flexibilité de 2% par axe prioritaire? (Illustrée en page 34 des lignes directrices de la Commission européenne) Quels sont les effets en cas de sur programmation?**

The term "flexibility" in the context of Point 8 of the Closure Guidelines means that the Commission will

- (i) reimburse eligible expenditure at measure level irrespective of the Community amount stated for the measure in the financing plan of the programme complement but respecting the co-financing rate agreed in the last programme complement; and
- (ii) reimburse eligible expenditure at priority level up to 102% of the Community amount stated in respect of a given priority in the financing plan of the Commission decision.

However, at programme level, the Commission will only reimburse eligible expenditure up to the amount stated at programme level in the financing plan of the Commission decision. More details are given under Point 8 of the Closure Guidelines.

An annex of the detailed calculation is set out in annex 3 of the Closure Guidelines.

- (326) In case of over-commitment what amount has to be declared? Can they declare more than 100% and shall the co-financing rate for the amount going beyond the 100% be used?**
- (327) Can the paying authority declare the total amount eligible under each measure/priority/programme even if these amounts will not be totally reimbursed by the EC because they go beyond the total amount of the contribution? If so should the paying authority indicate the priority/ies to which the 2 % flexibility rule applies?**
- (328) Comment tient-on compte du changement financier entre les axes? S'agit-il de 2% maximum de la totalité du programme? Ou bien de 2% du plan financier de l'axe modifié? Pour cette deuxième hypothèse, quel serait le critère: l'axe à dotation financière majeure ou mineure?**

The final payment claim may include all expenditure actually paid by the final beneficiaries before the end of the eligibility period. The overbooking is permitted but the Commission will calculate the final payment by applying the flexibility clause of 2% at priority axis level.

- (329) Is there a possibility to declare expenditure exceeding (we have over-commitments) the amount in financial table, at the same time claiming the amount in accordance with Point 8 of the Closure Guidelines?**

Yes, it is possible to declare expenditure exceeding the amounts in the financial table. It will even be a necessity in order to use the possible flexibilities at closure.

- (330) Does the compensation deriving from the 2% flexibility clause allow covering the gap of other priorities within their 2% or more? For example, could a surplus of EUR 2 million reached in a priority with a total allocation of EUR 100 million (2%) be used to compensate a gap for the same amount (EUR 2 million) in a priority with a total allocation of EUR 40 million or should it cover only the gap for the 2% of EUR 40 million (EUR 0,8 million)?**
- (331) Dans l'annexe 3 des Lignes directrices, on a un exemple de calcul de la participation définitive ayant tenu compte le 2% de flexibilité par axe prioritaire. Dans cet exemple, les calculs sont faits seulement pour la participation communautaire. Qu'est ce qui se passe avec la participation nationale, qui, conformément aux lignes directrices, ne doit pas changer dans**

le programme, mais de facto devrait changer dans ledit exemple (où il n'y a pas de calcul relatif)? Encore, pourriez-vous nous expliquer ce que signifie en pratique la colonne M par axe prioritaire? Finalement comment on considère la flexibilité dans le cas des axes sous-performants?

Est-ce possible d'utiliser la participation communautaire d'un axe prioritaire sous-performant avec une flexibilité de plus de 2% en faveur d'un axe prioritaire surperformant jusqu'à son maximum de 2% de ce dernier?

- (332) Continuant la question précédente et étant donné qu'on devra déclarer des dépenses éligibles plus de 100% (conformément à l'annexe 3 sur le calcul de la participation définitive), avec quelle procédure peut-on inclure dans un programme des dépenses éligibles des opérations dans des mesures et axes prioritaires en plus des montants approuvés des tableaux financiers du programme (c'est-à-dire plus de 100% des dépenses publiques du programme), pour qu'elles puissent constituer une "réserve" des dépenses à être payées (durant l'examen du rapport final et des éventuelles corrections par l'UE)?
- (333) The 2% flexibility per axis relates only to the amount that the axis can be exceeded i.e. the amount certified for an axis may be 15% less than the financing table of the Programme if an equivalent amount is covered by the 2% increases in the other axes?

The "2% flexibility" means that the Commission is willing to pay up to 102% of each priority axis, up the maximum amount available for the Fund and for the programme. It is therefore not necessary to examine whether the 2% of one priority axis compensate the 2% of another.

- (334) Should the paying authority calculate the final payment claim taking into account the 2% flexibility rule? What happens if the Member State does claim in the final payment application an amount not taking into account the 2% flexibility rule, which is lower than the amount calculated when taking into account the 2% flexibility rule? Does the Commission in spite of this fact calculate the amount taking into account the 2% flexibility rule or does that mean that the member state only receives what was claimed in the final payment application? This question relates to the Point 8 of the Closure Guidelines which says the following: "In any event, the Community contribution, for each Fund separately, shall not exceed the amount claimed by the Member State, where this is less than the amount calculated as being due by the Commission."

Yes we can confirm that in any case the Commission will not be able to pay an amount higher than claimed by the Member State.

Once the final contribution has been calculated, the Commission will inform the Member State of the final balance and will request the Member State's comments.

- (335) Is it correct to certify in each of two priority axis expenditure at the level of 102 % and in the third one – only 96%? Does the flexibility relate also to the measures - can it be certified 105% in one measure and in the other less than 100% (total in the priority -102%)?**

Member States should certify all eligible expenditure and do not need to limit the amounts of the expenditure they declare at measure or priority axis level.

- (336) Does the 2% flexibility rule on priority level also apply to the technical assistance part?**

- (337) Le Point 8 des Lignes directrices n'exclut la flexibilité d'aucun axe des programmes opérationnels. Par conséquent, peut-elle s'appliquer également à l'axe "Assistance technique"? De même, aucune exception n'est prévue par rapport à la flexibilité entre les mesures. Peut-on appliquer cette Règle n°8 aux mesures correspondant à l'axe de l'Assistance technique? Dans le cas contraire, sur quoi est basé ce refus?**

Yes, provided that there is no transfer between Funds and that Rule No 11 of Regulation (EC) No 1685/2000 as amended is complied with (the Structural Fund amount for some kinds of technical assistance expenditure defined under point 2.1 of the above mentioned rule is capped).

- (338) La flexibilité entre mesures et axes, prévue par le Point 8 des Lignes directrices, Calcul de la contribution finale, est déterminée par rapport à la contribution ou apport communautaire (FSE). Nous en déduisons que lorsque cette flexibilité s'applique à des mesures différentes, l'une avec financement privé et l'autre non, les calculs effectués feront référence à l'apport communautaire, même si le financement privé de la première mesure est modifié et/ou supprimé.**

Comme expliqué dans le point 8 des lignes directrices sur la clôture, la flexibilité de 2% s'applique sur les montants FSE de la priorité. Entre mesures et dans la limite d'un accroissement de 2% du FSE pour une priorité donnée, la flexibilité des montants est totale. Cependant, le montant remboursé sera plafonné si le taux moyen de la mesure est dépassé dans la déclaration finale de dépenses. Ce taux moyen résulte du calcul entre montant UE de la mesure :

- divisé par le montant des dépenses publiques (UE et dépenses publiques nationales) de la mesure dans le cadre de programmes gérés en dépenses publics ;

- divisé par la totalité des dépenses (UE, dépenses publiques nationales et fonds privés) de la mesure dans le cadre de programmes gérés en coût total. Dans ce cas, la contrepartie nationale est considérée comme un tout, indépendamment de sa nature publique ou privée.

- (339) The question concerns the calculation of the 2% flexibility of the final contribution to the Member States. Point 8 of the Guidelines on closure of assistance (2000-2006) from the Structural Funds states: "... that The Community contribution shall not exceed, for each Fund separately, the smallest amount - at priority level, the Community contribution stated in the financing plan of the last decision approved by the Commission increased by 2%, regardless of allocation to transitional areas and non-transitional areas". In this context I would like to know your opinion, if it is potentially possible - regarding the 2% flexibility - to increase the Community contribution (by at maximum 2%) at the Fund level (in case of multi-fund operational programme), moreover at the programme level? Chapter 8 of the Closure Guidelines states that: "In any event, the Community contribution, for each Fund separately, shall not exceed the amount claimed by the Member States, where this is less than the amount calculated as being due by the Commission." Should thus the 2% flexibility be taken into account by the paying authority when calculating the final balance in the final application for payment of the concerned operational programme or is it the Commission itself who will calculate according to the final statement of expenditure the potential increase (at maximum 2%) of the final balance for the Community contribution?**
- (340) Can the Paying Authority declare the total amount eligible under each measure/priority/program even if these amounts will not be totally reimbursed by the EC because they go beyond the total amount of the contribution? If so should the paying authority indicate the priority/ies to which the 2% flexibility rule applies?**
- (341) Ceiling of expenditure to be certified: Is it possible to certify expenditure that exceeds the amount allocated per axis according to the financing table and the 2% flexibility, in the framework of (a) the interim and (b) final payment requests. The managing authority is of the opinion that all eligible expenditure may be certified, to account for any possible financial corrections that may arise due to irregularities.**

It is not possible to increase the Community contribution at Fund level or programme level. The 2% refers only to priority level.

Member States should declare all their expenditure even if they go beyond the total amount of the contribution. Point 8 of the Closure Guidelines shows how the Commission will carry out its own calculation and how it will apply the 2% flexibility at priority axis level.

(f) Use of interest on the payment on account

- (342) Concerning Point 4.1.2 of the Closure Guidelines on the use of interest on the payment on account, it is not clear what form should be used within the final report about the use of interest. Should the report exactly indicate the individual projects or measures to which the interest earned was allocated? The term “activities” is not clear.**

There is no special form to be used. The report should indicate the measures to which the interest earned was allocated. For the purposes of this point, "activities" means "measures".

- (343) If interest earned by the programme replaces part of the Member States' co-financing, how this should be indicated in the final report?**

It has to be indicated under the measure on which it has been allocated.

- (344) Point 4.1.2 of the Closure Guidelines states that ‘....charges for transnational financial transactions are eligible for co-financing by the Structural Funds after deduction of interest on the payment on account.’ How should this be handled?**

The second paragraph of point 4.1.2 of the Closure Guidelines requires that the Member State uses the interest received on the payment on account for covering charges transnational financial transactions first. Where the amount of the interest is not sufficient to cover all the charges, the remaining part of the charges is eligible for co-financing.

In any case, each final report must present the use made of the interest on the payment on account, in order to show that these rules have been correctly applied.

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| <p>(345) How to deal with interest at the final payment claim in case when a programme did not succeed to replace all interest by national co-financing? Up to when can programmes decide on allocation of interest? How does it work with replacing interest by national co-financing and how to deal with ERDF?</p> <p>(346) What happens to interest generated by the programme after the final date of eligibility of expenditure?</p> <p>(347) L'exécution de notre programme a nécessité un préfinancement régional pour la totalité des dépenses éligibles. Les acomptes du FSE viennent seulement compenser une partie de ce préfinancement en attendant l'intervention européenne relative à la première demande de paiement. Comment déclarer d'éventuels intérêts produits par lesdits acomptes, sachant qu'une estimation des intérêts dus au préfinancement, nécessaire pour la mise en œuvre des mesures, serait supérieure à une estimation des intérêts qu'auraient produit lesdits acomptes, avant la réception de la première intervention européenne?</p> |
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(348) Is there some kind of „good practice” in the utilisation of interest earned on the programming accounts (in the light of the fact that it is allowed to substitute a part of national contribution by adding the interest to national contribution)?

As recalled in Point 4.1.2 of the Closure Guidelines interest earned on the payment on account made under Article 32(2) of Regulation (EC) No 1260/1999 is regarded as being the resources of the Member State and shall, pursuant to Article 32(2), third sub-paragraph, be allocated by the paying authority to the form of assistance concerned. It can be included in the national contribution by adding it to, or substituting it for, the amount of the national public co-financing envisaged.

However, in any case, the interest earned on the advance payment must cover expenditure paid by the final beneficiaries before the end of the eligibility period. If a programme earns interest after the final date of eligibility of expenditure, this can only legally be used to reimburse expenditure paid by the final beneficiaries prior to the final date of eligibility of expenditure.

(g) *Treatment of revenues at closure*

(349) How should revenues be treated at closure?

Pursuant to paragraph 2 of Rule 2 in the Annex of Regulation (EC) No 448/2004, "receipts under point 1 represent income which reduces the amount of co-financing under the Structural Funds that is required for the operation in question. Before the Structural Funds' participation is calculated and no later than at the time of the closure of the assistance, they are deducted from the operation's eligible expenditure in their entirety or pro rata, depending on whether they were generated entirely or only in part by the co-financed operation." It is important to note that the final report should include details of deductions of receipts as set out in point 4.2 of the Closure Guidelines.

(350) In respect of the ERDF, how are the revenues of a project estimated, if there is no cost-benefit analysis (CBA) / if no CBA has been carried out?

Revenue is in general the product of quantity sold (i.e. sales) and price paid (e.g. tolls, tariffs, charges, etc.). Revenue from the project should be determined over a reference period appropriate to the category of investment concerned (examples are provided in the CBA guide). Pursuant to Article 29(4) of Regulation (EC) No 1260/1999, in the case of investments in infrastructure generating substantial net revenue, i.e. which is higher than at least 25% of the total cost of the investment concerned, the co-financing rates can not exceed the ceilings referred to in that Article. More guidance can be found in the CBA guide and in the Commission guidance note on revenue-generating investments under the Structural Funds (CDRR-02 0042-00-EN).

(351) In respect of the ERDF, can we use a single reference period of 10 years for those projects for which in the CBA no revenues were initially foreseen, but

for which revenues will be realised at and after project conclusion (for the projects for which revenue was not calculated with CBA).

CBA analysis should be based on economically useful life of a project, and the reference period for taking account of revenue should reflect this. The CBA guide provides examples of time horizons to be used for different types of projects.

- (352) In respect of the ERDF, if after the closure of the project, revenue is declared, it is necessary to state the volume of revenue and determine on case by case basis the method of revenue calculation as to the type of project:**

Proposal Nr. 1: In cases of investments in infrastructure operations, it is necessary to calculate revenue in having regard to the guidelines as set out in the Working Document No. 4.: When ex post calculation of the financing gap is performed, discounted net revenue is taken into account and subsequently it can be established whether substantial net revenue (25%) is generated or not. If there is no substantial net revenue, the volume of revenue is to be taken into account that was actually born by the project.

Proposal Nr. 2: In cases not falling under the infrastructure investments, but industrial investments, the restriction under 29 4(b) Article of the Regulation 1260/1999 shall be applied. If revenue is declared, it is appropriate to take into account the volume of revenue in the period of 5 years after the project closure.

Proposal Nr. 3: Should it not be possible to apply one of the above-mentioned proposals for the calculation of the financial gap, the actual revenue accruing during the implementation of the project shall be taken into account. For revenues accruing in 5 years period after the closure of the financing of the project, the extrapolation model shall be applied for revenue recorded during the project implementation.

According to Article 29(4) of Regulation (EC) No 1260/1999, two categories of revenue generating projects are to be considered: investments in infrastructure generating substantial net revenue and investments in firms. In both cases, the co-financing rates foreseen by that provision must be respected, independently from the moment when the revenue is generated for the project.

As recalled in the reply to question No 370, the economically useful life of a project is to be considered in a CBA analysis in order to determine whether it can be qualified as generating substantial net revenue. However, any deviation from the CBA forecasts must be assessed in the light of the obligations to apply the co-financing rates foreseen in article 29(4) of Regulation (EC) No 1260/1999 where appropriate.

- (353) As regards revenue generating projects for the ERFD, following "the net revenue" logic, according to the Regulation (EC) No 1260/1999, there substantial net revenue has been defined as net revenue that exceeds 25% of total investment cost. In case the project does not achieve 25% of net**

revenue, what method would you suggest to estimate revenues that particular project is generating?

In order to ensure the compliance with the principle of sound financial management, any revenue to be generated by a given project should be taken into account when fixing the co-financing rate applicable to it. In any case, when because of the volume of these revenues, the project can be qualified as generating substantial net revenues, Article 29(4) of Regulation (EC) No 1260/1999 must apply.

- (354) According to Point 2.6 of Rule 8 of Regulation (EC) No 1685/2000 "Returns to the fund attributable to the Structural Funds' contributions shall be reused for SME development activities in the same eligible area". Does this mean that the delimitation of the programming area 2000-2006 is the sole area relevant for the use of these revenues? Given the fragmented programming area in our region in the programming period 2000-2006 this would lead to substantial bureaucratic workload. In particular, if this area will continue to be relevant still after the end of the programming period 2007-2013. Can this provision also be understood as these revenues can be re-invested in the whole area of our region (RCE and Convergence) of the programming period 2007-2013?**

We consider that the delimitation of the programming area 2000-2006 is the sole area relevant for the use of these revenues.

- (355) Dans le cadre de la gestion des dispositifs d'ingénierie financière, les dispositions communautaires prévoient que les aides remboursées à l'autorité de gestion ou tout autre autorité publique sont réaffectées aux mêmes fins par celle-ci (règlement (CE) n° 1260/1999 du 21 juin 1999). Par ailleurs, les lignes directrices relatives à la clôture des interventions (2000-2006) des fonds structurels indiquent que *les ressources des fonds de capital-risque, des fonds de prêts, de garanties attribuables aux contributions des fonds structurels doivent être réutilisées pour les mêmes activités de développement des PME dans la même zone éligible et que l'autorité de gestion doit prendre les dispositions nécessaires pour assurer le respect de ces règles après la clôture.***

Les règlements communautaires ne précisent néanmoins, ni la durée de réemploi de ces derniers ni les dispositions à mettre en oeuvre par les autorités de gestion pour s'assurer du respect des règles précitées.

Aussi, dans le cadre de la clôture de la programmation 2000-2006, il s'avère nécessaire de définir un mode opératoire permettant d'assurer le réemploi des fonds de prêts, de garanties et de l'ensemble des dispositifs d'ingénierie financière, présentant des caractéristiques similaires, cofinancés par les fonds structurels ainsi que le suivi du réemploi de ces fonds par les autorités de gestion.

On envisage de proposer aux autorités de procéder au réemploi des fonds FEDER, restitués aux autorités de gestion ou le cas échéant, aux organismes bénéficiaires de subventions globales durant une période de trois années

suivant le paiement par la Commission européenne du solde du programme. Par ailleurs, pour permettre le suivi des fonds durant cette période, les organismes bénéficiaires de subvention globale devront établir, à l'attention des autorités de gestion, un rapport annuel faisant état du réemploi de ces fonds conformément aux dispositions communautaires. A l'issue de cette période, qui marquera la clôture définitive des programmes, les fonds ainsi réemployés pourront être considérés comme définitivement acquis. Ce problème devant se poser dans l'ensemble des Etats membres, je vous remercie de me faire connaître rapidement les modalités envisagées par la Commission et votre avis sur cette proposition afin que les instructions nécessaires puissent être diffusées rapidement aux autorités de gestion, dans le cadre des travaux préparatoires à la clôture de la programmation 2000-2006.

In accordance with Article 5(2) of Regulation (EC) No 1681/1994, as amended, there is a regulatory obligation for Member States and managing authorities to reuse resources returned for the development of SME in the same eligible area. Member States or managing authorities are free to opt for how exactly this reuse will be organised and take place.

(h) Automatic decommitment ('n+2 rule')

- (356) **Submission of the last intermediate payment request: at the deadline of 31 December 2008 (or 30 April 2009 for aid regimes) from the moment the final expenditure eligibility date was established at this date? If yes, is the "n+2" calculation taken into account or should there be submitted a different request before 31 December 2008?**
- (357) **There should not be an automatic decommitment of the non-certified expenditure on 31 December 2008, taking into account the fact that final documentation, including final payment, is to be submitted 6 to 15 months from 31 December 2008.**
- (358) **Taking into account that the final payment request the final eligibility date for expenditure is 31 December 2008 for infrastructure and 30 April 2009 for aid regimes, we would like to ask whether we have to consider the application of the "n+2" rule together with the final payment application (to be presented within the next 15 months from the final date for eligibility of expenditure).**
- (359) **Y a-t-il un seuil de dégage ment d'office fin 2008 correspondant à la tranche engagée par la Commission européenne en 2006, comme c'est le cas chaque année? Les lignes directrices pour la clôture disent que le dégage ment d'office (ou règle N+2) s'applique à la clôture "mutatis mutandis"; peut on avoir une précision sur ce que cela signifie?**
- (360) **At the 84th and 85th meetings of the Committee for Development and the Conversion of the Regions (CDCR), a delegation questioned how the "n+2" rule will operate for the last annual commitment (i.e. 2006 commitment in**

most programmes). They ask for a clarification of the date on which the payment claim covering the last year commitment to the programme will have to be sent to the Commission: 31 December 2008 or 30 June 2009.

On the one hand, interim payment requests can be submitted to the Commission before the submission deadline of the closure documents, i.e. within fifteen months after the final date of eligibility of expenditure. On the other hand, it is to be noted that there will be no "n+2" decommitment exercise in respect of the 2006 commitments at the end of 2008. Instead, the amounts to be decommitted will be calculated at closure.

(361) What are the criteria for the calculation of the "n+2" rule at programme closure?

(362) Another issue is the start date for calculating the deadline for transmission of the documents for the closure, in the case where the decision approving the assistance indicates two end dates for the payments by the final beneficiary. The final date for payment by the final beneficiaries mentioned in Article 5 of the decision granting the assistance is generally fixed at 31 December 2008, this date being extended to 30 April 2009 for expenditure incurred by bodies granting assistance under State Aid regimes.

For the ERDF and ESF, in accordance with Article 105(3) of Regulation (EC) No 1083/2006, if the Member State fails to submit any of the three closure documents within 15 months after the final date of eligibility of expenditure, partial sums committed for assistance will be automatically decommitted not later than 6 months after that deadline.

After calculating the final contribution from the Funds in accordance with Section 8 of the Closure Guidelines, if still relevant, the Commission will decommit the part of the commitment exceeding the amount of the final contribution to be paid to the Member State.

As set out in point 3.3.4 of the Closure Guidelines, where a programme contains operations subject to different final dates of eligibility of expenditure for a Fund, the latter or last of these dates will be deemed to be the final date of eligibility for the calculation of the time period for submission of closure documents for that Fund.

(i) Specific issues relating to the ESF

- (363) Basing on Regulation (EC) No 448/2004 there is so called 11.2 i 11.3 rule within technical assistance. Within EQUAL CIP and its compliment national side has assumed that technical assistance at the 6% level will be divided as follows: 11.2 - 4,5% and 11.3 - 1,5%. Are deviations from the above mentioned division possible, e.g. 11.2 - 4,6% and 11.3 - 1,4%?**

In the case of Technical assistance, transfers are possible between different measures of the same priority axis provided that Rule No 11 of Regulation (EC) No 1685/2000 as amended is complied with. In the case of EQUAL the ESF amount for some kinds of technical assistance expenditure defined under point 2.1 of the above mentioned rule is capped to 5% of the Structural Funds contribution to the CIP.

(j) Specific issues relating to the EAGGF

- (364) As concerns EAGGF, is there a regulation that foresees to deduct from EAGGF (2007-20103) the expenses with the ex-post, audit and final reports of the 2000-2006 programmes?**

The question about the eligibility of certain costs for the closure (ex post evaluations, audits and preparation of final reports) of the 2000-2006 period which incurred after the final date of eligibility is answered by Article 13(1) of Regulation (EC) No 1320/2006 laying down transitional rules to rural development support. Therefore, costs for ex post evaluations, audits and preparation of final reports incurred after the final date of eligibility are eligible under the EAFRD (2007-2013).

- (365) In compliance with Article 8(2) of Guidelines on closure of assistance fluctuation in amount of 2 % from the amounts stipulated in financial plan is possible between priorities (within one fund). Is our understanding correct that in such case no changes in financial plan are necessary? We have such situation for one measure of EAGGF, the amount declared exceeds the amount of financial plan, but less than for 2 % and we are requested from EC to make amendments in program compliment, do we really need to perform such amendments or we can respond to the guidelines?**

It is highly recommended that Member States change their programme complement until the final date of eligibility in order to adjust it to real execution.

- (366) Quelle est la date limite de remontée des justificatifs des cofinancements publics? (la question et la réponse concernent uniquement le FEOGA/LEADER+)**

Les services de la Commission ne peuvent pas se prononcer sur les procédures internes établies entre les groupes d'action locales et l'autorité de paiement en ce qui concerne les délais pour la remontée des justificatifs comptables.

En effet, les dépenses déclarées doivent correspondre à des paiements exécutés par les bénéficiaires finals et justifiés par des factures acquittées ou de pièces comptables de valeur probante, comme indiqué au point 4.1. des Lignes directrices.

(k) Arrangements for using the euro

(367) If a programme uses different currencies, will the Commission accept a final programme report where part of it is in EURO and part is in the other currency as long as final totals are in EURO?

No, reporting to the Commission is in euro.

(368) Following the implementation on Regulation (EC) No 2035/2005, Member States who do not have the Euro as their national currency are required to convert irregularities in individual claims into Euros at the rates applicable when these claims were entered into the accounts of the Paying Authority. The closure guidance states that any recoveries made should be converted into Euros at the exchange rate applicable on the date of recovery. This will create an imbalance between the Euro amounts notified to OLAF and the amounts declared to the Commission as being recovered in the statements of expenditure. How will Member States be expected to reconcile these amounts following closure of the programme?

After the closure of programmes, if a Member State is able to recover any ineligible funds, this corresponding EU co-funding has to be reported and paid back to the Commission. As the use of the exchange rate applicable at the date of recovery is the agreed procedure in accordance with Section 9 of the Closure Guidelines, the Member State will repay the Commission the amount recovered in the exchange rate applicable in the date of the recovery. The reason and possible differences in amounts in comparison to earlier OLAF notifications should be explained and clarified in the reporting to the Commission in order to avoid any confusion.

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1.7. ANNEXES

Annexes are published on this website :

http://www.ec.europa.eu/regional_policy/conferences/closure/qa_en.htm

ANNEX 1	Standard table with project list to be attached to the final report
ANNEX 2	Standard table on irregularities to be attached to the winding-up declaration
ANNEX 3	Note CDRR-01-0069-01 on expenditure actually paid out
ANNEX 4	Note CDRR-02-0042-00 on the determination of the rate of assistance for revenue-generating investments under the Structural Funds
ANNEX 5	Note CDRR-03-0013-00 on the date of eligibility when programming documents are amended
ANNEX 6	Note CDRR-05-0012-00 on the deduction of recoveries from next statement of expenditure and payment claim and on completion of appendix on recoveries under Article 8 and Annex II of Regulation (EC) No 438/2001
ANNEX 7	Note CDRR-06-0002-00 on good practice in relation to management verifications to be carried out by Member States on projects co-financed by the Structural Funds and the Cohesion Fund (21/12/2005)
ANNEX 8	Note COCOF/07/0021/02 on the financing, by the 2007-2013 technical assistance allocation, of the technical assistance tasks of the 2000-2006 programmes incurred after the final date of eligibility
ANNEX 9	Note COCOF/07/0078/02 on the closure of INTERREG III programmes 2000-2006