

N°	Theme	Question/Issue
1.	Closure - General Introduction	<p><i>General introduction to the revised version of "Guidelines on the Closure of operational programmes 2007-2013 (CLG)"; tips for closure and Commission's experience with the most common errors.</i></p> <p>REPLY: This is not a question per se and will be addressed during the presentation</p>
2.		<p><i>Clarification of the process following submission of closure documents after 31/3/2017 - Commission's comments, payment of the final balance, etc.</i></p> <p>REPLY: 31 March 2017</p> <ul style="list-style-type: none"> - all closure documents should be submitted <ul style="list-style-type: none"> ▪ certified final statement of expenditure, including a final payment application; ▪ Final implementation report (incl., for FEI information on the value of legacy resources attributable to ERDF/ESF resources at 31 March 2017); ▪ closure declaration, supported by a final control report (based on audit work carried out until 1 July 2015 and audit work carried out between 1 July 2015 and 31 December 2016 in order to cover the expenditure declared to the Commission in 2015 and 2016). <p>31 August 2017 (5 months)</p> <ul style="list-style-type: none"> - the Commission has five months from the date of the receipt of the final implementation report to confirm its admissibility or provide comments to Member States in case it is not satisfied with its content and ask for it to be revised. In the absence of observations within this period, it is deemed to be accepted. - the Commission informs the Member State of its opinion on the content of the <u>closure declaration</u> within five months of the date of its receipt; if no observations within this period, it is deemed to be accepted. - the Commission may request that a Member State <u>corrects the application for payment of the final balance</u> or the statement of expenditure insofar as this involves the submission of supplementary information or the making of technical corrections where such supplementary information and corrections relate to expenditure submitted to the Commission before the deadline for submission. Two months will be given to the Member State to proceed; - the Member State will be given two months to respond to the Commission comments on the <u>final report</u>, and/or provide the information requested. In case the Member State cannot comply with this

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		<p>deadline, it should inform the Commission accordingly and the deadline may be extended by another 2 months (2+2);</p> <ul style="list-style-type: none"> - the Member State will be given two months to respond and provide the necessary information on the Commission comments on the <u>closure declaration</u>. In case the Member State cannot comply with this deadline, it should inform the Commission accordingly and the deadline may be extended for another 2 months, except where further audit work is requested to the Member State, in which case the deadline can be extended to the period considered necessary to carry out this work. The closure declaration will only be accepted if all the comments from the Commission have been addressed (2+2+n). <p>30 September 2017 first report to the Commission on non-functioning projects completed between 31.03.2017 and 30.09.2017, as well as on the measures taken including milestones in order to complete the remaining projects.</p> <p>31 March 2018</p> <ul style="list-style-type: none"> - closure of an optimal programme: <ul style="list-style-type: none"> ▪ the objective is to have the <u>final report accepted</u> by the Commission within 1 year of the date of its receipt, if necessary after having been completed by the Member State on request; ▪ the objective is to have the <u>closure declaration revised and accepted</u> by the Commission within one year of the date of its receipt, except when the request for further audit work requires a longer period; - second report to the Commission on non-functioning projects completed between 30.09.2017 and 31.03.2018, as well as on the measures taken including milestones in order to complete the remaining projects; - [deadline for submission of closure documents for Croatia]]. <p>30 September 2018 third report to the Commission on non-functioning projects completed between 31.03.2018 and 30.09.2018, as well as on the measures taken including milestones in order to complete the remaining projects.</p> <p>31 March 2019</p> <ul style="list-style-type: none"> - deadline for informing the Commission on the completion of all non-functioning projects listed in the final report and which expenditure were included in the final statement of expenditure. A recovery order will be issued by the Commission for the reimbursement by the Member State of the Union contribution to projects non-completed on 31 march 2019; <p>Date of closure of the programme (as communicated by the Commission) + 3 years:</p> <ul style="list-style-type: none"> ▪ all the supporting documents regarding

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		<p>expenditure and audits on the programme concerned are kept available for the Commission and the Court of Auditors;</p> <ul style="list-style-type: none"> ▪ period could be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission;
3.	Durability of Operation according to Article 57 of the General Regulation No. 1083/2006	<p><i>Interpretation of the definition "investment in infrastructure" including concrete examples (which kinds of projects are considered to be an investment in infrastructure and which are not).</i></p> <p>REPLY: Art. 57(1) does not differentiate between long-term and short-term assets, nor does it expand the definition of investment to "any expenditure". It refers to two types of projects, defined as an operation comprising investment in infrastructure and investment in productive activity.</p> <p>In the absence of regulatory definition of productive investment and infrastructure projects, the Commission would have a broad understanding of these notions in light of Article 57 which is to ensure the durability of the investments and infrastructures financed under Cohesion policy and thus maximise the positive effects of this policy. On this basis, it is for the Managing Authority to assess if the projects supported falls within the scope of Article 57 either because they constitute productive investments or an infrastructure project.</p>
4.		<p><i>Commission's interpretation of Article 57 General Regulation with special regard to outputs of projects in such areas as transport, science, technology, etc.</i></p> <p>REPLY:</p> <p>When the two cumulative conditions below are fulfilled, it affects durability of operations and requires a financial corrections:</p> <p>1- First is a change in the nature of ownership or a cessation of the productive activity:</p> <p>A change in the nature of ownership would occur in the case of change from a public owner to a private one and vice versa. Other situations might also be considered as a change in the nature of ownership but require an in-depth case by case analysis.</p> <p>Cessation of productive activity applies to situations where a company (e.g, an SME) ceases an activity that has been agreed to be provided. A cessation of productive activity does not necessarily mean the cessation of all productive activities.</p> <p>2. Second is the affectation of the nature or the implementing conditions of an operation:</p> <p>The nature of the operation mainly refers to activities covered by the operation. As a result, a substantial modification caused by a change in the nature of the</p>

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		<p>operation could impede achievement of the objectives of the activity.</p> <p>As far as the implementation conditions of the operation are concerned, the substantial modification in the operation must be assessed by comparing modified circumstances and aims of the operation which justified the funding granted under the operational programme to the initial description of the operation. This can be verified by checking the conditions in the agreement between the Managing Authority or intermediate body and the firm or public body.</p> <p>In conclusion, the existence of a "substantial modification" of an operation shall be assessed on a case-by-case basis, taking into account the nature of the operation, the circumstances of the change in nature of the ownership or the cessation of a productive activity and the conditions attached to the support provided to the operation.</p> <p>In case the output from the operation is not maintained the second condition is likely to be fulfilled. Fulfilment of the first condition should then be checked.</p>
5.		<p><i>Specification for projects financed from ESF and explanation of Article 57 General Regulation for durability of operations in these projects.</i></p> <p>REPLY: Second subparagraph of Article 57.1 indicates that actions falling under the scope of assistance of the ESF shall be considered as not having retained the contribution from the ESF only where:</p> <ol style="list-style-type: none"> 1. they are subject to an obligation for maintenance of investments under the applicable rules on State aid, and 2. they undergo a substantial modification as a result of the cessation of a productive activity within the period laid down in those rules.
6.		<p><i>How to manage outputs of ESF projects, acquired within cross-financing (things that would be normally financed from ERDF). Will the same rules (given by Article 57 General Regulation for ERDF) be applied?</i></p> <p>REPLY: For cross-funding operations the durability rules of the fund financing the operation apply. Only the eligibility rules from the fund under which scope the operation falls apply. Example: when the building of a training room is financed with ESF funds using cross-financing, then the ESF durability rules apply.</p>
7.		<p><i>According to General Regulation, the durability of operations is 5 or 3 years. The final date for eligibility of expenditure is 31/12/2015 but projects can be also completed during the year 2016 (beginning of durability period), or up to March 2019 in case of non-functional projects. By when should the managing authority provide</i></p>

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		<p><i>control of durability of operations - possibly up to year 2024?</i></p> <p>REPLY: The period of 3/5 years starts from the date of completion of the project. This can be as late as March 2019 in case of projects non-functioning on 31.03.2017 and completed with national funds.</p>
8.	Financial Engineering Instruments	<p><i>Practical recommendations for reporting on the financial engineering instruments within the final implementation report.</i></p>
9.		<p><i>Is it possible to withdraw a part of unutilised resources from a financial engineering instrument (FEI) and put it back to the operational programme during January 2016 or is it necessary to withdraw it by 31/12/2015? Managing authority will know the exact amount that was not utilised within the FEI (unutilised allocation + loans undrawn on time according to the loan agreements + interests of unutilised allocation) only after the end of the year.</i></p> <p>REPLY:</p> <p>The Closure guidelines as modified clarify that the deadline for the managing authority to justify the OP contribution to the FEI with eligible investments in final recipients and eligible management costs and fees is the 31.03.2017.</p> <p>If the reallocation of unused OP contribution into FEI requires an OP modification, MS shall be aware of the Commission recommendation in the Closure guidelines, that OP modification requests are submitted to the Commission by 31.12.2015. It might however not be necessary to modify the OP financial plan in case the eligible expenditure at priority axis level allow for the full payment of the funds contribution for that priority.</p> <p>Member State should also bear in mind that the flexibility between priority axis in the calculation of the payment of the final balance requires over declaration of expenditure for one or more priority axis to compensate for an under declaration under another priority axis (10% flexibility applicable at closure without requiring a modification of the programme).</p> <p>The maximum that can be declared for a FEI operation is the OP contribution into the FEI.</p>
10.	Monitoring of indicators at the end of the programming period	<p><i>Indicator of newly created FTs must be fulfilled within one year after the project completion, in some cases within one year after the financial completion of the project. What should be done with the indicator if the date of data generation precedes the vesting date for the indicator?</i></p>

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		<p>REPLY: Do what is meaningful. If it is meaningful, provide a value and state in the final report that this is preliminary.</p> <p>If not meaningful, state this.</p>
11.		<p><i>What will be the procedure in case of non-fulfilled indicators? What justification and explanation will / will not be accepted?</i></p> <p>REPLY: There is no defined procedure. Explain why the target value was not achieved in the final report. It is the Member State's responsibility to deal with projects which do not fully achieve the targets fixed ex ante. Provisions in grant decisions on the consequences of the non-fulfilment of indicators and a close monitoring of projects during their implementation phase should allow Member States to prevent problems at closure.</p> <p>The reporting is only required with regard to the programme indicators. Unfinished projects may be compensated within a programme by overachievements.</p> <p>Financial correction could be decided on a case by case basis whereby divergences would actually disclose cases referred to in article 99 of Regulation (EC) 1083/2006 (irregularities, serious deficiencies of MCS).</p>
12.	Closure and Final Report	<p><i>Will the Commission specify the form and level of detail required for reporting on measures taken by the managing authorities on recommendations arisen from evaluations?</i></p> <p>REPLY: This is a matter of judgement by the MAs. Where evaluations have been carried out leading to recommendations the MA should include a summary of these and the actions taken (or not) in the Final report.</p>
13.		<p><i>How detailed should the qualitative analysis be and what should the managing authority mainly focus on in evaluation of the entire programming period? E.g. If and how the compliance with the national strategic documents should be evaluated.</i></p> <p>REPLY: This varies depending on the content of the programmes and the number of evaluations conducted and their quality.</p> <p><i>Is it possible to have some examples from other operational programmes of previous programming periods?</i></p> <p>REPLY: The explanations given by other programmes are not systematically stored or organised by the Commission in a way that relevant examples can be retrieved.</p> <p><i>What will be the consequence if the Commission disagrees with qualitative analysis? Completion of the information</i></p>

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		<p><i>within 2/4 months might be problematic. Could it be a reason for rejection of the final report by the Commission? Is it recommended to consult individually with own desk officer?</i></p> <p>REPLY: If the analysis is considered to be incomplete or implausible the Commission is in the first instance likely to ask for amendments to the Final report. The Commission does not find it useful to speculate on potential outcomes.</p>
14.	Irregularities	<p><i>Is it possible to close the programme if it contains some projects affected by legal proceedings or will the programme be closed by the Commission only after the end of these proceedings?</i></p> <p>If at closure an operation is still suspended due to legal or administrative proceedings, it is up to the MA to decide whether this operation should be withdrawn (and replaced by another one (overbooking) or retained in the programme. If the latter, the operation should be included in Annex VII of the CGL. The amounts declared in Annex VII will allow the Commission to keep a commitment open for possible future payments.</p> <p>Full closure of the programme will be the last payment/decommitment or issuance of recovery order.</p> <p>In case the court verdict is in favour of the beneficiary the corresponding payment based on eligible expenditure will be paid by the Commission or payment already made will be confirmed.</p> <p>Member States will be informed in the closure letter about the starting date of the three years for conservation of documents.</p>
15.		<p><i>Final implementation report includes also a list of irregularities - should all irregularities be included (even those which regard not certified expenditures), or should the list contain only irregularities exceeding certain limit?</i></p> <p>REPLY:</p> <p>The final implementation report (cf. Annex XVIII of the Implementing Regulation) should include (under the appropriate section, e.g. section 2.2) information on irregularities reported pursuant to Article 70(1)(b) of Regulation (EC) No 1083/2006(i.e. irregularities relating to expenditure certified to the Commission) and the respective corrective measures taken by the Member State.</p> <p>Moreover, as mentioned in the guidance on closure (section 5.2.1), the final implementation report (FIR) "should present aggregated data and information for the whole of the</p>

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		<p>implementing period". This means that the information on irregularities included in the FIR should also be presented in aggregate form (e.g. by priority axis) and should refer to the whole implementation period. The information disclosed on the FIR should correspond to the data presented in the annual statements (including the final statement by 31 March 2017) on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts in line with Article 20(2) and Annex XI of the said Regulation. In addition, as per Article 67(2.h) of Regulation (EC) No 1083/2006, the FIR should also include information on the use made of assistance released following cancellation as referred to in Article 98(2) to the managing authority or to another public authority during the period of implementation of the operational programme.</p> <p>As established in Annex VIII (point 7, 2nd dash) of the Regulation (EC) No 1828/2006, the audit authority will confirm, in the final control report, the accuracy of the information disclosed in the FIR as above-mentioned. This confirmation should be drawn from the AA's assurance on the above-mentioned annual statements. Where discrepancies exist between these statements and the FIR, the AA should disclose them in the final control report. In addition, still under point 7 of the said Annex VIII, the AA shall confirm that the procedure for reporting and following up irregularities, including the treatment of systemic problems, has been carried out in accordance with regulatory requirements.</p> <p>Further to the correction of irregularities relating to expenditure certified to the Commission, the Managing Authority may report in the FIR, in a separate paragraph, corrective measures taken <i>ex ante</i>, i.e. before expenditure was certified to the Commission (for example, <i>ex ante</i> corrections applied in the context of an action plan agreed with the Commission to mitigate system deficiencies). In any case, the FIR should clearly distinguish such <i>ex ante</i> corrections from the ones concerning expenditure certified to the Commission.</p>
16.		<p><i>What will be the focus when dealing with irregularities? Could the Commission provide examples of common errors from previous periods and their effects on programmes?</i></p> <p>REPLY: The question is too vague. The MS should clarify the question.</p>

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17.	Article 95	<p><i>Application of Article 95 General Regulation in relation to the closure of programmes - specific examples of application and detailed proceeding.</i></p> <p><i>CLG say that affected amounts will not be included in the final statement of expenditures and the commitment will remain open. How these amounts will be declared/certified (how will they be included into the payment of the final balance) if the result of the legal proceedings will be in favour of beneficiary and the expenditures will be eligible?</i></p> <p>If at closure an operation is still suspended due to legal or administrative proceedings, it is up to the MA to decide whether this operation should be withdrawn (and replaced by another one (overbooking) or retained in the programme. If the latter, the operation should be included in Annex VII of the CGL.</p> <p>The amounts declared in Annex VII will allow the Commission to keep a commitment open for possible future payments.</p> <p>In case the court verdict is in favour of the beneficiary the corresponding payment based on eligible expenditure will be paid by the Commission or payment already made will be confirmed.</p>
18.	Irrecoverable Amounts	<p><i>Could the Commission provide specific examples from the past when the irrecoverable amounts were borne by the general budget of the European Union?</i></p> <p>REPLY: The question is too vague. The MS should clarify the question.</p>
19.	Flexibility	<p><i>Application of flexibility - how to compensate exceeding of allocation by decreased drawing in other priority axis. Is there any specific procedure regarding multi-objective projects?</i></p> <p>REPLY:</p> <p>Overdeclaration of expenditure under certain priority axis can compensate underdeclaration under one or more priority axis.</p> <p>There is no specific procedure in this respect, only a ceiling of 110 % of each priority axis and a capping corresponding to the public contribution and Funds contribution to the programme.</p>
20.	Revenues	<p><i>What is the procedure regarding the sale of property within the durability period? The property was remediated by the grant (former brownies). Will the mechanism of other financial revenues be applied? That is - will the beneficiary pay back the money earned by the sale or should he reduce indicators and return a proportion of the grant? Or will the managing authority decide what should be done?</i></p> <p>REPLY:</p>

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		<p>Article 55.4 applies to a situation where net revenues not initially foreseen are generated by an operation consisting in the sale of land or building. Where Article 55.4 applies the financial contribution to the operation is reduced but the indicators do not need to be reduced as the operation does not change</p> <p>If the sale takes place because of a substantial modification of an operation in the meaning of Article 57, then the provisions of Article 57 should apply.</p> <p>Application of the two Articles have the same consequence for the beneficiary in terms of reduction of the financial contribution, but deadlines are different: deduction of net revenues shall be done at the latest on 31.03.2017 whereas the provisions on durability apply within 5 years from the date of completion of the operation.</p>
21.		<p><i>By when should other financial revenues be resolved? By 2017 as revenue according to the Article 55 General Regulation or by the end of the durability of the project?</i></p> <p>REPLY:</p> <p>The funding gap is discounted investment costs less the discounted net revenues. The discounted net revenues will have to be assessed ex-ante for the live-time of the project, which can be last well beyond the durability of the project or the closure of the programme.</p> <p>Deduction of revenue from expenditure declared to the Commission in application of Article 55 must be done at the latest by the date of submission of the closure documents.</p>
22.		<p><i>What is the time frame for revenue monitoring? Should the revenue be monitored by the end of the period of durability or by the submission of the closure documents? Is the calculation of the funding gap part of the final monitoring report in the period of durability or is it enclosed only by the date of the submission of the closure documents (31/3/2017).</i></p> <p>REPLY: When their estimation in advance is possible revenues and costs have to be determined ex-ante; but Article 55 does not require the recalculation of the funding gap if from already calculated sources income, this income is higher or lower (see COCOF 07/0074/09, page15). Only if there are new sources of income that have not been taken into account in the ex- ante assessment of the funding gap a recalculation is necessary at the latest at the time of submission of the closure documents. The monitoring is to be concentrated on changes of the tariff policy or other new sources of income which shall result in a recalculation of the funding gap if these occur before the submission of the closure documents.</p> <p>If a substantial change referred to in Article 57 occurs after the date of submission of the closure documents to the Commission and before the end of the durability period the financial contribution to the operation must be reduced</p>

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		accordingly.