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Guidelines on the Closure of Cohesion Fund and Ex-ISPA projects 2000-2006

1. CLOSURE GENERAL PRINCIPLES AND FINAL DATE OF EXPENDITURE

1.1. Closure general principles

In line with the provisions of Regulation (EC) n°1164/1994 of 16 May 1994 establishing a Cohesion Fund¹, these guidelines apply to all Cohesion Fund and "ex-ISPA"² projects first adopted after 1 January 2000³.

“Closure of projects” covers the financial settlement of the outstanding Community commitment through payment of the balance to the appointed authority or the issue of a debit note and de-commitment of any final balance. Cohesion Fund assistance is linked to a project, stage of project or group of projects (as defined in Regulation 1164/1994) and to the completion of the relevant physical object defined in each grant decision adopted by the Commission. The closure procedure enables the Commission to assess whether the implementation of a project, stage of project, group of projects complies with the most recent version of the decision granting the Cohesion Fund assistance and whether the related expenditure declared is legal and regular, before the payment of the final balance.

Closure does not prejudice the obligation of the responsible body and of the national authorities to keep all the supporting documents regarding expenditure and checks available for the Commission for a period of three years, following payment by the Commission of the final balance⁴.

1.2. Final date of eligibility of expenditure

The period of eligibility of expenditure is set out in Article 2(2) of each individual decision granting financial assistance. In each such decision the final eligibility date was initially set at 12 months after the date of completion of the works related to the project as estimated by the national authorities. The final eligibility date of expenditure mentioned in Article 2(2) is binding.

In accordance with the principle of sound financial management, and previous guidance sent on 9 March 2005 by the Directorate General for Regional Policy to the Member States, for all Cohesion Fund projects the Commission will not, as a general rule, set the final eligibility date beyond 31 December 2010.

¹ OJ L 130, 25.5.1994, p.1. Regulation as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p.33).

² Projects initially adopted under Regulation (EC) N°1257/1999 of 21/06/1999 establishing an Instrument for Structural Policies for Pre-accession (OJ L 161, 26.06.1999, p. 73).

³ Without prejudice to the obligations in respect of projects first approved before 1 January 2000, pursuant to Articles 1 and 22 of Commission Regulation (EC) N° 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) N° 1164/1994 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections, OJ L 201, 31.7.2002, p.5.

⁴ Article G (3), Annex II to Regulation (EC) n° 1164/1994 as modified. Unless otherwise decided in the bilateral administrative arrangements, the period of three years starts following the payment of the final balance.

Only under exceptional and duly justified circumstances (i.e. administrative or legal proceedings having suspensory effects, cases of *force majeure* which has serious repercussions for the implementation of the project supported by the Cohesion Fund or manifest error attributable to the Commission) will the Commission decide to extend the final date of eligibility beyond 31 December 2010. As with any other modification request, 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 and decide whether to amend the decision approving the project.

2. DOCUMENTS TO BE SUBMITTED AT CLOSURE

2.1. Closure documents

The legislation governing the Cohesion Fund requires the Member States to submit several documents to the Commission, which enable it to successfully close the assistance. The required documents are:

- **Application for payment** (second indent of Article D(2)(d) of Annex II to Regulation 1164/1994);
- **Final report** ((third indent of Article D(2)(d) of Annex II to Regulation 1164/1994);
- **Certified statement of expenditure** (fourth indent of Article D(2)(d) of Annex II to Regulation 1164/1994⁵);
- **Winding-up declaration, including the winding-up report** (Article 12(1)(f) and the fifth indent of Article D(2)(d) of Annex II to Regulation 1164/1994⁶, and Article 14 of Regulation 1386/2006).

Unless otherwise agreed, for projects first adopted before 1 January 2000, the closure can be effected on the basis of the documents listed in Article D(2)(d) of Annex II to Regulation 1164/1994, in its original form (i.e. final payment application, final report and certification that the information given in the application for payment and in the report is correct). Under this provision, no winding-up declaration is required. However, since Regulation 1164/1994 in its original form provides for the submission of an equivalent document certifying the correctness of the information given in the application for payment and in the final report, it is recommended that, for projects first approved before 2000, Member States submit the same documents as those submitted for project adopted after 1 January 2000.

Once the final payment application is received the Commission services issue an acknowledgment of receipt. In principle, provided that the set of documents received

⁵ Article 8 and Annex II of Regulation 1386/2002 set out the form in which the certificate of statements of final expenditure must be drawn up, the substantive conditions which the certificate must fulfil and nature of the person drawing up the certificate.

⁶ Articles 13 to 15 and Annex III to Regulation 1386/2002 set out the form in which the certificate of statements of final expenditure must be drawn up, the substantive conditions which the certificate must fulfil and nature of the person drawing up the certificate.

is complete and there are no issues requiring clarification, the closure procedure could be completed within two months.

2.2. Timetable for submission of closure documents

The Cohesion Fund Regulation provides certain deadlines for the submission of the necessary closure documents as follows:

Document	Deadline
Final payment application and certificate of statement of expenditure	Within 6 months “ <i>of the deadline for completion of the work and for expenditure laid down in the decision.</i> ” (second indent of Article D(2)(d) of Annex II to Regulation 1164/1994)
Final report	Within 6 months of “ <i>completion of the project</i> ” (Article F(4) of Annex II to Regulation 1164/1994)
Winding up declaration	It is advisable to submit it within 6 months of the final date of eligibility together with the two above-mentioned documents.

As regards the wording, the terms "completion of the project" and "deadline for completion of the work and expenditure" used by Regulation 1164/94 correspond to the "final date of eligibility" fixed in the grant decisions (see **Annex 1**).

The Commission will treat closure documents as having been received on time when they have been sent by the above-mentioned deadlines, as attested by the postal stamp.

Where the certified statement of final expenditure is submitted electronically, the date of electronic submission will be considered as the date of submission. Where the original documents are scanned and sent by fax and e-mail they will also be accepted, provided that the original is sent within one month from the former's arrival.

When the eligibility period has not been extended, closure documents must be submitted within the deadlines, even if the project or parts of it have been suspended by judicial or administrative proceedings or are undergoing audit procedures.

2.3. Consequences of late submission of one or more closure documents

Pursuant to Article D(2)(d) of Annex II to Regulation 1164/1994 the first consequence of late submission of one or more closure documents mentioned above is that the Commission cannot pay the final balance of Cohesion Fund assistance.

Where, more than 6 months after the final date of eligibility, there is a persistent delay in providing one or more of the closure documents the Commission will send a warning letter to the national authorities. If the missing documents are not received

by the Commission within 2 months from the receipt of the warning letter or there is no reply at all, the Commission, on a case-by-case basis and taking into consideration all available information, is entitled to trigger the financial correction procedure foreseen in Article H of Annex II to Regulation 1164/1994.

2.4. Failure to present the final report within 18 months of the final date of eligibility

As indicated above, Member States must submit the final report within 6 months "*of the completion of the project*", which has to be understood as within 6 months following the final date of eligibility. Moreover, if the final report is not submitted to the Commission within 18 months of the final date of eligibility set by the decision, the remaining balance (i.e. the 10-20% balance and any other outstanding commitment) will be cancelled (Article D(3) of Annex II to Regulation 1164/1994).

Therefore, two months before the expiry of 18 month deadline the Commission will remind the Member State that the final report has not yet been received and that it runs the risk of cancellation of the outstanding commitments.

If by the expiry of the 18 months the final report is not sent, the Commission will cancel the outstanding commitments and inform the national authorities.

3. CONTENTS OF THE CLOSURE DOCUMENTS

3.1. The certified statement of final expenditure and application for payment

3.1.1. Format and content

Pursuant to Article 8(1) of Regulation 1386/2002, the certificates of statement of final expenditure must be drawn up in the form set out in Annex II to that Regulation.

Expenditure declared must relate to expenditure certified by the paying authority and correspond to payments effected by the implementing bodies supported by receipted invoices or accounting documents of equivalent probative value (Article D(1) of Annex II to Regulation 1164/1994 and Article 5 of Regulation 16/2003⁷). The conditions to be checked by the paying authority in certifying the statement of final expenditure are set out Article 8(2) of Regulation 1386/2002 and in the form prescribed in Annex II of Regulation 1386/2002. The statement of expenditure must be accompanied by the appendix on recoveries contained in Annex II to Regulation 1386/2002.

Recoveries indicated in the appendix and to be deducted from the final statement of expenditure under Article 7 of Regulation 1386/2002 must be actual, expressed in euros and –if this is the case- including the interest on account for late payment. They should arise from irregularities with the meaning of Article 1a of Regulation (EC) N° 1831/1994 of 26 July 1994 concerning irregularities and the recovery of

⁷ Commission Regulation (EC) N° 16/2003 of 6 January 2003 laying down special detailed rules for implementing Council Regulation (EC) N° 1164/1994 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund, OJ L 2, 7.1.2003, p.7.

sums wrongly paid in connection with the financing of the Cohesion Fund and the organization of an information system in this field⁸ and include both cases reported to OLAF and those exempted from communication to OLAF, for example because they are below the threshold for reporting. Recoveries related to financial corrections applied under Article H(2) of Annex II to Regulation 1164/1994 should not be included in the recoveries appendix.

Before the closure of the project, recovered amounts can be re-allocated to the project, provided that the re-allocation does not modify the physical object of the project.

Member States must also inform the Commission of recoveries made between the submission of the final expenditure declaration and payment application 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 on recoveries effected after submission of the final expenditure declaration and after closure of the project.

The payment on account paid to Member States pursuant to Article D(2)(a) of Annex II to Regulation 1164/1994 has to be justified by payments effected at the latest when the final balance of the assistance is claimed.

3.1.2. Changing the certified statement of final expenditure or application for payment after the deadline for their submission

In principle, the certified statement of final expenditure or application for payment cannot be modified after the deadline for their submission.

The Commission may request that the Member State corrects the certified statement of final expenditure or application for payment by submitting supplementary information and making corrections related to the expenditure submitted initially to the Commission. In this event, the national authorities will be given two months to carry out the corrections. If the correction is not effected within the two months period, the Commission will proceed with closure on the basis of the available information and within the framework of Article H of Annex II to Regulation 1164/1994.

3.1.3. The use of interest earned on payments

Interest earned on the payment on account or interim payments is regarded as being the resources of the Member State and it is recommended to allocate them to the project

⁸ Commission Regulation (EC) N° 1831/1994 of 26 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organization of an information system in this field, OJ L 191, 27.7.1994 and Commission Regulation (EC) N° 2168/2005 amending Regulation (EC) N° 1831/1994, OJ L 345, 28.12.2005. Irregularities are defined as "Any infringement of a provision of Community Law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget." (Article 1a).

In that case, the interest may be included in the national contribution by adding it to, or substituting it for, the amount of the national public co-financing envisaged. It is recommended that the final report should state the amounts and the activities to which such interest earned have been allocated. The implementing body (or the paying authority) should maintain a record of the interest generated in its accounts. If no interest is generated, this should be mentioned in the final report.

3.2. The final report

There is no mandatory standard model for drafting final reports. In cases where a template of final report has already been agreed it is recommended to follow it.

The requirements for the content of the final report are set out in Article F(4) of Annex II to Regulation 1164/1994:

"This report shall include:

- (a) a description of the work carried out, accompanied by the physical indicators, the expenditure by category of work and any measures taken under specific clauses in the decision granting assistance;
- (b) information on all publicity measures;
- (c) certification that the work conforms to the decision granting assistance;
- (d) an initial assessment as to whether the anticipated results as indicated in Article 13(4) are likely to be achieved, including in particular:
 - (i) the actual starting date of the project;
 - (ii) the way in which it will be managed once finished;
 - (iii) confirmation, if appropriate, of the financial forecasts, especially as regards the operating costs and expected revenue;
 - (iv) confirmation of the socioeconomic forecasts, in particular the expected costs and benefits;
 - (v) an indication of the environmental protection measures taken, and their cost, including compliance with the polluter-pays principle.

In relation to the different elements to be included in the final report, the Commission services would like to draw the attention to the following:

3.2.1. Description of the work carried out

The physical object of the project, and hence its description, must be in line with the most recent version of the decision granting the financial assistance. The Commission services should be kept informed of any modification of the physical and financial indicators.

The physical and financial indicators by category of work should be coherent with the indicators used during the monitoring of the implementation. Where an element

of the physical object is not completed the final report should detail the facts, explain the circumstance and how the absence of the physical object has been taken into account in formulating the final payment claim. In such a case, where the information in the final report is not complete, the Commission will not be in a position to pursue the closure process until it has received further clarification.

Depending on the precise drafting of the project description in the grant decision the physical monitoring indicators elements may not be 100% complete according to the most recent estimates. In any case where an element of the physical object is not completed according to the technical specifications or does not correspond fully to the project decision, the Member State would have to ensure that the main overall physical objective of the project is completed.

3.2.2. *Certification that the work conforms to the decision granting assistance*

In this respect it should be recalled that:

- The physical object is the core element of the decision with which conformity should be ensured;
- Where certain items were exceptionally mentioned as “eligible” in the decision in line with the eligibility rules, i.e. durable equipment, their delivery has to be confirmed;
- The physical monitoring indicators are in general to be considered as indicative (for example, m², m³, linear metres), subject to the exact drafting of the description of the text of the decision. Reasonable deviations can therefore be accepted provided they are duly justified, they have been agreed in the monitoring committees and they do not affect the nature of the project.

3.2.3. *Measures taken under specific clauses in the decision granting assistance*

The final report has to provide substantiated confirmation, supported by appropriate documentation, of compliance with any specific clauses in the grant decision, in particular any clauses linked to the final payment.

3.2.4. *An initial assessment of the actual starting date of the project*

The term “*actual starting date*” stated in the first indent of Article F(4)(d) of Annex II of Regulation (EC) No 1164/94 means the date when the project becomes operational. Where the project (or project stage) encompasses works, it is recommended that the final report provides the date or date(s) at which the different major elements of the project were completed under the terms of the contract. In particular, the following dates shall be provided:

- the date(s) of commissioning of the different elements (i.e. the date the project starts to cater for demand);
- the provisional date(s) that the implementing body took the infrastructure “in charge” (“*réception provisoire*“), where relevant;

- the definitive date(s) that the implementing body took the infrastructure “in charge” (“*réception définitive*”)⁹.

These dates will normally be before the final date of eligibility. In the grant decision the final date for eligibility is set by adding 12 months to the Member State's estimated end date for the completion of works; this is done in order to allow the final payment to the contractor to be taken into account in the final statement of expenditure. Therefore, where a project respects the implementation timetable, the “defects liability period” would normally expire within the eligibility period and the final account would be paid by the implementing body and could be declared to the Commission for reimbursement.

However, if one or more of these dates ("*date de réception provisoire*" or "*date de réception définitive*") falls after the final date of eligibility it may be possible to establish the completion of the project and closure may proceed. If the expiry of the “defects liability period” exceeds the final eligibility date it shall be for the national authorities to finance the expenditure falling outside the eligibility period.

3.2.5. *How the project will be managed once finished*

The final report must describe the way in which the operating costs are to be covered and the continuing operation of the infrastructure assured (identifying the revenue stream or public budget that is to cover the operation cost). It is recommended that the annual operating/maintenance cost should be identified and valued.

3.2.6. *Confirmation of the socio-economic forecasts*

The final report shall contain a confirmation of the socio-economic forecasts, in particular in relation to the expected socio-economic costs and benefits.

As a minimum the original estimations, to the extent that they are still considered accurate, should be confirmed by a clear statement. On the other hand, where, for example, the demand estimates or the final estimated costs have changed significantly compared to the initial costs taken into account, the impact on the cost benefit analysis should be set out.

Should the revised socio-economic analysis results show that the project as implemented will now have a lower rate of return this will not normally lead, on its own, to a re-evaluation of the initial grant award to the project or the payment of the final balance. However, a re-evaluation and even a reduction of the grant may be necessary when changes in the socio-economic analysis also show up in the financial analysis (e.g. investment cost).

3.2.7. *Confirmation of the financial forecasts*

Where financial forecasts (including, for instance, the total investment cost, the operating costs and expected revenue) were analysed in the original appraisal of the

⁹ "Taking in charge (provisional)" is normally provided for as a standard provision of construction contracts and governs the start of the "defects liability period" of the contractor for the infrastructure post-commissioning. The "taking in charge (definitive)" equates with the end of the "defects liability period".

project these estimations shall be specifically updated and confirmed in the final report.

As a minimum the original estimations, to the extent that they are still considered accurate, should be confirmed by a clear statement.

Where previously unforeseen revenues are now estimated these shall be quantified and explained.

Where the change of the revised revenue flows is more than 10% relative to the initial revenue flows the grant rate may be reviewed. A reduction of the grant rate may be considered if the total Net Present Value (NPV) of the revised net revenue generated (including the 10% or more increase in expected revenue) exceeds 15% of the NPV of the revised total costs (or exceeds the share of national financing initially agreed where greater than 15%).

3.3. The winding-up declaration and report

The winding-up declaration must be prepared in accordance with Article 12(1)(f) of Regulation 1164/1994 and Chapter V of Regulation 1386/2002. Pursuant to Article 14 of Regulation 1386/2002, the winding-up declaration must be accompanied by a winding-up report. An indicative model of the winding-up declaration is contained in Annex III to Regulation 1386/2002. For convenience, it is recommended to follow this model.

In addition, on 15 April 2005, the Directorate General for Regional Policy has issued a Guidance note on the winding-up declaration (see **Annex 2**).

3.4. Missing information or insufficient controls

If either the final report or the winding-up declaration does not contain all information required by the applicable legislation, the Commission will request their completion (e.g. by supplying the missing information or undertaking additional controls), fixing a time limit for compliance. In event of failure to comply within the fixed time period, the Commission will proceed with the closure and, on a case-by-case basis and taking into account all available information, may apply financial corrections within the framework of Article H of Annex II to Regulation 1164/1994.

4. UNCOMPLETED PROJECTS AT THE TIME OF CLOSURE

Subject to the circumstances mentioned in Section 5 below, Cohesion Fund assistance cannot be granted for non-completed projects. If a Member State wishes to continue the execution of works after the final date of eligibility, only national resources can be used.

The Commission issued internal guidelines on non-completed projects (see **Annex 3**).

5. PROJECTS SUSPENDED DUE TO ADMINISTRATIVE AND LEGAL PROCEEDINGS

Unlike the rules governing the Structural Funds, there are no specific provisions in Regulation 1164/1994 for the closure of the projects where the operations are suspended due to judicial or administrative proceedings. However, it results from Articles 12(1)(e) and 13(1) of Regulation 1164/1994 that Member States have to keep the Commission informed of the progress of administrative and legal proceedings affecting a Cohesion Fund project. As a result, in principle and in line with Article F(5) of Annex II to Regulation 1164/1994, it is also for the Member States in the first place to draw operational conclusions from such procedures and propose the relevant solutions concerning the project. In this context, the following orientations are given:

- The term "legal" or "administrative proceedings" indicates judicial proceedings or administrative appeals provided for by national law.
- It refers also to infringement procedures initiated by the Commission under Article 226 of the EC Treaty when the procedure is directly linked to the implementation of the project.
- For the purposes of the closure, only administrative and legal proceedings suspending the implementation of the project will be taken into consideration
- The Member State concerned has to inform the Commission about the administrative or legal proceedings, supply the Commission with the court order or any other administrative formal act produced by the Member State and propose the possible solutions before the final date of eligibility (e.g. extension of the eligibility period, withdrawal of the project or - if the impact of the procedure on the project's implementation is insignificant - not to propose any change).
- The Commission, taking into account the particular circumstances of each case, the proposal of the Member State, the budgetary rules in force, the necessity to close the project within a reasonable time period, and the Cohesion Fund's objectives will decide accordingly. In this respect, if the modification of the decision under Article F(5) of Annex II to Regulation 1164/94 is not possible, the envisaged solutions might be e.g. the closure of the project with proportional payment of the Cohesion Fund assistance for the part already completed, the reduction or total cancellation of the assistance in line with Article H of Annex II to Regulation 1164/1994. Finally, if the above-mentioned proceedings reveal shortcomings or irregularities or negligence attributable to the Member State, the Commission may – on a case-by-case basis - apply financial corrections pursuant to Article H of Annex II to Regulation 1164/1994

6. IRREGULARITIES TO BE NOTIFIED TO THE EUROPEAN ANTI-FRAUD OFFICE (OLAF)

Irregularities have to be reported to OLAF pursuant to Articles 3 and 5 of Regulation 1831/1994. OLAF must also be advised in the quarterly communications under that Regulation of the follow-up given to the irregularities. Irregularities reported to OLAF have to be mentioned in the final report, together with irregularities which have not been communicated because they fall below the threshold of the Regulation.

It has to 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). This information has to be validated by the winding-up body in its report and declaration.

Where there are irregularities reported to OLAF that still have a financial consequence at closure (i.e. there is an amount recoverable), there will be a partial closure of the project leaving as an outstanding commitment the Community contribution payable for the amount of expenditure concerned, until the communication by the Member State of the final outcome of the case. If the final outcome is that the amount in question is established by the national courts to be regular, the Community contribution can be paid. If the irregular amount is fully recovered, there will be no further payment due and the de-commitment can be made. If the national authorities have not been able to effect a recovery, this shall be the subject of a special report to the Commission (Article 5(2) of Regulation 1831/1994), which will decide whether the Community budget should bear its share of the loss related to the irregularity.

7. CALCULATION OF THE FINAL CONTRIBUTION

Once the final contribution has been calculated, the Commission will inform the Member State of the final balance to be paid or to be recovered and will request the Member State's comments. If the amount to be paid by the Commission services is different than the amount requested by the Member State and if no agreement is reached with the Member State on the final balance to be paid or recovered, or if the Member State does not reply to the Commission's request for comments within the deadline given to it by the Commission, the Commission will carry out a financial correction procedure pursuant to Article H of Annex II to Regulation 1164/1994.

The Cohesion Fund contribution shall not exceed the amount claimed by the Member State (an example of a final contribution calculation is presented in **Annex 4**).

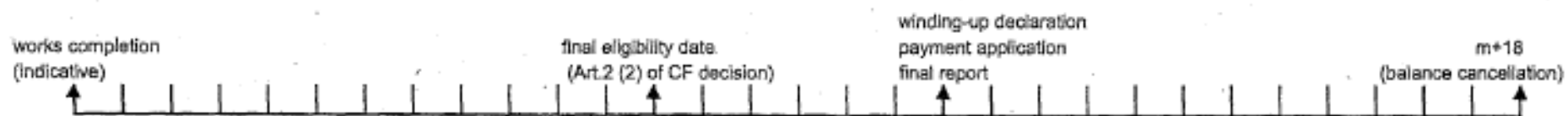
8. THE EURO

Amounts mentioned in closure documents shall be expressed in Euros, as indicated in the respective grant decision.

List of Annexes

- Annex 1: Closure timetable
- Annex 2: Guidance note on declaration at winding-up of projects under Article 12.1 or Regulation 1164/1994, Article 13 and Annex III of Regulation 1386/2002.
- Annex 3: Guidelines relating to the amendment of Cohesion Fund projects- Cases where projects are not completed at the time of closure of the decision.
- Annex 4: SYSFIN Calculation Sheet.

CLOSURE TIMETABLE



Guidance note on declaration at winding-up of projects under article 121. f of Regulation 1164/94, Article 13 and annex III of Regulation 1386/2002

Introduction

This note serves as guidance provided to the competent bodies responsible for issuing winding-up declarations at the closure of projects..

It will be included in the guidance section of the Commission's audit manual for the Cohesion Fund.

Work to be done by independent body for declaration at winding-up of projects

The declaration sets out the opinion of the independent body designated under Article 13 of Regulation 1386/2002 ("independent body") on the final statement of expenditure and application for payment of the balance of the Community aid and the final report. It is based on the examination of the management and control systems, of the findings of checks already carried out and, where necessary, of a further sample check of transactions, and of the final report drawn up under Article F(4) of Annex II to Regulation 1164/94. A declaration must be provided when each project, stage of project (technically and financially independent) or group of projects is wound up and no later than at the time of the request for final payment and the final declaration of expenditure. The examination should be conducted according to the Internationally Accepted Auditing Standards with a view to obtaining reasonable assurance on whether the audited statements are free of material misstatement, particularly as regards the execution of the project in accordance with the terms and conditions of the decision granting assistance from the Cohesion Fund and the objectives assigned to it.

The precise nature of the work to be done by the independent body will depend on the structure put in place for fulfilling the requirements of the regulation and notably whether the independent body has also been responsible for carrying out systems audits and/or controls of expenditure (sample checks) under Article 9 of Regulation 1386/2002.

The information available to the independent body and the work it does must be sufficient to enable it to respond to the questions set out below:

1. Which bodies carried out the audit work?
2. Were these bodies sufficiently independent of the implementing services (with management functions) to avoid any conflict of interest and how this independence is guaranteed?

Audits of management and control systems under Article 9, paragraph I.a of Regulation 1386/2002

It is particularly important that the basis for forming the opinion expressed in the winding up declaration is clearly explained. In this regard, it should be clearly shown whether the winding up body has formed its opinion based solely on the results of its own audits or whether it has placed reliance on audits carried out by other audit bodies in forming its opinion (e.g. internal audit units in the Managing Authority, Paying Authority or Intermediate Bodies, EC or ECA audits etc.).

3. Have there been any audits carried out on the management and control systems under art. 9, paragraph La of Reg. 1386/02 and did it include the body responsible for the implementation of the project to which the winding up declaration is being drawn or other projects carried out by the same body?

Yes (see points 3a-3f) or No (go to point 6)

In case of Yes, an exhaustive list of the audits carried out should be provided indicating bodies involved and dates.

3a) Have all the main bodies involved in implementation of the assistance been audited?

A list should be provided with the audited bodies in question as well as the date of the audit.

3b) Have all findings and recommendations of audits performed on this project been fully implemented by the audited?

A summary of the main findings and follow-up action taken should be provided.

3c) Did any of the audit reports conclude that there were material shortcomings in the management and control systems which might have consequences for the regularity of expenditure under the assistance?
If applicable, a list of these material shortcomings should be provided.

3d) If the answer to point 3c) is positive, has adequate follow up action been taken to rectify the weaknesses and to identify and exclude all irregular expenditure?
If applicable, a table listing the follow-up action taken should be provided.

3e) If adequate follow up action has not been taken, what is the amount of expenditure affected?
A table with the necessary break-down of the expenditure should be provided.

3f) Do the audit reports confirm the presence of a sufficient audit trail? If not, how this requirement is fulfilled?

Recommendation on Audits of management and control systems under Article 9, paragraph 1.a of Regulation 1386/2002

Make an overall judgement taking into account points 3a-3f and any other information available (e.g. summary of findings of Community controls and/or any other national bodies to which the body issuing the winding up declaration had access to, detailing by year and control body:

- *bodies which carried out the controls, principle findings, recommendations and follow-up action taken*
- *amount of expenditure checked and its percentage as a proportion of total eligible expenditure)*

A reference could be made to the report issued under art. 12 of Reg. 1386/2002

Controls on expenditure under Article 9, paragraph 1.b of Regulation 1386/2002

6. Is the percentage of the total eligible expenditure declared in respect of eligible expenditure incurred on projects first approved during the period 2000-2006 covered by the controls sufficient to comply with Article 9, paragraph 1 .b of Regulation 1386/2002 (minimum 15%, taking into account the Commission's recommendation of auditing expenditure of the project to which the winding up declaration is being drawn).

A detailed list should be provided indicating whether other bodies' controls (i.e. Intertai Audit units of Intermediate Bodies) are accounted for in this minimum 15% requirement.

7. Has only expenditure checked in its entirety, or on the basis of a sampling approach in accordance with accepted auditing standards, been counted toward the minimum percentage?

A brief explanation of the method adopted should be provided.

8. Have the controls covered expenditure incurred during the whole of the period of the project implementation?

A table with a chronological (i.e. on a yearly basis) breakdown of the sampled expenditure should be provided.

9. How many errors/irregularities were detected, what was their importance, and what was the amount of expenditure affected? Were they of a systemic character (A systemic irregularity is a recurrent error due to serious failings in management and control systems designed to ensure correct accounting and compliance with rules and regulations¹) and if so, were the necessary steps taken to identify other cases?

A list of detected errors/irregularities, rating of importance, character and amount of expenditure affected should be provided. In case of systemic ones, the steps taken to identify similar cases should be described. It is important that the winding-up body provide the nature of the error/irregularity encountered, namely:

- Ineligible expenditure incurred and why it is considered ineligible (outside eligibility dates, cost overruns, direct award of contracts, etc)
- Contracting & Tendering procedures (violation of public procurement legislation at national and/or European level)
- Physical object not implemented as described in the decision

10. Have all errors and irregularities identified in the controls been satisfactorily treated - i.e. is there adequate evidence that all ineligible expenditure has been corrected, or that appropriate recovery procedures have been taken (with the consequent repayment to the Commission of amounts recovered or allocation of liability between the Commission and Member State pursuant to Article 5 of

Regulation 1831/94 in the event of incomplete recovery), and that irregularities have where necessary been reported under Regulation 1831/94?

A table listing all errors and irregularities identified in the controls, along with their subsequent treatment by the relevant audit bodies should be provided.

¹ Cohesion Fund audit manual of 2/2/2004, page 79

Where checks have identified a rate of error above 2% of the amount of eligible expenditure checked, the control body should consider to increase the scope of the work done to better determine and quantify the extent of the problem.

11. What is the amount of expenditure affected by errors/irregularities not satisfactorily treated?

Recommendation on controls on expenditure under Article 9, paragraph 1.b of Regulation 1386/2002

Recommendation on controls on expenditure under Article 9, paragraph 1.b of Regulation 1386/2002

Make an overall judgement taking into account points 6-11 and any other information available (e.g. summary of findings of Community controls and/or any other national bodies to which the body issuing the winding up declaration had access to, detailing by year and control body:

- bodies which carried out the controls, principle findings, recommendations and follow-up action taken*
- amount of expenditure checked and its percentage as a proportion of total eligible expenditure)*

A reference could be made to the report issued under art. 12 of Reg. 1386/2002

Final statement of expenditure and application for payment of the balance of the community aid and final report

The independent body is required to declare that the final statement of expenditure and application for payment of the balance of the Community aid and the final report are free of material misstatement. It must therefore audit the procedure followed by the managing and paying authorities and implementing authorities to compile the final declaration of expenditure in order to satisfy itself, in particular that the amount of expenditure is in conformity with the accounting and monitoring systems maintained, that it is based on adequate supporting documentation and that the procedures followed give reasonable assurance that ineligible expenditure has been excluded.

With regard to the final statement of expenditure and the final report, the independent body must verify in particular:

- The correct presentation and compilation of the documents;
- The correctness of the calculations;
- The reconciliation of the final statement presented to the Commission with statements presented by implementing bodies to intermediate bodies;
- Consistency with the financial information, including information on irregularities, in the final report.

It is recommended that the independent body formulates the opinion in accordance with the text of the conclusion to the indicative model in Annex III of Regulation 1386/2002. If it proposes to formulate the opinion in a different way, prior agreement should be sought from Commission services.

Qualification of the opinion or disclaimer

The indicative model for the Declaration (Annex III of Regulation 1386/2002) envisages a *qualified opinion* where there are certain limitations to the control examination provided that the frequency error found is not

high or where there are problems which have not been satisfactorily treated, and *no opinion* if there are important limitations to the control examination or the frequency of error found is high.

If the closure statement contains a qualified opinion, it is likely that the Commission will be unable to pay immediately the final balance requested and that the closure will be delayed until adequate follow up action has been taken and/or the limitations overcome.

The independent body should therefore, whenever possible, seek to agree with the designated authority and/or implementing bodies the actions to be undertaken which would make it possible for an unqualified opinion to be given. Where this will significantly delay the presentation of the request for final payment, the Commission should be informed.

Limitations to the control examination

The independent body has to determine whether they are of such importance that no opinion can be given, whether they are of lesser importance but still require a qualified opinion to be given, or whether they are of such minor importance that no qualification is necessary.

Sufficient information should be given in the declaration at the winding up of projects to support the conclusion and consequences drawn.

By way of indication:

- limitations resulting in no opinion could include:
 - failure to control the minimum percentage of expenditure,
 - failure to carry out controls down to the level of implementing bodies (*e.g. lack of audit trail, lack of supporting documentation at a significant level*),
 - failure to control one or more of the main implementing bodies/final beneficiaries,
 - serious management weaknesses for which no remedial action has been taken.
- limitations resulting in a qualified opinion could include:
 - failure to ensure the representativity of the control sample (*e.g. insufficient coverage of different types of expenditure*),
 - lack of formal procedures for identifying and treating systemic problems,
 - inadequate quality of control reports under Article 9 of Regulation 1386/2002,
 - lack of separation of functions of controllers carrying out controls under Article 9 (Note: controls on a project carried out by a person responsible for project management functions in relation to the same project cannot be taken into account for determining 15% requirement. In other cases the independent body should assess the risk resulting for the expenditure declared).

The amount of expenditure affected and the amount of corresponding Community aid should be estimated. It is up to the independent body to conclude that there is no impact on the final expenditure declared, if it is satisfied that this is the case.

In case that the Commission has doubts as regards the reliability of the information provided, it has the power under Article 15 of Regulation 1386/2002 to request a Member State to carry out additional controls. The request will be made by letter sent by the Director General. According with art. 18 of Reg. 1386/2002, the period of time within which the Member State concerned may respond shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.

Problems which have not been satisfactorily treated

Where there are errors or irregularities, or systemic problems, arising from national control visits, which have not been satisfactorily treated, information should be provided on each particular case. This information should include the possible systemic character and extent of the problem, together with an indication of the amounts of expenditure affected and the corresponding amounts of Community aid. The opinion of the independent body will have to be qualified accordingly.

High frequency of errors/irregularities

Where the independent body concludes that there is a high frequency of errors, no opinion can be given even if the individual cases have been satisfactorily treated. This is because a high level of errors indicates systemic problems in the management and control bodies. The independent body should indicate in the declaration the basis for the conclusion on the high frequency, and details of the errors/irregularities identified. The Commission services will have to agree with the national authorities on further measures to be undertaken to identify the amount of expenditure which can be accepted for co-financing. The conclusion of the independent body in that case may be limited to specific types of expenditure or specific bodies, for which the amount of expenditure concerned should be indicated.

Guidelines relating to the amendment of Cohesion Fund projects -Cases where projects are not completed at the time of closure of the decisions

The "guidelines relating to the amendment of the projects of the Cohesion Fund due of extension of the time limits of implementation and of increase in the costs" were adopted on 18 July this year, and were transmitted to the Member States concerned.

These guidelines envisage a stricter framework of the modifications applied to the projects, so much in terms of frequency (only one modification can henceforth be accepted, except cases of disasters), than of duration of realisation (the new completion date of completion of the work is now irremovable). Lastly, a suitable justification is requested in each case.

Consequently, the risk exists that the limitation of the number of the possible modifications leads to decision ends while the corresponding projects are not completed (by insufficiency of funds and/or of time). This point was referred to at the last coordinating meeting on the Cohesion Fund. The note of 18 December has therefore to be amended to take account of the conclusions of this meeting.

1. THE LEGAL FRAMEWORK

Article D§2 d) of Annex II of amended Regulation 1164/94 lays down the requirements for the payment of the balance of which the submission of the final report forms part. Article F§4 stipulates that the final report is forwarded within 6 months following the completion of the project but the final report has imperatively to reach the Commission within the time fixed by article D§3, namely 18 months after the deadline fixed in the decision, under penalty of cancellation on the part of the competition corresponding to the balance. Consequently, Article 2.3 of the financing decision of competitions determines the final date of eligibility of expenditure and of completion of work. Consequently, the Member State has, in fact, an additional period of 12 month to complete work (i.e. the 18 months of article D§3 minus the 6 months of article F§4).

2. PROPOSED APPROACH

It is advisable to distinguish two categories, according to if the final report is submitted or not.

2.1. defect of transmission of the final report within the time fixed by regulation 1164/94

If the final report is not received within the time provided for in article D§3, namely 18 months after the deadline fixed at Article 2.3 of the decision, and whatever the state of completion of the project and that it is functional or not, it is appropriate to cancel the share of the competition corresponding to the balance.

It will also be advisable to close down the project on the basis of the information of which the Commission is informed and to examine whether it is appropriate to initiate a financial correction procedure, in accordance with the provisions of article H paragraph 1 of Annex II of Regulation 1164/94 ("financial Corrections").

2.2. project not completed final at the time of eligibility of expenditure and final report submitted to the Commission

On the assumption that work is not completed in the date fixed at Article 2.3 of the standard financing decision, work has to be completed within 12 months.

At the end of the transmission of the final report by the Member State, three situations can occur:

- (1) the part of the project carried out is functional and, independently of the delay, the project is completed within 12 months after the date fixed at Article 2.3 of the decision. In this case, the payment of the balance is carried out on the basis of the received payment request.
- (2) the part of the project carried out is functional but the project is unfinished within 12 months after the date fixed at Article 2.3 of the standard decision. In this case, the share of the competition corresponding to the balance has to be cancelled and it is appropriate to examine whether a financial correction on the already paid parts of the competition has to be carried out, in accordance with Article H.1) of Annex II of amended Regulation 1164/94.
- (3) . the part of the project carried out is not functional. The Commission engages then a financial correction on the totality of the competition (article H paragraph 1).

The risk of having to close down a not yet completed project however is reduced by the fact that the national authorities will decide, at the time of the modification of a decision, on a new completion date of completion of the work. Since this date will be final, authorities will probably be inclined to envisage a sufficient period to make sure that the project will well be completed at that date.

SYSFIN	Calculation Sheet - Solde
<u>File :</u>	
<u>File Title :</u>	

Currency:	EUR
Total Eligible Cost:	3.792.471,00
Fund Contribution:	3.033.977,00
Co-Financing Percentage:	80,00%

	Percentage	Amount
Total Expenditure:		4.037.495,24
Fund Proportion:		3.229.996,40
Total:		3.229.996,40
Ceiling:		3.033.977,00
Total :		3.033.977,00

Currency:	EUR	<u>Calculations Result</u>	<u>Commitments</u>	<u>Payments</u>	<u>Recoveries</u>	<u>Forecasts of revenue</u>
Current operations:		3.033.977,00	2.427.182,00	2.347.420,00	0,00	0,00
Net:			2.427.182,00	2.347.420,00		0,00
Balance to execute:			606.795,00	686.557,00		

Amount requested:	686.557,00	Currency:	EUR	Reception date:	20/06/2005
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