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## EUROPEAN COMMISSION

## COMMISSION NOTICE

**Guidelines on the closure of operational programmes adopted for assistance from the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and cross-border cooperation programmes under the Instrument for Pre-accession Assistance (IPA II) (2014-2020)**

(2022/C 474/01)

This Commission notice replaces the Commission notice previously published in the *Official Journal of the European Union* C 417 of 14 October 2021.

Taking into account the importance of timely and efficient closure of the operational programmes approved for assistance from the European Regional Development Fund (including the cooperation programmes under the European territorial cooperation goal), the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period from 1 January 2014 to 31 December 2020, including those benefiting from the REACT-EU resources, it is necessary to provide proper guidance on the closing of those programmes in accordance with Regulation (EU) No 1303/2013 of the European Parliament and of the Council <sup>(1)</sup> and the legal acts of general application adopted on its basis.

These guidelines cover also the cross-border cooperation programmes under the Instrument for Pre-accession Assistance (IPA II). The IPA Implementing Regulation refers generally to the CPR or specifically to certain provisions thereof. These guidelines therefore also apply to IPA II cross-border cooperation programmes, unless specified otherwise.

In view of the experience of closing the 2000-2006 and 2007-2013 programming periods, the guidelines propose simplified procedures aiming to build on the best practices identified during the closure of these previous periods.

The guidelines take into account the unprecedented COVID-19 crisis in 2020 and 2021 and the military aggression by the Russian Federation against Ukraine on 24 February 2022 as well as the associated impact on programme implementation.

The purpose of the guidelines is to facilitate the closure process by providing the methodological framework under which the closure exercise should take place for the financial settlement of the Union's outstanding budgetary commitments through payment of any final balance to the Member State in respect of a programme and/or decommitment or recovery of the sums unduly paid by the Commission to the Member State.

<sup>(1)</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320) ('CPR').

With the system of annual examination and acceptance of accounts, a significant simplification of the closure procedure has been introduced. The final closure of the programme should therefore be based only on the documents relating to the final accounting year and the final implementation report or the last annual implementation report.

**DISCLAIMER:**

*This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for colleagues and bodies involved in the closure of the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund. This guidance is without prejudice to the interpretation of the Court of Justice and the General Court.*

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## 1. GENERAL PRINCIPLES

Operational programmes under the European Regional Development Fund ('ERDF') <sup>(2)</sup> (including the cooperation programmes under the European territorial cooperation goal) <sup>(3)</sup>, the European Social Fund ('ESF') <sup>(4)</sup>, the Cohesion Fund <sup>(5)</sup> (hereinafter referred to as the 'Funds') and the European Maritime and Fisheries Fund ('EMFF') <sup>(6)</sup> implemented in accordance with the CPR for the 2014-2020 programming period <sup>(7)</sup>, as well as cross-border cooperation programmes under the Instrument for Pre-accession Assistance (IPA II) based on Regulation (EU) No 231/2014 of the European Parliament and of the Council <sup>(8)</sup> and implemented in accordance with the Commission IPA II Implementing Regulation (EU) No 447/2014 <sup>(9)</sup> shall be closed in accordance with the present guidelines.

Closure of such programmes entails the financial settlement of the Union's outstanding budgetary commitments through payment of any final balance to the Member State <sup>(10)</sup> <sup>(11)</sup> in respect of a programme and/or the decommitment or recovery of the sums unduly paid by the Commission to the Member State. The closure of programmes is without prejudice to the Commission's power to impose financial corrections under the relevant provisions of the CPR.

## 2. POSSIBILITY OF EARLY CLOSURE

Member States may request an early closure provided that they have carried out all the activities related to the implementation of the programme. For this purpose, an earlier accounting year than the one running from 1 July 2023 to 30 June 2024 should be considered as the final accounting year of the programme. If the Commission

<sup>(2)</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).

<sup>(3)</sup> Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259).

<sup>(4)</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470).

<sup>(5)</sup> Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006 (OJ L 347, 20.12.2013, p. 281).

<sup>(6)</sup> Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

<sup>(7)</sup> In accordance with the Article 92b(8), second subparagraph, of the CPR, as amended by Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) No 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU) (OJ L 437, 28.12.2020, p. 30), the programmes to which the Member States allocate REACT-EU resources will cover the period until 31 December 2022, subject to paragraph 4 of that Article.

<sup>(8)</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11) ('IPA II Regulation').

<sup>(9)</sup> Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 132, 3.5.2014, p. 32) ('IPA II Implementing Regulation').

<sup>(10)</sup> For cooperation programmes supported by the ERDF under the European territorial cooperation goal and for cross-border cooperation programmes supported by the IPA II, 'Member State' as mentioned in the present guidelines should be understood as the Member State hosting the managing authority.

<sup>(11)</sup> In accordance with Article 138(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384I, 12.11.2019, p. 1), ('the Withdrawal Agreement'), in respect of the implementation of the Union programmes and activities committed under the MFF 2014-2020 or previous financial perspectives, applicable Union law, including the rules on financial corrections and on clearance of accounts, will continue to apply to the United Kingdom after 31 December 2020 until the closure of those Union programmes and activities, unless technical measures have been adopted by Joint Committee in accordance with Article 138(5) of the Withdrawal Agreement. However, it should be noted that the provisions of these guidelines relating to REACT-EU resources do not apply to the United Kingdom, as per the fifth subparagraph of Article 154 of the CPR, as amended by Regulation (EU) 2020/2221.

accepts such a request, the Member State must submit the closure documents set out in Article 141 of the CPR (the 'closure documents') <sup>(12)</sup> by 15 February of the year following the accounting year considered. Early closure should follow all rules established for closure.

### 3. PREPARATION FOR CLOSURE

#### 3.1. Amendment of programmes

To ensure proper implementation of programmes and timely preparation of closure, Member States should submit requests for programme amendments <sup>(13)</sup>, including amendments of financing plans to transfer funds between the priority axes of the same programme under the same category of region and the same Fund, by 30 September 2023. This will permit decisions to be adopted before the final date of eligibility, 31 December 2023. Member States should notify revised financial tables to the Commission for non-substantial transfers in accordance with Article 30(5) and (6) of the CPR <sup>(14)</sup> and for the amendments related to the co-financing rate in accordance with Article 30(7) of the CPR <sup>(15)</sup> before the final date of eligibility, 31 December 2023.

Cross-border cooperation programmes under IPA II shall be amended in accordance with Article 31(5) IPA II Implementing Regulation. Programme amendments requiring a formal Commission decision should be submitted by 30 September 2023. With regard to transfers between priorities, Article 31(5A) IPA II Implementing Regulation applies. Such transfers should be notified by 31 December 2023.

Transfers of REACT-EU resources referred to in Article 92a of the CPR <sup>(16)</sup> between the ERDF and ESF, in accordance with the tenth subparagraph of Article 92b(5) of the CPR <sup>(17)</sup> can only apply to the ongoing year or to future years in the financing plan. Any requests for amendments of the financing plans affecting the resources available for programming for the years 2021 and 2022 involving a transfer between the ERDF and the ESF should be submitted by 15 November of the corresponding year, to allow for sufficient time for the decisions to be adopted before 31 December. Annual budgetary commitments for a given year cannot be modified beyond 31 December of that year.

#### 3.2. Submission/ notification and amendment of major projects <sup>(18)</sup>

As major projects involve considerable amounts of the Funds and are therefore important for the overall performance of the programmes, Member States should submit a request or a notification for major project approval or amendment by 30 September 2023. This will permit adoption of the decisions before the final date of eligibility, 31 December 2023.

The submission and notification of major projects must follow the procedures set out in Article 102 and 103 of the CPR and the information requirements of Article 101 of the CPR, of Commission Implementing Regulation (EU) 2015/207 <sup>(19)</sup> and of Commission Implementing Regulation (EU) No 1011/2014 <sup>(20)</sup>.

<sup>(12)</sup> Article 141 CPR applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

<sup>(13)</sup> Article 30(1) of the CPR.

<sup>(14)</sup> As amended by Regulation (EU) 2020/460 of 30 March 2020 and FAST CARE Regulation (EU) 2022/2039.

<sup>(15)</sup> As amended by FAST CARE Regulation (EU) 2022/2039.

<sup>(16)</sup> As amended by Regulation (EU) 2020/2221.

<sup>(17)</sup> As amended by Regulation (EU) 2020/2221.

<sup>(18)</sup> Major projects are not relevant to the programmes supported by the EMFF, ETC and IPA II programmes have not supported major projects.

<sup>(19)</sup> Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for the progress report, submission of the information on a major project, the joint action plan, the implementation reports for the Investment for growth and jobs goal, the management declaration, the audit strategy, the audit opinion and the annual control report and the methodology for carrying out the cost-benefit analysis and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council as regards the model for the implementation reports for the European territorial cooperation goal (OJ L 38, 13.2.2015, p. 1).

<sup>(20)</sup> Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014 laying down detailed rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission and the detailed rules concerning the exchanges of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies (OJ L 286, 30.9.2014, p. 1).

The requests for amendment of major projects must follow the same procedure as the one used for the initial notification or submission to the Commission (Article 102(1) or Article 102(2) of the CPR respectively). Amendments of major projects include phasing requests, amendments of major projects still to be completed in the 2014-2020 programming period and cancellation of major projects.

#### 4. FINANCIAL MANAGEMENT

##### 4.1. Decommittment

Unused commitments related to the last year of the programming period will be decommitted in the course of closure <sup>(21)</sup>. The part of commitments still open on 31 December 2023 will be decommitted if any of the closure documents has not been submitted to the Commission by 15 February 2025, or 1 March 2025 if extended by the Commission <sup>(22)</sup>.

In accordance with the second subparagraph of Article 92b(8) of the CPR <sup>(23)</sup>, the programmes to which the Member States allocate REACT-EU resources will cover the period until 31 December 2022, subject to paragraph 4 of that Article. Unused commitments related to REACT-EU resources will also be decommitted in the course of the closure of the programmes <sup>(24)</sup>.

##### 4.2. Clearance of the initial and annual pre-financing

The Commission will carry out clearance of initial pre-financing paid to Member States not later than when a programme is closed <sup>(25)</sup>. This also applies to additional pre-financing paid from the REACT-EU resources <sup>(26)</sup>.

Amounts paid as initial pre-financing can be cleared only with regard to declared eligible expenditure. Clearance of initial pre-financing may, however, start as soon as the programme receives through payments the maximum Funds contribution set out in the Commission decision approving the programme. In this event, the eligible expenditure included in the accounts will be used by the Commission, following calculation of the amount chargeable to the Funds and the EMFF, to clear the annual pre-financing first and the Commission will thereafter proceed with clearance of the initial pre-financing. Clearance will be done by programme, Fund and category of region, after acceptance of the accounts.

Amounts not recovered by the Commission in 2020 for the accounts submitted in 2020, will be cleared or recovered at closure <sup>(27)</sup>. Such amounts will be taken into account when calculating the final balance for the programme.

##### 4.3. Calculation of the final balance

For the final accounting year, as for any other accounting year, the Commission will reimburse 90 % of the amount claimed by the Member State by applying the co-financing rate for each priority to the eligible expenditure for the priority included in the interim payment applications, provided there are available commitments in the programme, and subject to available funding.

The Commission will determine the amount chargeable to the Funds and to the EMFF for the final accounting year in accordance with Article 139 of the CPR. Article 139(6) of the CPR establishes that, on the basis of the accepted accounts, the Commission calculates the amount chargeable to the Funds and to the EMFF for the accounting year taking into account both the amounts in the accounts and the total amount of payments made by the Commission during the accounting year.

<sup>(21)</sup> Article 86(2) of the CPR; applies to IPA II by virtue of Article 46(4) IPA II Implementing Regulation.

<sup>(22)</sup> Article 86(4) and 136(2) of the CPR; apply to IPA II by virtue of Article 46(4) IPA II Implementing Regulation.

<sup>(23)</sup> As amended by Regulation (EU) 2020/2221.

<sup>(24)</sup> Fifth subparagraph of Article 92b(5) of the CPR, as amended by Regulation (EU) 2020/2221.

<sup>(25)</sup> Article 82 of the CPR; applies to IPA II by virtue of Article 46(2) IPA II Regulation.

<sup>(26)</sup> Third subparagraph of Article 92b(7) of the CPR, as amended by Regulation (EU) 2020/2221.

<sup>(27)</sup> Article 139(7) of the CPR, as amended by Regulation (EU) 2020/460 of 30 March 2020; applies to IPA II by virtue of Article 46(5) IPA II Regulation.

Following the calculation of the amount chargeable to the Funds and the EMFF, the Commission will clear the annual and/or initial pre-financing. In accordance with the Article 139(7), second subparagraph, of the CPR <sup>(28)</sup>, amounts recoverable but not recovered by the Commission for the accounts submitted in 2020 will be cleared or recovered at closure.

In accordance with Article 130(3) of the CPR <sup>(29)</sup>, the contribution from the Funds or the EMFF through payment of the final balance must not exceed:

- at the level of the priority per Fund and per category of region,
  - by more than 15 %, the contribution from the Funds or the EMFF for each priority per Fund and per category of region as set out in the Commission decision approving the programme;
- at the level of the programme,
  - the eligible public expenditure declared; or
  - the contribution from each Fund and category of region to each programme as set out in the Commission decision approving the programme; whichever is the lower.

REACT-EU resources constitute external assigned revenue which, in accordance with Article 21(1) of Regulation (EU, Euratom) No 2018/1046 <sup>(30)</sup>, shall be used to finance specific items of expenditure. REACT-EU resources are kept on specific budget lines, separate from the non-REACT-EU ERDF and ESF budget lines. Therefore, it is not possible to apply the 15 % flexibility between them, as this would imply a modification of the budgetary commitment after the year in which it was made. As a result, in the case of REACT-EU, the 15 % flexibility will only apply between the REACT-EU priorities of the same Fund within the same programme, for instance between two REACT-EU ERDF priorities.

The amount due to be paid/recovered calculated in accordance with the rules explained above will constitute the final balance for the programme.

An example of the application of the 15 % flexibility and capping of public expenditure within the calculation of the final balance for a programme is set out in Annex IV to these guidelines.

#### 4.4. **Overbooking**

Overbooking is the practice of the Member States of declaring to the Commission eligible expenditure in excess of the maximum Funds contribution set out in the Commission decision approving the programme.

As payment applications are cumulative only within a given accounting year, if a priority reaches the maximum Funds contribution set out in the Commission decision approving the programme before the final accounting year, expenditure declared to the Commission in excess of this maximum Funds contribution for the priority will not be carried over to the next accounting year.

Certifying authorities may therefore decide that amounts entered in their accounting system in an accounting year are declared to the Commission in a subsequent accounting year or indeed in the final accounting year for the purposes of the closure.

<sup>(28)</sup> As amended by Regulation (EU) 2020/460 of 30 March 2020.

<sup>(29)</sup> As amended by Regulation (EU) 2020/558 of 23 April 2020 and FAST CARE Regulation (EU) 2022/2039; applies to IPA II by virtue of Article 46(2) IPA II Regulation.

<sup>(30)</sup> Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1) ('the Financial Regulation').

Taking the above into account, and should Member States wish to have overbooked expenditure available in the final accounting year, they could refrain from declaring to the Commission overbooked expenditure in any accounting year before the final accounting year and use this expenditure considering the needs of the programme. Member States may consider declaring overbooked expenditure only in the final accounting year, except if:

- they need to declare it in an earlier accounting year to replace irregular amounts detected (within the limits of the Funds or the EMFF contribution for the priority); or
- they modify the financing plan of the programme to increase the Funds or the EMFF contribution for the overbooked priority in accordance with the rules applicable to the programme amendments.

If overbooked expenditure is not needed before the final accounting year, Member States would declare to the Commission such expenditure, including expenditure incurred and paid by beneficiaries during the previous accounting years, only in the final accounting year (or at an earlier stage if a Member State opts for an early closure). Overbooked expenditure declared to the Commission in the final accounting year will be considered at and after closure to replace irregular amounts (declared in any accounting year, including the final accounting year) and for the 15 % flexibility as per Article 130(3) of the CPR <sup>(31)</sup>. Without prejudice to Article 145(7) of the CPR <sup>(32)</sup>, the Member States may be able to replace irregular amounts, which are detected after the submission of the accounts for the final accounting year/after closure, using overbooked expenditure.

## 5. INDICATORS AND PERFORMANCE FRAMEWORK AT CLOSURE

At closure for the EMFF, data for indicators must be transmitted in the last annual implementation report of the programme using the template tables 1, 2 and 3 set out in the Annex to Commission Implementing Regulation (EU) No 1362/2014 <sup>(33)</sup>.

At closure for the ERDF, ESF and Cohesion Fund, data for output and result indicators must be transmitted in the final implementation report of the programme using the template tables 1, 2, 3 and 4 set out in Annex V <sup>(34)</sup> to Commission Implementing Regulation (EU) 2015/207. In the column 'Observations', Member States should explain (where necessary) the year 2023 achievement values, especially in cases where they are significantly different from the set targets (i.e. a deviation of more than 20 %). Data for the indicators selected for the performance framework must be reported in table 5 of Annex V <sup>(35)</sup> to Commission Implementing Regulation (EU) 2015/207.

Member States are required to include in the final implementation report the following information on indicators:

- cumulative (annual for ESF): values for output and result indicators up to and including the year 2023. For ERDF and Cohesion Fund output indicators and for ESF outputs and result indicators, values will relate to operations that are co-financed by the programme;
- any issues affecting the performance of the programme, including the achievement of the targets;
- (for ERDF and Cohesion Fund) the year 2023 values for the result indicators of the programmes either taken from statistics or provided by information sources specific to the priority (such as surveys), at particular points in time. Such values must encompass the contribution of the programme and the contribution of other factors. They relate to all potential beneficiaries (the same unit of analysis as for the definition of the baseline).

<sup>(31)</sup> As amended by Regulation (EU) 2020/558 of 23 April 2020 and FAST CARE Regulation (EU) 2022/2039.

<sup>(32)</sup> Applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

<sup>(33)</sup> Commission Implementing Regulation (EU) No 1362/2014 of 18 December 2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes (OJ L 365, 19.12.2014, p. 124).

<sup>(34)</sup> Tables 1 and 2 of Annex X to Commission Implementing Regulation (EU) No 2015/207 for ETC and IPA II (by virtue of Article 42(1) IPA II Implementing Regulation).

<sup>(35)</sup> Table 3 of Annex X to Commission Implementing Regulation (EU) No 2015/207 for ETC and IPA II.



Member States are recommended not to revise the targets beyond 2022, except for cases where the revision is due to changes in allocations for a given priority or phasing of certain operations. The achievement of targets will be assessed by the Commission taking into account the information provided in the final implementation report of the programme, including elements and factors that might have seriously affected the achievement of the targets set.

### 5.1. Reporting output indicators achievement values

Output indicator achievement values reported in the final implementation report or the last annual implementation report for the EMFF of a programme should refer to what has been delivered by the operations supported under the programme. Although the indicator achievement values should correspond to the situation at 31 December 2023, in practice, outputs delivered by the co-financed operations until the date of submission of the final implementation report or the last annual implementation report for the EMFF of the programme can be reported in these documents. Programme audit authorities should conclude on the reliability of performance data in the annual control report of the final accounting year.

For phased operations (see section 6 of these guidelines), only outputs actually delivered by the phase included in the 2014-2020 programming period can be reported in the final implementation report of the programme. Other outputs (together with the related expenditure) must be reported under the 2021-2027 programming period.

For non-functioning operations (see section 7 of these guidelines), only outputs actually delivered based on the expenditure declared under the programme should be reported in the final implementation report of the programme. In certain cases, this will mean zero output is reported. Outputs delivered by non-functioning operations will be assessed after 15 February 2027, the deadline for Member States to physically complete or fully implement such operations and ensure they contribute to the objectives of the relevant priorities.

### 5.2. Implications of the performance framework for closure

The Commission will assess the achievement of the target values for indicators in the performance framework based on the values reported in the final implementation report or the last annual implementation report for the EMFF of the programme.

Member States may propose a revision of targets through a programme amendment in duly justified cases, such as a significant change in the economic, environmental and labour market conditions, and when the revision is a consequence of changes in allocations for a given priority<sup>(36)</sup>. The revision of the targets may be proposed by Member States through a programme amendment in case of phasing of certain operations in accordance with section 6 of these guidelines.

A serious failure to achieve the targets relating only to financial indicators, output indicators and key implementation steps may give rise to financial corrections if the conditions set out in Article 22(7) of the CPR are met<sup>(37)</sup>. A serious failure is assessed in accordance with criteria set out in Article 6(3) and (4) of the Commission Implementing Regulation (EU) No 215/2014<sup>(38)</sup>.

<sup>(36)</sup> Point 5 of Annex II to the CPR; applies to IPA II by virtue of Article 34(1) IPA II Implementing Regulation and Article 8(2), 1<sup>st</sup> subparagraph, point (b)(v) ETC.

<sup>(37)</sup> Articles 22(7) and 144(4) of the CPR; the latter applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

<sup>(38)</sup> Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014 laying down rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to methodologies for climate change support, the determination of milestones and targets in the performance framework and the nomenclature of categories of intervention for the European Structural and Investment Funds (OJ L 69, 8.3.2014, p. 65). Article 6 Regulation (EU) 215/2014 applies to IPA II by virtue of Article 34(1) of IPA II Implementing Regulation and Article 8(2), 1<sup>st</sup> subparagraph, point (b)(v) ETC.

Where a programme authority decides to include non-functioning operations in a programme, the lack of outputs may adversely affect the achievement of the targets selected for the performance framework. If the non-functioning operations included in the programme result in a serious failure to achieve the targets selected for the performance framework, the undertaking by the Member State to physically complete or fully implement such operations and to ensure they contribute to the objectives of the relevant priorities by 15 February 2027, will be assimilated to a corrective action in order to achieve the targets, referred to in Article 22(7) of the CPR. This is subject to the condition that the necessary outputs are delivered, by the operations concerned, in the additional period granted by section 7 of these guidelines. A financial correction may be applied if the outputs are not delivered by 15 February 2027.

If phasing of certain operations results in a serious failure to achieve the targets selected for the performance framework, the Commission may decide to apply a financial correction under Article 22(7) of the CPR.

In accordance with Article 2 of Commission Delegated Regulation (EU) No 480/2014 <sup>(39)</sup>, financial corrections will be determined on a flat rate basis having regard to the achievement/absorption coefficient, i.e., the average of final achievement rates for all output indicators and key implementation steps selected for the performance framework under a given priority divided by the final achievement rate for the financial indicator selected for the performance framework under a given priority. In accordance with Article 3(2) of the same Delegated Regulation, the flat rate correction is to be applied to the contribution from the Fund based on the expenditure declared by the Member State under the priority concerned. Under Article 3(4) of the Delegated Regulation, the level of financial correction resulting from the application of the flat rate must not be disproportionate.

In accordance with Article 92b(13)(c) of the CPR <sup>(40)</sup>, the requirements on the performance reserve and the application of the performance framework do not apply to the REACT-EU resources.

## 6. PHASING OF CERTAIN OPERATIONS OVER TWO PROGRAMMING PERIODS

This section is based on Article 118 of Regulation (EU) 2021/1060 of the European Parliament and of the Council <sup>(41)</sup> which provides conditions for the 'selection of an operation consisting of the second phase of an operation selected for support and started under Regulation (EU) No 1303/2013', and Article 118a of Regulation (EU) 2021/1060 which provides conditions for 'operations subject to phased implementation that were selected for support before 29 June 2022 under Regulation (EU) No 1303/2013' and the Fund-specific Regulations <sup>(42)</sup> <sup>(43)</sup>.

<sup>(39)</sup> Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ L 138, 13.5.2014, p. 5). Articles 2 and 3 of Regulation (EU) 480/2014 apply to IPA II by virtue of Article 34(1) of IPA II Implementing Regulation and Article 8(2), 1<sup>st</sup> subparagraph, point (b)(v) ETC.

<sup>(40)</sup> As amended by Regulation (EU) 2020/2221.

<sup>(41)</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159), as amended by FAST CARE Regulation (EU) 2022/2039.

<sup>(42)</sup> Regulations referred to in footnotes 2 to 6.

<sup>(43)</sup> Not applicable to cross-border cooperation programmes under the Instrument for Pre-accession Assistance (IPA II).

Operations should be physically completed or fully implemented and contributing to the objectives of the relevant priorities at the time of submission of the closure documents. However, as it is sometimes difficult to align operations' implementation with the programming period and in order to ensure that operations are completed and contribute to the policy goals, in accordance with Article 118 of Regulation (EU) 2021/1060 phasing operations into the 2021-2027 programming period is possible (with the exception of financial instruments) provided that all the following conditions are met:

- the operation was not co-financed by the Funds or the EMFF under the 2007-2013 programming period;
- the total cost of both phases of the operation exceeds EUR 5 million;
- the operation has two identifiable phases from a financial point of view;
- there is a detailed and complete audit trail for the expenditure to ensure that the same expenditure is not declared twice to the Commission;
- the second phase of the operation is eligible for co-financing from the ERDF, the ESF+, the Cohesion Fund or the EMFAF<sup>(44)</sup> under the 2021-2027 programming period and is compliant with all applicable rules of the 2021-2027 programming period;
- the Member State undertakes, in the final implementation report submitted in accordance with Article 141 of the CPR, or in the context of the EMFF in the last annual implementation report, to complete the second and final phase during the 2021-2027 programming period.

Likewise, notwithstanding Article 118 of Regulation (EU) 2021/1060, operations that were selected for support and started before 29 June 2022 under the CPR and the Fund-specific Regulations<sup>(45)</sup> are deemed eligible for support also under Regulation (EU) 2021/1060 and the corresponding Fund-specific Regulations in the 2021-2027 programming period<sup>(46)</sup> in accordance with Article 118a of this Regulation<sup>(47)</sup>. Therefore both phases of these phased projects are subject to all the eligibility conditions of the 2014-2020 programming period. The 2021-2027 rules on thematic concentration of funds remain unchanged.

By way of derogation from Article 73(1) and (2) of Regulation (EU) 2021/1060, the managing authority<sup>(48)</sup> may decide to grant support to such operations under Regulation (EU) 2021/1060 provided the following conditions are met:

- the total cost of both phases of the operation exceeds EUR 1 million;
- the operation has two phases identifiable from a financial point of view;
- there is a detailed and complete audit trail for the expenditure to ensure that the same expenditure is not declared twice to the Commission;

<sup>(44)</sup> Under the 2021-2027 programming period, the title of the European Maritime and Fisheries Fund (EMFF) is changed to the European Maritime, Fisheries and Aquaculture Fund (EMFAF).

<sup>(45)</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council, Regulation (EU) No 1304/2013 of the European Parliament and of the Council, Regulation (EU) No 1300/2013 of the European Parliament and of the Council, Regulation (EU) No 1299/2013 of the European Parliament and of the Council and Regulation (EU) No 2014/508 of the European Parliament and of the Council.

<sup>(46)</sup> Article 118a of Regulation (EU) 2021/1060, introduced by FAST CARE Regulation (EU) 2022/2039.

<sup>(47)</sup> As amended by FAST CARE Regulation (EU) 2022/2039.

<sup>(48)</sup> Monitoring Committee in the case of ETC [and IPA II].

- the operation falls within actions programmed under a relevant specific objective and is attributed to a type of intervention in accordance with Annex I to Regulation (EU) 2021/1060 <sup>(49)</sup>;
- the Member State undertakes, in the final implementation report submitted in accordance with Article 141 of the CPR, or in the context of the EMFF in the last annual implementation report, to complete the second and final phase during the 2021-2027 programming period.

Member States should submit, with the final implementation report (or, for the EMFF, with the last annual implementation report), a list of all phased operations (in accordance with Article 118 and/or Article 118a of Regulation (EU) 2021/1060), using the template provided in Annex I to these guidelines.

In doing so, Member States undertake that the operations listed in Annex I to these guidelines will be functioning, i. e. physically completed or fully implemented and contributing to the objectives of the relevant priorities by the deadline to submit the assurance package for the final accounting year of the 2021-2027 programming period. An operation phased in this way is considered as a whole and regarded as completed only once both phases have been physically completed or fully implemented and have contributed to the objectives of the relevant priorities. Failure to complete a phased operation as planned may give rise to financial corrections for both phases of the operation.

In order to request formally the phasing of a major project, Member States should submit or notify either a major project which foresees phasing over two programming periods or a request for amendment of a major project already approved in 2014-2020 (see section 3.2 of these guidelines).

In accordance with section 11.2 of these guidelines, the list of phased operations submitted with the final implementation report (or, for the EMFF, the last annual implementation report) using the template in Annex I of these guidelines may not be modified after the deadline for the submission of the closure documents, except when the Commission requests a modification or in the cases of clerical mistakes.

## 7. NON-FUNCTIONING OPERATIONS

As stated above, at the time of submission of the closure documents, Member States must ensure that all operations (including the operations phased from the 2007-2013 programming period) in the programme are functioning, i.e., they have been physically completed or fully implemented and have contributed to the objectives of the relevant priorities <sup>(50)</sup>.

Member States are invited to exclude from the accounts for the final accounting year expenditure incurred and paid for operations that are not physically completed or fully implemented and/or not contributing to the objectives of the relevant priorities ('non-functioning operations'). Member States may however decide to include in the accounts for the final accounting year such expenditure provided that:

- the total cost of each non-functioning operation exceeds EUR 1 million; and
- the total expenditure certified to the Commission for the non-functioning operations does not exceed 20 % of the eligible total expenditure (EU and national) decided for the programme.

By including expenditure for non-functioning operations in the accounts for the final accounting year, Member States undertake to physically complete or fully implement all such non-functioning operations and ensure they contribute to the objectives of the relevant priorities not later than by 15 February 2027, and to reimburse the amounts concerned to the EU budget if such operations are non-functioning by this date.

<sup>(49)</sup> As amended by FAST CARE Regulation (EU) 2022/2039.

<sup>(50)</sup> An operation, which fulfilled the requirement of Article 71 of the CPR but is no longer functioning at the time of the closure of the programme, should not be considered as a non-functioning operation.

Member States should submit, with the final implementation report (or, for the EMFF, the last annual implementation report), a list of the non-functioning operations included in the programme, using the template provided in Annex II to these guidelines. Member States should monitor the non-functioning operations and by 15 February 2027, they should provide the Commission with the necessary information on their physical completion or full implementation and their contribution to the objectives of the relevant priorities.

If the operations are non-functioning by 15 February 2027, Member States, taking into account the status of completion and implementation as well as the achievement of the overall objectives of the operations, should provide the Commission with the amounts to be corrected and justification as to how the amounts were calculated. Upon receipt of this information, the Commission will proceed with the recovery of the amounts concerned. Any irregular amounts may be replaced using overbooked expenditure (if available).

If the Commission disagrees with the calculation of the amounts to be corrected, it may decide to initiate a financial correction procedure.

In addition, the lack of physical completion or full implementation of the operations and/or their lack of contribution to the objectives of the relevant priorities by the above deadline may give rise to a financial correction for a serious failure to achieve the targets selected for the performance framework <sup>(51)</sup>.

#### 8. OPERATIONS AFFECTED BY ONGOING NATIONAL INVESTIGATIONS OR SUSPENDED BY A LEGAL PROCEEDING OR BY AN ADMINISTRATIVE APPEAL HAVING SUSPENSORY EFFECT

Before submitting the closure documents, Member States should decide whether or not to exclude from the accounts for the final accounting year all or part of the expenditure for any operation affected by ongoing national investigations or suspended by a legal proceeding or by an administrative appeal having suspensory effect.

Examples of ongoing national investigations include investigations carried out by national bodies different to the programme authorities (such as police investigations, judicial or criminal investigations) the outcome of which may affect the expenditure's legality and regularity.

Suspension of an operation by a legal proceeding or by an administrative appeal does not extend the final date for incurring eligible expenditure set out in Article 65(2) of the CPR <sup>(52)</sup>.

No expenditure may be declared for operations suspended by a legal proceeding or by an administrative appeal having suspensory effect after the submission of the final application for an interim payment for the final accounting year.

If operations affected by ongoing national investigations or suspended by a legal proceeding or by an administrative appeal having suspensory effect are not excluded from the accounts for the final accounting year, Member States should submit, with the final implementation report, a list of such operations using the template provided in Annex III to these guidelines.

Member States must inform <sup>(53)</sup> the Commission about the outcome of national investigations, legal proceedings and administrative appeals. Where irregularities are established, the Commission will proceed with recovery of the amounts concerned. Any irregular amounts may be replaced using overbooked expenditure (if available).

<sup>(51)</sup> Article 22(7) of the CPR.

<sup>(52)</sup> Article 43(1) IPA II Implementing Regulation sets a final date for the eligibility of expenditure paid for IPA II cross-border cooperation programmes at 31 December 2023.

<sup>(53)</sup> Without prejudice to the irregularity reporting obligations in accordance with Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund (OJ L 293, 10.11.2015, p. 1). Regulation (EU) 2015/1970, based on Article 122(2) CPR, applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

## 9. EXPENDITURE AFFECTED BY ONGOING OLAF INVESTIGATIONS, OLAF REPORTS OR AUDITS OF THE COMMISSION OR THE EUROPEAN COURT OF AUDITORS

Before submitting the closure documents, Member States are invited to exclude from the accounts for the final accounting year expenditure affected by potential irregularities identified in ongoing OLAF investigations (if such investigations and the concerned affected expenditure are known to the Member States at that stage), OLAF reports or the Commission's or the European Court of Auditors' audits. If the Member State contests such findings or the concerned affected expenditure amounts and includes the affected expenditure in the accounts, the Commission will continue the contradictory procedure, which may lead to a financial correction. Without prejudice to Article 145(7) of the CPR <sup>(54)</sup>, any irregular amounts may be replaced using overbooked expenditure (if available).

## 10. IRREGULARITIES

The accounts for any accounting year, including the final one, must include at the level of each priority and, where applicable, at the level of Fund and category of region:

- the amounts withdrawn and recovered during the accounting year;
- the amounts to be recovered at the end of the accounting year;
- the recoveries effected in accordance with Article 71 of the CPR; and
- the irrecoverable amounts <sup>(55)</sup>.

The format for reporting withdrawals and recoveries, amounts to be recovered, recoveries effected in accordance with Article 71 of the CPR and irrecoverable amounts are set out in the model for the accounts established in Annex VII to Commission Implementing Regulation (EU) No 1011/2014 (Appendices 2, 3, 4 and 5 respectively) <sup>(56)</sup>.

### 10.1. Treatment of irregularities in the final accounting year

Given that after the final application for an interim payment to be submitted by 31 July 2024, no subsequent payment application can be submitted to the Commission, any necessary deductions (notwithstanding the fact that they may refer to the expenditure declared in previous accounting years) must be carried out in the accounts for the final accounting year and reported in accordance with the model for the accounts, in particular Appendices 1, 2 and 8 thereto.

This does not concern amounts to be recovered, irrecoverable amounts or amounts referred to in sections 8 and 9 of these guidelines for which the Member State decided to maintain the affected expenditure in the accounts.

If pursuant to Article 137(2) of the CPR <sup>(57)</sup>, the Member State decides to exclude expenditure from the accounts for the final accounting year due to an ongoing assessment of that expenditure's legality and regularity, if such expenditure is subsequently found to be legal and regular, it cannot be re-declared because there will be no subsequent applications for interim payment in which to include it.

### 10.2. Amounts to be recovered and irrecoverable amounts

In the accounts for the final accounting year, Member States may report amounts to be recovered and irrecoverable amounts relating to expenditure declared not only in the previous accounting years, but also in the final accounting year <sup>(58)</sup>. Member States may also report in the accounts for the final accounting year amounts that have become amounts to be recovered or irrecoverable amounts after the end of the final accounting year but before submission of the closure documents.

<sup>(54)</sup> Applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

<sup>(55)</sup> Article 137(1)(b) of the CPR.

<sup>(56)</sup> Annex VII, based on Article 137(3) CPR, applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

<sup>(57)</sup> Applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

<sup>(58)</sup> In order to allow Member States to avail of the possibility under the CPR to declare amounts to be recovered as irrecoverable at closure or after closure for the amounts to be recovered relating to the final accounting year of the programming period.

The Commission will exclude the amounts reported as to be recovered and irrecoverable from the calculation of the final balance <sup>(59)</sup>.

The Commission will decide whether to reimburse the reported amounts from the budget of the Union, based on the outcome of the recovery process and/or of the Commission's assessment in relation to irrecoverable amounts, in accordance with the procedure established in Commission Delegated Regulation (EU) 2016/568 <sup>(60)</sup>. Amounts in Appendices 3 and 5 of the accounts related to expenditure declared in the final accounting year should also be included in Appendix 1 of the accounts to allow for their possible future reimbursement by the budget of the Union, pending the outcome of such procedures or assessments.

The Member State should inform the Commission at the earliest convenience on the outcome of the pending recovery process.

If a Member State concludes that irrecoverable amounts should be charged to the budget of the Union, it should submit a request to the Commission to confirm such a conclusion following the form set out in Annex to Commission Delegated Regulation (EU) 2016/568. The Commission will determine whether the irrecoverable amounts should be charged to the budget of the Union in accordance with the rules established in Article 3 of the same Regulation. This concerns irrecoverable amounts included in Appendix 5 ('irrecoverable amounts') of the programme accounts set out in Annex VII to Commission Implementing Regulation (EU) No 1011/2014 and also amounts included in Appendix 3 ('amounts to be recovered') of the same Annex as amounts to be recovered which may become irrecoverable amounts after the accounts for the final accounting year have been submitted.

### 10.3. **Risk of irregularities leading to additional verifications by the programme authorities of expenditure already declared to the Commission**

If a risk of irregularities has been detected which leads to additional verifications by programme authorities of expenditure already declared to the Commission, national authorities must comply with the following deadlines:

- for expenditure deducted from the accounts of an accounting year preceding the final accounting year in accordance with Article 137(2) of the CPR, the additional verifications must be finalised in time to enable the declaration of the expenditure at the latest in the final application for an interim payment for the final accounting year, for which the deadline for submission is 31 July 2024;
- in case of a risk of irregularities leading to additional verifications of expenditure declared in the final accounting year, the decision about its legality and regularity and therefore the decision whether to keep this expenditure in or deduct it from the accounts for the final accounting year, should be taken at the moment of the submission of the accounts, for which the deadline for submission is 15 February 2025, or 1 March 2025, if extended by the Commission.

### 10.4. **Amounts recovered after closure**

If the Member State established irregularities after closure in relation to the expenditure included in the accounts, the amounts recovered after closure must be repaid to the budget of the Union. Any irregular amounts may be replaced using overbooked expenditure (if available).

<sup>(59)</sup> This will result in a lower amount to be paid or cleared in cases of positive final balance or a higher amount to be recovered in cases for which the final balance is a recovery.

<sup>(60)</sup> Commission Delegated Regulation (EU) 2016/568 of 29 January 2016 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund (OJ L 97, 13.4.2016, p. 1). Regulation (EU) 2016/568, based on Article 122(2) CPR, applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

## 11. SUBMISSION OF CLOSURE DOCUMENTS

### 11.1. Deadline for submission of closure documents

The closure documents must be submitted by 15 February 2025 <sup>(61)</sup> (except for the last annual implementation report of the EMFF which must be submitted by 31 May 2024 <sup>(62)</sup>). This deadline may be extended by the Commission to 1 March 2025, upon communication by the Member State concerned, in accordance with Article 63(7) of the Financial Regulation.

The Commission will automatically decommit the part of the commitments still open on 31 December 2023 if any of the closure documents has not been submitted to the Commission by 15 February 2025 (or 1 March 2025, if extended by the Commission) <sup>(63)</sup>. In such a case, closure of the programme will be carried out on the basis of the available information.

Failure to submit any of the closure documents may be an indication of a serious deficiency in the management and control system of the programme, which puts at risk the Union contribution already paid to the programme. The Commission may decide to impose a financial correction in such cases.

### 11.2. Modification of the closure documents after the deadline for their submission

Member States may not modify any of the closure documents after the deadline for their submission, except when the Commission requests a modification or in case of clerical mistakes.

### 11.3. Availability of documents

In accordance with Article 140(1) of the CPR <sup>(64)</sup>, the retention period for the availability of documents could be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.

If the Member State opted to phase an operation over two programming periods (as per section 6 of these guidelines), the Commission will make a request for an interruption of the retention period for the first phase of such operation until the retention period starts for the second phase of the operation in accordance with the fourth subparagraph of Article 140(1) of the CPR.

If the Member State opted to use the additional time granted by the Commission to physically complete or fully implement the non-functioning operation and to ensure it contributes to the objectives of the relevant priorities (as per section 7 of these guidelines), the Commission will make a request, in accordance with the fourth subparagraph of Article 140(1), for an interruption of the retention period for such operation until it is notified to the Commission as functioning, i.e. physically completed or fully implemented and have contributed to the objectives of the relevant priorities.

The interruption is justified by the fact that the overall eligibility and functioning of the whole operation (both phases) can only be verified or audited by the Commission services or the European Court of Auditors upon its completion.

<sup>(61)</sup> Articles 138 and 141(1) of the CPR and Article 63(5) of the Financial Regulation. The CPR provisions apply to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

<sup>(62)</sup> Article 114(1) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

<sup>(63)</sup> Article 136(2) of the CPR; applies to IPA II by virtue of Article 46(4) IPA II Implementing Regulation.

<sup>(64)</sup> Applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.



## 12. CONTENT OF CLOSURE DOCUMENTS

### 12.1. Final implementation report

The final implementation report of the programmes supported by the ERDF, ESF and Cohesion Fund must include the information described in Article 50(2) and (5) (for the Investment for growth and jobs goal, for the European territorial cooperation goal and for IPA II programmes) <sup>(65)</sup> and Article 111(3) of the CPR (for the Investment for growth and jobs goal) <sup>(66)</sup>.

The structure of the final implementation report is set out in Annex V (Investment for growth and Jobs goal) and Annex X (European Territorial Cooperation goal) to Commission Implementing Regulation (EU) 2015/207 <sup>(67)</sup>.

In accordance with the third subparagraph of Article 92b(7) of the CPR <sup>(68)</sup>, Member States shall report in the final implementation report on the use made of the additional initial pre-financing from the REACT-EU resources to address the migratory challenges faced as a result of the military aggression by the Russian Federation and the contribution of that additional initial pre-financing to the recovery of the economy.

Member States shall also report in the final implementation report on the fulfilment of the condition set out in the fourth subparagraph of Article 98(4) of the CPR <sup>(69)</sup>, which requires that where a programme has a dedicated priority axis to finance operations addressing the migratory challenges as a result of the military aggression by the Russian Federation by making use of the flexibility provided by the first and second sub-paragraphs of Article 98(4) CPR, at least 30 % of the financial allocation of that priority axis shall be attributed to operations which have beneficiaries that are local authorities and civil society organisations operating in local communities. Where this condition is not fulfilled, reimbursement by the Commission under the priority axis concerned shall be reduced proportionately to ensure that this condition is respected when calculating the final balance to be paid to the programme.

The final implementation report should additionally include:

- a list of all phased operations with the amount of the eligible expenditure for the first phase incurred in the 2014-2020 programming period in accordance with section 6 of these guidelines. The list should follow the template in Annex I to these guidelines;
- a list of all non-functioning operations in accordance with section 7 of these guidelines. The list should follow the template in Annex II to these guidelines;
- a list of all operations affected by ongoing national investigations or suspended by a legal proceeding or by an administrative appeal having suspensory effect in accordance with section 8 of these guidelines. The list should follow the template in Annex III to these guidelines.

For the programmes supported by the EMFF a final implementation report is not required. Instead, the last annual implementation report (which should include the tables in Annex I, II and III to these guidelines, where applicable) must be submitted by 31 May 2024, and include the information described in Article 50(2) of the CPR and Article 114 of the Regulation (EU) No 508/2014. The structure of such annual implementation report is set out in Annex to Commission Implementing Regulation (EU) No 1362/2014.

<sup>(65)</sup> Apply to IPA II by virtue of Article 42 IPA II Implementing Regulation.

<sup>(66)</sup> Article 14 ETC, also applies to IPA II by virtue of Article 42(1) IPA II Implementing Regulation.

<sup>(67)</sup> Applies to IPA II by virtue of Article 42(1) IPA II Implementing Regulation.

<sup>(68)</sup> As amended by Regulation (EU) 2022/613 of 12 April 2022.

<sup>(69)</sup> As amended by FAST CARE Regulation (EU) 2022/2039. Article 98 only applies to the Investment for growth and jobs goal.

### 12.1.1. *Reporting on major projects* <sup>(70)</sup>

By including a major project in the final implementation report (table 12 of Annex V to the Implementing Commission Regulation (EU) 2015/207), the Member State confirms that the major project is physically completed or fully implemented and contributes to the objectives of the relevant priorities. Major projects that are non-functioning, or which are phased, should be reported in accordance with sections 6 and 7 of these guidelines.

In the column 'Observations' in table 12, Member States should indicate whether the major project has been implemented in accordance with the documentation submitted or notified to the Commission under Article 102 or 103 of the CPR which formed the basis for the Commission decision approving the financial contribution to the project, in the form of the decision or tacit agreement. Member States should describe and explain any divergence in the implementation of the major project compared to what was stated in the above-mentioned documentation.

The Commission will assess compliance of the implemented major project with the documentation submitted or notified (and the Commission decision approving the financial contribution where relevant). In doing so, the Commission will take into account the reasons and consequences of any non-compliance of the implemented major project with the documentation supporting the Commission's approval and may impose a financial correction.

### 12.1.2. *Acceptance and deadlines*

The Commission will examine the final implementation report and inform the Member State of its observations within five months of the date of its receipt <sup>(71)</sup>. Where the Commission does not provide observations within this deadline, the report will be deemed to be accepted.

Member States will be given two months to respond to the Commission's observations on a final implementation report. The Commission may extend this deadline by a further two months, upon request by a Member State. The final implementation report will be accepted if the Commission has no observations or if all the Commission's observations have been adequately addressed.

## 12.2. **Accounts**

The accounts for the final accounting year, as for any other accounting year, must include the information described in Article 137(1) of the CPR. The structure of the accounts is set out in Annex VII to Commission Implementing Regulation (EU) No 1011/2014. They need to be prepared taking into consideration the specific requirements for the final accounting year (see in particular section 10 above).

### 12.2.1. *Examination and acceptance*

The examination and acceptance of the accounts for the final accounting year follows the same rules as established for the examination and acceptance of accounts for any other accounting year.

The Commission will apply procedures for the examination and acceptance of the accounts for the final accounting year and inform the Member State by 31 May 2025 as to whether it accepts that the accounts are complete, accurate and true <sup>(72)</sup>.

<sup>(70)</sup> Major projects are not relevant to the programmes supported by the EMFF. ETC and IPA II programmes have not supported major projects.

<sup>(71)</sup> Article 50(7) of the CPR; applies to IPA II by virtue of Article 42(1) IPA II Implementing Regulation, referring in turn to Article 50 CPR.

<sup>(72)</sup> Article 139 of the CPR; applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

### 12.3. Management declaration and annual summary

The structure of the management declaration for the final accounting year, as for any other accounting year, is set out in Annex VI to Commission Implementing Regulation (EU) 2015/207<sup>(73)</sup>.

### 12.4. Audit opinion and control report

The structure of the audit opinion for the final accounting year, as for any other accounting year, is set out in Annex VIII to Commission Implementing Regulation (EU) 2015/207<sup>(74)</sup>.

The structure of the control report for the final accounting year, as for any other accounting year, is set out in Annex IX to the Commission Implementing Regulation (EU) 2015/207<sup>(75)</sup>.

Where a common management and control system applies to more than one programme, the Member State can opt to provide the required information in a single control report covering all the programmes concerned.

The control report for the final accounting year should also include:

- information on open findings stemming from the audits carried out by the Commission services or the European Court of Auditors, which should be provided in section 8 'Other information' of the control report;
- assurance on the legality and regularity of expenditure under financial instruments (Articles 41 and 42 of the CPR);
- assurance on the reliability of the data relating to indicators;
- assurance that the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds and the EMFF paid by the Commission to the Member State (Article 129 of the CPR<sup>(76)</sup>).

#### 12.4.1. Financial instruments<sup>(77)</sup>

For financial instruments, programme audit authorities should obtain assurance that the final amounts declared at closure are eligible. This information should be provided in section 9 'Overall level of assurance' of the control report and, if relevant, in other sections of the report (in particular, sections 4 'System audits' and 5 'Audits of operations').

For financial instruments subject to phased applications for interim payments (advance payments tranches)<sup>(78)</sup>, the eligibility of expenditure related to the last tranche, as well as up to 15 % of the amounts included in previous tranches, might not be covered by previous audits of operations. Programme audit authorities should obtain assurance on the legality and regularity of this expenditure before submission of the accounts for the final accounting year. However, it is not necessary for the final recipient to have completed the implementation of an investment supported by the financial instrument by the submission of the closure documents. Programme audit authorities should report how they have obtained this assurance and confirm to the Commission the eligibility of the total expenditure of the financial instruments in accordance with Article 42 of the CPR in the control report for the final accounting year.

<sup>(73)</sup> Annex VI, based on Article 125(4) CPR, applies to IPA II by virtue of Article 37(1) IPA II Implementing Regulation.

<sup>(74)</sup> Annex VIII, based on Article 127(5) CPR, applies to IPA II by virtue of Article 37(3) IPA II Implementing Regulation.

<sup>(75)</sup> Annex IX, based on Article 127(5) CPR, applies to IPA II by virtue of Article 37(3) IPA II Implementing Regulation.

<sup>(76)</sup> Applies to IPA II by virtue of Article 46(2) IPA II Implementing Regulation.

<sup>(77)</sup> Not relevant for ETC programmes and not applicable to cross-border cooperation programmes under IPA II.

<sup>(78)</sup> Article 41 of the CPR.

For financial instruments at closure, it is recommended that the programme audit authority covers the remaining population of eligible expenditure not covered previously during audits of operations. It is not necessary that all financial instruments are audited at closure, but no financial instrument should be excluded from random selection. Furthermore, programme audit authorities may decide to group the selected financial instruments for the purpose of their audits, given that the results obtained will be applicable to all the financial instruments within the group.

Programme audit authorities should carry out an audit of a statistical sample of investments and management costs and fees and may treat such expenditure as an additional sampling period in order to use the results of audits carried out previously <sup>(79)</sup>.

#### 12.4.2. *Reliability of data*

Programme audit authorities should conclude on the reliability of data relating to indicators, in the control report of the final accounting year, including a conclusion on the assessment on key requirement 6 'Reliable system for collecting, recording and storing data for monitoring, evaluation, financial management, verification and audit purposes, including links with electronic data exchange systems with beneficiaries' set out in table 1 of Annex IV to Commission Delegated Regulation (EU) No 480/2014 <sup>(80)</sup>. This assessment of key requirement 6 should include confirmation that the aggregated data reported to the Commission is correct.

#### 12.4.3. *Public expenditure paid to beneficiaries*

The certifying authority should ensure that, in its calculations for the final accounts, the compliance with Article 129 of the CPR is respected. The national audit authority should include this aspect in its audit of the accounts for the final accounting year and report about the assurance obtained in chapter 6 of the final control report.

### 13. **PAYMENT OF THE FINAL BALANCE**

The final balance will be paid no later than three months after the date of acceptance of the accounts for the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later <sup>(81)</sup>.

This is without prejudice to the Commission's power to interrupt the deadline for payment of the final balance or suspend such payment.

### 14. **LEGALITY AND REGULARITY ISSUES**

Issues related to the legality and regularity of the underlying transactions concerning expenditure in the accepted accounts can be raised by the Commission after payment of the final balance and closure of the programme.

Closure of the programme is without prejudice to the Commission's right to impose financial corrections in accordance with Articles 85, 144 and 145 of the CPR <sup>(82)</sup>, and additionally in the case of EMFF, Article 105 of Regulation (EU) No 508/2014.

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<sup>(79)</sup> With regard to financial instruments set up under points (a) and (c) of Article 38(1) of the CPR and for financial instruments set up under point (b) of the same Article implemented by the European Investment Bank (EIB) or other international financial institution, management costs and fees charged by EIB/European Investment Fund (EIF) or by other international financial institution are audited by the external auditors of the EIB/EIF. Furthermore, any management costs and fees charged by the financial intermediaries selected at national level by EIF for loans and equity instruments are checked by the external auditors of EIB/EIF.

<sup>(80)</sup> Annex IX, based on Article 144(6) CPR, applies to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

<sup>(81)</sup> Article 141(2) of the CPR; applies to IPA II by virtue of Article 46(5) IPA II Implementing Regulation.

<sup>(82)</sup> The three provisions apply to IPA II by virtue of Article 46(6) IPA II Implementing Regulation.

## ANNEX I

## LIST OF ALL OPERATIONS PHASED FROM 2014-2020 INTO 2021-2027

(to be attached to the final implementation report <sup>(1)</sup>)

PROGRAMME TITLE											
CCI NUMBER											
PRIORITY/ FUND/ CATEGORY OF REGION	OPERATION REFERENCE	OPERATION TITLE	DATE [AND NUMBER] OF TACIT AGREE- MENT/ APPROVAL BY COMMISS- SION (IF MAJOR PROJECT)	PHASED OPERATIONS UNDER ARTICLE 118	PHASED OPERATIONS UNDER ARTICLE 118a	TOTAL COST OF THE OPERATION (in EUR)		TOTAL CERTI- FIED EXPENDI- TURE FOR THE FIRST PHASE (in EUR)	PUBLIC CONTRIBU- TION FOR THE FIRST PHASE (in EUR)	PLANNED/ FINAL COMPLETION DATE OF THE SECOND PHASE (YEAR, QUARTER)	2021-2027 PROGRAMME UNDER WHICH THE OPERATION WILL BE/WAS COMPLETED <sup>(2)</sup>
						Total (for both phases, final or estimated)	For the second phase (final or estimated)				

<sup>(1)</sup> For the EMFF, to be attached to the last annual implementation report.<sup>(2)</sup> The name of the programme for the 2021-2027 programming period under which the second phase of the operation will be/was completed.

ANNEX II

LIST OF NON-FUNCTIONING OPERATIONS

(to be attached to the final implementation report <sup>(1)</sup>)

PROGRAMME TITLE						
CCI NUMBER						
PRIORITY/FUND/ CATEGORY OF REGION	OPERATION REFERENCE	OPERATION TITLE	NAME OF THE BENEFICIARY/ RECIPIENT	TOTAL COST OF THE OPERATION (in EUR)	TOTAL CERTIFIED EXPENDITURE (in EUR)	PUBLIC CONTRIBUTION (in EUR)

<sup>(1)</sup> For the EMFF, to be attached to the last annual implementation report.

ANNEX III

**LIST OF OPERATIONS AFFECTED BY ONGOING NATIONAL INVESTIGATIONS/ SUSPENDED BY A LEGAL PROCEEDING OR BY AN ADMINISTRATIVE APPEAL HAVING SUSPENSORY EFFECT**

**(to be attached to the final implementation report (\*))**

PROGRAMME TITLE							
CCI NUMBER							
PRIORITY/FUND/ CATEGORY OF REGION	OPERATION REFERENCE	OPERATION TITLE	NAME OF THE BENEFICIARY/ RECIPIENT	TOTAL CERTIFIED EXPENDITURE AFFECTED (in EUR)	PUBLIC CONTRIBU- TION AFFECTED (in EUR)	OPERATIONS AFFECTED BY ONGOING NATIONAL INVESTIGATIONS*	OPERATIONS SUSPENDED BY A LEGAL PROCEEDING OR BY AN ADMINISTRATIVE APPEAL HAVING SUSPENSORY EFFECT*

(\*) For the EMFF, to be attached to the last annual implementation report. Put an X in the appropriate column.

ANNEX IV

EXAMPLE OF THE APPLICATION OF THE FLEXIBILITY AND THE CAPPING OF PUBLIC EXPENDITURE WITHIN THE CALCULATION OF THE FINAL BALANCE FOR A MONO-FUND PROGRAMME

Closure 2014 - 2020

EXAMPLE OF THE APPLICATION OF THE FLEXIBILITY/CAPPING AT CLOSURE FOR A MONO FUND PROGRAMME

Financial Plan								Declaration of expenditure (all past accounting years)		Paid over all past accounting years	Declaration of expenditure (last accounting year)			Sum of Total Paid in past years and Calculated Fund Contribution last year	Calculation at the level of the priority axis (all years, including last)		Calculation at the level of the programme	
Priority	Eligible Total	EU (Fund Contribution)	National Counterpart	National Public	National Private (*)	Public /Total	Cofin Rate (**)	Total expenditure	Public Contribution	P	Total expenditure	Public Contribution	Calculated Fund Contribution (1)	M=P+F	Flexibility limit	Amount retained at priority level (2)	Capping to Amount retained at priority level and Fund Contribution (3)	Capping to Public Contribution (4)
	A = B + (z)	B	(z) = (x) + (y)	(x)	(y)	P / T	C=B/A	D1	E1	P	D	E	F=C*D or C*E	M=P+F	H=B+8*15%	J=min(M,H)	L=min(total J per category of region, total B per category of region)	K=min(total L at programme level, total (E+E1))
Priority 1	95.000	61.000	14.000	14.000	0	P	85%	70.000	70.000	57.610	30.000	30.000	25.579	83.189	93.150	83.189		
Priority 2	60.000	45.000	15.000	15.000	0	P	75%	34.000	34.000	26.431	20.000	20.000	15.000	41.431	51.750	41.431		
Priority 3	61.000	52.000	9.000	9.000	0	P	85%	44.000	44.000	38.651	20.000	20.000	17.049	55.700	59.800	55.700		
<b>Less developed</b>	<b>216.000</b>	<b>178.000</b>	<b>38.000</b>	<b>38.000</b>	<b>0</b>			<b>148.000</b>	<b>148.000</b>	<b>122.692</b>	<b>70.000</b>	<b>70.000</b>	<b>57.628</b>	<b>180.320</b>	<b>204.700</b>	<b>180.320</b>		<b>178.000</b>
Priority 4	800	600	200	150	50	T	75%	500	400	375	220	180	165	540	690	540		
Priority 5	7.000	6.000	1.000	800	200	T	86%	6.500	5.500	5.497	3.500	2.700	3.000	8.497	6.900	6.900		
Priority 6	27.000	20.000	7.000	5.000	2.000	T	74%	20.000	17.000	14.889	4.000	2.200	2.963	17.852	23.000	17.852		
<b>Transition</b>	<b>34.800</b>	<b>26.600</b>	<b>8.200</b>	<b>5.950</b>	<b>2.250</b>			<b>27.000</b>	<b>22.900</b>	<b>20.761</b>	<b>7.720</b>	<b>5.080</b>	<b>6.128</b>	<b>26.889</b>	<b>30.590</b>	<b>25.292</b>		<b>25.292</b>
<b>Programme</b>	<b>250.800</b>	<b>204.600</b>	<b>46.200</b>	<b>43.950</b>	<b>2.250</b>			<b>175.000</b>	<b>170.900</b>		<b>77.720</b>	<b>75.080</b>			<b>Final result at fund level</b>		<b>203.292</b>	<b>245.980</b>
															<b>Capping to Public at fund level</b>			<b>203.292</b>

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

(\*\*) Co-financing Rate of the last adopted decision

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

(2) Capping to the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme increased by 15%

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

(4) Capping to the public contribution declared at fund level only