



Closure 2007-2013

**Presidency Conference
for Baltic and Nordic States**

**Vilnius, Lithuania
24-25/10/2013**

Building blocks of the Conference

- **General principles and the Guidelines on the closure of operational programmes 2007-2013**
- **Submission and content of closure documents**
- **Eligibility of expenditure**
- **Miscellaneous - questions and answers**



Closure 2007-2013

**General principles and the Guidelines on the closure
of operational programmes 2007-2013**

Carole Mancel-Blanchard

Closure : What is it all about (1)?

Definition of Closure:

- Process leading to the financial settlement of outstanding Union's budgetary commitments
- Financial settlement of outstanding Union's budgetary commitments
- Starting point of the period during which the Commission's and Member States' rights and obligations remain valid in respect of assistance to operations

Value added of the guidelines on closure:

- Propose simplified procedures to avoid bottlenecks identified during the closure of the previous programming period
- Provide a methodological framework to facilitate the closure process

Closure : What is it about (2)?

- **Actors**

Key in the process : distinct roles but complementary

- **Timeframe**

- Regulatory deadlines
- Non regulatory deadlines recommended in the Closure Guidelines

- **Closure documents**

- Set of three documents established by the Regulations
- Additional documents required in the Closure Guidelines

Major changes compared to Closure 2004-2006 (1) : in substance

- **Final date of eligibility & deadline for submission of closure documents** fixed in the Regulation: no extension possible
- **Closure at priority level** - but no flexibility between priorities at closure
- **No individual closure of Cohesion Fund projects** since CF has been mainstreamed

Major changes compared to Closure 2004-2006 (2): irregularities

- Disclosure of the **annual total projected error rates and residual error rate** for the programme at closure
- **Reporting** on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts, not only on recoveries
- **No payment of irregularities at closure** unless amounts are irrecoverable and the MS requests the EU Budget to share the burden of the loss and Commission accepts
- A **commitment will remain open for pending recoveries**
- **Quarterly reporting to OLAF** independent of the reporting on irregularities under Cohesion policy rules

Major changes compared to Closure 2004-2006 (3): form & procedure

- **Final Implementation Report**
 - following a template in annex XVIII of Commission regulation
 - one-step approach for admissibility and quality check of the Final Implementation Report
- **Specific reporting on FEI following 2011 amendment of the General Regulation**
- **Electronic submission** of closure documentation via SFC 2007

Most problematic issues at closure 2004-2006

- Closure documents were prepared at the **last moment**
- Insufficient number or **late execution of checks**
- Incomplete documents and long "**ping-pong**" between the Commission and the Member State to obtain additional information
- Disagreements with the Commission over the extent and application of **financial corrections**
- **Lack of overbooking** results in net loss
- **Not enough staff** allocated to closure

Lessons to be drawn

- **Launch preparation phase** as early as possible, including trainings
- **Assess** at early stage the risks of operations not to be completed
- **Plan** all activities of all actors **in time** to prepare for closure
- **Plan adequate resources**
- **Ensure consistency of the closure package**
- **Use overbooking**

Administrative capacities involved in the closure process (1)

Managing Authority/Intermediate Body

- Check the final expenditure claims form beneficiaries
- Complete management verifications
- Ensure the possible reconciliation between the final statement of expenditure and accounting records and audit trail down to the final recipient
- Verify amount of public contribution paid or due to be paid
- Verify that errors/irregularities stemming from all available verifications and audits (management checks, system audits/on operations audits, other national bodies, EU bodies audits) were corrected
- Verify correspondence of the financial information included in the final statement of expenditure and in the final implementation report, including list of operations suspended

Most of these tasks should be carried out regularly

Administrative capacities involved in the closure process (2)

Certifying Authority

- Ensure that it receives all necessary information from MA and on all audit results
- Satisfy itself that all errors/irregularities were corrected, that recovered amount are repaid and all audit findings and recommendations implemented
- Draw up the application for final balance and the final statement of expenditure
- Draw up the final statement on withdrawn and recovered/pending recoveries/irrecoverable amounts
- Draw up annex to the statement of expenditure on FEI and state aids

CA should submit its work to AA at the latest on 31.12.2016 to allow sufficient time for the AA to carry out its work

Administrative capacities involved in the closure process (3)

Audit authority

- Complete audit work on system audits and audits on operations on the expenditure declared in 2015 and 2016

(Last ACR on 31.12.2015 will cover expenditure declared until 2014. Therefore final control report needs to report on the results of audits carried out on systems and audits on operations for the expenditure declared in 2015 and 2016. This work is to be carried out from July 2015 and to be finalised before end March 2017).

Warning: a deadline needs to be set for the last interim payment claim for the AA to carried out its work: Commission recommends 30 June 2016

- Verify that MA, IBs, CA work for closure is complete and reliable in particular on management verifications, errors/irregularities, information on the follow up given to audit results.
- Draw up the final control report and closure declaration on the validity of the payment declaration and legality and regularity of the underlying transactions



Closure 2007-2013

**Timeline of closure:
procedural aspects & deadlines
Submission and content of closure documents,
Irregularities**

Serge Joseph

Timeline for Closure

Before submission of closure documents

31-12-2013 (MC): deadline for COM to adopt amending decisions resulting in financial transfer (2013 commitments) between OPs or SFs

30-06-2015: deadline for communicating to COM the list of major projects to be phased + deadline of submission of Annual Implementation Report 2014 (MC)

31-12-2015 (MC): deadline for COM to adopt amending decisions of OPs including transfers of funds between priority axis (any previous year) + deadline for amending decisions of Major Projects + last ACR



Timeline for Closure / Deadlines

Before submission of closure documents

30-06-2016: deadline recommended for the submission of the last interim payment to COM

31-12-2016: deadline recommended for the CA to submit to the AA application for payment of final balance + final statement of expenditure

Timeline for Closure/ Deadlines

At submission of closure documents

31-03-2017:

- final date for submission of all closure documents through SFC
- final date for new or additional deductions of net revenues for some RGP
- In the frame of State aid, final date for the body granting the aid to pay the public contribution to the State aid beneficiaries

Timeline for Closure/ Deadlines

After submission of closure documents

1 year after reception of closure documents : global objective for the COM to close as many OPs as possible

31-03-2019 : deadline for the final reporting on non-functional projects

No time limit : Report on pending recoveries + operations suspended due to legal or administrative proceedings

Preparation for closure : closure documents (a)

- **Closure document (Art.89(1) of the Gen Reg.)**
 - *Application for payment of the final balance and statement of expenditure*
 - *Final Implementation Report (FIR)*
 - *Closure declaration (supported by a final control report)*
- **Deadline for submission- 31 March 2017 via SFC**
 - *Interim Payment claims even when the threshold of 95% of the contribution from the funds to the OP has been reached*
 - *Failure to submit any of the closure documents: decommitment of the final balance*
 - *Failure to submit the FIR or FCR: potential financial correction*
- **Changing documents after the deadline for their submission**
 - *no new expenditure allowed after submission*
- **Availability of supporting documents**
 - *3 years following date of closure (or partial closure)*

Preparation for closure : closure documents (b)

- **Certified statement of final expenditure, final payment application**
 - *Possible discrepancies between EU funds paid back at priority axis level and EU funds paid/due to be paid at project level*
 - *Public contribution paid or to be paid (paid in any case for State aid) to beneficiaries at least \geq EU contribution to the programme*
 - *Beneficiaries to be paid in full as quickly as possible*
 - *Possibility to include overbooking ... but not beyond submission of closure documents*
 - *Specific case of cross-financing*

Preparation for closure : closure documents (c)

- **Final Implementation Report (FIR)**
 - *Commission has 5 months to confirm its admissibility or provide comments to MS in case it is not satisfied*
 - *Objective: Approval within one year of submission,*
 - *Consequence if MS fails to provide satisfactory responses to comments sent by COM → FIR rejected and at the same time financial corrections may be applied in the context of Article 99*

Preparation for closure : closure documents (d)

- **Closure declaration**

- *Submission of a closure declaration by programme*
- *Final control report might cover more than one programme or Fund → includes audits as of 30/06/2015 and between 01/07/2015 and 31/12/2016, also covering expenses paid in 2015 and 2016*
- *Residual error rate to be mentioned*
- *Objective: revise and accept the closure declaration within one year of submission subject to audit issues.*

Procedural aspects / Closure package

Role and tasks

- **Final Implementation Report (MC)** : prepared by MAs (format set in annex XVIII of Reg. 1828/2006)
- **Application for final payment and final statement of expenditure** : prepared by CAs (format set in annex X of Reg. 1828/2006)
- **Closure declaration + final control report** : prepared by AAs (format set in annex VIII of Reg. 1828/2006)
- Flexible format for : list of functioning projects + reporting on non functioning projects every six months by MA

Procedural aspects / Closure package

Coordinated submission of closure documents

- Need for regular exchanges between authorities well ahead of the compulsory deadlines
- Final consistency check to be made by one authority before submission of the closure documents
- Specific duty of CA : statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts (annex XI of Reg 1828/2006)

Calculation and irregularities / flexibility

- **2000-2006** : calculation at measure level, limited flexibility between priority axis, deadline for modification of financial plan limited to end of 2006
- **2007-2013** : calculation at axis level, full flexibility to modify financial plans till end of 2015 (transfers between priority axis)

Financial transfers :

- Limited to the 2013 commitments in case of transfer between OPs (deadline : 31/12/2013)
- Subject to prior discussion on the justification of transfer, no legal restriction as for the modification of earlier years allocations between priority axis

Calculation and irregularities / irregularities

Distinction and links to be drawn between:

- **Statement on amounts withdrawn, recoveries, pending recoveries and irrecoverable amounts** : final statement to be issued by CA by 31/03/2017 (Annex XI of the Implementing Regulation) → *COM commitments kept open for pending recoveries and irrecoverable amounts when additional info is required*
- **Operations suspended due to legal or administrative proceedings** : decision to withdraw/retain + obligation of information by MA (Annex VII of Closure Guidelines) → *COM commitments kept open (no time limit)*
- **Financial correction** : no time limit (notably in case of fraud). Frequent mix-up with the period of retention of documents by beneficiaries following closure for the purpose of audits



Closure 2007-2013

Eligibility of expenditure:

**Phasing of projects, non-functioning projects,
suspended operations, ETC specificities**

Tomas NejdI

Eligibility of expenditure

- incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility and paid (by the beneficiary) for operations by 31 December 2015 (Article 56)
- supported by receipted invoices or accounting documents of equivalent probative value, unless otherwise provided in specific Regulations for each Fund (Article 78(1))

Projects & operations

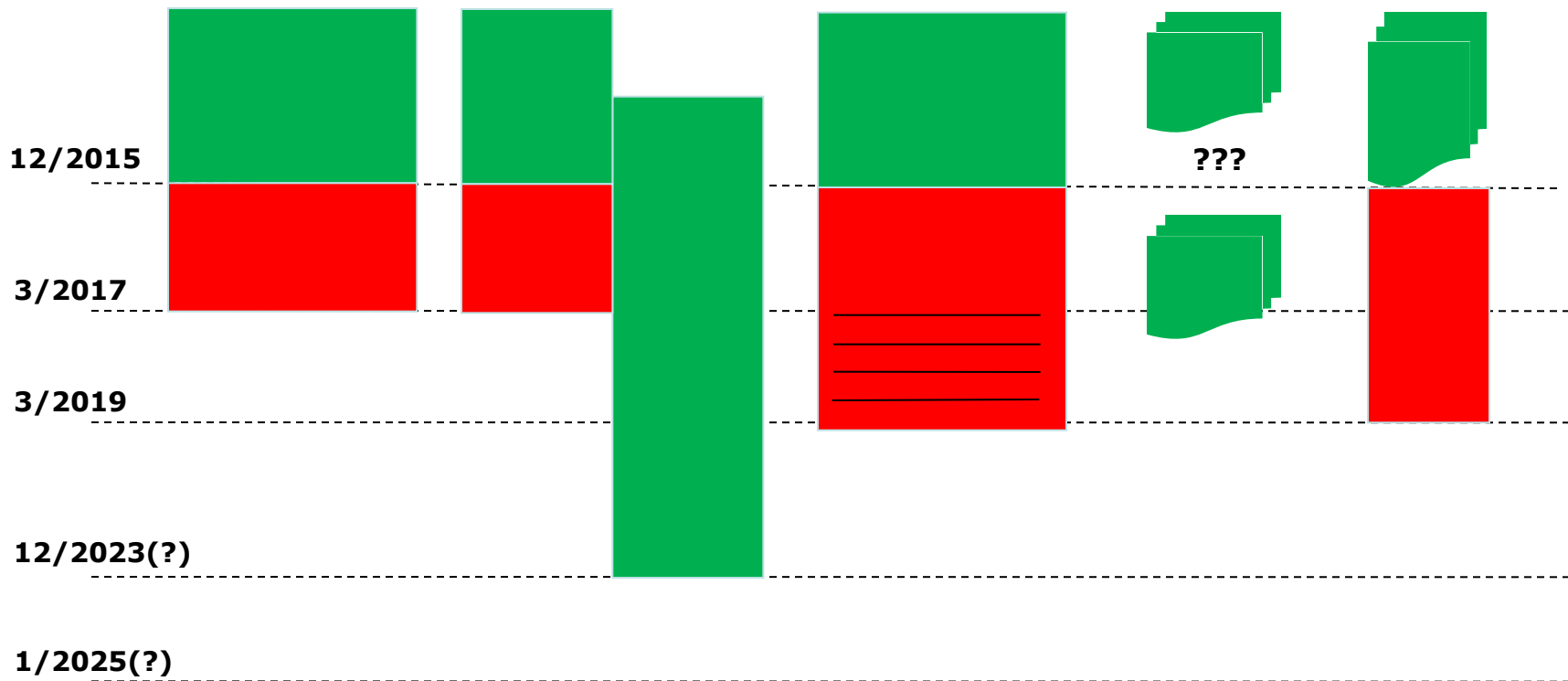
functioning

phasing

non-functioning

force majeure

suspended



Functioning operations

- functioning operations: eligible, completed (no further activity is required, in conformity with the requirements foreseen by the national legislation) and in use at the time of the submission of the closure documents*
- completion of the operations is possible by using national resources between 31 December 2015 and 31 March 2017 (deadline of the submission of closure documents)
- there is no obligation to provide a full list of completed projects (with the exception of completed major projects, Annex I of the Closure Guidelines)
- managing authority should make available to the COM on request a list of all functioning operations for the full period of three years following the closure of the programme

Projects & operations: Phasing

phasing of major projects and non-major projects over two programming periods:

- possibility for a project to be implemented over two periods in order to complete the project without compromising its overall scope and avoiding incomplete (non-eligible) projects
- phases are implemented under the rules applicable for the respective programming periods + implementation of two phases may overlap in years 2014 and 2015
- should be duly justified
- a complex approach which should be implemented carefully - risk of non-completion (second phase should be eligible, be a priority, be selected, ...) x completing functional and in use operations
- not for FEI, productive investment

Projects & operations: Conditions

- MS should ensure that the following conditions are met:
 - operations over 5 MEUR of total costs (for non-MP)
 - two clearly identifiable stages (physical & financial objectives)
 - first phase is ready to be used for its purpose/function by the deadline of the submission of closure documents
 - second phase is eligible under ESI Funds*
 - reducing the financial allocation to the project in the 2007-2013 period (first phase)
 - indicate (in FIR) that financial and legal commitment was made to complete the second phase
- quantify the overall amount of phased projects, list provided on request (Annex III or Annex IV)

Projects & operations: Phasing procedure

- Identification of phasing needs (informal screening, a list of major projects to be phased submitted to the Commission)
- Amendment of a major project to allow phasing, definition of the first phase
- Approval of the second phase (in line with CPR 2014-2020)
- Closure of the first phase (in accordance with the Guidelines on closure 2007-2013)
- Closure of the complete and functional phased project (in line with CPR 2014-2020)

Phasing of MP – definition of phases

- phasing of major projects (total cost exceeds EUR 50 million*)
- specific rules for major projects (COM decision is modified/new)
 - MS defines two clearly identifiable stages (physical & financial)
 - not possible to use only financial milestone (85% of costs, or 75% of construction or materials, etc.) for defining a phase
 - a phase should be auditable with regard to its physical objects, allocated amounts and results achieved, means should demonstrate tangible targets
 - no specific guidelines or checklists for phasing are foreseen or suitable since relevant criteria for phasing are project-related (case-by-case assessment)

Phasing of MP – amendment

- request for an amendment of the decision on a major project should be submitted by 30 September 2015
- original application should be updated and the proposed amendment should take into account revised project details including a possible update of certain documents or procedures (CBA, EIA, permits)
- the Commission decision on the major project will reaffirm the overall objective of the major project, but it will cover only the project phase implemented in the 2007-2013 period

Phasing of MP – 2014-2020 approval

- listed as a major project, if both phases calculated together exceed the ceiling of the total eligible costs provided in the CPR
- the major project application of the second phase should refer to both phases and also to overall physical and financial objectives
- 1) notification or 2) simplified notification - without the independent experts review, Article 92bis is applicable (if there are no substantial changes) or 3) decision of the Commission

Phasing - questions

Q: one or two applications when phasing major project

- both phases should be calculated together to get total eligible costs (for the 2014-2020 period, CPR is applicable, it includes definition of a major project)
- approval of the second phase

Q: two lists to be submitted for phased major projects

- one to be attached to the final report as it serves to the closure of 2007-2013 programmes (see Annex III of the Closure Guidelines) and
- one linked to the 2014-2020 period and should be included in the relevant OP

Phasing - questions

Q: phase 1 is not completed and in use by 31 December 2015

the Member State has the following options:

- to cancel the project and acknowledge that expenditure is not eligible (withdraw it from the final statement of expenditure)
- to complete the project with national resources before it will submit closure documents (by 31 March 2017)
- to consider the project as non-functioning at the closure (section 3.5 of the Guidelines on closure 2007-2013) and complete it with national resources before 31 March 2019

Phasing - examples

R&D: HU, CZ lasers

Phase 1: General construction of buildings, laser purchased and assembled, partly operational

Phase 2: Completion of the construction and installation of the technology. Achievement of the full capacity of lasers

Motorway:

Phase 1: Earthworks and construction of bridge 1 and temporary roads completed, and ready to be used for its purposes; not in use as essential sections remain to be completed

Phase 2: Construction of bridge 2, motorway and pipeline network completed; Motorway between A and B fully completed and in use

Non-functioning projects

non-functioning projects

- non-completed projects or projects completed, but not in use (at the submission of closure documents)
- over 5 MEUR of total costs, and a total of EU contribution to all non-functioning projects < 10% of total OP allocation
- on case-by-case basis, must be reasoned and justified
- MS may include expenditure paid in the final statement of expenditure
- MS commits to complete, list in FIR (Annex V), monitored and completed within 2 years (i.e. before 31 March 2019, otherwise financial correction), report to COM every 6 months
- no extension of the final date of eligibility

Suspended operations

suspended operations due to legal proceedings or an administrative appeal having suspensory effect

- MS must decide before the deadline for submission of closure documents whether:
 - the operation should be withdrawn/replaced (by another eligible operation) or retained in the programme
 - if retained, inform COM of the (maximum) amount that could not be declared, a commitment is kept open
- outcome: further payments, recovery or confirmation of payments made
- list should be submitted (Annex VII)
- but: the suspension does not extend the final date of eligibility of expenditure

Force majeure

Exception for operations suspended due to force majeure = principle of Community law

The concept defined by the Court of Justice, non-performance was due to circumstances (cumulative conditions) which:

- a) were beyond the control of the person/body claiming force majeure,
- b) were abnormal and unforeseeable, and
- c) could not have been avoided despite the exercise of all due care

Allows the declaration of expenditure incurred and paid after 31 December 2015 and review of closure documents after the deadline for submission

ETC specific issues

- no specific guidelines for the ETC programmes, general rules apply
- Q: Funds cannot be transferred between ETC and non-ETC (mainstream) programmes
- Q: the concerned Member States should establish internal procedure for the closure of the ETC programmes bearing in mind that the Managing Authority keeps overall responsibility towards the Commission
- Q: error rates/reporting on results are to be provided on programme level as it is a joint programme (a possible agreement among the Member States on how the corrections are applied), but the Commission - considering the programme as a single programme - will make financial correction on the programme



Closure 2007-2013

Eligibility of expenditure:

Financial engineering instruments, Revenue generating projects, State aid, Reporting on results, Technical assistance and Overbooking

Andreas von Busch

Financial engineering instruments

What is eligible at closure ?

- Not the OP contribution to the FEI
- Support granted to final recipients under each FEI
 - If activities and recipients eligible
 - Only repayable assistance subject to 2 exceptions
 - Special rule on guarantees: multiplier
- Management costs and fees
 - Capped
 - Annual average
 - No overlap with arrangements fees

Financial engineering instruments

- ☑ Eligibility of grant elements, under conditions
 - interest rate subsidy, guarantee fee subsidy and measures such as loan discounts or capital rebates for the commercial part of the loan
 - conditions for eligibility of grant elements at closure: associated and combined with ERDF/ESF loans or guarantees in a single financing package
- ☑ in respect of loans disbursed within eligibility date
- ☑ at closure capitalisation needed (discounted payment obligations to be calculated at the end of programming period)
- ☑ transfer to escrow account

Financial engineering instruments

Amounts to be deducted from the eligible expenditure:

- overlap between arrangement fees paid by final recipient and eligible management costs/fees
- interest generated by payments from the OP to FEI (including holding fund) which are attributable to Structural Funds contribution not spent for eligible expenditure by the end of eligibility period

Financial engineering instruments

Reporting requirements

- Data on FEI to be reported in June 2016 for 2015 (cumulative data)
- Information relevant for eligibility at closure
 - Management costs and fees
 - Amount of capitalised interest rate subsidies or guarantee fee subsidies
 - Interest generated by payments from OP
 - Legacy

Financial engineering instruments

Main qualitative information to be provided at closure:

- The number and the type of funds
- The national co-financing (and co-investors)
- Funding Agreement (signature, modifications, amounts, duration)
- Types of product offered and final recipients targeted
- Brief assessment of fund performance in terms of its contribution to the achievements of objectives
- Difficulties encountered (reasons, nature of difficulties, timing, remedial actions and their effectiveness)

Revenue generating projects: Definition

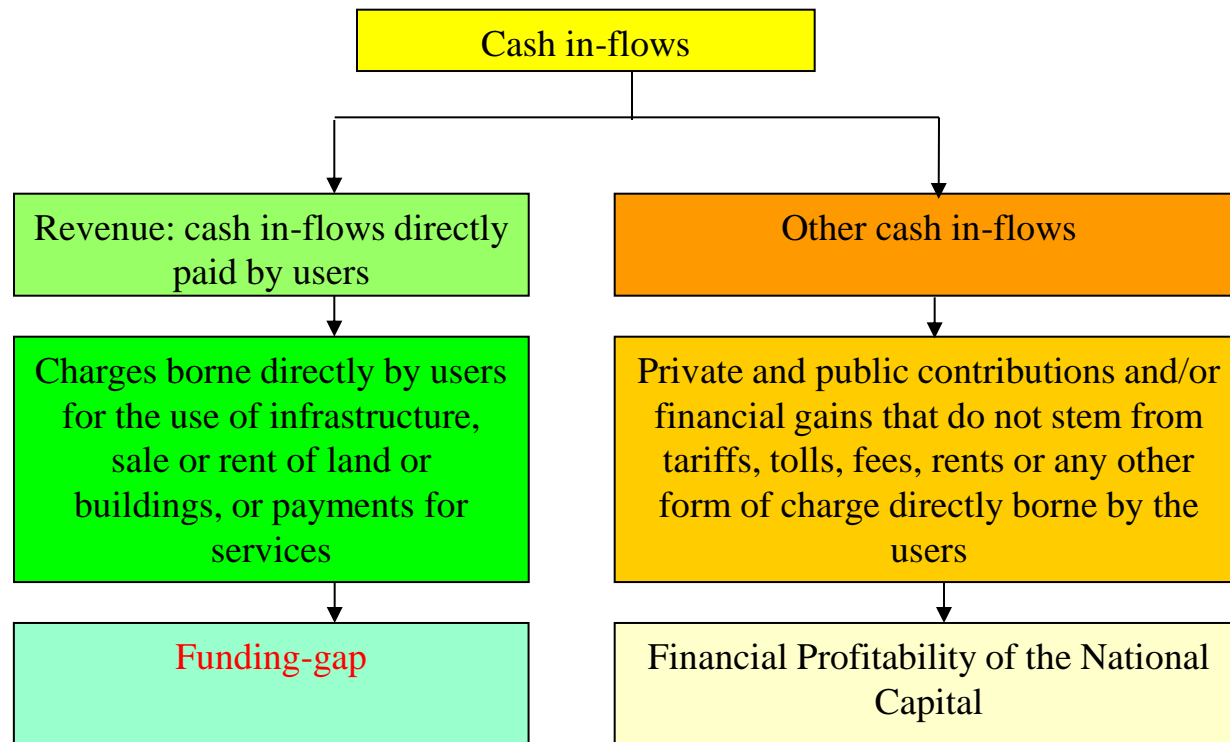
Revenue generating project means:

- any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or
- any operation involving the sale or rent of land or buildings or
- any other provision of services against payment
- analysis based on cash flows
- an estimated value for future period extending after project's completion

Net revenue = revenues – operating costs (+ residual value)

Negative revenues = no RVG project

Article 55(1): Classification of Cash In-Flows



Revenue generating projects: Estimation not possible in advance

due to:

- **Lack of data** (for tariff & demand)
- **Unforeseeable demand** (new demand might be generated by supply)

...the net revenues generated within 5 years after the completion of an operation shall **be deducted** from the expenditure declared to EC the net revenues generated shall **be deducted** at the latest at the closure.

deduction done within 5 years or at closure, whichever comes first

Revenue generating projects: Deductions

Deductions required:

- **New sources of revenue**
- **Changes in the tariff policy**

Deductions not required in principle

- **Changes in demand or other external economic factors**

!Systematic underestimation of revenues constitutes irregularity!

Revenue generating projects: Deductions

Q: capital infrastructure projects completing late in 2015 and beyond which could become operational in 2017

- any deductions are to be made at the latest at the submission of closure documents, but of course could be made before that
- revenues will be calculated only for the remaining time, i.e. few months, before the closure documents are submitted
- if the closure documents are submitted earlier, i.e. project does not generate any revenue yet, it is fine for the calculation (but it should be completed and in use)
- Article 55(3): deduction is done within 5 years or at closure, whichever comes first

Revenue generating projects: Monitoring

System should be in place for monitoring of revenues

Objective:

- **Prevent over-financing** (by correct application of funding gap methodology, etc.)
- Contribute to **effective allocation of resources**

Early detection of possibility to reallocate funds prevents losses at closure

Revenue generating projects: Exceptions

Provisions on revenue-generating projects do not apply to:

- projects subject to **State aid rules within the meaning of Article 87 of the Treaty** (following Leipzig-Halle judgment of the Court of Justice of EU, more infrastructure projects could be considered within the ambit of State aid)
- operations covered by **financial engineering instruments** under Article 44 of Council Regulation 1083/2006

State aid

- the beneficiary must have executed the payment for which the aid has been granted before the eligibility end date 31 December 2015
- in addition to the payment being made by the beneficiaries, the public contribution to the beneficiary must be paid before the submission of the closure documents
- advances paid to the beneficiaries should be covered by expenditure paid by beneficiaries at the latest on 31 December 2015

Specific reporting requirements

- Reporting on results to be included in the FIR
- Reporting on FEI, Phasing, non-functioning projects, major projects, top-up, performance and use of interest
- Final categorisation data should be reconciled with the final payment declaration

Reporting on results

- no automatism in applying the financial corrections if indicators are not achieved
- explanation and justification of any significant divergence against the set targets and problems encountered in their achievement should be provided
- MS should demonstrate that it has adopted corrective actions during the implementation
- financial corrections for the evident non-achievement of programme objectives will have to be assessed case-by-case

Technical assistance for closure

TA for management and implementation of 2007-2013

Possible flexibility:

Article 46 paragraph 1 of the General Regulation financing of preparatory activities of the 2014-2020 period

Remaining closure works after 2015 to be financed by TA 2014-2020

If a clear demonstrable link between the proposed activities and the preparations/closures exists

Overbooking

to declare more eligible expenditure than amounts committed for the OP

Advantage:

- promote the full absorption of funds and creates financial buffer

Warning:

- respect the procedure for selecting projects
- respect the rules of eligibility of expenditure/projects
- Member State bears expenditure declared beyond the total allocation of the programme (not paid by the Commission)

Thank you for your attention

- if there are additional questions and clarifications needed, the Commission is ready to respond
- the Commission will provide written replies on the questions raised