

Draft replies to the "Baltic" Member States questions on the 2007-2013 programmes closure

DISCLAIMER: This draft working document is based on questions submitted by the "Baltic" Member States authorities to the Commission ahead of the closure workshop. It comprises of draft replies of the Commission. The aim is to provide the Commission's explanations and interpretations of the rules in order to facilitate closure of operational programmes and encourage good practice. However, the answers in no way take precedence over the rules set out in the relevant Union legislation or in the Closure Guidelines

Q	Topic	Section	Question	Answers
1	Phasing	3.3	Please, describe the phasing of major projects over two programming periods procedure, step by step.	<p>Phasing is a complex approach and should be implemented carefully. Nevertheless, phasing allows splitting of a major project implementation over two programming periods in order to achieve the completion of the major project without compromising the project's overall scope and avoiding incomplete (and thus non-eligible) major projects.</p> <p>When a managing authority decides to apply for phasing of major projects, the following steps should be followed:</p> <ul style="list-style-type: none"> • Identification of phasing needs (informal screening, a list of major projects to be phased submitted to the Commission) • Amendment of a major project decision to allow phasing and 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 accordance with CPR 2014-2020) <p>It is up to the Member State to define phases for the operation proposed for phasing. A phase should have a specific and identified physical object (which could be audited) allocated amount, clearly defined indicators and it should demonstrate tangible targets.</p> <p>Phasing of major projects is subject to a Commission decision via a modification of the major project decision and the approval of a new (major) project. A managing authority should check that the project complies with the conditions for phasing, namely financial volume, definition of two stages, the first phase is completed and ready to be used for its purpose/function and finally, the second phase is eligible</p>

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				under the 2014-2020 eligibility rules and it is selected under the new programme and legal and financial commitments have been taken for the second phase.
2	Phasing	3.3	Could you please specify the criteria of phasing in more detail – when two phases of the project (e.g. two railway sections) should be treated as 1 project and when it could be considered as two separate projects? Could you please provide some practical examples?	<p>Phasing should not be applied if each phase of the major project represents a stand-alone project. This is the case for the major projects where the results of implementation would lead to the completion and functionality of less ambitious targets than originally expected (i.e. it would be possible to reduce the scope without compromising qualitative aspects - for instance, instead of 50km of road, only 40km is built and it would be functional (i.e. completed and in use) by the deadline for the submission of the closure documents). In such a case, the scope reduction would be accompanied by a reduction of the Funds' contribution.</p> <p>In this scenario two separate operations could be defined:</p> <ul style="list-style-type: none"> ▪ firstly, an operation financed under the 2007-2013 period and redefined by a modification of the Commission decision on the major project, ▪ secondly, an operation (possibly a major project depending on the volume of total eligible costs of the second operation) supported under the 2014-2020 period. <p>Without prejudice to the definition of a major project, if the reduction of the scope of a project is possible so that the reduced project is completed and operational, phasing is not the appropriate solution. Phasing such projects which can be split in two standalone projects would induce an unnecessary burden of follow up.</p>
3	Phasing	3.3	As situations of possible artificial division of the projects may occur at this and 2014-2020 programming period, i.e. in the planning stage of a new (possibly major project) and not necessarily as a consequence of the screening procedure, a clarification from COM side on project's artificial division , i.e. some elaboration on the key principles and/or criteria for identifying an artificially split project , would be of great significance, as this would contribute to better management of risks of such projects during this and 2014-2020 financial perspective.	<p>Conditions for acceptance of phasing are given in point 3.3 of the Closure Guidelines.</p> <p>[It is customary that a project may need from the start to be divided into phases, for example, due to budgetary, time or technical constraints. In this case, the Member State or the managing authority should submit an application on the basis of Article 40 (d), dividing the project into phases so that certain phase or phases can be completed within the programming period 2007-13, leaving the implementation of a subsequent phase into the next period.]</p>
4	Phasing	3.3	Do we understand correctly, that if a phased out part of the project is implemented in the 2014-2020 programming period with purely national (budget or private) resources the EU structural funds accountability or other requirements are not applicable?	<p>Under the phasing scenario the second phase of the project is supported by the Structural Funds and/or the Cohesion Fund under the 2014-2020 period.</p> <p>If the second phase is not co-financed by the EU resources, a project cannot be considered as phased over two programming periods. The Member State may complete the project with national resources. If it is completed before the final date for submission of the closure documents it does not need to be listed as non-functioning</p>

				project. If it is not completed by 31 March 2017 at the latest, it should be listed as non-functioning project, reported upon every six months and completed with the national resources before 31 March 2019.
5	Phasing	3.3	When major project is split into phases, one of which will be implemented in the 2014-2020 financing period, and the application is submitted to COM, should the financing plan provided in the section H of the application form (Annexes XXI of the Commission implementing regulation 1828/2006) reflect the estimated cost for the entire project or a particular phase, which will be implemented in 2007-2013? In case the financing plan is set for the entire project, how would COM distinguish between the investment costs of particular phases when approving only one/some of it in the current programming period?	<p>As stated in the COCOF note on major projects spanning over two programming periods, "the major project application should provide the description of the phase which will be implemented in the 2007-13 programming period and make reference to the subsequent project phases and their implementation timetable in view of the completion of the entire project.</p> <p>If a major project implementation starts in the 2007-2013 period, even if the Member State intends to phase this project it has to fill in a major project application for the whole project, including the phase to be implemented in the 2014-2020 period (Annex XXI or Annex XXII of the Implementing Regulation). However the Commission decision adopted on the basis of Article 40 of the General Regulation will specifically cover phase one of the project.</p> <p>Where the division into phases is necessary, the managing authority should specify the criteria which have been used to determine the division of the project into phases (section B.4.1 points (b) to (c)). Where the CBA and EIA procedure relate to the whole project then separate CBA and EIA may not be required for each phase, though this is to be assessed case by case." The total cost should correspond to a project, seen as a self-sufficient unit of analysis, for which the CBA and EIA assessment are carried out.</p> <p>Finally, phase two will be examined under a different legal basis (CPR and Fund-specific regulations), however the Commission is currently developing and discussing with the Member States via expert groups, two templates, one for the approval and the other one for notification. Both of them include references to the phase one and overall major project aspects, which should be taken into account when adopting decision or notifying phase two.</p>
6	Phasing	3.3	Moreover, if 1st phase of the major project financed in 2007-2013 was approved by COM, would there be a possibility to apply independent quality review for the phases to be implemented in 2014-2020?	<p>For the 2014-2020 period, a new regulatory framework is applicable with regard to major projects (it concerns for instance a new method of calculation when defining major project, increased threshold and new methods of approval/notification procedure, etc.) Article 101 of the CPR foresees the possibility for MS to ask for a quality review by independent experts.</p> <p>In the case of phasing, however, no independent quality review is required if specific conditions are met (Article 103 (2) of the CPR). The approval of the second phase is thus facilitated and accelerated.</p>
7	Phasing	3.3	If a major project, which has been appraised by COM, has to be phased, does the major project application	In line with the COCOF note 13/0089/01 on the amendment to major project decisions and its impact on the exceptions to the automatic decommitment adopted on 27 July 2013, "any request for modification of the physical object of the major

			(including CBA, IEA) which was already submitted to and approved by COM, have to be revised and re-submitted or there could be a simplified procedure for amending the related information (including COM decision) of such major project established?	<p>project will be subject to a case-by-case assessment by the Commission services, in particular in case of phasing of major projects".</p> <p>In the case of phasing, a Commission decision on the major project has to be amended. Therefore, the Member State should submit a revised application form through SFC 2007 in order to request the amendment to a major project decision.</p> <p>The 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 such as the original cost benefit analysis, environmental impact assessment, studies, permits, technical justifications, if certain parameters of the project or the conditions of implementation have changed significantly.</p> <p>The Commission will examine the request for amendment/new application for the phased major projects on a case-by-case basis with regard to the requirements of Articles 40 and 41 of the General Regulation and it should adopt the decision on the major project within three months.</p>
8	Phasing	3.3	<u>More clarification is needed with regard to the unplanned phasing of major projects (i.e. when a project is delayed despite the substantial progress in its implementation, leaving only a small part of the Project unfinished at the end of the programming period) and the procedure to be followed in such cases and if any possibility of continued financing is considered. Do such cases fall under 3.4 non-functioning projects?</u>	<p>In case of an unexpected implementation problems leading to the situation when a major project is unfinished by the end of eligibility date (end of 2015), the Member State may choose of the following options:</p> <ul style="list-style-type: none"> ▪ to withdraw the project; ▪ to phase the project over two programming periods respecting all rules of the sections 3.3 of the Closure Guidelines (namely, a modification request should be submitted by the end of September 2015); ▪ 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 (if conditions specified in section 3.5 of the Closure Guidelines are met) and complete it with national resources before 31 March 2019. By including the expenditure paid for non-functioning projects in a final statement, a Member State commits to complete all such non-functioning projects not later than two years after the deadline for submission of the closure documents and to reimburse the Union co-financing allocated in case of non-completion of such projects by the two year deadline. The Member State should provide the necessary information on the completion and operational aspect of these projects retained in the programme on a six-monthly basis.
9	Phasing	3.3	<u>Is there any time frame set of the assessment procedure of requests for phasing major projects</u>	A Commission's decision of major projects which are going to be phased needs to be amended by the end of 2015. Therefore it is recommended to submit a request for an

			submitted by MS at COM level?	<p>amendment by 30 September 2015.</p> <p>There is no simplified procedure foreseen for amendments of major projects to be phased and the same time limit as for the approval of major projects is applicable, i.e. "as soon as possible but no later than three months after the submission by the Member State or the managing authority of a major project, provided that it is submitted in accordance with Article 40."</p>
10	Non-functioning projects	3.4	<p>Could you please elaborate on the definition of a non-functioning project? Are there any criteria set for the evaluation of such state of the project or it rests at the disposal of MS?</p>	<p>A non-functioning project is either a project non-completed (even if partially in use) or a project completed and not in use.</p> <p>The General Regulation (Article 88) sets out that "an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid". In addition, the Closure Guidelines in chapters 3.2 and 3.5 specify that "no further activity is required to complete the operation - works are completed and received in conformity with the requirements foreseen by the national legislation".</p> <p>It is the responsibility of the managing authority to check and declare that the operations which are included in the closure documents are completed and in use..</p>
11	<p>Financial engineering instruments</p> <p>Eligibility of expenditure and the programme contribution in case of guarantees</p>	3.6	<p>Article 4.1.8 of Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 states that „If the financial intermediary has not issued and disbursed the agreed amount of new loans to final recipients that justify the full use of the guarantees, the eligible expenditure will have to be calculated by taking into account the appropriate ratio between planned (or agreed) and effectively disbursed loans“.</p> <p>Could you please give us an example how it should be done technically?</p>	<p>If, with the OP contribution of EUR 20mIn to the guarantee fund it was agreed based on a prudent ex-ante risk assessment that a multiplier ratio of 5 should be achieved and therefore a new loan portfolio of EUR 100 will be issued, then if at the end only 50% of loan portfolio was issued (EUR 50 mln), the eligible expenditure for the guarantee is 50% of EUR 20mIn, i.e EUR 10 mln.</p> <p>OP contribution would be equal to total loans issued divided by the multiplier ratio (50/5 =10).</p>
12	<p>Financial engineering instruments</p> <p>Eligibility of management cost and fees</p>	3.6	<p>Article 2.6.8 of Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 states „<...> the eligible management costs and fees in relation to financial engineering instruments, pursuant to Article 44 of Regulation 1083/2006, at the partial or final closure of operational programmes, should not exceed the limits set out in Article 43(4) of Regulation 1828/2006, averaged on a yearly basis over that part of the programming period for which the holding fund</p>	<p>According to Article 43(4) of the Implementing Regulation management costs may not exceed, on a yearly average, for the duration of the assistance any of the thresholds, foreseen therein, unless a higher percentage proves necessary after a competitive tender.</p> <p>At closure arrangement fees charged by the financial engineering instrument to final recipient, which has been taken into account as eligible expenditure as part of the management costs under Article 78(6) is to be deducted from eligible expenditure claimed from the Structural funds.</p>

			<p>or financial engineering instrument effectively manages an operation“. In the FI public procurement documents it has been indicated that FI will get a management fee (Article 2.6.1 of Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 specifies that „While management costs refer to cost items reimbursed against evidence of expenditure, <u>management fees refer to an agreed price or compensation for services rendered</u>“). However in the public procurement conditions it has been specified for what purposes and how much administration fee can be used.</p> <p>* Can a part of management fee be recognized as unacceptable expenditures during the closure of the programming period if other FEI conditions have been achieved?</p>	
13	<p>Financial engineering instruments</p> <p>Eligibility of management cost and fees</p>	3.6	<p>Article 2.6.9 of Revised Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 states that “since management costs and fees are calculated having regard to “capital contributed from operational programme to the [...] fund...”, it is important to clarify that only amounts paid by operational programmes to holding funds or financial engineering instruments should be taken into account for this purpose”.</p> <p>Does that mean that for the holding fund manager it is not worth to reuse returned resources and reach multiple effect of FEI?</p>	<p>The objective of FEI is to provide support to final recipients.</p> <p>The funding agreement signed between the MA and the HF must include provisions for the use of the resources returned, including possible reinvestment within the existing fund. In that case it must also include provisions regarding the management fees for such reinvestments.</p> <p>Such fees do not constitute anymore eligible expenditure to be declared to the Commission. It must be recalled that the provisions of General Regulation and Implementing Regulation regarding management costs and fees only concern the eligible expenditure regarding the OP contributions to FIs.</p> <p>As Member State will only take full advantage of the support of the funds to an FEI if it is reinvesting the provided capital resources Article 78(7) requires that 'returns' are reused for the benefit of similar actions . Accordingly, the legislator definitively considered it "worth to reuse returned resources beyond the eligibility period".</p>
14	<p>Financial engineering instruments</p> <p>Implementation (closure) of Financial engineering instruments</p>	3.6	<p>What kind of procedure (specifically) for reporting on implementation of FEIs will (should) take place at the closure of operational programmes (OP) (what kind of reports/payment claims will be provided by the member state; maybe only the withdrawals will be declared (resulting from the difference between the total expenditure paid in establishing or contributed to FEIs and the eligible expenditure as defined in</p>	<p>Article 67(2)(j) of the General Regulation specifies the information that has to be provided in the final report.</p> <p>The OP contribution made to the Fund is considered as an advance from a Commission accountancy point of view even if it is considered, at the same time, as eligible expenditure from the perspective of the OP's financial management. At closure the MA authority has to declare eligible expenditures in line with Article 78(6).</p> <p>As foreseen in Article 78(1) of the General Regulation, expenditure paid by</p>

	(FEI)		Article 78(6) of Regulation 1083/2006)?	<p>beneficiaries shall be supported by receipted invoices or documents of equivalent probative value. They should allow verifying the legality and regularity of the expenditure declared to the Commission. The supporting documents should include as appropriate documents listed in point 6.1.7 of the COCOF note on the FEI.</p> <p>Any part of the advance for which no eligible expenditure is declared and which cannot be supported by such supporting documents will have to be reimbursed to the Commission.</p>
15	Financial engineering instruments	3.6	<p>In case FEI (operation) is fully implemented and has reached its goals, can it be closed before the closure of OP (what kind of procedures should take place in that case)? Is it possible to report on eligible expenditure (considering Article 78(6) of Regulation 1083/2006) before the closure of OP (leaving the FEI for the further functioning), or the closure is only possible together with the closure of OP?</p> <p>Partial closure of FEI: Can FEI be closed prior to the closure of an OP or only at the time of the closure of respective OP? If yes, what procedures should be followed? How a FEI could be closed prior to the closure of an OP if the MS intends to keep the instrument operational?</p>	<p>In line with 78(6) of the General Regulation partial closure of the OP can include FEI.</p> <p>If the lifetime of a FEI ends before the (partial or final) closure of the OP then the FEI could be closed in full respect of the exit policy as referred in the funding agreement. It is however useful to recall the provisions of Article 78(7) according to which resources returned to the operation from investments undertaken by a FEI shall be reused by the competent authority for the same type of activities.</p> <p>Partial closure can take place when the operation is completed during the period up to 31 December of the previous year. FEI could be presented to partial closure if the entire OP amount paid to FEI (+ any interest earned on OP contribution to FEI) has been spent for investments in final recipients and eligible management costs and fees. In this case the operation can be considered completed. Eligibility of management costs ends with the partial closure.</p> <p>Partial closure could be done also for FEI operation which did not use the entire OP allocation to the FEI, where it is obvious that there is no chance to invest the remaining funds by 2015. In this case with partial closure declaration part of OP allocation not used for eligible expenditure shall be returned to COM or covered by eligible expenditure in other operations under the same PA.</p> <p>The completion of FEI operation does not mean that FEI needs to wind up. It will continue with the outstanding OP loans, guarantees and investments and it will operate with resources returned to the operation (which are not anymore OP resources). Similarly many FEIs after closure in 2017 will continue their operations with resources returned (revolving funds).</p>
16	Financial engineering instruments	3.6	<p>Will there be any verifications (controls) related to reutilisation of resources returned? What kind of controls would it be? What would be (legal) background for such verifications?</p> <p>Re-use of FEI funds for the same purpose – how it should be verified and on what basis?</p>	<p>According to Article 43(3) of the Implementing Regulation the funding agreement signed between a managing authority or the holding fund and the FEI should include provisions on the inclusion of an exit policy and winding-up provisions on the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured that are attributable to the contribution from the operational programme..</p> <p>At closure the MA should provide information on the reuse of legacy resources attributable to the Structural Funds specifying the competent authority which is responsible for managing legacy resources, the form of reuse, the purpose, the</p>

				<p>geographic area concerned and the envisaged duration.</p> <p>Audits would cover the verification of the respect of the provisions of the General Regulation, the Implementing Regulations and the funding agreement.</p>
17	Financial engineering instruments	3.6	<p>Implications of loss of FEI funds in case of a bankruptcy of a bank – would be these funds considered ineligible?</p> <p>How should such bankruptcies effect all the situation? Would the "lost contribution" really be ineligible despite the fact that FEI is implemented and the goals (eg. as provided in the funding agreement and (or) in the investment strategy) are reached fully with lower resources</p>	<p>According to Article 78 (1) of the General Regulation, all statements of expenditure shall include the total amount of eligible expenditure paid by beneficiaries in implementing the operations. By way of derogation Article 78(6) allows to declare all expenditure paid in establishing or contributing to funds or Holding funds managing FEI as defined in Article 44 of the General Regulation.</p> <p>However, at closure according to Article 78 (6) only the amount paid out by the financial engineering instrument for concrete investments in final recipients (e.g. SMEs, urban development projects, energy efficiency and use of renewable energy in buildings) or the amount of guarantees provided including the amounts committed as guarantees (corresponding to underlying loans issued and disbursed) can be declared as eligible expenditure. Also, management costs or fees are eligible expenditure within the limits set out in the legislation (Article 43(4) of the Implementing Regulation).</p> <p>Following the above, eligible expenditure at closure would only be expenditure paid for investments in final recipients irrespective of the bankruptcy occurred. In case detailed facts are presented or more specific questions are asked the reply may be further elaborated.</p>
18	Financial engineering instruments	3.6	<p>What kind of procedures should be applied by AA during implementation and (or) closure of FEIs?</p> <p>What would be the legal background for such actions considering that AA is responsible for verification of 1) the effective functioning of the management and control system (MCS) - while the managers of holding funds and FEIs are not part of MCS and 2) the expenditure declared to the European Commission - because of applying the random statistical sampling no FEI sample can be selected.</p>	<p>The audit approach to be applied by AAs during implementation is set out in the Common Audit Framework developed for auditing financial engineering instruments under EC Structural Funds (transmitted to all AAs by letter of 11/10/2011 (Ares(2011)1078561).</p> <p>The AA work on FEI at closure should include:</p> <ul style="list-style-type: none"> - thematic audits focused on checking if the final balance was calculated in compliance with Article 78(6) and (7) of the General Regulation and the MA took into account all EC and national audit findings for the FI selected at closure.
19	Financial engineering instruments	3.6	<p>In accordance with Article 78(6) of Regulation 1083/2006 at partial or final closure eligible expenditure of financial engineering instruments shall be payments for investments in enterprises.</p> <p>Would it be possible, if needed, to declare as eligible expenditure the investments which have been financed in accordance with rules applicable to</p>	<p>No, it is not possible. The eligible expenditure concerns investments in final recipient with resources from operational programme which were effectively used during the first cycle of investments. The resources returned are not considered OP resources any longer and their reinvestment cannot therefore be declared as eligible expenditure.</p>

			Structural Funds but from the resources returned by SMEs to financial intermediary (and not to HF)? Therefore these investments can be considered as over-committed and subsequently invested as eligible expenditure.	
20	Financial engineering instruments	3.6	Procedures applicable for FEI at the closure of OP's (reports and expenditure declarations to be submitted by the MS at the final and partial closure; should the MS only declare the amounts to be returned resulting from the difference between amounts indicated under points a), b), c), d), e) of Art. 78(6) of Reg. 1083/2006 and total expenditure paid in establishing or contributing to specific FEI funds?	<p>The procedure should be the following:</p> <ol style="list-style-type: none"> 1) In interim payments MA declares as eligible expenditure the expenditure paid in establishing or contributing to FEI in line with Article 78(6) of the General Regulation. 2) At closure MA should declare as eligible expenditure only amounts invested in final recipients and eligible management costs and fees as set out in Article 78(6) of the General Regulation. 3) At closure it can happen that the amount already declared to the Commission in interim payments (amount paid into the FEI) is higher than the eligible expenditure at closure (investments in final recipients and management costs). In this case the eligible expenditure at closure will be lower than the expenditure declared in interim payments for FEI. <p>To sum up, the MA should declare as eligible expenditure at closure the amount which is equal to: the amounts invested in final recipients and eligible management costs and fees - article 78(6) a), b), c) d) e) minus [interest earned on OP payments to FEI which are attributable to structural funds not reused by the fund for support to final recipients or management costs and fees] minus [any arrangements fees overlapping with eligible management costs and fees declared under 78(6) d)].</p>
21	Financial engineering instruments	3.6	What is the legal basis for FEI audits by a national audit authority taking into account that the audit authority provides an annual opinion regarding expenditure declared to the EC on the basis of statistical sample, and that at the closure of FEI no new payment claims will be submitted to the EC (and therefore, not sampled) and /or the amounts to be recovered will be so small that they will not be sampled.	In the framework of FEI an adequate audit trail should allow the verifications of the provisions of Article 78(6). While the expenditure paid in establishing or contributing to the financial engineering instrument can be included in an interim statement of expenditure, the eligibility of this expenditure will be ultimately verified at closure and is subject to the assurance given in the closure declaration by the audit authority in line with Article 62(1)(e)
22	Revenue generating projects	3.7	In accordance with Article 55 (3) of Regulation 1083/2006: where it is objectively not possible to estimate the revenue in advance, the net revenue generated within five years of the completion of an	In the case of Article 55(3) of the General Regulation revenues generated within 5 years of the completion of the operation should be deducted by the certifying authority from the expenditure declared to the Commission. Any deductions are to be made at the latest at the submission of closure documents, but of course could be made

			<p>operation shall be deducted from the expenditure declared to the Commission. If there are such projects for which this five year period ends after 2017-03-31 (i.e. after the submission of closure documents), which period should be taken in the net revenue calculation?</p> <p>The question concerns wording „at the latest“. Does it mean that net revenues should be deducted (under the applicable conditions) at least once after 5 years period (or at the latest at the time of submission of the closure documents)? Whether the net revenue should be deducted every year or once after 5 years (or no later 2017 March 31)?</p>	<p>before that.</p> <p>Deduction of the revenues generated is done at the latest at closure i.e. by 31 March 2017. If the five years period ends after closure, revenues are calculated for the period between the completion of the operation (and the start of revenue generation) and the submission of closure documents.</p> <p>In addition the managing authority should calculate the contribution these projects are entitled to. If there are new sources of revenue which have not been taken into account in the financial gap analysis, or there is a change of tariffs, or it was not possible to assess revenues in advance, then (additional) net revenue should be deducted by the certifying authority from the expenditure declared to the Commission, at the latest by 31 March 2017 in accordance with Article 89(1) of the General Regulation.</p>
23	Revenue generating projects	3.7	<p>The information on revenue generating projects is collected yearly (no longer than 5 years) with reports submitted after the end of the project. In some cases the latest data will be submitted no later than 2017 January 31. How EC will treat 2 month period that can't be covered? In our opinion, to ask the information from the beneficiary additionally, before 2017 March 31, can be treated as administrative burden and therefore inappropriate.</p>	<p>Deduction of revenues on the basis of Article 55 (4) of the General Regulation. is required at the latest at the time of submission of closure documents. For practical reasons the cut-off date for the transmission of the revenues concerned by the beneficiaries is necessarily earlier. It is up to the national authorities to collect the information in advance of the submission of the closure documents possibly basing themselves on forecasts from the beneficiaries.</p>
24	Revenue generating projects	3.7	<p>Could EC describe what the changes in tariff policy are, give the best practise examples and explain its' monitoring.</p>	<p>The tariffs generated from an investment are usually bound in their development to a price index and as such reflected in the financial analysis. If the tariffs remain linked to the development of such a specific price index, the tariff policy is to be considered as unchanged during the live time of a project. However, in case of a decoupling of the tariff policy from such a price index or one shot tariff increase beyond the price index a change of the tariff policy needs to be reflected in a reassessment of the financial gap.</p>
25	Certified statement of final expenditure, final payment application	5.1.	<p>According to the General Regulation the final eligibility of expenditure is 31.12.2015., in our understanding that means that the final beneficiary has to pay all expenditure till that day, and the public contribution could be paid later. Please confirm that our understanding is correct.</p>	<p>According to a combined reading of Articles 56 (1) and 78 (1) of the General Regulation:</p> <ul style="list-style-type: none"> ▪ The final date for eligibility of expenditure (i.e.31 December 2015) mentioned in Article 56(1) of the General Regulation concerns the expenditure paid by beneficiaries implementing operations ▪ The corresponding public contribution is "due to be paid" i.e. it may be paid after the 31 December 2015 to the beneficiaries. <p>Article 80 of the General Regulation indicates however that the public contribution</p>

				<p>shall be paid to the beneficiaries as quickly as possible.</p> <p>In addition, as regards state aid, the public contribution shall be paid to the beneficiaries before 31 March 2017.</p>
26	Certified statement of final expenditure, final payment application	5.1 3.8	In addition please clarify what about the state aid, does the term 31.12.2015 relate to the state aid beneficiary or to the public contribution that should be paid to state aid beneficiary?	<p>As for State aid, there are two deadlines to be met:</p> <ul style="list-style-type: none"> - 31 December 2015: only expenditure paid by State aid beneficiaries by this deadline would be eligible - the body granting the aid should have paid the public contribution to the State aid beneficiaries before the date of submission of closure documents (31 March 2017).
27	Certified statement of final expenditure, final payment application	5.1	Considering the fact that the public contribution to final beneficiary can be paid after the 31.12.2015, what date should be indicated in the certificate as a date of closure of accounts;	<p>If this question is referring to the certificate in annex X, the date of closure of the accounts should be one of the following:</p> <ul style="list-style-type: none"> - the date of the certificate - or, if earlier than the above mentioned, the date of registration of the amounts paid in the CA accounts
28	Certified statement of final expenditure, final payment application	5.1	Please confirm our understanding, that the cross-financing, when the project/activity has been financed partly from ESF and ERDF, presentation in the final statement of expenditure is only for informative purposes and should not be taken for calculation of the amount claimed.	<p>The information included in the final statement of expenditure will allow for a consistency check ensuring the verification of the respect of the thresholds for cross financing foreseen in Article 34(3) of the General Regulation.</p> <p>A consistency check (by MS and the COM) between the information on cross-financing provided in the final statement of expenditure and in the final implementation report (cf. table 2-1-2 of Annex XVIII to the Implementing Regulation).</p> <p>For the sake of clarity, cross-financing does not refer to projects financed partly by ESF and ERDF. It refers to expenditure falling under the scope of one fund but fully financed under an OP co-financed by the other fund.</p>
29	Recoveries	5.1. 3	Article of 5.1.3 states that „for the amounts declared under Annex XI(3) as "irrecoverable amounts", where <u>the Member State requests the Union's share to be borne by the general budget of the European Union, the Commission will carry out an appropriate examination of each case.</u> In this respect it will either (a) inform the Member State in writing about its intention to open an enquiry in respect of that amount or (b) request that the Member State continue the recovery procedure or (c) <u>accepts that the Union's share is borne by the general budget of the European Union.</u> “.	<p>The Commission has informed the Member States in the COCOF guidance note to Certifying Authorities (COCOF 10/0002/02/EN of 17/03/2010) that it will analyse the basic data in the list of irrecoverable amounts provided by the Member States in table 3 of Annex XI to the Implementing Regulation as amended, and based on a risk assessment or on other indications such as that the loss has occurred as result of fault or negligence on the part of a Member State, it might proceed as follows: the Commission might request further information, it might open an enquiry or it might request the Member State to continue the recovery procedure. According to Article 20 (2a) of the Implementing Regulation, if the Commission has not contacted the Member State within one year from the submission of the statement, the amounts at stake will automatically be borne by the EU budget except when the irrecoverable amounts relate to suspected or established fraud.</p>

			<p>Could you please explain more precise mechanism of the action: the documents must be sent to, the usual process of going (the most common stage of the process; give us an example how it should be done technically)?</p>	<p>Furthermore, the Commission has informed the Member States that the simplification of the requirements on the reporting do not exempt Member States from their obligation, under Article 70 of the General Regulation, to take all the necessary measures in order to try to recover the amounts unduly paid. It is only when all the available means have been carried out till their end without result that the Member State will be able to request that the irrecoverable amounts are shared by the EU budget. (see COCOF guidance note 10/0002/00)</p> <p>Whereas the Commission must have contacted the Member State within one year, the enquiry itself might extend over a one year period from the date of submission of the statement.</p> <p>The following is an indicative list of information which could be requested from the Member State in order to assess potential negligence and to obtain proof on adequacy of recovery measures:</p> <ol style="list-style-type: none"> a) a copy of the award decision; b) the date of the last payment made to the final beneficiary or the final recipient; c) a copy of the recovery order; d) where applicable, a copy of the document attesting the final beneficiary's or final recipient's insolvency; e) an outline description of the measures taken by the Member State, with indication of their dates, to recover the relevant amount. <p>From a financial point of view, the following provisions would apply:</p> <ul style="list-style-type: none"> - amounts included in the final payment claim - amount inserted in the final statement to be sent by the 31 March 2017 based on figures as at 31 December 2016 (Annex XI to the Implementing Regulation). <p>The Commission will focus on the amounts being inserted after 31 December 2015. For any case (a,b,c) commitment will remain open until the end of the examination process is closed.</p>
30	Closure declaration	5.3	<p>ANNEX VIII (MODEL FINAL CONTROL REPORT) of the Implementing Regulation</p> <p>If it would be possible to explain more detailed what EC expects from these additional checks from AA (scope, timing, procedure, difference):</p> <ol style="list-style-type: none"> 1. audits of the closure procedure of the managing 	<ol style="list-style-type: none"> 1) The audit authority should verify if the work done by the managing authority/intermediate bodies and certifying authority in preparation for closure has adequately covered the points identified in the first two pages of Annex VI of the closure guidelines. This work involves mainly desk-review of the procedures put in place by the MA/IBs and CA, analysis of whether those procedures are adequate and tests of controls (e.g. walk-through tests) of the work done by the MA/IBs/CA when applying those procedures. The selection of the files to be checked for the tests of

			<p>and certifying authorities and intermediate bodies.</p> <ol style="list-style-type: none"> 2. examination of the debtors' ledger kept pursuant to Article 61(f) of Regulation 1083/2006. 3. re-performance of controls on the accuracy of the amounts declared in relation to supporting documents. 4. examination of information relating to follow-up of audit findings and reported irregularities. 5. examination of additional work carried out by managing and certifying authorities to enable an unqualified opinion to be provided. 	<p>controls can be risk based, taking into account the assurance obtained by the AA during implementation of the programmes.</p> <ol style="list-style-type: none"> 2) The AA's examination of the debtors' ledger kept pursuant to Article 61(f) of Regulation 1083/2006 is covered by the verifications that the AA should carry out at closure on the reliability of the final statement on withdrawn and recovered amounts, pending recoveries and irrecoverable amounts, as explained on page 47 of the closure guidelines. This task should correspond to a follow-up of the work of the AA carried out when verifying compliance with the key requirement 11 (satisfactory arrangements for keeping an account of amounts recoverable and for recovery of undue payments, in line with the applicable provisions). 3) The closure guidelines do not refer to "re-performance of controls (...)". The question needs to be clarified by the MS. 4) The examination of information relating to follow-up of audit findings and reported irregularities is a basic work to be done by the AA at closure. It is unclear what the MS wishes to have as detailed explanations in this regards.. 5) If there is additional work carried out by the MA and CA to enable a unqualified opinion, the AA obviously needs to verify the adequacy of such work, the depth of which depends from each case. It is unclear what the MS wishes to have as detailed explanations in this regards
31	Closure declaration	5.3.2	<p>Could you please explain, what procedures could be applied by the Commission and actions taken by the Member State in case the closure declaration is not provided by the submission deadline to the Commission under the circumstances when the Commission or the European Court of Auditors audits are not closed.</p>	<p>The closure declaration should be based on all audit work carried out by, or under the responsibility of, the audit authority in accordance with the audit strategy. On-going audits by the ECA or the Commission can be mentioned in the closure documents but have no impact on the submission deadline: 31 March 2017.</p>
32	Operation suspended due to legal or administrative proceedings	8	<p>According the Article 95 of the General Regulation the amounts, that the certifying authority has not been able to declare because of operations suspended due to legal proceedings or an administrative appeal having suspensory effect, will be not included into an automatic decommitment procedure. Please specify what documentation should be provided concerning the legal proceedings and administrative appeal having suspensory effect in order to provide sufficient information on the existence of such reasons.</p>	<p>The Member State should demonstrate that following conditions are met:</p> <ol style="list-style-type: none"> a) to prove that there is a legal proceeding/administrative appeal with regard to a specific operation; b) to demonstrate that the legal proceeding or the administrative appeal has suspensory effect; c) administrative appeals/legal proceedings have an impact on the ability of the national authorities to declare expenditure to the Commission d) to justify the amounts, which will reduce the amounts potentially concerned by

				<p>automatic decommitment and make an assessment of how much has not been able to be declared.</p> <p>In addition to the justification, the table for suspended projects in Annex VII of the Closure Guidelines should be filled in.</p> <p>It is up to the Member State to provide any appropriate documentation with regard to the proof of the existence of legal or administrative proceedings as well as the existence of suspensory effect, according to national administrative or judicial systems.</p>
33	Operation suspended due to legal or administrative proceedings	8	<p>Chapter 7 of the Commission Guidelines stands that the Certifying Authority will not be able to declare expenditure because of operations suspended due to legal proceedings or an administrative appeal having suspensory effect (Article 95 of the General Regulation) or for reasons of force majeure (Article 96(c) of the General Regulation). The Member State should indicate in the final report on implementation and in the closure declaration the amount relating to these two types of situations, <u>which could not be declared</u> at the time of submission of the closure documents.</p> <p>Could you please explain:</p> <p>1) What actions should be made by the Member State, if relevant authorities will recognize or make a decision that the expenditure, which the Certifying Authority has not been able to declare (in the final payment application) because of operations suspended due to legal proceedings or an administrative appeal having suspensory effect, is eligible? It is very important for the projects which do not have over contracting.</p>	<p>Given the uncertainty about the results of the legal or administrative proceedings and considering the amounts at stake, it is the Member State's responsibility to decide, when drawing up the closure documents, whether the corresponding operations should be withdrawn (and replaced by other operations, possibly from "overbooking") or retained in the programme. If the latter option is selected by the Member State, then closure documents should refer to these operations and the Commission should be informed on the amount that could not be declared in the final statement of expenditure, so as to keep a commitment open (to protect them from the automatic decommitment) until the responsible national authorities deliver a final decision. The list of suspended projects should be provided, see template in Annex VII of the Closure Guidelines.</p> <p>On the basis of the above, the Member State informs the Commission: a) of the operations that are retained in the programme and thus listed in Annex VII and b) of the corresponding amounts that could not be declared in the final statement of expenditure.</p> <p>Furthermore, the Member State should keep the Commission informed of the outcome of the legal proceedings or administrative appeal. When competent authorities deliver a final decision, either further payments will be made or the recovery of amounts already paid will be carried out or payments already made will be confirmed.</p>
34	Operation suspended due to legal or administrative proceedings	8	<p>2) What does it mean expenditure:</p> <p>- „withdrawn from the programme and/or replaced by another eligible operation before the deadline“;</p> <p>- „retained in the programme“?</p>	<p>The Member State should decide, before the deadline for submission of the closure documents for the programme, whether the operations should be withdrawn from the programme or retained in the programme.</p> <p>Expenditure withdrawn means expenditure deducted from the expenditure declared to the Commission for co-financing. But expenditure from another eligible operation can be declared instead.</p> <p>Expenditure retained means expenditure not withdrawn from expenditure declared to</p>

				the Commission for co-financing.
35	Operation suspended due to legal or administrative proceedings	8	3) if the legal proceedings are not finalized at the time of the submission of the closure documents, but expenditure, related with the legal proceedings, has been already declared to the Commission, should Certifying Authority withdraw possibly ineligible expenditure from the closure documents?	<p>It is up to the Member State to make an assessment and decide, when drawing up the closure documents, whether the corresponding operations should be withdrawn (and replaced by other operations, possibly from “overbooking”) or retained in the programme.</p> <p>In principle, there is no time limit set up by the Regulations or Closure Guidelines for the closure of suspended operations. The Commission will keep commitment open until it receives information from the Member State. However the Member State should make an assessment whether the period of suspension would be proportional to the amount at stake. The Commission could only advice to consider if the period is not excessive, because the suspended operations would delay the full closure of the programme and could represent an unworthy administrative burden for the Member State if the proceedings last for many years.</p> <p>If expenditure relates to legal and administrative proceedings on-going on 31 March 2017 and these expenditure are included in the final statement of expenditure sent by the Certifying Authority by 31 March 2017 and the outcome of an administrative or legal proceeding results in expenditure declared to be ineligible, the statement of expenditure should be revised downwards after 31 March 2017 (see point 4.3 of the Closure Guidelines).</p>
36	Over contracting		When over contracting is used and during implementation of projects more eligible expenditure will be actually made, than it was planned in the financial plans of the Operational programmes, do we have to include all eligible expenditure, which was made by the beneficiaries, in the final statement of expenditure or we have to include only the sum of expenditure which exactly corresponds to the total sum of eligible expenditure planned in the financial plans of the Operational programmes on the level of Priority Axes.	<p>It is up to Member States to decide whether they “resort overbooking”. It is possible and advisable to include all eligible expenditure beyond financial plan because this could provide a buffer in case of individual financial correction In any case, the expenditure corresponding to overbooking has to be covered by sufficient national funding sources.</p> <p>Please note in this context that financial corrections after closure will be net corrections unless the Member State has the possibility to replace the related irregular expenditure on individual projects by supplementary expenditure declared under the priority axis at closure (overbooking). However, financial corrections notably linked to systemic irregularities imposed by a Commission decision under Article 100 (5) of Regulation (EC) No 1083/2006 after completion of the procedure laid down by Article 100(1) to 100(4) will involve net reduction in the Member State's indicative allocation of funding under Article 18 (2) of Regulation (EC) No 1083/2006.</p>