European Commission

Closure 2007-2013

Closure training, Copenhagen

18 February 2016

Building blocks

- Model Programme Closure

- Key elements in 2007-2013 closure

- Closure calculation

Model Programme Closure: Stakeholders

Managing Authority/Intermediate Body

Draws up the FIR including check the final expenditure claims from beneficiaries and complete management verifications etc.

Certifying Authority

Draws up the application for final balance and the final statement of expenditure and satisfy itself that all errors/irregularities were corrected, that recovered amounts are repaid and all audit findings and recommendations implemented

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

Audit authority

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

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

Model Programme Closure

Before submission of closure documents

30-06-2016: deadline recommended for the submission of the last interim payment claim to COM even if 95% threshold reached

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

Model Programme Closure

At submission of closure documents

- Closure documents (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
- Failure to submit any of the closure documents: decommitment of the final balance
- Failure to submit the FIR or FCR: potential financial correction
- Availability of supporting documents 3 years following the date of closure

Model programme closure : closure documents: Final Implementation Report (FIR):

- 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
- Categorisation data in the FIR should be reconciled with the final payment declaration
- Explanation and justification of any significant divergence against the set targets and problems encountered in their achievement should be provided
- MS should report on the corrective actions adopted during the implementation

Model Programme closure: Final statement of expenditure and final payment application:

- 31.03.2017: Last date to declare expenditure (except for force majeure)
- Declaration of expenditure paid by beneficiaries for the implementation of operations and of public contribution paid or to be paid to beneficiaries
- Beneficiaries to be paid in full as quickly as possible
- State aid : public contribution must be paid to State aid beneficiaries on 31.03.2017
- State aid : Advances paid to the beneficiaries should be covered by expenditure paid by beneficiaries at the latest on 31 December 2015
- Public contribution paid to beneficiaries at least ≥ EU contribution paid to the programme

Model programme closure: final statement of expenditure and final payment application:

- Possibility to "overbook" expenditure
- Deduction of new or additional net revenues for some RGP
- Deduction of certain types of expenditure under FEI
- Drawing of the 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 future payments in relation to pending recoveries and irrecoverable amounts once these pending recoveries have been cleared and once the COM has accepted to share the burden of irrecoverable amounts

European Commission

Model closure : 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 covering expenses paid in 2015 and 2016
- Residual error rate to be mentioned
- further advices in Annex VI of the Closure Guidelines

Timeline for Closure

<u>After</u> submission of closure documents

- 1 year after reception of closure documents : 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

    - Report on operations suspended due to legal or administrative proceedings

    - Financial correction : Could also happen beyond the period of retention of documents

Examination of Closure documents

Objective: revise and accept the FIR and closure declaration within one year of submission

Commission has 5 months to confirm its admissibility or provide comments to MS in case it is not satisfied

Tacit approval if no reaction by the Commission within 5 months

If COM Comments:

➢ MS has 2 months to react

➢ Possibility to extend deadline by another 2 months (or for duration of audits for the closure declaration)on request

➢ If MS fails to provide satisfactory responses to comments sent by COM: rejection of FIR rejected and possible financial corrections

Closure 2007-2013

Key elements to consider

Key changes compared to 2000-2006

- Final date of eligibility & deadline for submission of closure documents fixed in the Regulation: no extension possible

- No individual closure of Cohesion Fund projects since CF has been mainstreamed

- Role of Audit Authority- checks final statement and disclose discrepancies and/or systemic deficiencies, projected error rate by year and a residual error rate for the programme at closure.

Key elements: Irregularities I.

- Disclosure of the annual total projected error rates and residual risk 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

Key elements: Irregularities II.

Reporting threshold

Where the irregularities relate to amounts of less than €10,000 chargeable to the EU budget, Member States are exempt from the reporting obligation unless the Commission expressly requests information on such amounts.

Reporting information

Less detail on recovery procedures now required; report only the initiation, conclusion or abandonment of any procedures for imposing administrative or criminal penalties related to the reported irregularities, as well as the outcome of such procedures.

Key elements: Irregularities III.

Exemption of reporting obligations:

- cases where the irregularity consists solely in the failure to execute, in whole or in part, an operation owing to the bankruptcy of the beneficiary (simple bankruptcy);

- cases brought to the attention of the MA or CA by the beneficiary voluntarily and before detection by either of them, whether before or after the inclusion of the expenditure concerned in a certified statement submitted to the Commission;

- cases which are detected and corrected before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

However, irregularities preceding a bankruptcy and cases of suspected fraud must be reported.

Key elements: Suspended operations (legal or administrative proceedings)

- MS has to decide whether to withdraw or retain operations suspended

- MS has to quantify the amount that the CA has not been able to declare for operations retained

- Suspended operations are to be presented in a Summary attached to the FIR (Template: Annex VII of Closure Guidelines)

- COM will keep respective commitments open (no time limit)

- Suspension does not extend the eligibility period

- MS to keep Commission informed on the outcome of the proceeding

Key elements: Durability of Operations I.

- No substantial modification must occur defined as
  - a change of ownership or cessation of a productive activity
  - affecting the nature or implementing conditions of an operation or gives an undue advantage to a firm or public body
- Duration: Five years after completion of the operation Possibility for MS to reduce to three years for SMEs
- Exceptions:
  - ESF – Only in case of State aid (Art 107 of Treaty)
  - Cessation of the productivity activity due to non-fraudulent bankruptcy

Key elements: Durability of operations II.

Application to concrete situations:

- Operation implemented by public authority is privatised

    - implementing conditions maintained (condition 2 not fulfilled) no Financial correction (FC)

    - Implementing conditions changed (condition 2 fulfilled): FC

- Operation is subject to a bankruptcy within five years from the date of completion

    - Fraudulent bankrupcy (condition fulfilled) : FC

    - Non fraudulent bankrupcy (exception applicable): no FC

FC pro rata temporis

Key elements: Revenue generating projects

- Financing needs based on estimates (Funding gap)
- Deduction required at the latest of closure

  ➢ New sources of revenue

  ➢ Changes in the tariff policy

- No compulsory deductions required to take into account the variation of revenues which sources have been taken into account ex ante

  ➢ Unless systematic ex ante underestimation of revenues

Key elements: Non-functioning operations

- Definition: Non-completed projects or projects completed, but not in use (at the submission of closure documents).

- Can be, exceptionally and on a case-by-case basis, included in final statement of expenditure IF:

➢ Operation over 5 MEUR of total costs;

➢ Total of EU contribution to all non-functioning projects < 10% of total OP allocation.

➢ MS commits to complete non-functioning projects before 31 March 2019 and to report to COM every 6 months.

➢ List of non-functioning projects included in FIR.

No extension of the final date of eligibility

Key elements: Non-functioning operations: outcome

➢ Functioning: Information on completion and operational aspects provided to the Commission. No further payment as already paid at closure.

➢ Non-Functioning: Recovery of funds allocated to the whole project. If MS disagrees, financial correction (Art 99 of GR)

Key elements: Force majeure

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

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 IF seriously affecting the programme of part of it.

Key elements: 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

- Dedicated section both on major projects and FEI reporting following 2011 Amendment of the General Regulation

- Electronic submission of closure documentation via SFC 2007

Closure 2007-2013

Closure Calculation

Final statement of expenditure and final payment application

➢31/03/2017: last date to declare expenditure to the Commission (except for force majeure)

➢Declaration of expenditure paid by beneficiaries for the implementation of operations and of public contribution paid or to be paid to beneficiaries

➢Public contribution paid to beneficiaries at least >= EU contribution paid to the programme

➢Use of flexibility requires overbooking under at least one priority axis

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Closure calculation - main principles

At the level of the priority axis:

➢Calculation of the Fund contribution (= declared expenditure X co-financing rate) (1)
➢Fund contribution shall not exceed, by more than 10%, the maximum amount of assistance from the Funds (2)

At programme level:

➢Fund contribution shall not exceed the public contribution declared (3)
➢Fund contribution shall not exceed the maximum amount of assistance to the operational programme (4)

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Calculation example

Financial Plan								Final declaration of expenditure		Calculation at the level of the priority axis			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	Calculated Fund Contribution (1)	Flexibility limit	Amount retained at priority level (2)	Capping to Public Contribution (3)	Capping to Fund Contribution (4)
	$A = B + (z)$	B	$(z) = (x) + (y)$	(x)	(y)	P / T	$C=B/A$	D	E	$F=C*D$ or $C*E$	$H=B+B*10\%$	$J=min(F,H)$	$K=min(J,E)$	$L=min(K,B)$
Priority 1	95,000	81,000	14,000	14,000	0	P	85%	100,000	100,000	85,263	89,100	85,263		
Priority 2	60,000	45,000	15,000	15,000	0	P	75%	54,000	54,000	40,500	49,500	40,500		
Priority 3	61,000	52,000	9,000	7,000	2,000	T	85%	64,000	60,000	54,557	57,200	54,557		
Programme	216,000	178,000	38,000	36,000	2,000			218,000	214,000	180,321	195,800	180,321	180,321	178,000

Final Result	178,000

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Thank you for your attention !

Questions?!