



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION DECISION

**Guidelines for financial closure of operational assistance (1994-1999)
from the Structural Funds**

**Subject: Guidelines for financial closure of operational assistance (1994-1999)
from the Structural Funds**

1. General principles

- 1.1 Closure of operational assistance corresponds to the financial settlement of outstanding Community commitments for each operation involved through payment of the balance of the commitment to the appointed authority or the issue of a recovery order.
- 1.2 The request for payment of the balance must be submitted to the Commission within six months of the final date for taking into account payments made by the final beneficiaries (see paragraph 36 of the financial implementing provisions and paragraph 2.2 of data sheet No 2). It should enable the Commission to check whether the most recent decision concerning a form of assistance was properly executed.

2. Final date for payments

- 2.1 The final date for taking into account payments in respect of co-financed operations is fixed by the Commission decision granting assistance. The deadline for payments may be extended by the Commission in response to a specific and properly grounded request by the Member State. The request must be submitted before expiry of the deadline and accompanied by information justifying the extension.

3. Final report

- 3.1 The request for payment of the balance must comply with the requirements laid down in the Coordination Regulation, in particular in the second indent of Article 21(4).
- 3.2 In the six months following the completion of an operation, Member States must send a final implementation report to the Commission. For this purpose Member States can use the model prepared by the Commission; at all events they must provide the information specified in the model.

4. Closure in the absence of the request for payment of the final balance and/or the final implementation report

- 4.1 The final date specified in the first indent of Article 21(4) of the Coordination Regulation is not a prescriptive date. In other words failure to meet the deadline does not necessarily entail rejection of a request for payment of the balance. This conclusion derives from the Court decision in Case 44/81 *RFA v Commission* [1982] ECR 1855.
- 4.2 Nevertheless, in this case the Court ruled that the account "must be cleared within a reasonable period and that the Commission is empowered to determine that period and to attach to it penalties which will ensure its observance" (ground 15 of the decision). Consequently, since there are no general provisions on the

subject the Commission is entitled, even obliged, to fix a time limit in individual cases when national authorities are slow to submit a request.

- 4.3 If after expiry of the six months specified in Article 21(4) of the Coordination Regulation the Commission has not received the request for payment of the final balance and/or the final implementation report it may send the Member State concerned a letter of formal notice. The letter will inform the Member State that if the documents in question are not sent in the two months following the date of transmission of the letter of formal notice the programme can be closed on the basis of the data available. In such cases, closure will be based on the certified expenditure covered by the last implementation report approved by the Commission.

In the application of this paragraph account will be taken of Article 52(5) of Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L161, 26.6.1999, p.1).

- 4.4 Documents received after the final date specified in the letter of formal notice will not be admissible and will not be taken into consideration.

5. **Statement of Validity of the Request for Final Payment (Article 8(1) of Regulation No 2064/97)**

- 5.1 Article 8 of Regulation No 2064/97 of Commission establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds specifies that: "No later than at the time of the request for the final payment and the final declaration of expenditure in respect of each form of assistance, Member States shall present to the Commission a statement ... drawn up by a person or organisation functionally independent of the implementing service. The statement shall summarise the conclusions of the control examinations made in the previous years."
- 5.2 The statement must also give an opinion on the validity of the request for final payment and the legality and regularity of the operations underlying the final statement of expenditure. It can be prepared on the basis of the model in Annex 2 of Commission Regulation (EC) No 2064/97.
- 5.3 "If the presence of important management or control weaknesses or the high frequency of irregularities encountered does not allow the provision of a positive overall assurance as to the validity of the request for final payment and the final declaration of expenditure, the statement shall refer to these circumstances and shall estimate the extent of the problem and its financial impact" (Article 8 (2) of Regulation No 2064/97).
- 5.4 Commission Regulation No 2406/98 (OJ L 298, 07.11.1998) provides that the statement of control referred to in Article 8(1) of Regulation No 2064/88 need not be presented for forms of assistance for which the first decision granting assistance sets the final date for Community and national commitments up to 1 January 1997.

5.5 Without prejudice to the checks specified in Article 23(2) of the Coordination Regulation, the Commission can carry out additional checks to identify any irregularities reported in the above statement and obtain a rectification within a specified time limit.

6. Financing Plans

6.1 The financing plan cannot be amended after the final date for commitments.

6.2 Financial closure of programmes must be based on the current version of the financing plan (usually the financing plan is divided into three: programme, sub-programme/priority axis and measure). Accounts presented by the Member States must contain the same details as the financing plans annexed to decisions granting operational assistance, and must as a rule present a statement of actual expenditure incurred broken down by measure.

A 20% overspend by measure (subject to a limit of 20% of each fund in that measure) may be accepted provided the total of the sub-programme as specified in the current financing plan is not increased.

However, increases in measures within a sub-programme may not exceed 10% (subject to a limit of 10% of each fund in that sub-programme) of the total of the sub-programme in question as laid down in the financing plan.

It should be noted that the flexibility clause is applicable only within the same fund and that, in the absence of sub-programmes, the 10% flexibility is applicable at the programme level.

The above must be compatible with the sectoral regulations applicable to the assistance concerned.

Given the binding nature of structural policy measures for fisheries, especially relating to the fleet, the above percentages are reduced to 5% and 2.5% in the case of measures financed by the FIFG.

7. Final settlement

7.1 Member States are required to transfer the entire amount of Community assistance received to the final beneficiaries. Given that there have been some problems in the past in this matter when the final settlement is carried out, Community contribution, calculated in accordance with the procedures set out in 6.2 above, is limited to whichever of the following two amounts is the smaller:

(a) the amount produced by applying to the declared expenditure the rate of Community co-financing established under the current financing plan for the measure;

(b) the amount of Community assistance actually owed to the final beneficiaries (paid and to be paid in respect of the measure). The latter amount must be specified by the Member State in the statement of expenditure of the latest certification for measures where it does not tally with the amount calculated in accordance with (a).

In instances where the Member State is not able to provide an accurate figure for the amount indicated in point (a), it must contact the Commission's services prior to drawing up the final balance of the programme.

8. The Euro

- 8.1 According to Article 2 of Council Regulation No 1103/97 every reference in a legal instrument to the ecu, as referred to in Article 109g of the Treaty (Article 118 since the entry into force of the Treaty of Amsterdam) and as defined in Regulation No 3320/94 must be replaced by a reference to the euro at the rate of one euro to one ecu.
- 8.2 Member States may submit statements of expenditure supporting payment requests in euros or in national currency.
- 8.3 The conversion into euros of expenditure incurred and certified to the Commission will be carried out in accordance with the provisions of Regulation No 1866/90 using, for the period prior to 1 January 1999 the monthly ecu rate and, for the period after 1 January 1999 the monthly rate of the euro (fixed in the case of the countries in the euro zone). Expenditure converted into ecus will be re-converted into euros at the official rate (1 ecu = 1 euro).
- 8.4 Differences in exchange rates between the date of payment of Community assistance to the final beneficiary and the rate applied to the calculation of payments to the Member States by the Commission are not taken into account.
- 8.5 If Member States fail to meet the obligations devolving on them under Article 5(2) of Regulation No 1866/90 (e.g. utilisation of a rate other than the reference rate whether it is the rate in force on the day of registration of the request or the average monthly rate in force in the capital markets of the Member State in question) Commission departments must return the request and call for a recalculation in accordance with the regulations.

9. Conformity with other Community Policies

- 9.1 Cases not complying with the following provisions must be cleared up before closure:
- Conformity with Community policies, especially the rules on competition, the award of public contracts, environmental protection and the principle of equality between men and women (Article 7 of Framework Regulation);
 - co-financing rate (Article 13 of Framework Regulation and Article 17(3) of Coordination Regulation);
 - Commission Decisions regarding the eligibility of expenditure in the framework of the Structural Funds (Commission Decisions 97/313 to 97/331/EC).

10. Closure of programmes where operations are suspended on legal grounds or in similar situations

- 10.1** The move since 1989 from Community co-financing of projects to co-financing of programmes allows Member States, in conformity with Regulation No 1681/94 concerning irregularities and the recovery of sums unduly paid in connection with the financing of the structural policies and the organisation of an information system in this field, to replace projects appearing on the statements of expenditure sent to the Commission before the final date for commitments. This possibility, however, is not an absolute right according to the third paragraph of the guidelines on financial corrections for the purposes of implementing Article 24 of Regulation No 4253/88, of which the Commission took note at its meeting on 15 October 1997 [C (97) 3151 final II].
- 10.2** If an administrative, civil or criminal court in a Member State suspends implementation of a project, the Member State concerned must take a decision before the date of closure of the assistance. The project concerned may be:
- replaced by another project (possibly from over-programming) before the deadline for commitments for the form of assistance in question, in accordance with the procedures laid down in Regulation No 1681/94; after the Commission is notified of the alleged irregularity, the amount concerned is not recovered but re-programmed, and the Member State remains responsible for any repercussions from the suspended project;
 - retained in the statement of expenditure. In such cases the procedure laid down in Article 24 is applied and the Commission may suspend the amount of Community assistance for the project in question until a decision is taken by the national court. After partial closure of an operational programme, the incriminated project may not be replaced, not even by another project included in over-programming which could have been completed before the final date for payment.
- 10.3** Under Article 24, the operational programme cannot be extended on the grounds that the incriminated project was suspended (nor can a request for extension be invoked) but partial closure of the operational programme will take place on the date fixed for the payments to be taken into account, excluding the amount covering the project in question.
- 10.4** The Member State must be officially notified of the suspension of Community assistance for the project. Notification will serve as supporting evidence for the partial closure of the operational programme (in particular for the Court of Auditors).
- 10.5** Suspension of payment of the amount in respect of the project in question constitutes an outstanding commitment for the National and Community Administrations until the national court delivers its decision. Depending on whether or not the irregularity is confirmed, sums eventually already paid will have to be recovered or the suspended payments will have to be made.
- 10.6** The above provisions are applicable *mutatis mutandis* where, as a result of the bankruptcy of a firm, the project is terminated before completion.