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**DECISION OF THE COMMISSION**

**Guidelines  
on  
closure of assistance  
(2000-2006)  
from the Structural Funds**

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## 1. CLOSURE GENERAL PRINCIPLES

These guidelines apply to closure of assistance under the Structural Funds and are without prejudice to specific rules for individual Funds on particular points<sup>1</sup>.

Closure of assistance covers the financial settlement of outstanding Community commitments through payment of the balance of the commitment to the appointed authority or the issue of a debit note and decommitment of any final balance, as well as the period until all the Commission's and Member State's rights and obligations have been extinguished in respect of assistance or operations. Final settlement does not prejudice the Commission's right to adopt financial corrections.

## 2. IN THE RUN-UP TO CLOSURE (2006-2008)

### 2.1. Modification of Commission decisions

Commission decisions may be modified before the final date of eligibility of expenditure for the assistance, provided that a request for modification is submitted to the Commission before that date.

However, the financing plans annexed to Commission decisions will not be modified at the request of the Member States if such requests are submitted after the applicable deadline set out in the following paragraph<sup>2</sup>.

Member States wishing to modify the financing plan annexed to a Commission decision should submit a request to the Commission by 30 September 2006 at the latest where the modification involves a transfer between Structural Funds or between programmes. In other cases, the request should be submitted to the Commission by 31 December 2006 at the latest.

### 2.2. Modification of programme complements

Changes to the programme complement which require modification of the financing plan attached to a Commission decision will only be permitted if they are submitted to the Commission by the applicable deadline set out in point 2.1 above.

Transfers between measures within the same Fund and the addition of new measures will be possible after 2006 and until the final date of eligibility provided the financing plan of the Commission decision does not require to be modified. The co-financing rates of measures may be modified until the final date of eligibility provided that the total for each source of financing for the priority remains unchanged. Until this date, Member States may also make transfers between different sources of national public financing, provided that the national public funding at priority level remains unchanged.

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<sup>1</sup> Legal interpretations given in the guidelines are without prejudice to the rulings of Community Courts on the provisions involved. Although intended to deal with most issues in relation to a standard closure, Commission services may need to look at specific problems on a case-by-case basis.

<sup>2</sup> This is in line with the Commission's opposition to retroactive amendment of past years' financing plans, as set out in CDRR/04/50/00.

Other modifications to the programme complement, which do not require modification of the financing plan attached to a Commission decision, may be made and approved by the Monitoring Committee until the final date of eligibility of expenditure for the programme. Pursuant to Article 34(3) of Regulation (EC) No. 1260/99, modifications to programme complements must be submitted to the Commission within one month of their approval by the Monitoring Committee.

The final programme complement, including the financial table annexed to it, shall be consistent with the Commission decision approving the assistance, including the financial table annexed to the Commission decision<sup>3</sup>.

### **2.3. Commitments to operations**

As no specific deadline is laid down for commitments in Member States relating to expenditure in the 2000-06 programming period, such commitments can in principle be made by the programme authorities up to the final date for the eligibility of expenditure. However, in practice, commitments will need to be made in sufficient time to enable final beneficiaries to carry out operations and make payments by the final date for the eligibility of expenditure at the latest.

Pursuant to Article 9(2)(b)(ii) of Regulation (EC) No 438/2001, decisions to approve operations must be based on the normal selection and approval criteria and procedures laid down for the programme and Member States must ensure that replacement operations comply with all applicable European and national regulatory provisions, including, but not limited to, rules on management and control systems, eligibility, information and publicity, as well as procurement, competition and environmental rules.

### **2.4. Treatment of state aid post-2006**

#### *2.4.1. Changes in state aid rules*

The 1998 Guidelines on regional state aid, the existing regional aid maps for EU 25 for 2000-2006, and the three block exemption regulations on training aid, employment, and SME aid (including R&D aid for SMEs), as well as the *de minimis* regulation, will expire on 31 December 2006. This also holds for the R&D Framework (1996), which was recently extended until the end of 2006.

On 21 December 2005, the Commission adopted the new Guidelines on National Regional Aid for 2007-2013, corresponding appropriate measures pursuant to Article 88(1) of the EC Treaty, as well as a draft block exemption regulation for national regional investment aid, envisaged to apply for transparent aid schemes that are to enter into force after 31 December 2006.

The new Guidelines were published in the Official Journal of 4 March 2006<sup>4</sup>. On 6 March 2006, the Commission transmitted its formal proposal for appropriate measures to all Member

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<sup>3</sup> The possibility provided in point II.1.1 of the Commission's Communication of 25 April, 2003 on the simplification, clarification, coordination and flexible management of the structural policies 2000-06, C(2003) 1255, to adjust, in the programme complement, the public/private funding breakdown by priority in the financing plan of the Commission decision, will no longer be open to Member States after 31 December 2006.

<sup>4</sup> OJ C 54/13

States. In addition, a draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to national regional investment aid (the so-called 'block exemption regulation') has been published in all languages on DG Competition's website prior to its publication in the Official Journal.

Under the Regional Aid Guidelines 2007-2013, Member States are invited to notify a single regional aid map for 2007-2013 covering their entire territory as soon as possible after the publication of the Guidelines. The Commission will endeavour to approve these regional aid maps as soon as possible. Under the appropriate measures mentioned above, without prejudice to SME and Employment block exemption regulations, all existing regional aid schemes (investment aid and operating aid) have to be phased out by 31 December 2006 (most of them are due to expire on that date, in any event).

In addition, under the appropriate measures, where the environment aid schemes allow regional investment aid to be granted for environmental investments pursuant to footnote 29 of the Community guidelines on State aid for environmental protection, Member States shall amend the relevant schemes in order to ensure that aid may only be granted after 31 December 2006 if it complies with the new regional aid map in force on the date the aid is granted.

Member States shall, as necessary, amend other existing aid schemes in order to ensure that any regional bonuses such as those allowed for training aid, aid for research and development or environment aid may be granted only after 31 December 2006 in areas which are eligible for support under Article 87(3)(a) or (c) in accordance with the regional aid maps adopted by the Commission in force on the date the aid is granted. All but one Member State has confirmed its acceptance of the appropriate measures.

As a consequence, regional investment or operating aid can be awarded after 2006 only if it is covered by the new block exemption regulation on transparent regional investment aid (currently being prepared), by the existing SME block exemption regulation, or by a Commission approval decision pursuant to a notification under Article 88(3) of the EC Treaty. The Commission will not consider as complete notifications for regional investment or operating aid for the period after 2006, and will therefore not decide on such aid until the relevant regional aid map for 2007-2013 has been approved.

The Commission is considering whether to extend, before 2007, the existing block exemption regulations for training aid, employment aid, and SME aid by one year, until the end of 2007, and to replace them with a 'super-block exemption' regulation which would integrate them, together with the block exemption regulation on regional aid, in one single text. This 'super-block exemption' regulation is envisaged to be adopted in the course of 2007. It is also envisaged that a new *de minimis* block exemption regulation will be adopted before 2007.

In any event, aid schemes exempted under the current block exemption regulations, including the *de minimis* regulation, will remain exempted during an adjustment period of six months after the expiry of the regulations. However, insofar as these block exemption regulations foresee specific provisions for assisted areas, these provisions are only applicable if the area concerned remains or becomes eligible for regional aid pursuant to the regional aid map which will be applicable at the point in time the aid is formally awarded.

#### *2.4.2. Possibility to extend regional aid and other aid schemes in 2007 and 2008*

As indicated under 2.4.1, the extension of regional aid schemes beyond 2006 is not possible unless and until new regional aid maps are defined. If a Member State wishes to continue the application of regional aid schemes after 2006, the Member State should notify its extension, with the necessary amendments necessary to comply with the Regional Aid Guidelines 2007-2013, to the Commission in line with Commission Regulation (EC) No 794/2004 of 21 April 2004, where possible and appropriate on the basis of the simplified notification procedure foreseen by its Article 4, as soon as the new maps have been approved by the Commission, unless this notification is no longer necessary because the extension of the scheme takes place in line with a block exemption regulation.

The re-notification and adjustment of the scheme does not mean that the individual aid contracts existing on 31 December 2006 with the beneficiaries of the aid will have to be modified following the revision of the state aid legal instrument. For the state aid assessment, the applicable rules are those which are in force at the moment the aid is awarded, that is, the moment of the legally binding act on the basis of which the beneficiary acquires the right to receive the aid. If a beneficiary acquires the right before the end of 2006, the rules in force before 2007 continue to apply.

#### *2.4.3. Modalities for extension of regional state aid schemes under Structural Funds rules*

If a Member State wishes to modify an existing aid scheme to comply with the new state aid rules (for example, to extend its duration, to adapt the aid intensity to new regional aid ceilings as defined in the applicable regional aid map, to modify the final beneficiary or to switch from large companies to SMEs), the programme complement should be modified, and in, particular, the state aid table should be updated to demonstrate the continued lawful application of the scheme under state aid rules.

In the event that the changes made are consistent with the description of the initial aid scheme in the initial assistance approved by the Commission, and the title of the initial scheme is maintained (to facilitate its identification), no modification of the initial Commission decision on the Structural Funds intervention will be necessary. The Commission should be informed of this change within one month and should be sent a modified 'state aid table', as well as a copy of either the Commission approval letter of the modified state aid, for notified aid, or of the summary information transmitted in compliance with the transparency rules under the block exemption regulation, where the aid is exempted from the notification obligation under a block exemption regulation.

In other cases, including where a Member State wishes to introduce a new aid scheme or change the objective of the existing scheme, a programme modification and formal Commission decision will be necessary.

### **2.5. Eligibility of expenditure**

#### *2.5.1. Final date of eligibility of expenditure*

In accordance with Article 30(2) of Regulation (EC) No. 1260/1999, the final date for eligibility of expenditure is laid down in the decision to grant a contribution from the Funds.

In practice, the latest final date for eligibility stated in decisions is generally 31 December 2008, or 30 April 2009 for expenditure incurred by bodies granting assistance under Article

9(l) of Regulation (EC) No. 1260/1999 (that is, aid schemes pursuant to Article 87 of the Treaty and aid granted by bodies designated by the Member States whereby the final beneficiaries are the bodies which grant the aid). Member States should inform the Commission in the programme complement where aid has been granted by bodies designated by the Member States.

#### 2.5.2. *Extension of the deadline for eligibility of expenditure*

Pursuant to Article 30(2) of Regulation 1260/99, the final date of eligibility of expenditure may be extended by the Commission at the duly justified request of the Member State in accordance with Articles 14 and 15 of the same Regulation.

The deadline for eligibility of expenditure may be extended in exceptional cases by the Commission for cases of *force majeure* which has serious repercussions for the implementation of operations supported by the Structural Funds or manifest error attributable solely to the Commission, in response to a specific and properly grounded request by the Member State. Guidance on the meaning of *force majeure* and the need for a causal link between the *force majeure* and implementation of assistance is set out in points 2.1 and 2.2 of Appendix 1.

The request must be submitted before the deadline for eligibility of expenditure and be accompanied by information justifying the extension. The Commission will examine each request on a case-by-case basis and may amend the programming decision to change the final date of eligibility of expenditure, provided there is a direct causal link between the justification and the proposed extension. Late adoption of decisions is not a sufficient justification for an extension.

In the event that the deadline for eligibility of expenditure is extended, the deadline for submission of the closure documents will be extended accordingly.

Any extension of the deadline for eligibility of expenditure shall take into account the fact that the closure documents should be submitted within six months of such deadline and sufficiently in advance of any deadline for decommitment by the Commission in respect of the 2000-2006 programming period that is set out in future legislation.

#### 2.5.3. *Payment of subsidy under soft loan/interest subsidy schemes*

Guidance is given on the treatment of such schemes at closure in document CDRR/02/0033/00 and is attached as Appendix 2 to these guidelines.

#### 2.5.4. *Venture capital and loan funds, and guarantee funds*

Rules regarding the eligibility of expenditure for such funds are set out in Rules 8 and 9 of the Annex to Regulation (EC) No. 1685/2000, as amended.

Pursuant to point 2.6 of Rule 8, returns to venture capital and loan funds that are attributable to the Structural Funds' contributions shall be re-used for SME development activities in the same eligible area. Similarly, pursuant to point 2.5 of Rule 9, in respect of guarantee funds, any part of the Structural Funds' contribution left over after the guarantees have been honoured shall be re-used for SME development activities in the same eligible area. Arrangements should be made by the managing authority to ensure that these rules are respected after closure.

Any sums paid by the Commission in respect of venture capital funds, loan funds and guarantee funds which exceed the eligible expenditure for such funds, as calculated in accordance with point 2.8 of Rule 8 and point 2.7 of Rule 9, shall be reimbursed to the Commission.

### **3. DOCUMENTS TO BE SUBMITTED AT CLOSURE**

#### **3.1. Closure documents**

For closure to take place, Member States are required by Article 32(4) of Regulation (EC) No. 1260/1999 to submit three documents to the Commission for each programme, namely a certified statement of final expenditure, including a final payment application, a final report on implementation and a declaration on winding-up of the assistance (the 'closure documents'). For the purposes of the Financial Instrument for Fisheries Guidance, the closure documents that must be submitted include the progress report referred to in Article 1 of Regulation (EC) No. 366/2001.

#### **3.2. Closure by Fund**

3.2.1. The Commission may pay the final balance for a Fund if it has received the final payment application, winding-up declaration and a final report for the Fund. This final report should contain all the information for the Fund required by Regulation (EC) No 1260/99 and other applicable regulations and in Annex 1 to the guidelines on the contents of the final report.

3.2.2. The Member State should still, however, submit with the last of its final reports by Fund a final report for the programme. This final report for the programme shall contain the final reports by Fund as well as the information required by Regulation 1260/99, by other applicable regulations and by Annex 1 to the guidelines for the programme as a whole.

3.2.3. For the purposes of calculation of the time periods for retention of documents under Article 38(6) of Regulation (EC) No 1260/99 and for correction of the final balance paid under Article 32(5) of the same Regulation, the Commission will take as a starting point for such time periods whichever of the following dates is applicable: (i) the date of execution of the last payment by the Commission, (ii) the date of execution of reimbursement by the Member State to a Fund, (iii) the date of compensation or (iv) the date of the letter from the Commission regarding closure where no final balance is paid because payments already made have been sufficient to cover expenditure.

#### **3.3. Deadline for submission of closure documents**

3.3.1. For the European Agricultural Guidance and Guarantee Fund (EAGGF), Guidance Section, the closure documents should all be submitted within six months after the final date of eligibility of expenditure laid down in the Commission decision granting a contribution from the Funds. The latest date on which this six month period will generally expire is 30 June 2009, or 31 October 2009 for decisions that include aid schemes or aid granted by bodies referred to in Article 9(1) of Regulation 1260/1999.

- 3.3.2. For the European Regional Development Fund (ERDF), the Financial Instrument for Fisheries Guidance (FIFG) and the European Social Fund (ESF), the closure documents should all be submitted within fifteen months after the final date of eligibility of expenditure laid down in the Commission decision granting a contribution from the Funds
- 3.3.3. The Commission will treat as having been received on time closure documents that have been sent by the applicable deadline, as attested by the postal stamp. Where the certified statement of final expenditure is submitted electronically, the date of electronic submission will be taken into account.
- 3.3.4. Where a programme contains operations subject to different final dates of eligibility of expenditure for a Fund, the latter or last of these dates will be deemed to be the final date of eligibility for the calculation of the time period for submission of closure documents for that Fund.
- 3.3.5. The final report for a Fund should be submitted by the applicable deadline, even if certain operations are suspended by judicial or administrative proceedings.
- 3.3.6. No annual implementation report is required to be provided for the final full calendar year in which the programme is implemented, provided that the final report contains a separate section on implementation of the programme during that year and any period thereafter that falls before the final date of eligibility of expenditure for the programme.
- 3.3.7. For the avoidance of doubt, annual reports for the years before the final full calendar year of the programme should be submitted.

#### **3.4. Consequences of late submission of closure documents**

- 3.4.1. The Commission will send a letter to Member States two months prior to the deadline for submission of the closure documents for a Fund informing them that, failing timely submission of these documents, it will carry out closure on the basis of the available documents and that it will carry out an automatic decommitment and a financial correction, in accordance with points 3.4.2 to 3.4.7 below.
- 3.4.2. For the EAGGF, Guidance Section, pursuant to Article 31(2) of Regulation (EC) No 1260/1999, where a certified statement of final expenditure, including a final payment application, has not been sent to the Commission by the applicable deadline, any part of a commitment for which no acceptable application has been received will be automatically de-committed.
- 3.4.3. For the ERDF, FIFG and ESF, where the closure documents for either Fund have not all been submitted by the applicable deadline, partial sums committed for assistance co-financed by the Fund(s) in question shall be automatically decommitted not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid.
- 3.4.4. If the final report for a Fund, including the information described in Article 37(2) of Regulation (EC) No 1260/99 and in other applicable regulations, is not submitted by the applicable deadline, closure will be carried out on the basis of the certified

statement of final expenditure for the Fund and shall take account of the information provided in the latest annual report.

- 3.4.5. If the winding-up declaration for a Fund is not submitted by the applicable deadline, closure will be carried out on the basis of the certified statement of final expenditure for the Fund and the final report for the Fund.
- 3.4.6. If the certified statement of expenditure for a Fund has not been sent by the applicable deadline, closure will take place on the basis of the latest acceptable payment application for the Fund.
- 3.4.7. In the event that the final report for a Fund, including the information described in Article 37(2) of Regulation (EC) No 1260/99 and in other applicable regulations, or the winding-up declaration for the Fund are not submitted, the Commission will carry out a financial correction<sup>5</sup>, even where an automatic decommitment has been carried out. Such a financial correction is not based on the lack of punctuality in failing to submit such documents before the applicable deadline, but rather the non-submission of these documents, which seriously hinders the Commission's assessment of the assistance and of the validity of expenditure that has been declared.

### **3.5. Changing payment claims or the certified statement of final expenditure after the deadline for their submission**

Member States will not be permitted to modify the final payment claim or certified statement of expenditure after the deadline for their submission. The Commission may request that a Member State corrects the final payment claim or certified statement of final expenditure insofar as this involves the submission of supplementary information or the making of technical corrections where such supplementary information and corrections relate to expenditure submitted to the Commission before the deadline for submission. In this event, the Commission will give the Member State two months in which to carry out the correction. If the correction is not effected within the two month period, the Commission will proceed with closure on the basis of the information available to it at the end of the two month period.

## **4. CONTENT OF CLOSURE DOCUMENTS**

### **4.1. Certified statements of final expenditure ; final payment application**

#### *4.1.1. General principle*

A certified statement of final expenditure, including a final payment application, should be drawn up in the form set out in Annex II to Commission Regulation (EC) No. 438/2001. Expenditure declared should relate to expenditure payable or actually paid out by the paying authority, which must correspond to payments effected by the final beneficiaries, supported by receipted invoices or accounting documents of equivalent probative value, as required by Article 32(1) of Regulation (EC) No 1260/1999. The conditions to be checked by the paying authority in certifying the statement of final expenditure are set out in the form prescribed in Annex II to Regulation (EC) No. 438/2001, in Article 9 of the same Regulation and in the guidance on the winding-up declaration set out in Annex 2 hereto.

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<sup>5</sup> On the basis of Commission Decision C(2001) 476 providing guidelines on the application of Article 39.3 of Regulation (EC) No 1260/99.

The statement of final expenditure should be accompanied by the appendix on recoveries referred to in Annex II to Regulation (EC) No. 438/2001. Document CDRR/05/0012/01 provides guidance on the recoveries appendix and is attached as Appendix 3 to these guidelines.

Member States must inform the Commission of recoveries made between the submission of the final expenditure declaration and payment claim and the final payment by the Commission, so that the Commission can deduct them. Such cases will have been identified in the closure documents as cases under legal proceedings or concerning unresolved irregularities. Potential recoveries still open at closure are recorded in the Commission's accounts as receivables. Member States must therefore also inform the Commission of recoveries effected after submission of the final expenditure declaration and after closure of the programme and repay the Structural Funds contribution to the Commission.

The payment on account paid to Member States pursuant to Article 32(2) of Regulation (EC) No. 1260/1999 has to be justified by payments effected by final beneficiaries at the latest when the final balance of the assistance is claimed<sup>6</sup>.

#### *4.1.2. Use of interest on the payment on account*

As recital 42 of Regulation (EC) No 1260/1999 makes clear, interest earned on the payment on account made under Article 32(2) of Regulation (EC) No. 1260/1999 is regarded as being the resources of the Member State and shall, pursuant to Article 32(2), third sub-paragraph, be allocated by the paying authority to the form of assistance concerned. It can be included in the national contribution by adding it to, or substituting it for, the amount of the national public co-financing envisaged.

For the PEACE programme and for Community initiatives, charges for transnational financial transactions are eligible for co-financing by the Structural Funds after deduction of interest received on the payment on account<sup>7</sup>. Similarly, for global grants, debt interest charges paid by the designated intermediary prior to payment of the final balance of assistance are eligible after deduction of interest received on the payment of account<sup>8</sup>.

The final report shall state the amounts and the activities to which such interest earned have been allocated.

## **4.2. Final Report**

The final report should enable the Commission to check whether the decision, as amended, concerning the assistance was properly executed and if the programme's objectives have been attained.

Before being sent to the Commission, the report should first have been examined and approved by the Monitoring Committee, as required by Article 35(3)(e) of Regulation (EC) No 1260/1999.

The final report should include the information described in Article 37(2) of Regulation (EC) No. 1260/1999 and in other applicable regulations. The minimum required information to be

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<sup>6</sup> According to point 8 of the 'n+2' Communication of 18 August 2003, C(2003)2982.

<sup>7</sup> Rule 3 of Regulation (EC) No 1685/2000, as amended.

<sup>8</sup> Rule 3 of Regulation (EC) No 1685/2000, as amended.

presented in the final report is set out in Annex 1 to these guidelines. The final report should include details of the total expenditure payable or actually paid out by the paying authority, which must correspond to payments effected by the final beneficiary, and the contribution of each Fund, by measure and by operation<sup>9</sup>. Where certain operations are suspended by judicial or administrative proceedings at the time of submission of the final report, the nature and details and amounts involved in these proceedings should be set out in the final report. The final report should also include details of deductions of receipts pursuant to Rule 2 of the Annex to Regulation (EC) No 1685/2000, as amended. The amounts in the section on financial implementation should be consistent with the certified statement of final expenditure and the final payment application.

In accordance with Article 37(1) of Regulation (EC) No. 1260/1999, the Commission has five months from receipt of the final report in which to advise the Member State if it is not satisfied with the final report, including the coherence of financial information, and the reasons for its dissatisfaction, failing which the final report will be deemed to have been accepted. If the final report is deemed unsatisfactory, the Commission will advise the Member State of this and enter into dialogue with it with a view to the Member State improving the final report. In the event that the Member State does not improve the final report as requested, the Commission may decide to carry out financial corrections<sup>10</sup>.

#### **4.3. Winding-up declaration**

An indicative model of the winding-up declaration is contained in Annex III to Regulation (EC) No. 438/2001. That declaration should be prepared in accordance with Article 38(1)(f) of Regulation 1260/1999 and Chapter V of Regulation (EC) No. 438/2001. Specific guidance on the preparation and contents of the winding-up declaration is set out in Annex 2 to these guidelines.

### **5. DECOMMITMENT: APPLICATION OF THE N+2 RULE AT CLOSURE**

#### **5.1. Automatic decommitment (so-called ‘n+2 rule’)**

The ‘n+2’ Communication of 18 August 2003 shall apply, *mutatis mutandis*, at closure.

#### **5.2. Making appropriations available again in the case of *force majeure* or manifest error**

Pursuant to Article 157 of the Financial Regulation, decommitted appropriations may be made available again in the event of manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by the Structural Funds. Some guidance on application of this rule is given in document CDRR/03/0040/00, which is attached as Appendix 1 to these guidelines, and in the ‘n+2’ Communication.

### **6. UNFINISHED AND NON-OPERATIONAL PROJECTS AT THE TIME OF CLOSURE**

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<sup>9</sup> For the European Social Fund and the European Agricultural Guidance and Guarantee Fund, details at operation level are not required in the final report, provided that the Member State makes them available to Commission services on request.

<sup>10</sup> On the basis of Commission Decision C(2001) 476, *supra*.

The managing authority, intermediate body, paying authority and Member State have a duty to ensure the delivery of co-financed products and services and to ensure the reality and correctness of expenditure claimed, in accordance with the principles of sound financial management.

The Member State must set out in the final report a list of operations by measure that are unfinished or non-operational at the time of closure, having regard to the stated aims of the operation, the decision awarding assistance to the operation and any conditions related to the operation.<sup>11</sup> This list should identify:

- *operations that will not be co-financed from Community funds under the next programming period*: the Member State should undertake to complete or render operational, at its own expense, all unfinished or non-functional operations not later than two years after the deadline for submission of the final report. The Member State should advise the Commission at the end of this two year period whether each such project has been completed or rendered functional. For operations that have not been completed or rendered functional by end of that period, the Commission will take the steps necessary to recover Community funds.
- *operations envisaged to be co-financed from Community funds under the next programming period*: a separate and detailed description of the operation must be clearly drawn up by the Member State's authorities for each programming period. The operation should be divided into at least two distinct, identifiable financial and physical or development stages corresponding to the two 'forms of assistance' concerned. This is to be done with the aim of ensuring transparent implementation and monitoring and to facilitate controls. If the first part of the operation is not completed or functional in the first programming period, expenses related to its completion or its becoming functional may be accepted in the second programming period, provided that the co-financing and eligibility conditions are met (inclusion in the second programme, legal and financial commitment by decision of the responsible authority). In such cases, the Member State should ensure that the same work will not be financed twice from Community funds.

## **7. OPERATIONS SUSPENDED DUE TO JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

For each operation that is the subject of a judicial procedure or an administrative appeal having suspensory effects, the Member State must decide, before the deadline for submission of the certified statement of final expenditure, including a final payment application, and the final report on implementation for the programme, whether the operation should, wholly or partly, be:

- withdrawn from the programme and/or replaced by another operation (possibly from over-programming) before the deadline; after the Commission is notified of the withdrawal or replacement, the Member State remains responsible for any repercussions from the withdrawn or replaced operations, such as the financial consequences or irrecoverable amounts due; or

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<sup>11</sup> For the European Agricultural Guidance and Guarantee Fund, this list does not need to be provided with the final report, provided that the Member State makes it, and the other information set out in point 6, available to Commission services on request.

- retained in the programme. After submission of the final certified statement of expenditure for a programme, an operation that is the subject of a judicial procedure or an administrative appeal having suspensory effects, may not be replaced, not even by another operation included in over-programming which may have been completed before the final date for eligibility of expenditure.

Replacement operations should be selected in accordance with Article 9(2)(b)(ii) of Regulation (EC) No. 438/2001. Member States must ensure that replacement operations comply with all applicable European and national regulatory provisions, including, but not limited to, rules on management and control systems, eligibility, information and publicity, as well as procurement, competition and environmental rules.

If the judicial procedure or administrative appeal having suspensory effects concerns irregularities, those that are above the applicable threshold should be reported to OLAF in accordance with Article 3 of Regulation (EC) No 1681/94, as amended by (EC) Regulation No 2035/2005. OLAF should also be advised of the follow-up given to the irregularities, including the decision to withdraw or replace the operation from the programme or the recovery or non-recovery of amounts unduly paid, as applicable, as required by Article 5(1) and 5(2) of that Regulation. Information on the treatment of all irregularities must be provided in a summary table in accordance with point 1.2 of Annex 2 to these guidelines. It should be noted that for irregularities above the threshold for reporting to OLAF for which recovery is impossible, the Member State shall submit to the Commission a special report under Article 5(2) of Regulation (EC) No 1681/94, as amended. Irrecoverable expenditure from irregularities below the threshold can be included in the final declaration of expenditure and will not be subject to the examination provided for by Article 5(2) of the Regulation.

The maximum amounts remaining to be paid by the Commission or recovered from the Member State in respect of the suspended operations constitute an outstanding commitment for the Member State and the Commission until the responsible national authorities deliver a final decision. The Member State should therefore keep the Commission advised of the outcome of the judicial procedure or administrative appeal. In accordance with the outcome of the legal proceedings, and where appropriate following examination of the case under Article 5(2) of Regulation (EC) No 1681/94, as amended, either further payments will be made, the recovery of amounts already paid will be effected, or in the case of a successful application under Article 5(2) of Regulation (EC) No 1681/94, as amended, payments already made will be confirmed.

## **8. CALCULATION OF THE FINAL CONTRIBUTION**

The Community contribution shall not exceed, for each Fund separately, the smallest amount at each of the following levels:

- (1) At measure level, the smaller of the two following amounts:
  - (a) the amount produced by applying to the declared eligible expenditure the rate of Community co-financing established under the final form of the financing plan for the measure; or
  - (b) the amount declared in the certified statement of final expenditure as being the Community contribution to the final beneficiary (paid and to be paid to the final beneficiary);

it being understood that, for the calculation of the final contribution, the Commission will not cap the amounts under (a) and (b) at the level of the corresponding amounts at measure level in the financing plan of the programme complement;

- (2) At priority level, the Community contribution stated in the financing plan of the last decision approved by the Commission increased by 2%, regardless of allocations to transitional areas and non-transitional areas<sup>12</sup>;
- (3) At programme level, the assistance granted, separately for transitional areas and non-transitional areas.

In any event, the Community contribution, for each Fund separately, shall not exceed the amount claimed by the Member State, where this is less than the amount calculated as being due by the Commission.

An example of a final contribution calculation is set out in Annex 3 to these guidelines.

Once the final contribution has been calculated, the Commission will inform the Member State of the final balance to be paid or to be recovered and will request the Member State's comments. If the amount to be paid by Commission services is lower than the amount requested by the Member State and if no agreement is reached with the Member State on the final balance to be paid or recovered, or if the Member State does not reply to the Commission's request for comments within the deadline given to it by the Commission, the Commission will carry out a financial correction by decision pursuant to Article 39 of Regulation (EC) No. 1260/99.

## **9. THE EURO**

Commission Regulation (EC) No. 643/2000 sets out the arrangements for using the euro in budgetary management of the Structural Funds, including in the closure documents.

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<sup>12</sup> This flexibility is additional to the flexibility that Member States have due to the fact that they can change the financial plans for their programmes up to the end of 2006, as explained in point 2.1 of these guidelines, and their programme complements up to the final date of eligibility of expenditure. It is envisaged because the programming rules for the 2000-2006 programming period require financial programming by priority broken down by year and because it is not possible to change financial plans for previous years. The Commission's proposal for the 2007-2013 programming period does not envisage financial programming by priority broken down by year and thus the rationale for this additional flexibility is limited to 2000-2006 programmes only.

**Annex 1**  
**Final Report**  
**Minimum Requirements**

**Basic information**

CCI n°:

Objective n° / Community Initiative:

Member State / Region:

Title of the assistance:

Programming Years:

Managing Authority:

Paying Authorities:

Monitoring Committee approval date:

*Does the Report also cover year 2008?<sup>13</sup>*

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<sup>13</sup> This period may be extended by four months when so foreseen by the Commission decision on the contributions of the Funds for bodies under Article 9(1) of Regulation 1260/1999.

## **Operational Framework**

- (1) Important changes in general conditions in the period 2000-2008 which are of relevance to the implementation of the assistance, in particular:
  - a) the main socio-economic trends ;
  - b) changes in national, regional, sectoral policies ;
  - c) changes in the objective 3 policy frame of reference.
- (2) Where applicable, their implications for the mutual consistency of assistance:
  - a) from the different Funds
  - b) between Fund assistance and that from other financial instruments (Community initiatives, EIB loans, EAGGF-Guarantee, etc.).

## **Implementation of priorities and measures for each of the Funds**

- (3) Description of achievements in relation to their specific objectives and targets.
- (4) Quantification of the related indicators (whenever they lent themselves to quantification in the OP/SPD and the Programme Complement) :
  - a) physical / output
  - b) result
  - c) impactat the appropriate level (programme, priority or measure).

## **Financial implementation**

- (5) Summary table(s) (which can be complemented by diagrams where appropriate) showing:
  - a) for each measure, the total certified expenditure actually paid out and to be paid out<sup>14</sup> by the paying authority and the respective community contribution broken down by project<sup>15</sup> (in annex). This list shall in particular identify:
    - unfinished or non-operational projects at the time of closure, with an indication on whether it is envisaged that such projects will be co-financed or not from Community funds under the next programming period ;

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<sup>14</sup> Total cost or public expenditure total, depending on the option taken. Expenditure certified should correspond to payment effectively paid by the final beneficiaries and justified by paid invoices or other equivalent verifiable supporting documents.

<sup>15</sup> For the European Social Fund and the European Agricultural Guidance and Guarantee Fund, details at operation level are not required, provided that the Member State makes them available to Commission services on request

- projects suspended due to legal or administrative proceedings.

b) the financial performance against the last approved financial plan by using the financial indicators (Article 36(2)(c)), with an indication, where applicable, of the decommitments made in accordance with the “N+2” rule (Article 31.2§2) ;

c) the total expenditure broken down by field of intervention at measure level (Article 36.1).

(6) Measures funded by EAGGF Guarantee Section and referring to Article 33 of Regulation (EC) No 1257/1999 shall be presented at the level of the total amount of the financial implementation.

(7) Measures funded by FIG shall be presented at the level of total amount of the financial implementation and in conformity with the Annex IV of Commission Regulation (EC) 366/2001 of 22 February 2001.

### **Administration and management**

(8) Steps taken by the Managing Authority and the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular :

a) monitoring, financial control (day-to-day management checks) and evaluation measures, including data collection arrangements ;

b) summary of any significant problem (besides those possibly mentioned under point 1) encountered in managing the assistance and any measure taken, including :

- actions on comments or recommendations for adjustments (Article 34.2) made by the Commission following annual review meetings;

- actions on observations or requests for corrective measures (Article 38.4) made by the Commission following the annual audit meeting, particularly regarding the financial impact of any irregularities detected ;

c) use made of technical assistance ;

d) measures taken to ensure publicity of the assistance towards potential beneficiaries and the general public (article 46), particularly with regard to the communication Action Plan set out in the Programme Complement (point 3.1.1. in annex to Regulation 1159/2000).

(9) Summary of the results of the main evaluations carried out on the programme, including e.g. thematic evaluations, and any measure taken to address the recommendations made.

(10) Statement by the Managing Authority, noting the problems encountered and the steps taken to ensure:

a) compatibility with Community policies including the rules on competition, on the award of public contracts, on environmental protection and improvement and on the elimination of inequalities and the promotion of equality between men and women

(Article 12)

b) coordination of all the Community structural assistance such as CSF (art 17.1) and objective 2 SPD (art 19.2§2), where appropriate.

(11) Achievements and financing of (where appropriate):

a) major projects;

b) global grants. Information on small global grants in favour of NGOs and other local partners (article 4.2 of Regulation 1784/99) should also be included.

## Annex 2

### Guidance on preparation for and contents of winding up declaration under Article 15 of Regulation 438/2001

#### **1. PREPARATION FOR CLOSURE**

##### **1.1. Managing authorities and intermediate bodies**

- Receive final expenditure claims from all final beneficiaries in relation to expenditure incurred up to the end of 2008 (or other applicable deadline).
- Complete management checks under Article 4 of Regulation 438/2001 to verify eligibility and regularity of expenditure.
- Compile final declaration of expenditure for programme and submit it to paying authority.
- Satisfy itself that the expenditure declaration has been, and can be, reconciled with the records in the accounting system for the programme and that there is an adequate audit trail down to the level of the final recipient both for Community and national funds.
- Verify in the final payment claim for each measure the amounts of Community aid actually paid, or due to be paid, to final beneficiaries/final recipients.
- that all errors/irregularities have been satisfactorily treated, in respect of:
  - Verifications carried out under Article 4 of Regulation 438/2001;
  - Checks carried out under Article 10 of Regulation 438/2001;
  - Audits by other national bodies;
  - Audits by European Commission;
  - Audits by European Court of Auditors

(see point 3.6 for an explanation of what is meant by “satisfactory treatment” of errors/irregularities)

It should be noted that many of the above points are the completion of tasks which need to be carried out regularly during the implementation of operations.

##### **1.2. Paying authorities**

- Draw up certificate of final expenditure for the programme in the prescribed form according to annex II of Regulation 438/2001 (see point 4.1 of Guidelines on closure).

- Ensure that there is sufficient information from the Managing Authority to be able to certify the accuracy, eligibility and regularity of the amounts declared.
- Satisfy itself that the conditions under Article 9 § 2 of Regulation 438/2001 are respected.
- Satisfy itself that all errors/irregularities have been satisfactorily treated and findings and recommendations of audits fully implemented.
- Request further information and/or undertake own verifications where necessary.
- Provide a summary table based on the information in the debtor's ledger maintained under article 8 of regulation 438/2001 indicating:
  - (a) for each case for which there are amounts awaiting recovery or that are irrecoverable:
    - The operation and measure concerned
    - The reference number in the case of an irregularity
    - The amount recoverable (breakdown by Community and national contribution)
    - The year of initiation of recovery proceedings
    - Whether a communication has been made under Article 5 (2) of Regulation 1681/94 in respect of an irrecoverable amount;
  - (b) for each case for which amounts have been recovered:
    - The operation and measure concerned
    - The reference number in the case of an irregularity communicated under Regulation 1681/94
    - The amount recovered (breakdown by Community and national contribution)
    - The year in which the amount recovered was deducted from expenditure declared to the Commission.

This table should contain the references of all irregularities communicated under Regulation 1681/94 except those in which no payment had been made to the final beneficiary.

### **1.3. Bodies responsible for sample checks under Article 10 of Regulation 438/2001**

- Complete final sample checks on operations.
- Ensure that for the programme concerned, the sample checks carried out on the spot have covered:
  - at least 5% of the total eligible expenditure

- adequate expenditure by year over the period concerned
- an appropriate mix of types and sizes of operations
- operations implemented through the main intermediate bodies and by the main final beneficiaries so that such bodies/beneficiaries have been controlled at least once

and have been spread evenly over the period of the programme.

- Evaluate the nature of every error identified to determine whether they are systemic errors. A systemic error is a recurrent error due to serious failings in management and control systems designed to ensure correct accounting and compliance with rules and regulations.
- Where checks carried out have indicated a problem of a systemic character, carry out further checks of an appropriate nature to determine and quantify the extent of the problem.
- Where checks have identified a rate of error above 2% of the expenditure checked, consider carrying out further checks to better determine and quantify the extent of the problem.
- Ensure that recommendations relating to the work of the bodies responsible for sample checks under Article 10 from audits of the European Commission and/or European Court of Auditors have been fully implemented.

## **2. Work to be done by independent body for closure statement**

The winding up declaration sets out the opinion of the independent body designated under Article 38(1)(f) of Regulation 1260/1999 (“independent body”) on the final declaration of expenditure and the request for final payment. It is based on the checks carried out under Article 10 of Regulation 438/2001, on the audits by other national and Community bodies, and any additional audit work of the independent body itself. A winding up declaration must be provided for each programme by the deadline set out in point 3.3.2 of the Guidelines on closure. In the case of multifund programmes, there may be a separate declaration for each fund. In exceptional cases where for institutional reasons it is not possible for a Member State to submit a single declaration for a Fund, the Commission may at the request of the Member State agree arrangements for multiple declarations to be provided. Additional guidance will be given for the closure of INTERREG programmes.

It is recommended that the independent body formulates the opinion in accordance with the text of the conclusion to the indicative model in Annex III of Regulation 438/2001. If it proposes to formulate the opinion in a different way, prior agreement should be sought from Commission services.

The precise nature of the work to be done by the independent body will depend on the structure put in place for fulfilling the requirements of the regulation and notably whether the independent body has also been responsible for carrying out systems audits and/or sample checks of expenditure under Article 10.

The information available to the independent body and the work which it does must be sufficient to enable it to respond with reasonable assurance to the questions set out below for the programme concerned.

## **2.1. Audits of management and control systems under Articles 10 and 16 of Regulation 438/2001**

- (1) Which bodies carried out the audit work ?
- (2) Were they sufficiently independent of the managing and paying authorities and implementing bodies to avoid any conflict of interest ?
- (3) Is the quality of the audit work satisfactory (methodology, qualifications of staff, work carried out, content of report) ?
- (4) Have all the main bodies involved in implementation of the programme been audited ?
- (5) Has risk analysis where appropriate been correctly applied in the selection of auditees?
- (6) Have all findings and recommendations of audits been fully implemented ?
- (7) Did any of the audit reports conclude that there were material shortcomings in the management and control systems which might have consequences for the regularity of expenditure under the assistance ?
- (8) If the answer to point 7 is positive, have adequate steps been taken to rectify the weaknesses and to identify and correct all irregular expenditure ?
- (9) If adequate steps have not been taken, what is the amount of expenditure estimated to have been affected which has not been corrected ?
- (10) Do the audit reports confirm existence of a reliable accounting system and the presence of a sufficient audit trail ?

## **2.2. Sample checks on expenditure under Article 10 of Regulation 438/2001**

- (1) Which bodies carried out the checks?
- (2) Were they sufficiently independent of the implementing services to avoid any conflict of interest?
- (3) Is the quality of the checks satisfactory and in line with the Commission guidance note CDRR n° 03-0034-00 (methodology, qualifications of staff, work carried out, contents of report)?
- (4) What percentage of the total eligible expenditure declared in respect of the programme has been covered by the checks?
- (5) Is the percentage sufficient to comply with Article 10 of Regulation 438/2001?
- (6) Has only expenditure which has been subject of in depth on the spot checks down to the level of final recipients been counted toward the minimum percentage? If not, is this justified in accordance with the guidance referred to in point (3) above?

- (7) Has only expenditure checked in its entirety, or on the basis of a sampling approach in accordance with accepted auditing standards, been counted toward the minimum percentage?
- (8) Was the methodology of selection of operations to be checked in conformity with the regulation? In particular have the checks ensured adequate coverage by year, by measure and by type and size of operation as well as the concentration of operations under the main intermediary bodies and final beneficiaries? Have any risk factors been taken into account?
- (9) How many errors/irregularities were detected, what was their importance, and what was the amount of expenditure affected?
- (10) Have all errors and irregularities identified in the checks been satisfactorily treated (see point 3.6 for an explanation of what is meant by “satisfactory treatment” of errors/irregularities)?
- (11) Were any of the errors or irregularities of a systemic character? In particular was there a high error rate? If so, were the necessary steps taken to carry out further appropriate checks to identify other cases and to correct all ineligible expenditure or take appropriate recovery procedures, and to prevent recurrence?
- (12) Was there an error rate exceeding 2%? If so, was the sample extended to other expenditure in the population?
- (13) What is the amount of expenditure affected by errors/irregularities not satisfactorily treated?
- (14) Do the results of the checks confirm the presence of a sufficient audit trail?
- (15) Do the results of the checks indicate any material weaknesses in the management and control system? If so have adequate remedial actions been taken and affected expenditure corrected? If not does the independent body have a basis for indicating the affected expenditure?

### **2.3. Audits by other national or Community bodies**

- (1) Is there adequate evidence that individual cases of error or irregularity have been satisfactorily treated (see point 10 above)?
- (2) Were there any errors or irregularities of a systemic character identified? If so, is there adequate evidence that the necessary steps were taken (see point 11 above)?
- (3) Do the audit reports indicate any material weaknesses in the management and control system? If so, is there adequate evidence that necessary steps were taken to implement recommendations to correct problems and to correct the expenditure concerned?

### **2.4. Closure procedure of paying and managing authorities**

The independent body is required to declare whether or not he has reasonable assurance that the final statement of expenditure and the request for the payment of the balance of the Community aid are free of material misstatement. It must therefore audit the procedure followed by the paying and managing authorities to compile the final statement of expenditure in order to satisfy itself in particular that the amount of expenditure is in conformity with the

accounting systems maintained, is based on adequate supporting documentation and that the procedures followed give reasonable assurance that only eligible expenditure has been included.

With regard to the final statement of expenditure and request for final payment, the independent body must verify in particular:

- The correct presentation of the documents;
- The correctness of the calculations;
- The reconciliation of the final statement to declarations of the managing authority and intermediate bodies;
- Compatibility with the applicable financial tables of the last decision in force;
- Correspondence with the financial information, including information on irregularities, in the final report on execution of the programme.

### **3. INFORMATION TO BE PROVIDED AS PART OF THE WINDING UP DECLARATION**

Article 38(1)(f) of Regulation 1260/1999 sets out that the declaration presented at the winding up of the programme shall summarise the conclusions of the checks carried out during previous years and shall assess the validity of the application for payment of the final balance and the legality and regularity of the transactions concerned.

Article 16 of Regulation 438/2001 provides that the winding up declaration shall be accompanied by a report which shall include all relevant information to justify the declaration including a summary of the findings of all checks carried out by national and Community bodies to which the independent body has had access. Annexe III of the Regulation gives an indicative model for the declaration itself.

Set out below are details of the information which in the Commission's view should be included in the accompanying report. This represents information which must be available to the independent body to make the winding up declaration, and is the minimum information necessary for the Commission to assess the reliance which it can place on the declarations.

#### **3.1. Details of independent body**

Name, title, service and further information (if necessary) to establish its functional independence of the managing and paying authority and intermediate bodies.

#### **3.2. Details of programme**

Title, fund, period, CCI number.

#### **3.3. Summary of controls carried out under Article 10**

In the case of multifund programmes this information should be broken down by Fund.

Details of bodies which have carried out checks (audits of management and control systems/expenditure checks)

- For systems audits:
  - Bodies audited and year of audit
  - Principal findings and conclusions
  - Follow up to verify implementation of recommendations
- For checks on operations:
  - Number of operations checked broken down by year when check was carried out and by measure
  - Amount of expenditure checked broken down by year when expenditure was declared (either by the final beneficiary or by the paying authority) and by measure.
  - Percentage of expenditure checked as proportion of total eligible expenditure declared to the Commission.
  - Error rate in the sample of expenditure checked for the programme broken down by measure.

### **3.4. Work undertaken by independent body (in addition to point 3)**

(Indicative list)

- -Audits of bodies which have carried out Article 10 checks
  - -Audits of closure procedure of managing and paying authorities or intermediate bodies
  - -Examination of the debtors' ledger maintained under Article 8 of Regulation 438/2001
  - -Examination of reports from checks referred to in point 2.2 (specify by category which reports have been received and examined) and where appropriate re-performance or alternative verifications of their reliability
  - -Execution where appropriate of further sample checks of transactions
  - -Examination of reports of other national or Community audit bodies (specify by category which reports have been received and examined)
  - -Examination of information relating to follow up of audit findings and treatment of irregularities
  - -Examination of other information received (specify the categories of further information).

### **3.5. Limitations to the scope of the examination by independent body**

As mentioned in the indicative model for the winding up declaration annexed to the Regulation, any matters which have limited the scope of the examination by the independent

body referred to in point 4 must be indicated. Examples of such matters are listed in the indicative model (systemic problems, management weaknesses, lack of audit trail, lack of supporting documents, cases under legal proceedings). Other examples could include inadequate sampling procedures or insufficient independence of bodies carrying out checks. However, this is a non-exhaustive list. The estimated amounts of expenditure affected, and corresponding Community aid, must be stated.

### **3.6. Treatment of errors and irregularities**

It is required to state whether such errors and irregularities have been treated satisfactorily. “Treated satisfactorily” means:

- -That where necessary the irregularity has been reported under Regulation 1681/94 ;
- -That the error/irregularity has been corrected by deduction from the expenditure declaration or that proceedings for the recovery of undue payments have been taken (with the consequent repayment to the Commission of amounts recovered in accordance with Article 8 of Regulation 438/2001 or allocation of liability between the Commission and Member State pursuant to Article 5(2) of Regulation 1681/94 in the event of incomplete recovery);
- -That for systemic errors/irregularities, measures have been taken to identify all other cases and to make the corrections necessary or to take appropriate proceedings for recovery, as well as steps to prevent recurrence.

The information provided must include:

- -The summary table referred to in point 1.2
- -A list of the cases of error/irregularity treated as systemic and the estimated amounts of expenditure affected.

### **3.7. Frequency of errors and irregularities**

It is required to state whether the frequency of errors and irregularities is low/high. The following points should be noted:

- The standard applied and the methodology followed for the determination of the frequency of errors/irregularities and the assessment as to whether it is considered high or low should be mentioned expressly. The error rate resulting from the sample checks under Article 10 should in particular be taken into account. “Low frequency” may be taken to mean that the financial consequences of the errors/irregularities are estimated to fall below a level of materiality considered appropriate by the independent body for the programme, and will not therefore prevent an unqualified opinion. “High frequency” may be taken to mean that confidence in the entire management control system is seriously affected and therefore no opinion can be given. For determining frequency, a distinction may be drawn between categories of error of different importance (formal/substantive, financial impact, systemic nature ...).

- The materiality level referred to above should generally not exceed 2% in order to be consistent with the methodology of the European Court of Auditors for its declaration of assurance and the guidance applicable to the annual declaration of assurance by the Director Generals of the Commission. Specific justification should be provided in case a higher level is applied.
- The errors and irregularities to be taken into account by the independent body are not only those identified in the controls under Article 10, but also those detected in other national controls and those by the Commission and Court of Auditors. However, these other errors and irregularities are not included for the purposes of determining an error rate from the sample checks under Article 10.

#### **4. WHAT THE INDEPENDENT BODY SHOULD DO WHEN THERE ARE PROBLEMS**

The indicative model of winding up declaration envisages a qualified opinion where there are certain obstacles in the examination or where there are some problems which have not been satisfactorily treated, and no opinion if major obstacles are encountered in the examination or the frequency of error found is high.

If the winding up declaration contains a qualified opinion, it is likely that the Commission will be unable to pay the final balance requested immediately and that the closure will be delayed.

Whilst Article 38(1)(f) of Regulation 1260/1999 also provides that Member States may attach their own opinion to the final certificate of expenditure if they consider it necessary, any divergence from the declaration of the winding up body is likely to require further examination and delay the closure process.

The independent body is recommended therefore, whenever possible, to seek to ensure that the managing and paying authorities undertake the actions which would make it possible for an unqualified opinion to be given. Nevertheless the deadline for submission of closure documents set out in point 3.2 of the Guidelines on closure must be respected.

##### **4.1. Obstacles to the examination by the independent body**

The independent body has to determine whether they are of such importance that no opinion can be given, whether they are of lesser importance but still require a qualified opinion to be given, or whether they are of such minor importance that no qualification is necessary.

Sufficient information should be given in the winding up declaration to support the conclusion and consequences drawn.

By way of indication:

- limitations resulting in no opinion could include:
  - failure to check the minimum percentage of expenditure,
  - systematic failure to carry out checks down to the level of final recipients,
  - failure to check the main implementing bodies or final beneficiaries,

- serious management weaknesses for which no remedial action has been taken.
  - limitations resulting in a qualified opinion could include:
    - failure to carry out systematic risk analysis in selection of sample for checks,
    - failure to ensure the representativity of the sample,
    - lack of formal procedures for identifying and treating systemic problems,
    - inadequate quality of reports on checks under Article 10 of the Regulation,
    - inadequate separation of functions of staff carrying out checks of expenditure under Article 10.

The extent of the problem and the amount of expenditure affected and corresponding amount of Community aid should be estimated. It is open to the independent body to conclude that there is no impact on the final expenditure declared, if he is satisfied that that is the case.

The Commission has the power under Article 17 of the Regulation 438/2001 to request the Member State to carry out additional checks where the independent body is not able to give a positive overall assurance because of important management or control weaknesses on the high frequency of irregularities.

#### **4.2. Problems which have not been satisfactorily treated**

It is indicated under point 3.6 what is meant by “treated satisfactorily”.

Where there are errors or irregularities, or systemic problems which have not been satisfactorily treated, information should be provided on the case, including the possible systemic character and extent of the problem, together with an indication of the amounts of expenditure affected and the corresponding amounts of Community aid. The opinion of the independent body will have to be qualified accordingly.

#### **4.3. High frequency of errors/irregularities**

Where the independent body concludes that there is a high frequency of errors, no opinion can be given even if the individual cases have been satisfactorily treated. This is because a high frequency of errors indicates systemic problems in the management and control bodies. The independent body should indicate in the statement the basis for the conclusion on the high frequency, and details of the errors/irregularities identified. The Commission services will have to agree with the national authorities the further measures to be undertaken to identify the amount of expenditure under the form of intervention which can be accepted for co-financing. The conclusion of the independent body may be limited to specific measures or specific intermediate bodies, in which case the amount of expenditure concerned should be indicated.

### Annex 3

#### Example of Final Contribution Calculation

##### 1ST STAGE : DETERMINATION OF AMOUNTS TO BE RETAINED BY MEASURE AND BY PRIORITY (1)(2)

Financial plan of Programme complement (summary)					Final declaration of expenditure (summary)				Calculation by measure (1)		Calculation by priority (2)		
	Total eligible cost	National	EU	EU co-financing rate	Eligible expenditure	National	EU	Actual EU co-financing rate	Declared expenditure * co-financing rate	Amount retained at measure level	Flexibility limit	Amount retained at priority level	Final rate
	A	B	C	D=C/A	E	F	G		H=E*D	J=min(G,H)	K=C+C*2%	L=min(J,K)	M=L/E
Measure 1.1	77.000	60.000	17.000	22,07792%	90.000	70.000	20.000	22,2222%	19.870	19.870			
Measure 1.2	102.000	73.000	29.000	28,43137%	110.000	80.000	30.000	27,2727%	31.275	30.000			
Measure 1.3	196.000	92.000	104.000	53,06122%	220.000	116.000	104.000	47,2727%	116.735	104.000			
<b>Priority 1</b>	<b>375.000</b>	<b>225.000</b>	<b>150.000</b>	<b>40,00000%</b>	<b>420.000</b>	<b>266.000</b>	<b>154.000</b>	<b>36,6667%</b>	<b>167.880</b>	<b>153.870</b>	<b>153.000</b>	<b>153.000</b>	<b>36,4286%</b>
Measure 2.1	200.000	134.000	66.000	33,00000%	200.000	134.000	66.000	33,0000%	66.000	66.000			
Measure 2.2	108.500	58.500	50.000	46,08295%	100.000	54.000	46.000	46,0000%	46.083	46.000			
Measure 2.3	131.500	83.500	48.000	36,50190%	20.000	12.000	8.000	40,0000%	7.300	7.300			
<b>Priority 2</b>	<b>440.000</b>	<b>276.000</b>	<b>164.000</b>	<b>37,27273%</b>	<b>320.000</b>	<b>200.000</b>	<b>120.000</b>	<b>37,50000%</b>	<b>119.383</b>	<b>119.300</b>	<b>167.280</b>	<b>119.300</b>	<b>37,2813%</b>
<b>Programme</b>	<b>815.000</b>	<b>501.000</b>	<b>314.000</b>	<b>38,52761%</b>	<b>740.000</b>	<b>466.000</b>	<b>274.000</b>	<b>37,02703%</b>	<b>287.263</b>	<b>273.170</b>	<b>272.300</b>	<b>272.300</b>	<b>36,7973%</b>

##### 2ND STAGE : DETERMINATION OF AMOUNTS TO BE RETAINED FOR TRANSITIONAL AND NON-TRANSITIONAL AREAS (3)

Transitoire	100.000	80.000	80.000
Non-transitoire	214.000	194.000	194.000
<b>Programme</b>	<b>314.000</b>	<b>274.000</b>	<b>274.000</b>

##### 3RD STAGE : FINAL RESULT AT PROGRAMME LEVEL (3)

**272.300**

(1) As per Draft guidelines section 8, par.1

(2) As per Draft guidelines section 8, par.2

(3) As per Draft guidelines section 8, par.3

## Appendix1

### Making appropriations available again in the event of *force majeure*

#### CDRR/03/0040/00

#### 1. Background documents:

##### 1.1. Regulation (EC) No 1260/1999 - Article 31(2):

This provision states that the Commission shall automatically decommit any part of a commitment which has not been settled by the payment on account or for which it has not received an acceptable payment application, as defined in Article 32(3), by the end of the second year following the year of commitment or, where appropriate and for the amounts concerned, following the date of a subsequent Commission decision necessary in order to authorise a measure or an operation or by the end of the deadline for the transmission of the final report referred to in Article 37(1); the contribution from the Funds to that assistance shall be reduced by that amount.

However, unlike the exceptions set out in Article 31(2) *force majeure* does not prevent the decommitment of appropriations but, under certain conditions, makes possible their being made available again subsequently.

##### 1.2. Commission statement No 172/99 attached to the Council minutes on the adoption of Regulation (EC) No 1260/1999.

The Commission states (...) it intends to make available again the commitment appropriations corresponding to the decommitment carried out pursuant to the second paragraph of Article 31(2) where a clear error, including a technical one, has occurred which is attributable to the Commission alone, and in cases of *force majeure* understood as large-scale natural disasters with serious consequences for implementation of assistance provided by the Structural Funds.

##### 1.3. Financial Regulation - Article 157(3):

Article 157 of the Financial Regulation (Title II – Structural Funds) states that the decommitted appropriations may be made available again<sup>16</sup>:

- in the event of a manifest error attributable solely to the Commission, or
- in the case of *force majeure* which has serious repercussions for the implementation of operations supported by the Structural Funds.

This rule replaces Article 7(6) of the former Financial Regulation and Commission statement No 172/99 attached to the Council minutes on the adoption of Regulation (EC) No 1260/1999. It was also advocated by the Communication to the Commission on the

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<sup>16</sup> The Commission considers decommitments during the previous year and decides by 15 February of the current year, depending on needs whether to make the corresponding appropriations available again.

application of the “n+2” rule under Article 31(2) of Regulation (EC) No 1260/1999 (27 May 2002).

This means that Article 157 of the Financial Regulation applies to the making available again of appropriations decommitted under the “n+2” rule.

## **2. Conditions of application**

### **2.1. Force majeure**

“*Force majeure*” is not defined in legislation. The Court has ruled (Case 296/86, *McNicholl* [1988] ECR-1491) and, more recently, (Joined Cases T-61/00 and T-62/00 *APOL v Commission*, not yet published), that the concept of *force majeure* presupposes that non-performance was due to circumstances (cumulative conditions) which:

- 1) were beyond the control of the person claiming *force majeure*,
- 2) were abnormal and unforeseeable, and
- 3) could not have been avoided despite the exercise of all due care<sup>17</sup>.

Each case must be considered separately to see if these conditions are met.

### **2.2. Causal link**

The situation of *force majeure* must have serious repercussions for the implementation of assistance supported by the Structural Funds (see Article 157 of the Financial Regulation). In addition, a direct link must be demonstrated between the case of *force majeure* and these repercussions. This causal link must be considered in each specific case.

### **2.3. Deadline for an acceptable application**

The Member States must send its application to the Commission no later than [30 April] of year n+3 – note the dialogue procedure prior to automatic decommitment under Commission Communication C(2002) 1942 of 27 May 2002.

### **2.4. Other information to be provided at the same time**

- The measures in the programme or SPD affected by force majeure.
- The financial impact on the measures.
- The number of investment projects submitted to the authority responsible for implementation at the point when the force majeure began and an estimate of the number of projects which should have been selected because of and during the force majeure but could not be selected, to cover the cases where force majeure would have

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<sup>17</sup> See also Commission Communication C (88) 1696 concerning ‘*force majeure* in European agricultural law’, OJ C 259, 6.10.1988, p. 10.

delayed or prevented the responsible authority from issuing calls for proposals to select projects during the period affected by force majeure.

The Commission will consider making available again the appropriations associated with the measures affected, only to the extent of the financial impact demonstrated in connection with the case of *force majeure*.

### **3. Administrative and budgetary procedure to be followed**

The normal procedure to be followed, i.e. the application for the making available again of appropriations decommitted in 2003, must be sent to DG Budget by the DG responsible for the funds decommitted around 10 January 2004, so that the Commission can take a decision by 15 February.

As regards the practical arrangements for implementation, the budget commitments for 2000 decommitted in 2003 will, in the event of *force majeure*, be made available again in 2004 in accordance with the following procedure:

- a) the whole amount to be made available again is committed in 2004 (or n+4 for subsequent years);
- b) the spending and payment of these appropriations made available again and committed in 2004 (or n+4 for subsequent years) will, like all other commitments, be subject to the “n+2” rule.

## **Appendix 2**

### **Payment of subsidy remaining at end of programme period under soft loan schemes – Guidance note of the Commission services**

CDRR/02/0033/00 19 March 2002

#### **1. Purpose and background**

This note offers guidance to Member States using Structural Fund cofinance for soft loan schemes involving interest subsidies and possibly partial guarantees of credit losses on how to ensure that the subsidies outstanding at the end of the programme period can be counted as eligible expenditure for the programme under which the loans were granted.

The Commission, in Regulation 1260/1999 (recital 40, Articles 28(3) and 29(4)) and in its guidance for 2000-06 programmes (p.14-16), has encouraged Member States to cofinance through the programmes interest subsidies and other “financial engineering” products such as venture capital and loan guarantees.

The characteristic of such products is the delivery of the subsidy over a long period, as opposed to outright grants which are paid out in a lump sum. This raises a problem of compatibility with Structural Fund programme periods, unless the duration of the subsidy delivery can be timed to exactly correspond to the programme period (which may not be practicable).

#### **2. Schemes concerned**

This note does not concern loan funds. Loan funds are covered by eligibility rule 8 (“venture capital and loan funds”) under Regulation 1685/2000. A loan fund combines in a single block of finance both the principal to be lent out and the subsidy required to “soften” the loans granted. The subsidy is entirely paid into the fund when it is set up or at the latest as loans are granted.

In the interest subsidy schemes with which we are concerned here, the subsidy element is not paid into a common fund with the loan principal, but is disbursed separately in instalments as repayments of principal and interest payments fall due, which may extend over a period of many years (for SME finance usually not more than 10).

The subsidy element in interest subsidy schemes consists wholly or mainly of coverage of the gap between a commercial and the granted reduced interest rate, i.e. “interest subsidies”. In some schemes it includes as well an element of compensation for credit (= principal) losses sustained by the lending institution due to the (inevitable) bankruptcies of some of the borrowers. A financial institution must have cover against the risk of credit losses on lending to SMEs. Sometimes this is done through a separate guarantee or insurance scheme, sometimes via the same aid scheme as finances the interest subsidies. Invariably the financial institution is required to bear a share of the risk.

Credit loss risks associated with loan funds are also handled either directly through the fund, with subsidy reserved for this in the fund itself, or separately.

The direct recipient of the subsidy in interest subsidy schemes is either the borrowing firm or the financial institution. In the first case, the company takes out a bank loan on commercial terms and receives a grant to exactly reduce its interest payments to an agreed level as they fall due. In the second, the financial institution pays out a loan on already “softened” terms to the business and receives a grant at the time of each interest payment to increase the payments to a commercial level. With credit loss compensation, the recipient is always the financial institution, of course. Many permutations of these basic patterns are possible and conceivable.

One such variant is to pay the discounted value of the subsidy to the financial intermediary as soon as it grants the soft loan. (The financial intermediary in some schemes then immediately pays the discounted subsidy on to the borrower.) This method is analogous to the establishment of a fund. It does not occasion a problem of outstanding subsidy payments at the end of the programme and is therefore not considered further here, except with respect to the treatment of eligible expenditure (see point 5)

### **3. Treatment of loan funds and interest subsidy schemes at programme closure**

When the time comes to close the programme, eligibility rule 8 does not require a loan and/or venture capital fund to be wound up with loans immediately repaid and investments cashed in. The outstanding loans and investments can continue until redemption and the fund including the subsidy element, both EU and national (if any), can stay open. The programme is closed on the basis of the cost of the capital invested in or lent out to businesses by the end-date for payments and the entire (EU and national) subsidy element paid into the fund is attributed as eligible expenditure to the programme being closed.

Rule 8 (and rule 9 on guarantee funds) recognizes that the subsidies injected in the fund will not necessarily all have been completely used up at closure and is content to require that capital returning to the fund must be reinvested in SME development in the region. The responsibility for monitoring the re-use requirement is on the Member State.

Interest subsidy schemes are, from an economic point of view, identical in their effect to soft loans delivered through loan funds. They therefore should be treated in essentially the same way as regards

- (a) the attribution of subsidy payments to the programme during which the soft loans are granted;
- (b) the treatment of any subsidy that is surplus to requirements, despite all efforts to estimate requirements precisely and minimize any excess.

A general requirement for closure is the disbursement of all subsidies to the recipients. For loan funds this requirement is met from the moment the loans are granted with the lodging of all the required subsidy in a fund. For interest subsidy

schemes, it is necessary at closure to depart from the pattern of payment of subsidy in line with interest payments and effect the payment of all the remaining subsidy (EU and national) required in a lump sum so the subsidy can be counted as eligible expenditure.

#### **4. Guidance on payment of remaining subsidy in interest subsidy schemes at closure**

From the point of view of the managers of such schemes, the following two methods of payment of the remaining subsidy on interest subsidy schemes by the end of the payment period of the programme appear to be most satisfactory:

(a) payment of the capitalized subsidy still required to the borrower as a lump sum grant;

(b) payment of the capitalized subsidy still required into a blocked account held in the name of either (i) the borrower or (ii) the financial institution, from which the subsidy can be drawn down only as required in connection with payments of interest and only in respect of the loan or loans for which it is earmarked.

The Commission will accept both methods but has a definite preference for (b), for two reasons. First, method (b) interferes less with the normal manner of delivery of the subsidy as part of a loan, a delivery method that has certain advantages (continuous bank-client relationship, supervision and assistance of the borrower). Secondly, should the borrower fail after receiving the capitalized subsidy, it will be difficult, without constant monitoring, to recover any of it.

With regard to method (b), payment into a blocked account in the name of the financial institution will normally be preferable on management grounds, because several “interest subsidy accounts” in respect of different loans granted by the bank can be combined in one blocked account. Obviously, too, any element of credit loss compensation can only be paid into an account in the name of the financial institution.

#### **5. Conditions**

The remaining required subsidy paid out under both methods is the capitalized sum of discounted interest subsidies (and in the case of (b)(ii) possible credit loss compensation) due until the entire repayment of the loans concerned. Estimates of any credit loss compensation should be based on normal actuarial principles.

In the case of (a), there must be a system for monitoring the borrowers to maximize the possibility of recovery in case they get into difficulties.

In the case of method (b) there must be, in addition to the agreement between the programme authorities and the financial institution on the use of the blocked account, an agreement with the financial institution and with the Commission (in the form at least of an exchange of letters) concerning the return of any unneeded excess subsidy. Such a surplus may arise because of bankruptcies, making further interest subsidies to the failed businesses unnecessary (the businesses will not be paying interest let alone repaying principal), or – if applicable – from overestimates of credit loss compensation requirements (which should, however, be estimated conservatively to

minimize the risk of a surplus). The surplus may, at the option of the Member State, either be returned to the Commission or, as in the case of eligibility rules 8 and 9, re-used for the development of SMEs in the same region.

Loans must have been disbursed and subsidies – both EU and national, if any - paid out at the latest by the time limit for payments under the programme.

During the programme period, payments of subsidy (EU and national) can be claimed as eligible expenditure as and when the subsidies are drawn down. When the subsidies are paid in instalments (the normal case considered here), it is the (annual or more frequent) payments of subsidy to the financial intermediary or the borrower that are eligible expenditure. In the case of a lump-sum payment of the discounted value of the subsidy for the entire loan period to the financial intermediary, however, (see end of point 2 above), the subsidy would be eligible expenditure from the time it was paid.

The state aid rules, including the *de minimis* rule, must be applied.

#### **6. Other methods of ensuring coverage of interest subsidies in Structural Fund programmes**

Several methods avoid the problem of the programme end-date with interest subsidy schemes. Member States are, of course, free to continue to use them. Commission services may also, for particular reasons and in particular cases, continue to insist on their use.

Such methods include:

- (a) dividing the subsidy requirements between two consecutive programmes;
- (b) front-loading the interest subsidies to early years of the loan so that all the subsidies can be paid before the end of the payment period for the programme;
- (c) granting loans only in the early years of the programme with the same result as (b);
- (d) taking over the financing of interest subsidies due after programme closure entirely with national funds.

#### **7. Application of the methods set out in para. 4 (a) and (b) in 1994-99 programmes**

This guidance note is intended to be of benefit mainly during the current programme period 2000-06. However, the methods set out in para. 4(a) and (b) have been used with the Commission's approval in some 1994-99 (and indeed earlier) programmes. In such cases, closure reports should mention that eligible expenditure for the schemes concerned has been included on the basis of the payment of the remaining subsidies to borrowers or into a blocked account at the end of the period for payments.

## Appendix 3

### Guidance on deduction of recoveries from next statement of expenditure and payment claim and on completion of appendix on recoveries under Article 8 and Annex II of Regulation (EC) No 438/2001

CDRR/05/0012/01/EN

#### 1. Introduction

In 2003 the Directorates General of the Commission responsible for the Structural Funds reminded national authorities of the obligation to deduct recoveries, together with interest on account of late payment, from the next statement of expenditure and payment claim to the Commission<sup>18</sup> and to provide information on the recoveries in an appendix to the statement of expenditure.<sup>19</sup> The Directorates General informed Member States that from 30 September 2003 onwards payment claims that were not accompanied by the appendix would not be processed. This deadline was extended to 1 January 2004 by a note presented to the Committee for the Development and Conversion of Regions in December 2003<sup>20</sup>, which also covered some practical matters concerning the appendix.

The requirement to inform the Commission of recoveries deducted from statements of expenditure serves three purposes : to enable the Member State to show that it has fulfilled its obligation to recover amounts unduly paid and account for them to the Commission, to give the Commission the means to check that recoveries have been properly deducted, and to provide a source of data on recoveries effected by Member States which the Commission can use in replying to the European Parliament and the European Court of Auditors, which often question the Commission on Member States' recovery activity to have evidence that they are dealing with irregularities effectively.

This note is intended to clarify some practical questions concerning the deduction of recoveries with interest on account of late payment and completion of the recoveries appendix. It replaces the guidance given on this matter in the note presented to the CDRR in December 2003 which experience shows is incomplete.

#### 2. Legal provisions

Article 8 of Regulation (EC) No 438/2001 provides:

“The managing or paying authority shall keep an account of amounts recoverable from payments of Community assistance already made, and ensure that the amounts are recovered without unjustified delay. After recovery, the paying authority shall repay the irregular payments recovered, together with interest received on account of late payment, by deducting the amounts concerned from its next statement of

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<sup>18</sup> Or, if the amount recovered is greater than the new expenditure to be declared, to repay the excess Structural Fund amount recovered (with any default interest) to the Commission.

<sup>19</sup> See letter sent to Member States by the Directorate General Regional Policy in the name of all four directorates general on 17 June 2003. The letter was presented to the CDCR under number CDRR/03/0039/00 on 17 July 2003.

<sup>20</sup> Note CDRR/03/0065/00.

expenditure and request for payment to the Commission, or, if this is insufficient, by effecting a refund to the Community. The paying authority shall send the Commission once a year, in annex to the fourth quarterly report on irregularities supplied under Regulation (EC) No 1681/94, a statement of the amounts awaiting recovery at that date, classified by the year of initiation of the recovery proceedings.”

In the certificate and statement of expenditure which paying authorities submit to the Structural Funds Directorates General they certify that they have taken into account recoveries effected and revenue received by projects (see model certificate and statement in Annex II to the Regulation). Information is to be given on recoveries in an appendix to the statement of expenditure for which a model listing the information required is provided in Annex II of the Regulation after the model for the certificate and statement of expenditure.

### **3. Recoveries**

#### **3.1. Expenditure which has been declared to the Commission**

The obligation to deduct recoveries from the next expenditure declaration and indicate them in the recoveries appendix only applies to recoveries relating to expenditure that has already been declared to the Commission.<sup>21</sup>

#### **3.2. Arising from irregularities**

Only recoveries arising from an irregularity within the meaning of Regulation 1681/94, as amended by Regulation (EC) 2035/2005, are to be considered as covered by this obligation and not corrections made because of errors other than irregularities (for example, clerical errors). It should be noted, however, that the obligation concerns recoveries arising from irregularities which have been communicated under Regulation 1681/94, as amended, and those which are exempted from communication for example because they are below the threshold.<sup>22</sup>

#### **3.3. Withdrawal of expenditure from the programme**

Programme authorities may deal with irregularities either by withdrawing the expenditure affected from the programme, thereby immediately releasing the EU funding for commitment to other operations, or by leaving it for the time being in the programme pending the outcome of recovery proceedings.

In the first case, the withdrawal of an operation or part of it from the programme is not to be treated as a “recovery” and the irregular expenditure is not to be included in the recoveries appendix. Nevertheless, to correct the statement of expenditure it has previously submitted to the Commission the Paying Authority must record the adjustments in its accounts and deduct the expenditure withdrawn from the following statement of expenditure to the Commission. It must keep records of the withdrawal and deduction in order to maintain the audit trail and to be able to provide the

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<sup>21</sup> The obligation to report irregularities under Regulation 1681/94, as amended by Regulation (EC) 2035/2005, however, applies even where the expenditure has not yet been declared to the Commission.

<sup>22</sup> Raised by Regulation (EC) 2035/2005 to €10 000.

Commission on request with information on such adjustments. The further action of the programme authorities in respect of the withdrawn expenditure is a matter for them. The irregularity and its clearance by withdrawal from the programme must, however, be reported to OLAF except where an exemption applies.

#### 3.4. Recovery from the final beneficiary

Where the irregular expenditure is left in the programme pending the outcome of recovery proceedings, the programme authorities will take action under national law to effect recovery. Recovery from the final beneficiary may be achieved by :

- causing him to repay the amount received unduly;
- a set-off, whereby the amount to be recovered is deducted from subsequent payments due to the beneficiary.

In both cases the amounts recovered are to be deducted from the next statement of expenditure and included in the recoveries reported in the recoveries appendix.

#### 3.5. Financial corrections by the Commission

Recoveries from final beneficiaries made following financial correction decisions by the Commission under Article 39(3) of Regulation 1260/1999 are not to be deducted from the expenditure declared nor included in the amounts stated in the recoveries appendix.

#### 3.6. Actual, not pending recoveries

The "recoveries" to be deducted from the statement of expenditure and indicated in the appendix are recoveries actually made since the last statement of expenditure, not recoveries awaited.

No information on pending recoveries is required in connection with statements of expenditure and payment claims to the Commission. This information - in practice, extracts from the "debtors' ledger" maintained by the managing or paying authority - has to be submitted once a year in annex to the irregularities report for the final quarter.<sup>23</sup>

### **4. Amounts to be deducted from statements of expenditure and payment claims and indicated in the appendix**

Statements of expenditure have to show the expenditure that is the basis for co-financing. This may be total public expenditure or total eligible costs including private expenditure.<sup>24</sup> Recoveries concern public expenditure, but also require

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<sup>23</sup> Article 8 of Regulation (EC) No 438/2001. This information is used by the Structural Fund directorates general and OLAF in their monitoring of the follow-up of irregularities.

<sup>24</sup> Article 29(2) of Regulation 1260/1999.

adjustment of private expenditure declared in the statement of expenditure in the case of the second option.<sup>25</sup> Thus:

- In both cases, in the statement of expenditure the entire amount recovered should be deducted from the total public expenditure to be declared, and the Structural Fund and national public funding shares of the recovered amounts from the figures for Structural Fund and national public funding contributions respectively.
- In the second case, i.e. where private expenditure is part of the co-financing base, the private expenditure declared should be corrected in line with the correction of the public funding recovered. This means that in the case of a recovery of 100% of the public funding, the private expenditure for the operation should also be fully deducted; where only part of the public funding has been recovered, the private expenditure previously declared for the project should be corrected *pro rata* to the recoveries of public funding. For example, in the case of an operation financed with 50 EU funding, 25 national public funding and 25 private financing, where only 60 out of the 75 public funding is recovered, 20 and not 25 of the private expenditure would have to be deducted along with 40 of the EU contribution and 20 of the national public contribution. Failure to correct the private expenditure declared would make the total expenditure declared larger than justified, leading to a risk of excess payments of Structural Funds at closure.

In the annual breakdown of expenditure in the statement, the deduction of the recovered amounts should be made from the expenditure declared for the year in which the recovery was entered into the accounts of the paying authority.

The deductions made in the statement of expenditure for withdrawn expenditure should follow the same principles.

Default interest is normally charged if repayments are made after the deadline set in the recovery order. Such interest on account of late payment should be added to the recovered amounts that are deducted from the expenditure declared in the statement of expenditure.

If interest is charged under the Member State's national law on the public funds in the possession of the beneficiary from the date of payment until their recovery, the interest borne by the Structural Fund grant (less default interest, if any) should be used for the purposes of the programme concerned, in the same way as interest earned on the payment on account.<sup>26</sup>

The amounts to be indicated in the recoveries appendix are the total public funding recovered plus any default interest.

## **5. Detail of recoveries to be indicated in the appendix**

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<sup>25</sup> In some cases, for example for the European Social Fund, recoveries may not concern the Structural Fund contribution and national public funding to the same extent, and as a result the adjustments required to the statement of expenditure may be different from the typical cases illustrated here.

<sup>26</sup> Article 32(2), third subparagraph, of Regulation 1260/1999.

Although the information asked for in the model appendix implies that details of individual recoveries must be given, the Structural Funds Directorates General accept for all future statements of expenditure that aggregate figures by measure may be given in the appendix. No details therefore need be given in the appendix of the dates of issue of the recovery orders, the authorities issuing the orders, or the debtors. However, such information must be maintained in the debtors' ledger and at closure a list of cases with the irregularity report reference must be presented.

## **6. Exchange rate**

As with the statements of expenditure themselves which have to reflect any recoveries made, the amounts recovered that are indicated in the appendix should be in Euros.<sup>27</sup>

In non-Euro-zone countries the exchange rate applied both for the deduction from the statement of expenditure and for the recovery figures given in the appendix should be that applicable when the amounts recovered were recorded in the accounts of the Paying Authority.

## **7. Adjustments to Member States' practices to conform to this guidance**

The Member States should make the necessary adjustments to their national practices to conform to the guidance in the present note by the time of their first expenditure declaration in 2006.

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<sup>27</sup> Regulation 643/2000.