

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
1.	2.3	BG/ PL/ RO/ HU/ GR	We need clarification or justification on the text “The first phase of the major project should be completed and ready to be used for its purpose and/or function specified in the Commission decision...”. To be confirmed that is reached sufficient completion and readiness of the corresponding stage to be used, according to the implementation plan of the project (of the two phases).	This text will be adapted in line with section 3.3 and 3.4 of the CGL
2.	2.3	GR	<p>A phased project is considered as a whole and will only be regarded as completed once both phases have been implemented within their respective timeframes. The Commission will assess the Member States' proposals with a view to agree on the revised timetables for completion of the major projects and to amend the decisions of the already approved projects (see COCOF note 12/0047/02).”</p> <p>We would appreciate any clarifications regarding the procedures to be followed for projects which while they are considered major projects for the 2007-2013 programming period, they are not for the 2014-2020 period (when the sum of the total eligible costs of all phases does not exceed the respective levels set out in Article 100 of CPR)</p>	<p>Programmes and its respective operations are to be implemented according to the respective rules established for each programming period. MP thresholds and the basis for their calculation are different in the regulations applicable to 2007-2013 and 2014-2020 programming periods.</p> <p>Member States need to ensure the completion and the functionality of the phased (major) projects either with national resources is the second phase is not financed under the 2014-2020 period or under the 2014-2020 programming period under the category of non major project.</p> <p>Projects that are considered Major projects under the 2007-2013 programming period but not under 2014-2020 can still be supported as non major projects under 2014-2020 programming period.</p>
3.	3.1	BG	The text “However in the case of financial engineering instruments, the public contribution shall be paid to the beneficiary by the end of the eligibility period.” under point 3.1. “Final date of eligibility of expenditure and applicable rules” is inconsistent with point 3.6 of the Guidelines and more specifically with point 3.6.2 which specifies that the management costs and fees incurred and paid by 31.03.2017 are eligible considering that management costs and fees are fees, costs, expense and other proceeds paid from the	<p>There is no contradiction between section 3.1 which requires that a public contribution is paid to the FI before the end date of eligibility and section 3.6.2 which requires that the evidence for the expenditures declared should be provided inter alia by management cost and fees until 31 March 2017 with the final payment application.</p> <p>Attention is drawn to the fact that the audit authority must be enabled to fulfil its responsibilities under Article 62(1.e) of Regulation (EC) No 1083/2006 (i.e. <i>“assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final</i></p>

	Sections	MS	Questions	COM reply
			operational programme to the beneficiaries.	<p><i>statement of expenditure</i>"). This means that the audit authority needs to be able to seek reasonable assurance that not only the public contribution was paid to the FI before the end date of eligibility, but also that the expenditure declared at closure is indeed eligible under Article 78(6) of the said Regulation and complies with all the Union and national applicable law including the rules set out in the relevant funding agreement. This assurance would be obtained through a sample of operations audited in a nine month period before closure (including contradictory procedure with the auditees), which is considered the minimum time to perform sufficient audit work in this regard.</p> <p>If the final statement of expenditure is only submitted to the AA early 2017, it would be impossible in practice for audit authorities to make sufficient checks on that statement of expenditure since all closure documents (including the AA closure declaration) have to be sent to the Commission at the latest by the 31st of March 2017. Hence, it is recommended that the certifying authority sends the last interim payment claim (including the expenditure that will be certified at closure) to the AA by 30 June 2016, to allow this body to perform the necessary audit work. This will reduce the need for reservations in the closure declaration due to scope limitations if the AA is unable to perform the audit work in time before 31 March 2017.</p>
4.	3.1	HU/ CZ	We have brought up several times the issue of TA staff expenditure that emerges in Dec. 2015 but cannot be paid by the deadline due to mandatory national rules. We still believe that this issue could be best addressed in the Closure Guidelines. Therefore we kindly ask the COM to add the following provision to section 3.1 (Final date of eligibility): "Staff expenditure (salaries and social contribution), can be considered as paid within the eligibility period, even if the cash transfer will follow in 2016 if this is required by mandatory national rules allowing salaries and social contributions to be paid on a different date than the date the liabilities have been incurred. This	The request is not in compliance with Art 56 which requires that eligible expenditures have to be actually paid before 31 December 2015 (question is or will be covered by Q&As)

	Sections	MS	Questions	COM reply
			provision would also apply for taxes and property charges when relevant."	
5.	3.1	GR	With regard to section 3.1, we understand that - in the case of FEIs - by the term "beneficiary" is meant the Holding Fund/ FEI and not the Financial Intermediary or the final recipient (e.g. SME). Furthermore, this means that in the case of FEIs, any public contribution must be paid to the HF/ FEI by the OP until 31/12/2015, which implies that any disbursement from the HF/ FEI to the Financial Intermediaries/ final recipients can be made until 31/3/2017 (according to section 3.6). Please confirm. If this is not the case please give detailed clarifications.	In case where FEI is implemented through a holding fund the "beneficiary" is a holding fund. In case where FEI is implemented without a holding fund the "beneficiary" is a financial engineering instrument (financial intermediary). It is not enough that disbursements are made to financial intermediaries but to final recipients in line with Article 78.6. Accordingly it is not possible to declare payments in FI eligible if these OP contributions do not materialise in support to final recipients. It should be furthermore taken into account that expenditures paid to the FI before 31/12/2015 can only theoretically be justified by disbursements to final recipients until 31/07/2017 since they have to be covered by the closure declaration. As both CA and AA need time to prepare the final payment application (CA) and to work on the closure declaration (AA) a date somewhere in the second half of 2016 should be set between the authorities involved for the MA to provide evidence of support granted to final recipients (This will be clarified in the Guidelines). See above the reply to question 3.
6.	3.3	BG/ RO	We need clarification on the requirement in which cases should be amended the application form and in which cases only the Commission decision?	As regards interpretation concerning the modification of MP decisions we refer to the COCOF note 13-0085-1 on the amendment of major project decisions

	Sections	MS	Questions	COM reply
			The eventual amendment of the application forms should it lead also to any changes in the CBA and the other applications?	
7.	3.3	IT	L'eliminazione nel par. 3.3 del riferimento al divieto di "consentire nessuna suddivisione in fasi degli investimenti produttivi (ai sensi dell'articolo 3 del regolamento FESR). Questo tipo di investimento deve corrispondere a una chiara logica industriale e va attuato entro un solo periodo di programmazione" deve essere inteso che diviene possibile portare su due periodi di programmazione progetti di investimenti industriali, indipendentemente se siano grandi progetti o meno (sia pure con il rispetto della soglia minima di 5 milioni di euro)? Occorre a tale riguardo una esplicita conferma, atteso che tale aspetto risulta di particolare rilievo per dare la possibilità di completare significativi investimenti industriali che non possono essere conclusi entro il prossimo dicembre (anche a causa delle ripercussioni legate al prolungamento della crisi in corso), come già evidenziato in passato.	If the conditions of phasing as defined in 3.3 and 3.4 of the modified Closure guidelines are respected productive investment can be phased
8.	3.3 – 3.4	CZ	Even though the Commission has already mentioned that further amendments to the phasing process are currently not being planned, we would like to insist on phasing based solely on the time element, and 2014–2020 eligibility requirements. While we realize this is a demanding request, this change may make a crucial difference in the use of funding, especially in relation to OP Research and Development for Innovations and OP Transport. Our proposal would mean that: All expenditures paid by the beneficiary by 31 December 2015 will	Phasing in time or based on rough percentages of physical progress (that is physically not verifiable) will neither provide for a proper audit trail required under Article 15 of the Implementing Regulation nor for a reliable audit declaration at closure. Art. 15 d) requires that for the purpose of Article 60 (f) an adequate audit trail contain the technical specifications and financing plans. The absence of link between the financial resources spent for the project in the respective programming period and the physical progress of a project would create a risk of double financing of expenditure. It would also prevent the MA to check the reality of expenditure and the deliverance of the products or

	Section s	MS	Questions	COM reply
			<p>form the first phase,</p> <p>Any other expenditure incurred will be paid within the second phase,</p> <p>There will be a clear separation of expenditure applied within the first phase and second phase to avoid double financing and to ensure the appropriate audit trail,</p> <p>As we already mentioned during the Task Force meeting and in the subsequent video conferences, modifications of the time element alone would secure a minimum number of 6 major projects. In monetary terms it is approximately EUR 330.4 mil. With regard to non-major project the time element would enable phasing of at least further 31 projects amounting to approximately EUR 631.4 mil.</p> <p>Furthermore we wish to inquire about the possibility to lower the threshold for non-major projects eligible for phasing to EUR 1 mil. This measure would allow for phasing of further 14 projects from OP Transport (EUR 43.6 mil) and OP Research and Development for Innovations (EUR 5.5 mil).</p>	<p>services in accordance with the approval decision whereas article 13.2 second subparagraph so requires.</p> <p>This is why the Commission decision on major projects or the national granting decision in case of non-major projects will have to define a physical object in order to justify the respective funding. These decisions cover one programming period only and need a precise allocation of resources and physical progress to each programming period.</p> <p>With regard to the progress achieved in phasing 9 months before the end of the eligibility period the Commission considers it as predominant that national authorities concentrate on the more complex operations while the operations under 5 Million should concentrate on a completion within the programming period in order to assure the completion of the relevant programme objectives. As phasing still need an administrative closed monitoring a further extension of this possibility may impede the concentration of administrative resources on the new programming period.</p>
9.	3.3 – 3.4	RO	<p>We would like to ask COM to include a paragraph regarding the eligibility of advances to the contractors in the context of phasing projects.</p> <p>The guide should specifically mention if there is a need or not to</p>	<p>Explanation on this particular question has been provided in the Q&As and will be covered thus as well by a final Q&A consolidating the replies to the questions received after the individual Closure events. For the second part of the question see reply to question 8</p>

	Sections	MS	Questions	COM reply
			<p>update the cost benefit analysis for the second phase of the project.</p> <p>Given the specificity of the interventions, SOP IEC is generally supporting small scale projects with 83.91% of the total representing contracts with total value of under euro 1 million. As by the proposed version of art 3.4, only 4.2% of the contracts would be rendered suitable for consideration for phasing. By lowering the threshold to 1 million euro, we would allow 728 additional projects to fulfil this provision. Out of these, we estimate that a maximum of 5% would be considered for phasing by the Managing Authority. Moreover, while phasing is an option for projects that are still eligible under the new programming period, non-functionality of projects (art 3.5 of the proposed Guidelines) could be considered as an option for those projects that are not defined as eligible under the new programs. For instance, large enterprises or research infrastructure for a series of beneficiaries will not be eligible under the new Competitiveness programme nor do they exceed euro 5 million in total costs. Therefore, we propose that the same reduction of the minimum threshold should be applied to the total cost of the projects considered for declaring non-functional.</p>	
10.	3.3 – 3.4	GR	<p>Please explain the meaning of the phrase “... and the description should form part of the audit trail” referred to in sections 3.3 and 3.4.</p> <p>Please confirm that for the phasing of non-major projects, the same CBA exists and the eligible cost for co-financing (the “decision amount”) under the 2014-2020 programming period is calculated by using the same funding gap rate as in the 2007-2013 period</p>	<p>The description of the physical scope of each phase and its corresponding financial allocation should be fully auditable i.e. should be part of the audit trail in order to allow the Audit Authority to audit the phases and include all elements corresponding to the phases in the closure declaration.</p> <p>The Audit trail shall comply with the criteria as specified in Article 15 of the Implementing Regulation no 1828/2006</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
11.	3.4	BG	<p>In point 3.4 after the words “The second phase of the project shall comply with all applicable rules of the 2014-2020 period” the following text is suggested to be inserted “For the implementation of the second phase the launch of new selection/award procedure is not required”. The suggestion is made because more clarity about the applicable procedures for the implementation of the second phase is needed.</p> <p>Is it necessary a new CBA to be done to determine the sums according art.55 of 1083/2006?</p> <p>Are there propositions for faster and easier approach for calculation of these sums – for example, financial analysis with regard to the financial flows of the project which envisage determining of the Funding gap?</p>	<p>The closure guidelines provide interpretation of the rules for the closure of the 2007-2013 period not for the 2014-2020 period.</p> <p>Phasing is not providing any exceptions of applicable selection and procurement rules. It is possible that contracts concluded following the applicable public procurement rules cover operations implemented over two phases. But there is no exception to public procurement due to phasing.</p>
12.	3.4	HU/ SK	<p>We welcome the use of the term “phases” instead of „stages” in case of major projects. This terminology however is not consistently applied everywhere in case of non-major projects.</p>	<p>It will be corrected</p>
13.	3.4	IT/B G	<p>Is it possible for technical assistance projects to be phased – for example, for preparation of infrastructure projects and etc., financed from priority axis Technical assistance?</p>	<p>TA projects can be phased if they comply with the conditions for phasing outlined in section 3.4, notably total cost of above 5 M€. It is possible to finance the preparation of an infrastructure project from the technical assistance priority axis, while the infrastructure project itself is financed from the next programming period.</p> <p>It is also possible to finance a project financed from the technical assistance priority axis, if it complies with all the conditions for phasing stated under</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
				section 3.4
14.	3.4	DE	<p>For the so-called phasing of projects (section 3.4) as well as for declaring a project as non-functioning (section 3.5) the Closure Guidelines foresee a threshold of at least Euro 5 million. Would it be possible to lower this threshold due to new experiences that have been made since the 2000-2006 programming period? What does CION expect MS to do in case a project does not reach the threshold but is to be determined as non-functioning, do the contribution of ESI Funds have to be substituted by national capital?</p> <p>Do insolvencies count as non-functioning projects or do they have to be reported separately?</p> <p>Section 3.4, Phasing: Is it right that each stage of a project has to be a complete project of its own? Or does the deletion of the phrase „the first phase of the project is ready to be used for its purpose“, means that the first stage/phase of a project does not have to be completed?</p>	<p>For the reasons provided to the CZ (see reply 8) authorities the COM does not intend to extend the exception provided to non-functional projects for operations below the threshold defined in the Closure Guidelines.</p> <p>All non-functioning projects, above or below the threshold indicated in section 3.5 of the Closure Guidelines will have to be completed by national resources until closure. In case they are not functional by closure the full amount allocated to the projects will be recovered. As stated in the closure guidelines and in the conditions outlined in paragraph 3.5, projects the total cost of which amounts to at least EUR 5 million should be functional within two years of the deadline for submitting the closure documents.;</p> <p>Insolvency may cause a project to be uncompleted and/or non-functional. In case the amounts paid for such a project cannot be recovered, the member state should inform the Commission accordingly In line with Art.20 of Regulation (EC) No 1828/2006.</p> <p>The first phase does not necessarily have to be completed. It is sufficient that the project has two clearly identifiable phases from a physical and financial point of view, that the physical scope of each phase and its corresponding financial allocation is duly described and that the financial allocation of each phase is established by reference to the physical elements of each phase.</p>
15.	3.4	IT	<p>In par. 3.4 of the Decision C (2013) 1573 it is confirmed the threshold of 5 million euro as a limit for projects' phasing on two programming periods. The purpose of the provision is to limit the risk of incomplete projects and therefore not eligible for co-financing by EU funds. The amount of the threshold set by the Commission, in the light of the data for the implementation of programmes, appears too high with the result that, at this stage, it appears necessary to intervene in favor of its reduction, bringing it</p>	<p>See reply 8 provided to the CZ authorities.</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
			<p>to no more than 2 million euro. The subject has been brought to the attention of the Commission since the meeting held last year in Rome concerning 2007-13 closure, stressing that the provision of a high threshold to allow projects' phasing on two programming periods can have serious side effects on the administrations responsible for managing the operational programmes. Among others, these effects are linked to the need to obtain additional financial sources for the completion of these projects, with the real risk of determining debts and off-balance sheet.</p> <p>Moreover, the statistical information available indicates for Italy, but also for other European countries, an average size of projects, approved for EU funds, below the threshold. From these considerations and from those illustrated below comes the need for action to reduce the limit of 5 million euro.</p>	
16.	3.5	EE	<p>As a technical remark, we would welcome a clarification on how the reporting on non—functioning projects (referred to in point 3.5) would take place after the programming period and whether the SFC will provide technical support for this. Annex V does not include such information as it is meant for use in the final report, but it could be adjusted for this purpose</p>	<p>Yes SFC will provide technical support for the reporting on non-functioning projects. Adaptations of SFC for this purpose are on their way.</p>
17.	3.5	GR	<p>With regard to the second condition referred to in section 3.5 for the non-functioning projects ("<i>the Funds' contribution to these non-functioning projects cannot be more than 10% of the total allocation for the programme</i>"), please clarify whether this 10% is calculated</p>	<p>It refers to the Union contribution at closure (see Annex V of the Closure Guidelines). It refers to the totality of OP funds.</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
			on the Union contribution of the latest approved OP, or on the Union contribution at closure. Moreover, does the 10% concerns all the funds of the OP in total, or is it calculated for each Fund separately?	
18.	3.6	UK	<p>Please confirm that:</p> <ul style="list-style-type: none"> -ERDF investment can be made into FEIs up to 31 December 2015, but not after; -Investments within the FEI can be made up to 31 March 2017; -However, in practice, managing and audit authorities need to leave sufficient lead time to carry out the appropriate verifications before closure (so ceasing investment in, say, Dec 2016 would be wise); -It is not necessary for the final recipient to have completed the implementation of an investment activity supported by the financial engineering instrument by the time of submission of closure documents (but the authorities do need to have assurance that the contributions are being used for their intended purpose – this can be carried out at the level of the fund manager rather than needing to be done at the level of the final recipient). <p>Does the ability to make investments <u>within</u> the FEI after 31 December 2015 relate <u>both</u> to follow on investments in existing final recipients <u>and</u> to new investments into final recipients?</p> <p>J. Horseman: “Does the ability to make investments within the FEI after 31 December 2015 relate both to follow on investments in existing final recipients and to new investments into final</p>	<p>According to the General Regulation Art 78.6 eligible expenditure at closure is the total of the following items:</p> <ol style="list-style-type: none"> (1) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; (2) any payments for investment in enterprises from financial engineering instruments for enterprises; (3) any guarantees provided including amounts committed as guarantees by guarantee funds; (4) any loans or guarantees for repayable investments from funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments, for energy efficiency and use of renewable energy in buildings, including in existing housing; (5) eligible management costs and fees. <p>Since the final application for payment must be submitted by 31 March 2017, and no additional expenditure can be declared after 31 March 2017, closure for the purpose of Article 78 (6) is to be understood as the final date for submission of payment applications.</p> <p>That means that OP contributions to the FI before 31/12/2015 may be justified by disbursements to final recipients as eligible until 31/03/2017; however they have to be covered by the closure declaration (as all eligible expenditure).</p> <p>In order for the audit authority to have sufficient time to carry out its work for the closure declaration the application for payment of the final balance and the final statement of expenditure should be submitted to the audit authority well in advance (it is recommended that these documents are provided to the</p>

	Sections	MS	Questions	COM reply
			<p>recipients?”</p> <p>We are clear that the MA must have fully invested in the FEI by cop 31 December 2015, and that the proposal is that FEIs can make investments up to 31st March 2017, in practice to ensure closure in an orderly fashion we estimate that we can only extend FEIs to 31st December 2016, but that in itself is most welcome.</p> <p>This is just to clarify whether the FEI can invest into SMEs post 2015 with whom they have never before made an investment (hence ‘new’ investment) as well as making a follow-on (e.g. second) investment to a SME they have already invested in. It makes a difference for us as the slightly delayed 2014-2020 Operational Programme approval means that we may not get all our 2014-2020 FIs fully operational by 1st January 2016 and the ability to make some new loans beyond 2015 will help us avoid a gap in provision of ERDF loans to SMEs where they are most needed.</p>	<p>Audit authority at least three months before the deadline of 31 March 2017) see Annex VI of the Closure guidelines. See above the reply to question 3.</p> <p>As both CA and AA need time to draft the final payment application (CA) and to work on the closure declaration (AA) a date in the second half of 2016 appears realistic to be set between the authorities involved as a cut-off date for the MA to provide FI eligibility evidence (which can invest into new SME or SMEs already invested provided that Sate aid rules and limits are complied with). See above the reply to question 3.</p> <p>As outlined in the last paragraph of 3.6 resources returned from investments in final recipient should be considered as legacy and should not be declared in case of further loan disbursements to SME as eligible expenditure in the 2007-2013 programming period.</p>
19.	3.6	BG	<p>In the first paragraph of point 3.6 more clarity is needed about the final date by which the investments in final recipients shall be paid. In the case that by analogy with point 3.6.2 and point 3.6.3 this date is 21.03.2017 than a priority of the Closure Guidelines over the COCOF note 10/0014/04 of 21 February 2011 as revised on 14 December 2011 shall be envisaged. The latter suggestion is based on points 2.5.11 and 9.1.3 of the COCOF note 10/0014/04 which specifies that “at closure eligible expenditure is the amount paid out by 31st December 2015 by the holding fund or financial engineering instrument for concrete investments to the benefit of the final recipients..” and that “management costs or fees incurred until 31 December 2015 are eligible expenditure pursuant to Article 78(6)(d) of the General Regulation...”. It should be also noted that COCOF</p>	<p>An adjustment of the COCOF guidance on FI is in the discussion.</p> <p>Section 6.1.9 of the COCOF note 10-0014-05 is not contradicted by the Closure Guidelines.</p> <p>Financial Engineering Instruments are delivery mode of programme support to final recipients. The purpose of FEI in cohesion policy is support to final recipient in line with programme objectives. Managing authorities must have assurance that the contribution paid to the final recipients are used for their intended purpose (base on e.g. business plan confirming the purpose of a loan or a guarantee, on the spot visits by financial intermediary, first stages of implementation, implementation reports, etc...) . However it is not necessary for the final recipients to have completed the implementation of an investment activity supported by the FEI by the time of closure.</p>

	Sections	MS	Questions	COM reply
			<p>note 10/0014/04 has its revised version from COCOF-10-0014-05-EN of 08/02/2012.</p> <p>The following text in point 3.6 is needed to be clarified: “For the expenditure to be considered eligible at closure, national authorities must have assurance that the contribution paid to the final recipient is used for its intended purpose.”</p> <p>The clarity is needed in the following respect: by whom the contribution shall be used for its intended purpose by the financial intermediary which shall invest it the final recipients for the purpose specified in relevant documents of the instrument or by the final recipient in accordance with its application. If the latter is the intended meaning it shall be noted that it is difficult to establish whether the contribution is used for the intended purpose in cases where implementation activity is not completed. It shall be also noted that in accordance with point 6.1.9 of the COCOF note 10-0014-05-EN of 08/02/2012 “the audits may be conducted at the level of the final recipients only when the documents are not available at the level of the financial engineering instrument or at the level of the managing authority or in case of insufficient monitoring and verifications, or of legitimate doubt that the documents do not reflect the reality of the repayable investments” this will cause additional difficulty for the MA to verify if the contributions are used for the intended purpose.</p>	

	Sections	MS	Questions	COM reply
20.	3.6	CZ	<p>With regard to the revised chapter on financial engineering instruments we would like to make sure that we understand the Commissions' wording correctly. Could you please confirm the following – the revised Guidelines state: National authorities must have assurance that the contribution paid to the final recipient is used for its intended purpose. In practice this means that the managing authority using the FEI must have sufficient assurance from the fund through which the FEI is implemented that the contribution was paid to the final recipient by 31 December 2015 in compliance with activities included in the investment plan. The final recipient does not have to provide invoices or any other documents verifying the actual execution of the supported activity by the time of closure of operational programme.</p>	<p>The understanding is not correct. Please look at the reply 18 provided to the UK authorities.</p>
21.	3.6	SK	<p>We highly welcome the proposed flexibility and prolongation of the implementation period for the financial instruments. In the paragraph right after point (5) we suggest adding the words „and lending operations” right after the words „investment activity“.</p> <p>Justification: Adding lending operations would mean that loan agreements under guarantees are signed by a financial intermediary, but they do not have to be fully drawn by the client, who can continue drawing the funds under the signed loan agreement. We believe this is not in contradiction with point (3) above the paragraph and explains that it is not a failure of the FIs to disburse the funds, but instead a failure of clients to request drawing of the funds.</p>	<p>Investment activity covers lending operations as well. The word is used in a broad sense.</p> <p>Please note that in case of loans only the disbursed funds to the final recipient can count as eligible expenditure at closure. Any undisbursed funds will not be eligible.</p> <p>The additional reference to guarantee funds under section 3.6.1 is not necessary as it is already specified under point (3) what guarantees provided include</p>

	Sections	MS	Questions	COM reply
			Under 3.6.1 we suggest adding the words „by guarantee funds“ in the first sentence of the paragraph, so that this would be in line with point (3) in the paragraph above.	
22.	3.6	PL	<p>1) We suggest adding the following sentence: In line with Articles 44 and 78(6) of the General Regulation, eligible expenditure at closure are the investments made from operational programme contribution to the final recipients and the eligible management costs and fees. Such expenditure may be incurred or paid until the submission of the final application for payment (i.e. no later than 31 March 2017). Resources returned to the financial engineering instruments from investment in final recipient are, not considered to be operational programme contribution anymore. Such resources should be treated in accordance with Article 78(7) last indent of the General Regulation in order to ensure the revolving effect of programme contributions invested by the financial engineering instruments in final recipients. However reuse of these resources for further investments, which is not subject to any deadline, cannot be declared as eligible expenditure at closure.</p> <p>2) According to point 3.6 of the guidelines MA has the obligation to obtain assurance that the contribution paid to the final recipient was used for its intended purpose. We assume that MA is free to decide what kind of assurance as long as it proves that the support to the final recipient was used for its intended purpose.</p> <p>In specific cases when the assurance cannot be based on invoices or accounting documents of equivalent probative value because for example the investment of the final recipient has not been</p>	<p>1)COM considers the drafting proposal not clear. Paragraph 6 refers to the possibility to insert management costs and fees in the closure documents but does not provide a mandate to pay these expenditures until the deadline for the submission of the closure documents. This would not exactly reflect the legal provision. As outlined under question 3 the preparation of the closure documents may well impose to be more restrictive deadlines for the payment of management costs and fees</p> <p>2) see reply to question 19</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
			completed by the submission of closure documents is it enough to have the assurance based on other documents like application forms, business plans, support agreements, monitoring or reporting documents, etc?	
23.	3.6	RO	<p>We would like to ask COM to clarify within the guidance the nature and extent of the verifications expected from the national authorities in order to obtain the assurance mentioned in this paragraph. Should the verifications be performed at the level of final beneficiaries or at the level of financial intermediaries?</p> <p>It would be also useful to include in the guidelines a recommended deadline for these expenditures, in order to allow sufficient time to the national authorities to perform the necessary verifications for closure.</p>	<p>Even if the General Regulation does not set deadlines for completion of the investment activity financed through financial engineering instrument, the COCOF guidance note on Financial Engineering instruments indicates under section 6.1.7 that the programme resources paid to the final recipient or committed in guarantee contract for loan disbursed to the final recipient must be spent for the intended purpose in order to contribute to the achievement of the objectives of the relevant operational programme.</p> <p>This requires then that the programme support channelled through financial engineering instruments is indeed used for the intended purpose.</p> <p>This approach does not require that the investment financed by FI is completed by closure but that the national authorities can demonstrate that the OP contribution made to the final recipient (disbursed loan, invested capital) is used for the intended purpose which must be in line with the requirements of Article 44 of the General Regulation (on the basis of signed loan agreements, on the spot visits, implementation reports etc.). At closure there has to be proof of the financial transfers from the financial engineering instrument to the final recipients or, in the case of guarantees, proof that the underlying loans were disbursed.</p> <p>Evidence of expenditure to be kept at the level of the managing authority or of the FI is required as part of the audit trail. The Commission may usually not seek this evidence at the level of final recipients but may conduct audits at the level of final recipients if there is legitimate doubt that the documents do not reflect the reality of the repayable investment.</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
24.	3.6	HU	<p>In order to clarify the first paragraph on eligibility, we recommend modifying the text as follows: “According to Article 78(6) of the General Regulation, eligible expenditure that can be inserted in the final application for payment to be submitted by 31 March 2017 is the total of the following items <u>incurred and paid by 31 March 2017</u>”.</p> <p>We also propose the deletion of the following sentence: “For the expenditure to be considered eligible at closure, national authorities must have assurance that the contribution paid to the final recipient is used for its intended purpose.” In our understanding, this is part of the normal duties of different national authorities and therefore it is unnecessary and misleading to repeat it here. The current drafting suggests that the pre-condition of eligibility is the provision of accounts for each expenditure item by the final recipient.</p>	See reply 22 and 23
25.	3.6	BE	<p>We ask to add this sentence : “According to this provision, payments and loans may be paid and guarantees may be provided until 31 March 2017 ». Indeed, it is important that it should be explicit that the loans (decided in the required delays according to the GBER) can be paid correctly until 31 March 2017 (and not until 31 December 2015 as it is the case now). Moreover, Belgium is asking if this new possibility is compatible with the rules applicable for State Aid, particularly the GBER, which is applicable for financial instruments for this programming period.</p>	<p>Expenditure paid to the FI before 31/12/2015 can be justified by disbursements to final recipients as eligible until 31/07/2017; however they have to be covered by the closure declaration (as all eligible expenditure).</p> <p>In order for the audit authority to have sufficient time to carry out its work for the closure declaration the application for payment of the final balance and the final statement of expenditure should be submitted to the audit authority well in advance (it is recommended that these documents are provided to the Audit authority at least by 30 June 2016).</p> <p>Any restrictions resulting from the State aid rules should be complied with.</p> <p>See above the reply to question 18.</p>
26.	3.6	EE	<p>We acknowledge the clarifications as regards financial instruments but consider that the revised text should be clarified further.</p> <p>To our readers it seemed that the text was somewhat ambiguous and that the possibility to make payments from the financial</p>	<p>Section 3.6, points 1-5 specify precisely the different eligible payments from the funds to the final recipients. A further modification in the Closure Guidelines clarifies that closure in the meaning of Article 78 (6) is to be understood as the final date for submission of payment applications. See reply in questions 18 and 25.</p>

	Section s	MS	Questions	COM reply
			instrument until March 2017 (towards final recipients or for management costs) applied only for management costs and fees and capitalised interest rate subsidies/ guarantee fee subsidies (two elements for which this was specifically mentioned). Therefore we would propose to clarify directly under the heading of point 3.6, that this is applicable to all payments from the financial instrument.	
27.	3.6	GR	<p>With regard to the first paragraph of section 3.6 (<i>“According to Article 78(6) of the General Regulation, <u>eligible expenditure that can be inserted in the final application for payment to be submitted by 31 March 2017 is the total of the following items:</u>”</i>), we understand that all the five kinds of payments listed below this paragraph that are incurred and paid by 31 March 2017 are eligible. Please confirm. If this is not the case please give detailed clarifications.</p> <p>Moreover, further to the disbursement, we consider eligible any contract signing taking place until 31/3/2017. Please confirm. If this is not the case please give detailed clarifications.</p>	See reply 18 and 22
28.	3.6	FR/ DE	<p>Quelles sont les estimations de la Commission concernant l’impact budgétaire de l’extension de la date de fin d’éligibilité des dépenses (pour les paiements réalisés dans le cadre d’instruments financiers) ?</p> <p>What are the Commission's estimation as regards the budgetary impact of the extension of the eligibility end date for payments in FI?</p>	<p>It should be noted that there has not been any extension of the eligibility end date for FI investments but just a clarification of the existing rules.</p> <p>Payments into existing FI have been already declared to the Commission. These are reimbursed or being reimbursed and will not have an impact on the interim payments of the Union budget before closure. The proposed measure has accordingly no impact on budget 2015 or on the assessment made for the remaining needs for 2016.</p> <p>At closure, when eventually the Member State will not be able to present sufficient evidence for payments to final recipients, an impact on the Union budget in terms of decommitments may occur if these expenditure in financial instruments cannot be replaced by other eligible expenditures of the priority</p>

	Sections	MS	Questions	COM reply
				<p>axis or of other priority axis in the framework of the flexibility provided by Article 77(12).</p> <p>The assumption that by the clarification provided in the closure guidelines Member States may be tempted to allocate additional payments to new or existing financial instruments just before the end date of eligibility is rather speculative. Member States may as well reduce before that date the funding in FI priority axis and allocate them within a modification of the programme to priority axis that demonstrated an efficient spending in the past.</p> <p>Accordingly, it is not possible to provide at this stage a viable analysis of the expected impact of this clarification of the closure guidelines. There is accordingly no reason to believe that this adjustment in the guidelines has an impact on the key parameters underpinning the Multiannual Financial Framework.</p> <p>The closure procedures of 2007-2013 programmes will be finalised to a larger extent in 2018. Only then one will have a precise picture of the final decommitment figures which might have an impact on the payments 2018.</p> <p>The only figure that can be provided with assurance stems from the annual implementation report which provides aggregated figures on the use of financial instruments. The Summary of data on the progress made in financing and implementing financial engineering instruments reported by the managing authorities in accordance with Article 67(2)(j) of Council Regulation (EC) No 1083/2006 reported in October 2014 (latest available report) including data up to 31 December 2013 the following figures:</p> <ul style="list-style-type: none"> • 11.2bn € are ERDF commitments in relation to FEI • of which 9.3 bn € were paid into FEIs (Holding funds and Specific Funds) • of which 7.6 bn € were paid into specific funds (i.e. 1.6 bn are still at the level of holding funds) • of which 4 bn € were paid to final recipients.

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
				This means that at the end of 2013 5.3 bn € of payments in Financial Instruments declared to the Commission remained still without justification of a disbursement to final recipients. The figures will be updated by the next annual implementation report due for end of June 2015. Usually a significant acceleration of spending is observed towards the end of the programming period. Accordingly the Commission considers an annual average on the basis of the 4 bn € paid to final recipients as not applicable in order to provide a sound progression for future disbursements to final recipients. In October 2015 when new data from the implementation year 2014 are available the Commission to assess better the dynamic of disbursements to final recipients.
29.	3.6	DE	We would also like to consider what has been set out in section 3.6.2 and 3.6.3. Management costs and fees as well as interest rate subsidies or guarantee subsidies in respect of loans or other risk bearing instruments can be declared as eligible expenditure under certain circumstances. Isn't that an extension of the eligibility period?	These payments will only justify payments certified and declared to the Commission as payments from the program to the beneficiary (the FI). These declared payments are already reimbursed by the Commission. The regulation request the eligibility proof for these expenditures to be provided at closure. There hasn't been any extension of the eligibility end date for FI investments but just a clarification according to the existing rules. Please refer to replies 18 and 22.
30.	3.6	DE	Up to now CION has recommended to refuse from declaring new expenditure after the last application for an interim payment has been submitted. This last interim payment application is due on 30 June 2016. How can MS ensure an adequate audit and a sufficient time slot for the deadline for the closure documents due on 31 March 2017? Section 3.6 states that an investment supported by an financial instrument does not have to be completed. However, the managing authority should have assurance that the contribution paid to the final recipient is used for its intended purpose. How can the MA reach assurance in these cases, what kind of documents does CION want to see?	See reply 18 provided to UK and reply 23 provided to RO

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
31.	3.6	FR	Si les paiements sur les instruments financiers peuvent être réalisés jusqu'en mars 2017, comment rendre cette nouvelle échéance compatible avec les obligations liées à la préparation de la clôture ? étant donné notamment que l'autorité d'audit doit aussi remettre son rapport final à la Commission d'ici le mois de mars 2017 (son rapport ne pourrait donc pas couvrir les derniers paiements)	See reply 18 to UK
32.	3.7	GR	With regard to the conditions to be fulfilled for the recalculation of the funding gap rate in revenue generating projects (Section 3.7): <ul style="list-style-type: none"> • Is the Managing Authority obliged to recalculate the EU contribution to the project in case the total cost of the project changes, (i.e. if the MA does not recalculate the funding gap, this may be considered as irregularity)? • Can we give horizontal guidelines that the funding gap is recalculated only in case the total cost exceeds e.g. 10% of the original total cost? 	General question not linked to the modification is covered by Q&A
33.	3.9	HR	Still speaks about the accession of Croatia in the future tense.	Will be corrected
34.	5.2.9	HU	The guidance here uses a different wording from that of par. 83 of the General Regulation (CGL: „...interest...shall be used for operations...”; 1083: „...interest...shall be posted to the OP concerned...”). For the sake of clarity, we recommend using the exact wording of the GR.	The guidelines are providing interpretation of the regulation text.
35.	8	CY	In the case of public projects in Cyprus, where land appropriation is necessary, according to national law, the public department executing the works may requisition the land necessary for the project execution, even though the case for the amount due to paid to the owners of the land may still be pending in court (valuation	General question not linked to the modification, is or will be covered by Q&A

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
			disputed by the owners in a legal proceeding). As a result, the project is not suspended but can be executed, but the public department cannot pay the owner of the land the amount for the land appropriation until the case is settled, whereby the amount due (land value) will be agreed. Would such a case be outside the provisions of this article, therefore the payments made after the end of the eligibility period (at the close of the legal proceedings) would not be possible to be claimed under Article 95 of the General Regulation?	
36.	10	DK	<p>Can the Commission confirm, that when calculating the final contribution the amount at priority axis level will be A) the total eligible cost multiplied by the applying co-financing rate, and B) the Union contribution may not exceed by more than 10% the maximum amount of assistance from the Funds to the priority axis as laid down in the decision, and at programme level, C) the Union contribution shall not exceed the public contribution (EU and national public contribution) declared, D) and the maximum Union contribution can't be higher than the Union contribution in the programme as laid down in the decision of the Commission?</p> <p>The rules from the 2000-2006 closure, where the Union contribution, apart from the above mentioned four points, also were limited to the actually Union contribution paid to the beneficiaries, will not apply for the closure of 2007-2013 programmes? And therefore the Commission will not ask for the actually Union contribution paid to the beneficiaries in the final account submitted</p>	General question not linked to the modification, is or will be covered by Q&A

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
			from the Member State?	
37.	Annex II Template 2	UK	Could you please advise how we record e.g. quasi equity investments, the issue being that quasi equity has the characteristics of both loan and equity i.e. they are given initially as loans, but they are potentially convertible into shares? Equally, how would we record investments where funds give all their investments loans, quasi equity and ordinary equity within the same investment?	<p>Our advice is to report on quasi-equity under the category equity. In the case where several products (loan and equity) are provided by the same specific fund MS authorities should tick the separate boxes and report the amounts for each type of product.</p> <p>The Commission is currently working on an update of the respective FI guidance and will include these points</p>
38.	Annex VIII	CZ/BE	Moreover, would it possible to provide us with the Annex VIII in excel format (as requested during the previous EGESIF)?	Excel format will be uploaded in Circa with final Q&A
39.	Other	CZ	In our last email from 29 October 2014 we mentioned multi-objective programmes. Since we have not yet received an answer we would like to enquire again whether we are correct in our conclusion, that when using flexibility according to article 77 it is not necessary to keep the ratio between objectives as indicated in financial tables of programme documentation and it is only not possible to exceed the maximum amount agreed at the level of every objective? We trust that the Commission will find our proposals admissible and will inform us as soon as possible in relation to our suggestions. The final Guidelines on closure are essential for further activity on a national level. The suggested measures must be adopted within the national legal framework, otherwise they cannot be implemented by the individual Mas.	An example for Calculation of the final balance at the level of the programme and the priority axis for multi-objective programmes is provided in Annex VIII of the Closure Guidelines.

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Sections	MS	Questions	COM reply
40.	Other	SK	<p>In addition we would like to ask the EC to clarify two paragraphs under COCOF note:</p> <p>Application of point 4.1.: In particular, why under point 4.1 refinancing of existing loans is not possible? We suggest to give the Fis more flexibility and possibility to refinance existing loans or increase of existing overdrafts. Based on feedback from Fis, this could highly increase chances for full absorption of the allocated funds. We believe that this proposal is not in contradiction with point (2) above, but requires a simple modification of rules under point 4.1 in the COCOF note and operational contracts with Fis.</p> <p>We would like to ask the EC to kindly explain point 4.1.8 and provide a clear example for calculation. Would it be possible to take into account the pipeline of loans available for Fis when calculating the appropriate ratio? Again, we believe that this is not in contradiction with point (2) above, but could be subject to modification of COCOF note and of operational agreements with Fis.</p>	<p>General question not linked to the modification of the Closure Guidelines, is or will be covered by Q&A</p>
41.	Other	RO	<p>A recommended schedule for the closure process should be included in the guidance (especially with regard to the submission of documents at national level)</p>	<p>The Closure guidelines provide interpretation of the existing rules and bind the Commission to this rules. Flexibility is given to the individual national authorities to organise procedures within their national competences and responsibilities</p>
42.	Other	HU/ IT	<p>We are looking forward to the future updates of the closure Q+A document</p>	<p>Last questions have been received after the last events in Spain and Malta. Following the modification of the guidelines the Q&A provided after the national events will be updated and consolidated in a single document</p>

	Sections	MS	Questions	COM reply
43.	Other	FR/DE	<p>Pourquoi les paiements relatifs aux instruments financiers seraient-ils traités différemment des autres formes de soutien ?</p> <p>Sur quelle base juridique la Commission se fonde pour pouvoir modifier la date de fin d'éligibilité des dépenses ?</p> <p>Quelle est la base juridique de la décision de la Commission établissant les lignes directrices sur la clôture ? (ces lignes directrices prenaient avant la forme d'une simple note d'orientation de la Commission)</p> <p>Why are payments in FI treated differently than other forms of support?</p> <p>What is the legal basis used by the Commission to modify the final date of eligibility of expenditure?</p> <p>What is the legal basis of the Commission's decision establishing the closure guidelines? (in the past, these guidelines were provided as a simple guidance note from the Commission)</p>	<p>Following the European Council conclusions of 18 December inviting the Commission to cooperate with the Member States concerned to find solutions that would help maximise the use of commitments under the 2007-2013 programming period, and recognising that it would be suitable in the years to come to implement long term projects using existing rules' flexibility, Commission services examined how to offer more flexibility in the implementation of financial engineering instruments within the limits of the existing regulation.</p> <p>The modification of the closure guidelines the Commission does not affect Article 56 (1), according to which the contribution from the funds into FI must have been paid at latest at 31 December 2015.</p> <p>Article 78 (6) of Regulation (EC) N° 1083/2006 provides the specific modalities for the declaration of expenditure of financial engineering instruments at closure. Paragraph 6 indicates that, by way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total amount of expenditure paid in establishing or contributing to such funds or holding funds.</p> <p>The Article also specifies what the eligible expenditure will be at closure: At partial or final closure of the OP eligible expenditure shall be the total of the support provided by the funds to the final recipients together with eligible management costs and fees.</p> <p>The closure is defined in Article 89(5) of the General Regulation as being the date of the earliest of the following three events: the payment of the final balance by the Commission, the sending of a debit note for sums unduly paid by the Commission to the MS in respect of the OP or the decommitment of the final balance of the budgetary commitment.</p> <p>Nevertheless, it is not possible to consider that closure as defined under Article 78(6) of the General Regulation corresponds to the financial closure of the OP as defined above because the balance of the OP is precisely calculated on the basis of the expenditure declared to the Commission in line with article 78(6)</p>

CLOSURE GUIDELINES 2007-2013: QUESTIONS OF MEMBER STATES with the draft comments prepared by Commission following the EGESIF meeting of 25 February 2015

	Section s	MS	Questions	COM reply
				<p>(as far as FEI are concerned).</p> <p>As the 31st of March 2017 is the final date for submission to the Commission of the closure documents, the modification of the closure guidelines clarify that closure as referred to in Article 78(6) of the General Regulation is the date of submission of the closure documents, i.e. 31 March 2017.</p>