



Technical support to the implementation
and management of ENI CBC programmes

Questions and Answers on closure of ENPI CBC programmes 2007-2013

July 2017

(Based on Q&As raised in the framework of the meeting on closure for ENPI CBC programmes held in Brussels on 10 May 2017 and updated after the meeting on recoveries for ENPI CBC and ENI CBC programmes held in Brussels on 27 June 2017)



Topics	Questions	Proposed answers
Main milestones and deadlines	<p>1) EC instructions are unclear with respect to final date for "projects closure". If tight deadlines have been already fixed, it is important to be informed as soon as possible, to speed up project closure.</p>	<p>Projects should be closed in time for drawing up the final accounts and performing the final audit work, so that submission of the report takes place within the set date (30th June of N+2). Each programme will need to plan carefully how to reach this goal, including the necessary measures to speed up project closure.</p>
	<p>2) Par. 6.1 p. 28. Are exceptions to the cut-off date due to final report costs and external audit costs acceptable?</p>	<p>Expenditure may be incurred until the date of submission of the report, even if it is paid afterwards. Therefore, the costs referred in the question (the preparation of final report and external audit) are eligible, even though they have to be included in the audited accounts.</p>
Preparation for closure by programme bodies	<p>3) The reference "...since the last audit" in paragraph 7.5 p. 39 means that the final external audit report includes only the results on the expenditures and payments for the final reporting period (from 01/01/2017) not subject to an external audit verification yet?</p>	<p>Yes. The audit reports, including the external audit report, should not cover the "entire programming period", but only the amounts not included in previous reports. In relation to the entire programming period, the information in the reports should be presented in a summarised way.</p>
	<p>4) The information related to the financial part of the report (letter B p. 35) shall be included in the report by detailing each expenditure, recovery, revenues etc... for each year starting from the beginning of the programme or they should refer only to the final reporting period (from 01/01/2017)?</p>	<p>The information in the report shall refer to the whole duration of the programme.</p> <p>Table 5A "Technical assistance" was updated. The costs in this table can be reported on categories as reflected in the table 3 of the Annual Financial Report: staff, subsistence costs, travel costs, equipment and supplies, indirect costs etc.</p>
	<p>5) Shall the EC provide a specific template for drawing up the financial part of the final report?</p>	<p>The tables that include the financial information requested are provided together with the updated Guide and this set of questions and answers.</p>
	<p>6) In point 4.6 you mention that the interest generated on pre-financing can be used for covering expenses which are not included in the reported costs, such as the cost of staff of the bodies hosting the JMA. Can you please specify what type of staff costs can be reimbursed?</p>	<p>Not all staff costs of the bodies hosting the programme bodies have been reported and financed by the technical assistance budget. Even though the ENPI CBC IR did not allow for co-financing of technical assistance, additional staff has been assigned to the programme and has devoted part of their time to programme management. Programmes may make now an estimation of the cost of this non-previously reported staff. Interest generated on pre-financing and other revenues may cover these costs, which so far have been paid from the ordinary budget of the institution.</p>

<p>Closure of projects: a) Financial aspects b) Checking effectiveness and efficiency</p>	<p>7) Contentious recovery: a) We have a case in Partner Country (Russia) where the legal process is still going on. We have a consultant in Russia to handle this case on our behalf. Should we close this consult contract also at cut-off date of TA? Would this recovery process end by the Final Report (cut-off) of our programme? Or should we pass somehow this whole recovery and court process to Commission? Is there any model document? b) Please clarify the case of "Exception to decommitment – total suspended amounts for legal proceedings" having in view the ENPI closure process</p>	<p>a) Regarding the issue with the fees paid to the consultant in charge with the legal case is depending by the agreed clauses added to the contract. In situation that the legal case will not be finalized before the submission of the final report it can be proposed to be used the interest amount generated from the pre-financing in order to cover further related costs. b) Amounts related to projects suspended due to legal proceedings are an exception to the decommitment of funds, as indicated in article 86.5 of the Financial Regulation (see page 27 of the Guide). These amounts should be reported separately in the final report, as the conclusion of the legal proceedings may take place after the end of the execution period of the programme. In such cases, we recommend contacting the EC before the formal submission of the final report and keeping update about the file`s status.</p>
	<p>8) a) In case of projects suspended due to a legal proceeding before judicial courts or arbitral bodies (p. 27), which rules shall establish the relation between the JMA and EC after the execution period? (e.g. the legal proceeding will be concluded in favour of the JMA). b) Can the JMA submit a formal request to the EC for the amount not declared in the final report after the execution period?</p>	<p>a) For these kind of cases, when JMA is informed about the legal cases at the moment of final report submission to the EC, the JMA has the obligation to report the case to the EC (by filling in the table no 7). This will allow the EC to keep separately the amount for later decommitment. The additional payment submitted to the EC has to be accompanied with the documentation providing the conclusion of the legal proceeding. b) This kind of situation is particular. EC answer is YES, the JMA can submit a formal request, after the execution period, for an amount due to a legal case that it was not aware about it during the closure process. The formal request will be analysed by the competent services of the EC and a decision will be taken accordingly to the facts presented.</p>
	<p>9) Recoveries general comment: according to the ENPI CBC IR art 27 the JMA has one year from the date of issuing of the recovery order to recover the debt from a Member State while due to the actual scenario the JMA has less than one year to recover this debt. According to the ENPI CBC IR art 27 if the JMA is unable to recover the debt within one year of the issuing of the recovery order from a Member State, the Member State in which the</p>	<p>Effectively, the actual reception of funds from Member States in such cases may take place after the end of the execution period. Procedures concerning these unsolved contentious recoveries may also imply reimbursing the funds to beneficiaries affected by a reduction of the final balance, due to a pending recovery from one of the partners located in Member States. The amount in question would be identified in the final report as pending contentious recovery, and actual procedures related to the</p>

<p>beneficiary, contractor or partner is established shall pay the amount owing to the JMA one year after. By considering the actions to be adopted, the payment could be likely made after the execution period. Which procedures/activities the JMA can manage after the execution period of the programme?</p>	<p>payment of the amount due may take place after the execution period.</p> <p>On top of pending recoveries from Member States, and taking also into account the years open to control by EU institutions (as indicated in article 46.2 of ENPI CBC IR), the JMA may need to still carry out some activities <u>after closure</u> related to checks, recoveries and reception of funds.</p> <p>All these situations have to be carefully reported by the JMA in the final report in order to allow EC to do all the necessary provisions for later decommitment.</p>
<p>10) The JMA issues a debit note only towards the Beneficiary (organization established in a Member State or Mediterranean Partner Countries). This note includes the amounts to be recovered by the Project Partners involved in the projects (MS and MPC). As indicated in pag. 26 in case the recovery relates to an organization established in a MS, the amount shall be deducted by the EC from the final payment. Does it mean that for each debit note the JMA has to consider separately the single recoverable amount for each PP established in the MS?</p>	<p>Yes. As stated in article 27 of the ENPI CBC IR, procedures are different depending on the country of establishment of the beneficiary OR the partner. In order to allocate the responsibility in case of unsuccessful recovery, a breakdown of the amounts recoverable by partner is needed, regardless of the country of establishment of the beneficiary.</p>
<p>11) What is exactly required by the MA as <u>due diligence</u> (the IR stating that "<i>the claim is certain, of a fixed amount and due</i>").</p>	<p>Due diligence means all the necessary measures taken by the JMA in order to make the contractor to pay its debt.</p> <p>For more details, please refer to the official proceedings of the meeting on recoveries which took place in Brussels on 27 June 2017.</p>
<p>12) Where financial recoveries are concerned, is the JMA supposed to <u>claim exclusively to the Lead Beneficiary</u> or directly to the Partner who is ultimately responsible?</p>	<p>Article 27.1 of the ENPI CBC IR stipulates that "<i>the Joint Managing Authority shall make out recovery orders to the beneficiaries or contractors concerned</i>". Nevertheless, this provision does not preclude the obligation of due diligence in all recoveries, that is, making all the necessary efforts to successfully conclude the procedure, including direct contact with the project partners, with the support of the concerned national authorities.</p>
<p>13) After that the due diligence is performed by the JMA and the other concerned authorities, <u>which</u></p>	<p>As stipulated in article 27.2 & 27.3 of ENPI CBC IR, "Where the recovery relates to a claim against a beneficiary, contractor or partner established</p>

	<p><u>country is financially in charge</u> for the unrecovered funds? Is the country where is located the Lead Beneficiary or it is the country where is located the Partner directly concerned?</p> <p>14) If a project is terminated for not reaching its objectives and indicators (e.g. for a project where the main objective was the rehabilitation of a school but only expenditures related to salaries and travel have been incurred), how the provisions of Art. 12.4 of the General Conditions of the grant contract should be applied? In this case, the entire paid amount should be recovered, or the Beneficiary is entitled to retain or/and to receive the share of grant corresponding to the part of the Action carried out?</p> <p>15) Considering the potential delays in solving the situation of projects with partial achievement of indicators and potential impact on the objectives, an addendum for extension of the execution period might be needed. It is necessary a formal derogation from PRAG to be requested to the EC, or a decision of JMA/JMC approving the addendum would be sufficient?</p>	<p>in [...]". Therefore, the country financially liable is the one where the concerned beneficiary/partner is established in case of Member States, while the EC will take in charge the dossier in case of beneficiaries/partners located in CBC Partner Countries.</p> <p>This article stipulates that <i>"In the event of termination the Beneficiary shall be entitled to payment of the grant only for the part of the Action carried out, excluding costs connected with current commitments that would be implemented after termination. For this purpose, the Beneficiary shall introduce a payment request and a final report [...]".</i> The JMA decision needs to be taken on a case by case basis and be duly justified. Except in case of negligence or lack of real willingness to implement the activities, the project is entitled to receive a final payment in line with the actual implementation, even if the results have not been achieved.</p> <p>Article 11.6 of the General Conditions of the grant contract stipulates <i>"The payment obligations of the European Union under this Contract shall end 18 months after the implementation period laid down in Article 2 of the Special Conditions, unless the Contract is terminated under Article 12.</i></p> <p>The Contracting Authority shall <u>notify</u> the Beneficiary of any postponement of the end date."</p> <p>Therefore, where no derogation affecting this article is included in the grant contract, the JMA or the JMC (depending which of the two bodies is considered as the "contracting authority" by the programme), has the capacity to extend the execution period without the need to request any formal derogation to the EC. Nevertheless, when doing so, <u>the JMA should carefully consider the impact of this extension in the overall planning for programme closure.</u></p>
<p>Closure of technical assistance</p>	<p>16) We have the implementation period of TA agreed until 31.12.2017 and the execution period of programme until same day. We are not prepared to cut-off the use of ENPI TA before the latter part of year 2017 (for example 30.10.2017). We have not requested any funding of ENI CBC yet. Also we were not aware that the Final report should be ready even before execution time, at</p>	<p>It is not possible for the EC to grant an extension of the submission time for the final report without also extending the execution period. Please contact directly the EC in this situation.</p>

	<p>30.06.2017. How should we act in order to get extension to the submission time of the final report?</p>	
	<p>17) TA should not exceed <u>10% of the financial provision</u>. Is this calculated on the actual spent amount or on the overall EC available budget? In the first case, we may exceed the 10%. What we have to do in this case?</p>	<p>Article 18 of ENPI CBC IR stipulates that "No more than 10 % of the Community's total contribution to a joint operational programme may be allocated to technical assistance." In principle, this percentage has to be respected also at the moment of closure. Should the percentage be higher in the end, the deviation needs to be duly justified. Where sound justifications exist, percentages above 10% may be approved.</p>
	<p>18) Please advise us on the cut-off date for the technical assistance (extension D type)</p>	<p>As indicated in the Instruction Note issued by the EC, the costs may be incurred until submission of the final report. Nevertheless, the programmes will need to decide their own cut-off date, taking into account the time to be used for drawing the final report and get it audited.</p>
<p>Final report by the (JMA):</p> <p>a) Executive summary b) Technical part c) Financial part d) Audit reports</p>	<p>19) As the bookkeeping records of May and June are not available (and costs audited) by 30th June, can we report rest of the costs afterwards (in practice August 2017) to Commission. Or could we send technical part by 30th June and the financial part when it's totally ready (end of August).</p>	<p>Both the technical and the financial report have to be submitted by 30th June. However, the audit report may include non-paid costs incurred (e.g., those of the months of May and June in this particular case).</p>
	<p>20) Division of the costs between ENI preparation and ENPI, can the salaries be reported with estimated shares (%) of working time (no timesheets available). Shall we allocate IT, rent etc. costs with the same divisions?</p>	<p>In case there are no detailed timesheets allowing for a precise division of costs, you may use an estimate and include a description of the method used for the calculation. This method may be used for staff costs, as well as for indirect administrative costs.</p>
	<p>21) Transfer of assets:</p> <ul style="list-style-type: none"> Is it necessary when the management structures – MA and JTS - are the same institutions? Some assets might have been already discarded. <p>Which part (technical or financial) of the report should contain the information related to the paragraphs "transfer of assets" and "specific thresholds or requirements in JOP" (p. 19)? If the institution acting as JMA for the ENPI is the same for the ENI, the assets transferred to the new institution are</p>	<p>It is not necessary to indicate the transfer of assets if there is continuity, that is, when there is no "change of ownership". You must simply state this situation in the report. The assets discarded should be out of the inventory of the institution, following its own usual procedures. The auditors need to verify that these procedures have taken place, in accordance to your rules.</p> <p>This information, as well as the one on "specific thresholds or requirements in JOP" needs to be included in the technical part of the report.</p> <p>In case that some assets were purchased from ENPI funds for ENI Programme this information</p>

	<p>considered as “change of ownership”?</p>	<p>shall be included and added a breakdown of the items purchased. In this way it will be avoided double invoicing.</p>
	<p>22) Interest: We consider that it is not easy to put in practice such an approach and might complicate unnecessarily the process of managing the interest. In order to be considered as co-financing, it should be paid and it is not clear how it will be paid. It might be used as Technical Assistance funds for the ENI programme.</p>	<p>As indicated in the Guide, interest can be used for covering expenses which were not included in the reported TA costs. Such expenses are paid already (borne by the Member State), for example, cost of staff of the bodies hosting the JMA during the duration of the ENPI programme.</p> <p>As a result of the final calculation, irrespective whether the option above will be used or not, a <u>financial leftover</u> (amount of other revenues exceeding the additional costs) might still be present. As anticipated in the Guide, the possible options for the use of such leftover are currently being explored by DG Near. The outcome of this exercise will be notified in due time after the submission of the final report, but – whichever the choice – <u>it will not affect the closure of ENPI CBC programmes.</u></p>
	<p>23) Indicators: Regarding the reported indicators which might divert significantly from the target set in the programme, please clarify whether a specific approach should be followed in case the target are exceeded.</p>	<p>No specific approach should be followed. The programme needs to report them and, ideally, explain the reasons for the success.</p>
	<p>24) Project implementation: TESIM guide mentions 2 sections of the report which would imply the overlapping, partially, of information related to project implementation:</p> <ul style="list-style-type: none"> • The detailed list of the concluded contracts and summary of difficulties encountered • Summary of the project monitoring, evaluation and audit <p>We would prefer to approach the subject of project implementation in one single section.</p>	<p>The programmes are free to organize the technical information in a different way, provided that all indicated elements are included in the report.</p>
	<p>25) Table pg. 33: For projects: Please clarify the meaning of expenditure planned (allocated or contracted? If contracted - initially contracted, final contracted, final at the end of implementation taking into account addenda, termination. If allocated – initially allocated, allocated after reallocation between priorities,</p>	<p>“Expenditure planned” means the amounts budgeted in the last version in force of the Joint Operational Programme.</p> <p>In the case of the technical assistance devoted to the new programming period, the amount planned should be zero.</p> <p>The amounts paid by the programme should be considered as the sum of all payments made, regardless of any subsequent recovery, which</p>

<p>allocated after JOP funds increased from the EC?).</p> <p>For TA: We did not have allocated amounts for 2014-2020.</p> <p>Please clarify the meaning of amounts paid, with or without recoveries.</p>	<p>will be accounted for in other tables of the report.</p>
<p>26) Table pg. 34: Please clarify the terms in this table. It is not clear how it should be filled in.</p>	<p>Following the discussions held during the event, terminology has been revised in the tables in page 34. See the updated Guide, as well as the attached Excel file for further clarification.</p>
<p>27) Table 1 pg. 36: Please clarify the meaning of amount planned.</p> <p>Is this amount relevant for the absorption rate? The absorption rate should be calculated as percentage of amount paid / amount allocated to TA in the JOP.</p> <p>Please clarify the meaning of total amount recovered.</p>	<p>The amount planned means the amount in the indicative budget in the JOP in force, if this breakdown exists. In case the TA budget has no breakdown per type of expenditure, please indicate any available breakdown, such as per programme body.</p> <p>The absorption rate is the amount paid on the amount allocated.</p> <p>The word "recovered" in the total is an error, which has been corrected in the updated guide. It should simply say "total" (see the new version table 5A).</p>
<p>28) Table 2 pg. 36: Please clarify the meaning of amount awarded. Please note that there are differences between amounts awarded and amounts contracted. (regarding contracted amounts, please see above the questions for table on pg. 33.)</p> <p>Regarding amount paid, please see above the questions for table on pg. 33.</p> <p>Please clarify whether only ENPI should be reflected.</p>	<p>The updated guide has been corrected and the word "awarded" has been substituted by "contracted".</p> <p>Regarding amount paid, also the recoveries should not be deducted from the amounts paid.</p> <p>In case of programmes with other sources of funding, such as IPA, the tables should be adapted to show both the ENPI and IPA amounts separately, as well as a total per project. (See table 5B)</p>
<p>29) Table 3 pg. 36: Please clarify whether the table is intended only for financial corrections applied in accordance with Reg. 1343/2014 or for all the recoveries.</p>	<p>The table is intended to include ALL financial corrections applied by the JMA during the entire duration of the programme, both before and after the modification of the ENPI CBC IR (See table 5C).</p>
<p>30) Table 4 pg 36: Please clarify what it is requested for date of the decision by JMC. The</p>	<p>The updated Guide has been corrected to indicate JMA/JMC, as "contracting authority" has different interpretation in different programmes. In some of them is only JMA, while</p>

JMC decision for recoveries is not required.	in others is, depending on the articles of the grant contract, either JMA or JMC (See table 5D).
31) Table 1 pg 37: The date of decision by EC is also needed, in accordance with Reg. 951/2007.	Following the discussions during the event, the date of decision by the EC has been added in a separate column, as both dates are needed, in accordance with article 27.5 of the ENPI CBC IR (See table 5E).
32) Tables 2 and 3 pg 37: Also country of the partner should be mentioned. Please clarify the term <i>indicative</i> for the date of the recovery decision.	The label has been modified in the updated Guide, so it says "Country of beneficiary/partner". The word "decision" has also been removed. (See tables 6A and 6B)
33) Table 2 pg 38: This table should include also the elements from table <i>Additional revenue</i> from page 34.	Yes. They were added to the table 8A: Other revenue from projects (penalties, interest on recoveries etc.) and Revenue from Technical Assistance (penalties, interest on recoveries). The item "Interest on prefinancing" has a different treatment and therefore has to be reported separately (see point 4.6 of the Closure Manual).
34) General comment for the tables: Please note that there might be differences of absorption rates in different tables, depending on the type of information used (ex.: amount allocated in JOP, amount contracted).	These potential differences have been clarified in the updated Guide.
35) Section 7.4, last bullet: The amounts recovered should be included in the Financial part.	The amounts in the financial part of the report include all amounts recovered, regardless of who and when identifies the need of the recovery (e.g., due to underspending or checks by JMA/JTS during the revision of payment claims), while the amounts mentioned in section 7.4 refer exclusively to the amounts identified during the audit work.
36) Please explain the financial tables from the financial part of the Guide on closure. For instance, Section B), tables Technical assistance and List of projects, the last row "total amount recovered".	The financial tables have been revised in the updated Guide and the label "total amount recovered" has been corrected, where relevant. An Excel file with the table is provided together with the Guide.
37) Please detail the section regarding the interest on pre-financing	The information refers to the interests mentioned in article 21 of the ENPI CBC IR, as previously mentioned in other answers. The amount needs to be assigned to the programme and declared in the final report.

	<p>38) Please explain the calculation of the final balance, focused on how the amount waived from projects and the amount of pending contentious recoveries in Member States, should be reflected</p>	<p>The amounts waived from projects shall be accepted as programme expenditure and paid by the EC, once fulfilled all the requirements in article 27.5 of the ENPI CBC IR. It does not have a specific line in the final table, as the amounts waived are included in the total amount paid to projects.</p> <p>Opposite, the amounts to be recovered from contentious cases in Member States shall be paid either by the concerned beneficiary/partner or by the concerned Member State. Consequently, the amount needs to be deducted from the final amount of declared expenditure.</p>
	<p>39) Regarding point 5.2 when you talk about the reduction of grant based on detailed assessment, can you please elaborate in more detail on what are your recommendations on how to proceed with projects where one of the partners abridged the law? Who should be informed and what type of punitive measures can be imposed.</p>	<p>Section 5.2. does not refer to projects where one of the partners abridged the law, but to cases where the project was poorly or partially implemented and did not reach its expected results. For cases of breach in legal obligations, please refer to articles 4 and 5 of EC Regulation 2988/95 on the protection of EU financial interest, which details the type of punitive measures to apply.</p>
	<p>40) In point 7.2 part c) The Final Statement on pending contentious recoveries, please elaborate what category of costs can be waved and what are the criteria for waving costs.</p>	<p>Waivers are regulated in article 27.5 of the ENPI CBC IR. More details on the criteria for waving are indicated in article 80 of the Financial Regulation.</p> <p>At this stage JMAs are allowed only to wave the amounts up to EUR 200,00.</p>
	<p>41) As currently sample checks are being carried out by the Internal Audit Section of the JMA and it is foreseen that the results of them will be known by the end of May, how to reflect in final report financial part information, if as a result of sample checks there would be a need for recovery but the JMA would not been able to recover the amounts yet or the JMA decision of recovery would not yet been taken (as the procedure takes time and also opinion of the respective NA).</p>	<p>Such cases could be covered in the tables related to the pending contentious recoveries, identifying in the description of the recovery that proceedings are ongoing and only a preliminary decision regarding recovery has been taken.</p>
<p>Financial checks and controls after programme closure</p>	<p>42) According to the ENPI regulations the beneficiaries have to keep all programme documents seven years after closure. How shall we deal with cases when beneficiaries were dissolved without prior informing the</p>	<p>Specific instructions should be issued for the project beneficiaries and partners on how to deal with the cases of liquidation of institutions with no successor. The transfer of all documents to the beneficiary should be recommended. In case of liquidation of the beneficiary, the documents should be transferred to one of the</p>

	JMA and/or handing over the documents to any partner?	partners (theoretically the lead partner) and JMA be informed. If such instructions are clearly set for the closing projects, there is no additional responsibility for JMA.
Other (please specify):	43) Should the tables presented in the "Guide on closure" on pages from 33 to 38 be used as the matrix of the final report? Can you please provide us with the electronic version of the above tables and the matrix of the final report?	The electronic version is provided together with the updated Guide.
	44) In the case that the JMA makes an in-kind contribution to the technical assistance, where should it be indicated in the final report?	In accordance with article 19.3 and 35 of the ENPI CBC IR, the JMA may provide contribution in kind, subject to the prior approval of EC (e.g., if indicated in the JOP). This co-financing (both as expenditure and as income), should be clearly separated in ad hoc additional lines in the table 2 of the Guide on closure (pg. 34) and will not be taken into account in the calculation of the actual co-financing rate.

