



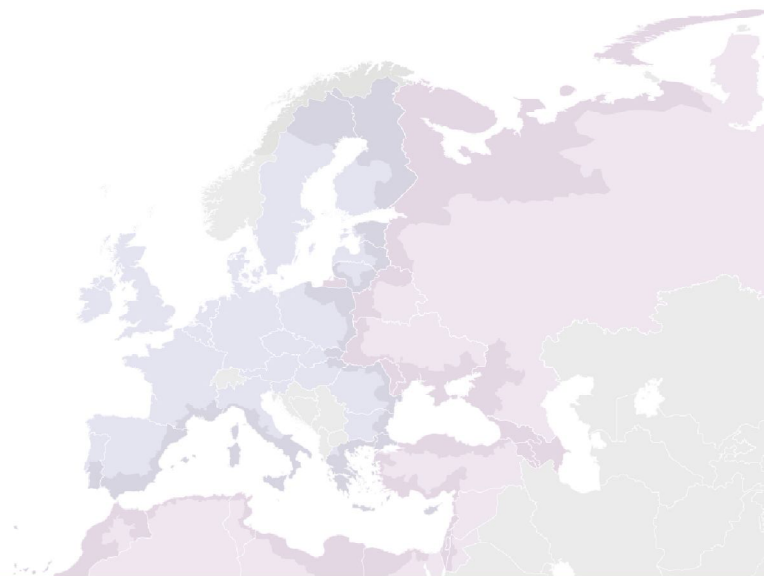
Technical support to the implementation  
and management of ENI CBC programmes

# 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)*

## SECTION 3 – Closure of projects (questions 7 to 15)



Topics	Questions	Proposed answers
<p><b>Closure of projects:</b></p> <p><b>a) Financial aspects</b></p> <p><b>b) Checking effectiveness and efficiency</b></p>	<p><b>7) Contentious recovery:</b></p> <p>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?</p> <p>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.</p> <p>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><b>8)</b></p> <p>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).</p> <p>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>c) 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.</p> <p>d) 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>

**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 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?

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 payment of the amount due may take place after the execution period.

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 after closure related to checks, recoveries and reception of funds.

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.

**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?**

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><b>11)</b> 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><b>12)</b> 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><b>13)</b> After that the due diligence is performed by the JMA and the other concerned authorities, <u>which 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>As stipulated in article 27.2 &amp; 27.3 of ENPI CBC IR, <i>“Where the recovery relates to a claim against a beneficiary, contractor or partner established in [...]”</i>. 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><b>14)</b> 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>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>

**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?

Article 11.6 of the General Conditions of the grant contract stipulates *"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.*

***The Contracting Authority shall notify the Beneficiary of any postponement of the end date.***

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, the JMA should carefully consider the impact of this extension in the overall planning for programme closure.