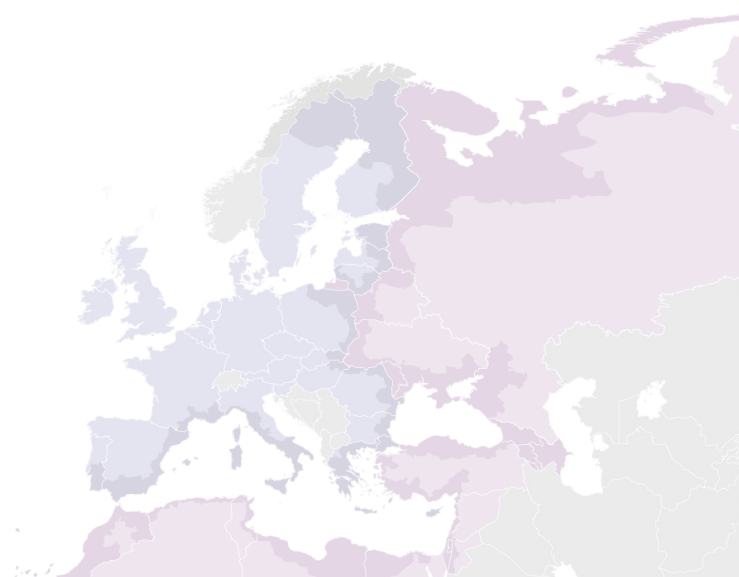




Technical support to the implementation  
and management of ENI CBC programmes

# Guide on closure for ENPI CBC programmes 2007-2013

Updated version September 2017



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## 1. Aim of the document

There is a strong request from the programmes and a necessity for the European Commission (EC) of establishing a clear framework regarding the closure of the Joint Operational Programmes financed by the cross-border component of the European Neighbourhood and Partnership Instrument for 2007-2013, hereinafter ENPI CBC.

A number of activities are being developed by TESIM, in close coordination with the EC, in order to support an effective, efficient and timely closure process of the projects and the programmes, as well as to build a unified approach concerning closure at the level of the instrument.

This Guide is a complement to the Instruction Note issued by DG NEAR and gives further **details and criteria on how to proceed for the closure of the projects and the technical assistance component of the programme, as well as for the preparation of the final reports**, so that all the necessary conditions for closure, as defined in the ENPI CBC Implementing Rules and the Financial Regulation are met within the stipulated deadlines.

**This updated version includes the conclusions and clarifications tackled during the networking event on closure of ENPI CBC programmes held in Brussels on 10 May 2017.**

## 2. Legal framework

The legal framework for closure is composed by:

- Financial Regulation and its Rules of Application
- ENPI CBC Strategy Paper
- ENPI regulations
- Provisions in the Joint Operational Programmes (JOP)
- Provisions in the Financing Agreements (FA)

### 2.1. ENPI CBC Strategy Paper

The “*Strategy Paper 2007-2013*” for the cross-border cooperation of the European Neighbourhood and Partnership Instrument (ENPI CBC) “*provides the strategic framework for EC support for cross-border cooperation on the external borders of the European Union, and the indicative allocations and programming framework (...)*”. The final reports from the programmes should allow the EC to draw conclusions on the actual implementation of the programmed strategy, together with the ex-post evaluation, which will take place in 2017. The strategy was revised after a mid-term review.

The main features of the document are:

#### ❖ Core policy objectives and expected results

The four **key objectives** were:

- **promote economic and social development** in regions on both sides of common borders;
- **address common challenges**, in fields such as environment, public health and the prevention of and fight against organised crime;
- **ensure efficient and secure borders**;
- promote local cross-border “**people-to-people**” actions

**Key expected results** from the ENPI CBC programme as a whole will include:

- the **efficient and timely implementation** of joint CBC programmes [...];
- **addressing effectively the general objectives** [...], meeting the specific priorities of local partners in each border region and allowing for increased ownership by the local stakeholders;
- providing means for improved co-ordination between local, regional and national level development plans - providing for the implementation of **relevant and effective CBC projects of benefit to both sides of the EU's external borders**;

- **contributing in the medium and long-term to enhanced prosperity, stability and security along the external borders of the Union** through strengthened co-operation and contacts across borders.

**Final reports need to show how the programmes contributed to these key objectives and expected results.**

### ❖ List of programmes<sup>1</sup>

The list of programmes implemented<sup>2</sup> is:

- Kolarctic (Nord/Russia)
- Karelia (Karelia/Russia)
- South East Finland-Russia, hereinafter SEFR
- Estonia-Latvia-Russia, hereinafter ELR
- Latvia-Lithuania-Belarus, hereinafter LLB
- Lithuania-Poland-Russia, hereinafter LPR
- Poland-Belarus-Ukraine, hereinafter PBU
- Hungary-Slovakia-Romania-Ukraine, hereinafter HSRU
- Romania-Ukraine-Republic of Moldova, hereinafter RUM
- Italy-Tunisia, hereinafter IT-TU
- Black Sea Basin, hereinafter BSB
- Mediterranean Sea Basin, hereinafter MSB

Additionally, there is ENPI contribution to the INTERREG programme Baltic Sea, which is not concerned by the current document.

## 2.2. ENPI regulations

The main applicable sector-specific regulations are:

- Regulation (EC) 1638/2006 laying down general provisions establishing the European Neighbourhood and Partnership Instrument;
- Commission Regulation (EC) 951/2007 laying down implementing rules for cross-border cooperation programmes financed under ENPI, hereinafter ENPI CBC IR;
- Commission Implementing Regulations 435/2011 and 1343/2014 amending Regulation 951/2007.

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<sup>1</sup> The name between brackets is the denomination in the Strategy Paper.

<sup>2</sup> The programmes Spain-Morocco and CBC Atlantic were never submitted to EC.

## ❖ Provisions on closure in the ENPI CBC IR

Some articles of this regulation explicitly tackle the programme closure:

Article	Title
<b>32</b>	Final report <sup>3</sup>
<b>43</b>	Duration of the joint operational programme <sup>4</sup>
<b>45</b>	Keeping of documents
<b>46</b>	Closure of the programme

Article 45 stipulates:

*The Joint Managing Authority and the various project beneficiaries and partners shall, for seven years from the date of payment of the balance for the programme or for a project, **keep all documents** related to the joint operational programme or a project, in particular the reports and supporting documents, as well as accounts, accounting documents and any other document relating to the financing of the joint operational programme (including, for the Joint Managing Authority), all documents relating to the selection and to contracts) and of the project.*

The Joint Managing Authority (JMA) needs to ensure that other bodies using ENPI CBC funds, such as the Joint Technical Secretariats (JTSs) and Branch Offices (BO), are aware of this provision and keep the documents and IT records as well.

In case of projects beneficiaries, this provision is complemented with article 16 of the General Conditions of the **grant contracts**, which stipulates a period of **seven years for inspections** by the EC, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by the JMA. Further details may be found in chapter 9 of this document.

Article 46 stipulates:

**1. A joint operational programme shall be considered closed after:**

- (a) all the contracts concluded under the programme have been closed;
- (b) the final balance has been paid or reimbursed;

<sup>3</sup> This article is modified by Regulation 1343/2014, so we will refer to it in the next sub-section.

<sup>4</sup> Same situation than article 32.

(c) remaining appropriations have been decommitted by the Commission.

2. The **closure** of the operational programme **shall not prejudice** the Commission's right to undertake, at a later stage, **financial corrections** vis-à-vis the Joint Managing Authority or the project beneficiaries if the final amount of the programme or the projects has to be readjusted as a result of controls carried out **after the closure date**.

#### ❖ Amendment of the ENPI CBC IR

The ENPI CBC IR are amended through Regulation 1343/2014, which covers two aspects:

- Effective handling of financial corrections;
- Extension of the implementation phase for projects and the execution period for programmes.

Articles 32 and 43 regarding closure are affected by this amendment. The amended **article 32 on final report** stipulates:

*The **final report** on implementation of the joint operational programme **shall contain mutatis mutandis the same elements as the annual reports**, including their annexes, for the entire duration of the programme. It shall be submitted*

- **by 30 June 2017** at the latest for the programmes that have proceeded with the extension of the **implementation phase** from 31 December 2014 to 31 **December 2015**,
- and by 30 June 2016 at the latest for the programmes with implementation phase ending on 31 December 2014.'

The modified **article 43** stipulates:

1. The **period of execution** of each joint operational programme shall start at the earliest at the date of the adoption of the joint operational programme by the Commission and end on **31 December 2017 at the latest** (...).

(c) a **financial closure phase** for the joint operational programme including the financial closure of all contracts concluded as part of the programme, the ex post evaluation of the programme, the submission of the final report, and the final payment or final recovery by the Commission. This phase **shall end on 31 December 2017 at the latest**.

3. Notwithstanding paragraphs 1 and 2, in the event of unforeseen and duly justified needs or circumstances, following a reasoned request from the Joint Monitoring Committee, **the Commission may agree on the extension of the execution period of a joint operational programme. In that case, the dates for submission of final report set out in Article 32 shall not apply.**



The third paragraph was used by all programmes, even though Karelia did not extend the end of implementation for projects.

### 2.3. Extension of programmes

Following the above-mentioned regulation, there were three rounds of extensions, each of them giving rise to Commission Implementing Decisions modifying the concerned JOP. All the programmes were affected by at least one extension. The final situation is as follows:

Type of extension	Programme	End of implementation phase for projects	End of implementation phase for technical assistance	End of execution period
<b>A</b>	Karelia	31 <sup>st</sup> December 2014	31 <sup>st</sup> December 2017	31 <sup>st</sup> December 2017
<b>B</b>	Kolarctic, SEFR, ELR, LLB & LPR	31 <sup>st</sup> December 2015	31 <sup>st</sup> December 2017	31 <sup>st</sup> December 2017
<b>C</b>	MSB, BSB & IT-TU	31 <sup>st</sup> December 2016	31 <sup>st</sup> December 2018	31 <sup>st</sup> December 2018
<b>D</b>	PBU, RUM & HSRU	31 <sup>st</sup> December 2017	30 <sup>th</sup> June 2019	31 <sup>st</sup> December 2019

The projects whose implementation period was extended beyond 31<sup>st</sup> December 2015 needed, in any case, “a reasoned request submitted by the Joint Monitoring Committee (JMC) to the European Commission for prior approval”.

These EC decisions affected the execution period of the programme and the implementation phase of the technical assistance and projects. They included no provision on the deadline for submission of the final report, though. Therefore, the deadline indicated in the modified article 32 of the ENPI CBC IR is not applicable in any programme having requested to apply paragraph 3 of modified article 43 and no alternative date is formally set.

Finally, the EC modifying decisions for the second round of extensions also provided for the possibility to use the 2007-2013 TA budget to prepare the 2014-2020 programmes. This affects all programmes.

#### ***2.4. Provisions in the Financing Agreements***

All Financing Agreements with Partner Countries and Russia have been modified in order to align their duration with the EC decisions on extensions. The amendments of the article on execution period have been agreed through an exchange of letters.



### 3. General principles, requirements and deadlines

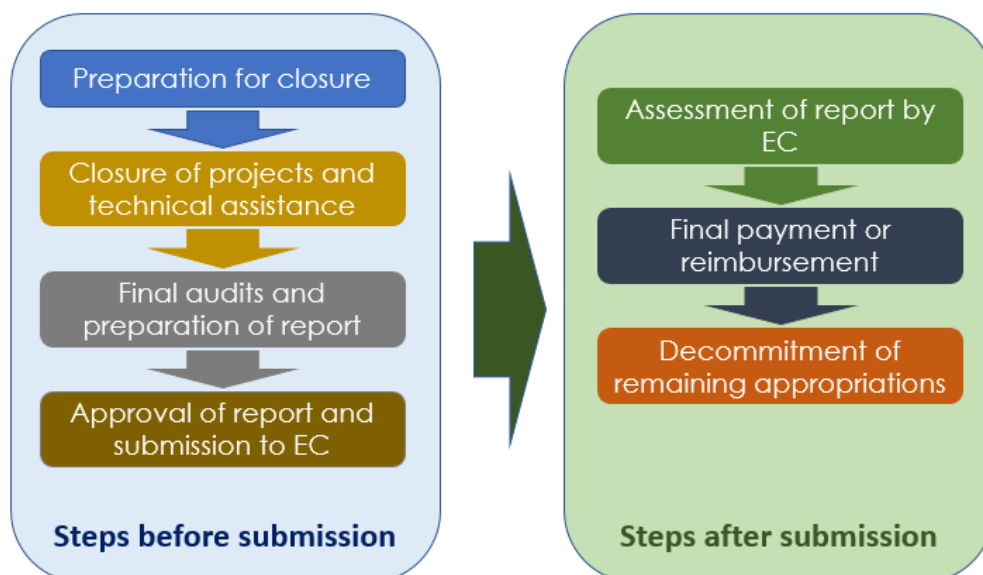
The closure process needs to respect the principles of **proportionality** and **equal treatment**, as well as of **sound financial management**, complemented with an adequate **verification of legality and regularity** of the operations, giving a **satisfactory level of confidence** in the amount of expenditure declared to the EC. To that purpose, the guide gives orientations and instructions for the different steps which will have to be followed by the programmes.

#### 3.1. Requirements and milestones

The three requirements for programme closure are clearly indicated in article 46 of ENPI CBC IR<sup>5</sup>:

1. conclusion of all contracts, either with project beneficiaries, staff in programme bodies or contractors supporting the technical assistance component;
2. final balance paid by EC to the programme or reimbursed by the JMA to EC;
3. remaining appropriations decommitted by the EC.

The main milestones in the process would be:



<sup>5</sup> More details on the second and third requirement in chapter 8 of the guide.

### 3.2. Deadlines

The extensions granted by the EC following the modifications of article 46 of the ENPI CBC IR provide deadline only for few of the above-mentioned milestones.

Several elements included in the provisions of the grant contracts need to be taken into account in order to ensure a timely closure of contracts:

- Article 2 of the Special Conditions of the grant contracts stipulates that “the **final report** shall be forwarded no later than **three months after the implementation period**”.
- Article 11 of the Special Conditions of the grant contracts stipulates that “The **payment obligations** of the European Union under this Contract **shall end 18 months after the implementation period** (...). The Contracting Authority shall notify the Beneficiary of any postponement of the end date.”;

**The use of the whole 18-months period for projects with end of implementation after September 2016 would prevent the submission of the programme’s final report in time.**

Moreover, the requirements for audits at programme level have also a high impact in the calendar for closure:

- Article 37 of the ENPI CBC IR stipulates that JMA “shall **each year** draw up an **audit plan for the projects** that it finances (...). The sample shall be sufficiently representative to warrant a satisfactory level of confidence in relation to direct controls carried out by the JMA on the existence, accuracy and eligibility of **expenditure claimed by the beneficiaries**”.
- Article 29 of the ENPI CBC IR stipulates that “the internal audit service of the JMA shall **each year** implement a control programme to **check the internal circuits and ensure procedures have been correctly applied** (...).”
- Article 31 of the ENPI CBC IR stipulates that “(...) carry out **each year** an **ex-post verification of the revenue and expenditure** presented by the JMA in its annual financial report”.

**Before the end of the execution period, the programmes need to carry out all the processes stipulated in the ENPI CBC IR, with respect of the grant and TA contracts signed with project beneficiaries and contractors.**

As already mentioned in previous sections, article 32 of the ENPI CBC stipulates a deadline of **6 months before the end of the programme execution period for the submission of the final report**. Even if this provision is not explicitly mentioned in the programme extensions, it should be used *mutatis mutandis*.

Additionally, it is important to remark that the end of the implementation phase for technical assistance is identical to the end of the programme execution period in three of the type of extensions. Nevertheless, the technical assistance contracts will actually need to be concluded before that deadline in order to allow for a timely drawing of accounts, auditing and preparation of final reports by the JMA. Therefore, a **cut-off date** for eligibility of technical assistance costs has to be set, depending on audit arrangements.

Finally, even if there are no formal legal deadlines, enough time needs to be allocated for the procedures to be carried out by the EC itself:

- Revision of the final report and decision on the final amount of appropriation used by each programme;
- Payment of balance or request for reimbursement of excess in pre-financing;
- Decommitment of remaining appropriations.

❖ **Assumptions on indicative time needed for each step<sup>6</sup>**

Steps	Time (in months)	Cumulated time (in months)
Preparation for closure	2,5	2,5
Submission of final report by projects	3	5,5
Revision of final report and decision on payment or recovery	2	7,5

<sup>6</sup> Deadlines for the first steps are only applicable to programmes with extensions type C & D.



Final payment or non-contentious recoveries	1,5	9
Last sample checks on projects and drawing report	3	12
Decision on final recoveries, contradictory procedure and non-contentious recoveries obtained	4	16
Drawing up final accounts	2	18
Drawing up final report	2	20
Last check on circuits and drawing report	2	22
Last external audit on accounts and drawing report	2	24
<b>Submission of the final report</b>		
Revision of final report by EC	2	26
Contradictory procedure with programmes	1,5	27,5
Final payment or reimbursement	1,5	29
Decommitment of appropriations	1	<b>30</b>

### ❖ Scenarios for calendar on closure

As previously indicated in section 2.2., there are four types of EC decisions concerning the extension of JOPs:

- **Type A** was extended only to allow the possibility of using ENPI CBC 2007-2013 funds in the launching phase of ENI CBC 2014-2020<sup>7</sup>.
- **Types B, C & D** have the same period of time (2 years) between the end of implementation phase for projects (end of year N) and the end of the execution period for programmes (end of year N+2).

There are big differences among programmes concerning the remaining time until the end of the execution period, as the programmes with end of implementation in 2015 have already consumed most of the time for closure.

The remaining time for closure for each type of extension is as follows:

<sup>7</sup> The only final report falling under this type has already been submitted to the EC.

TYPE	2017	2018	2019
<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			

Please note that projects having finalized by the end of year N may end their execution period in June of year N+2, in accordance with article 11 of the General Conditions of the grant contract, which only foresees a postponement of the date, but not a reduction of time.

It is therefore of **utmost importance to ensure a swift closure of projects well before the maximum deadline (18 months) foreseen in the grant contract.**

We are going to build two scenarios for types B, C & D, taking into account the two possibilities concerning the selection of the last sample for the audit on projects:

- The last sample will be decided once all projects receive their balance payment or a recovery order;
- The last sample will be decided once all projects have “claimed” their final balance, using the wording in article 37 of ENPI CBC IR.

We exclude from the calendar the preparation for closure, as it may be done before end of year N for type D (2017), but very different situations can be found in the other two types (2015 for type B and 2016 for type C).

#### CALENDAR FOR CLOSURE SCENARIO 1

Sample when all projects paid or issue of recovery order

Milestone	Months in year N+1												Months in year N+2											
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Submission of final reports by projects																								
Revision of final report and decision on payment or recovery																								
Final payment or non-contentious recoveries																								
Last sample checks on projects																								
Recoveries from last sample checks																								
Drawing up final final accounts																								
Drawing up final report																								
Last check on circuits and report																								
Last external audit and report																								
Submission of final report to EC																								
Revision of final report by EC																								
Contradictory procedure with programmes																								
Final payment or reimbursement																								
Decommitment of appropriations																								

This scenario shows a very tight calendar, with some overlaps and no possibility of any delay in any of the steps. Therefore, it is risky to take this option and, at the same time, ensure a timely report to the EC.

**CALENDAR FOR CLOSURE SCENARIO 2**  
**Sample when all projects submitted report**

Milestone	Months in year N+1												Months in year N+2											
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Submission of final reports by projects																								
Revision of final report and decision on payment or recovery																								
Final payment or non-contentious recoveries																								
Last sample checks on projects																								
Recoveries from last sample checks																								
Drawing up final final accounts																								
Drawing up final report																								
Last check on circuits and report																								
Last external audit and report																								
Submission of final report to EC																								
Revision of final report by EC																								
Contradictory procedure with programmes																								
Final payment or reimbursement																								
Decommitment of appropriations																								

This scenario provides more capacity of reaction in case of delays in any of the activities needed for closure.

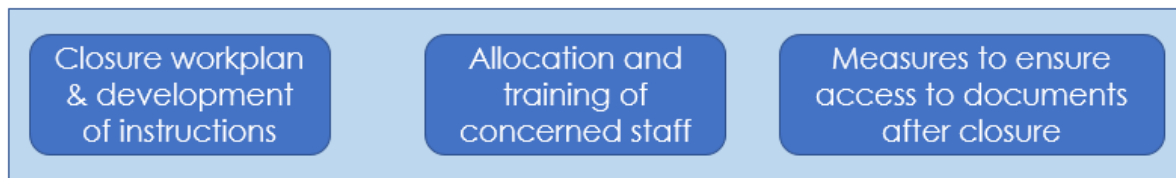
The calendar for closure will be very tight and highly dependent on external factors, such as the time used by the projects in their reporting, in the contradictory procedures and in reimbursing any eventual recovery.





## 4. Preparation for closure by programme bodies

Three main elements concern the preparation of closure by programme bodies:



### 4.1. Closure workplan and development of instructions

Following the conclusions of the previous chapter, it is obvious that a thorough workplan, adequate allocation of resources within the management bodies and clear instructions adapted to the specificities of each programme are needed.

A **workplan** needs to be developed at the earliest by all programmes; this is particularly important for programmes with extensions type C & D. Ideally, the plan should be shared with the members of the Joint Monitoring Committee (JMC) or even formally approved, together with the instructions. The collaboration of the national authorities from the participating countries may be key for ensuring a timely closure of some projects and successful recoveries.

Even if the programmes have already developed and distributed specific **instructions for closure to project beneficiaries**, additional or complementary instructions may be issued in view of the workplan.

In the case of **Large-Scale Projects (LSPs) in Ukraine**, which have been granted an exceptional extension for implementation until 31<sup>st</sup> December 2017, special support actions may be considered. Both the programme bodies and the Ukrainian national authorities need to be sure of the successful conclusion of the projects ideally already before December. An early termination in the meaning of article 12 of the General Conditions of the grant contract may be used if the positive conclusion of the projects is proved as impossible.

Finally, **clear instructions** adapted to the specificities of each programme should be prepared **by MA for each programmes' concerned staff**.

## **4.2. Allocation and training of concerned staff**

**JTs and BOs** may play an important role in the closure. For all programmes, in particular for those with extensions type C & D, the JMA needs to take a decision on their role and on who will be the persons involved in the process, taking into account their possible involvement also in the launching of the ENI CBC 2014-2020 programmes. The staff from JMA devoted to closure needs to be identified as well.

*TESIM will deliver trainings for each programme on the content of these guidelines. Additional trainings may be envisaged by the programmes themselves.*

## **4.3. Measures to ensure access to documents and IT records during the period open to control**

### **❖ Project level**

Even though the General Conditions of the grant contract, and probably also the projects implementation manuals, are clear on this issue, it cannot be assumed that all project beneficiaries and partners fully understand the requirements of article 45 of the ENPI CBC IR.

Therefore, it is recommended to issue a specific note to all institutions having participated in any project, regardless of the date of finalization, including at least:

- Indication of the date of payment of the balance (or request for recovery) and the date of finalization of the seven-years period during which the original documents and IT records need to be kept, and eventual controls and checks from EU competent bodies may take place. The date may be far beyond the requirements of the national legislation;
- Confirmation of the contact person (including contact details) at the institutions having participated in the projects (beneficiaries and partners). Some institutions may have recruited project managers only during the project implementation and additional information may be needed;
- Recall of the obligation to inform of any change in the contact person or the location of original documents and IT records;

- Request of communication to the JMA in case of merge or liquidation of the institution, as well as any successor.

In case the programme rules include any specific provision on sustainability of infrastructure, the related obligations should also be included.

#### ❖ Programme level

The same type of approach used for the projects should be used for the institutions having performed tasks as BOs or JTSs, and used the technical assistance funds. In this case, any relevant documents held by these bodies might be transferred to the JMA, unless there is continuity in the period 2014-2020.

On its side, the JMA should ensure that all documents are well filed and easily traceable, with specific emphasis on the documents related to selection and to contracts, as mentioned in article 45 of the ENPI CBC IR.

Moreover, IT records, accounts and accounting records need to be kept, also beyond the provisions of national legislation, if need be.

#### **4.4. Transfer of assets**

Assets reallocation after the closure of the programmes should be decided and documented (e.g. if the computers used by the programme bodies are transferred to the new ones). Changes of ownership or use of any asset acquired through TA funds should be indicated in the final report. In case of continuity (i.e., assets are transferred from ENPI to ENI CBC within the same institution), this situation should be indicated in the report, without the need of providing any further details.

#### **4.5. Specific thresholds or requirements in JOP**

In case the JOP or any amendment to it indicates specific thresholds or requirements for implementation, the JMA needs to check its compliance and indicate it in the report. Two examples of such programme specific thresholds are:

- Threshold for the apportionment of programme budget allocated to LSPs (e.g. in Karelia programme it cannot exceed 30%);

- Minimum apportionment of project budget allocated to CBC Partner Countries (e.g. at least 50% in the Mediterranean Sea Basin and Italy-Tunisia).

#### **4.6. Interest on pre-financing**

Article 21.2 of ENPI CBC IR stipulates that *"If the bank account bears interest, any interest generated by the pre-financing payments shall be assigned to the Joint Operational Programme and shall be declared to the Commission in the final report referred to in Article 32."* Even if this article clearly indicates that the amount shall be assigned and used for the programme, it does not give an explicit answer on how it should be treated in the framework of the programme accounts and calculation of the final payment.

In accordance with article 5a of Financial Regulation in force at the issue of the ENPI CBC IR (EC Regulation 1605/2002):

1. *Interest generated by pre-financing payments shall be assigned to the programme or the action concerned and deducted from the payment of the balance of the amounts due to the beneficiary. [...]*
2. *Interest shall not be due to the Communities in the following cases: [...]*  
(c) *pre-financing paid to Member States; [...]*

Likewise, article 8.4 of the current Financial Regulation (EC Regulation 966/2012) stipulates that *"Interest generated by pre-financing payments made from the budget shall not be due to the Union"*.

Therefore, **the interest generated shall not be deducted from the balance payment.** Even if not due, **the amount of interest generated will nevertheless be declared in the final report**, as well as the use made, if any, of these additional funds. For example, interest 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 which are borne by the Member State.

If 1) no additional costs exist or 2) the amount of interest on pre-financing is higher than these additional costs, a **profit** for the programme would be generated. In these cases, respectively the full amount of interest or the amount of interest on pre-financing exceeding the additional costs represents a financial leftover.

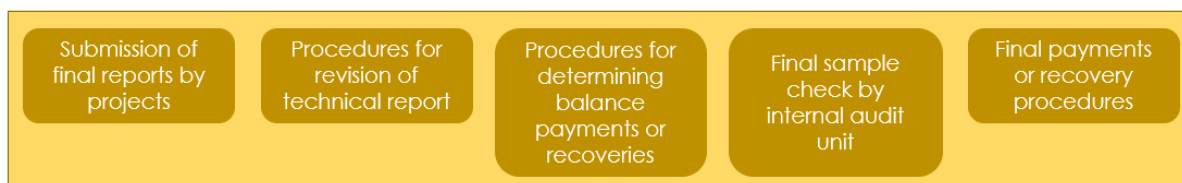
**The transfer of such financial leftover to ENI CBC programmes, as source of co-financing, is currently being explored by DG NEAR!**

The amount of interest has to be calculated until the decided cut-off date for establishing the accounts.

## 5. Closure of projects

Ensuring an effective, efficient and timely closure of projects is the most difficult challenge of the whole process not only in terms of complexity, but also because any delays incurred, even if by a reduced number of beneficiaries, may prevent the timely submission of the programme final report to the EC.

This chapter will provide orientations and instructions for the main processes.



### 5.1. Measures to ensure a timely closure of projects

Even though article 2 of the General Conditions of the grant contract foresees that final reports need to be submitted within three months from the end of the implementation period, a significant number of projects are submitting them with delay. Article 11 foresees that the execution period will finalise at the latest 18 months after the end of implementation, even if no satisfactory final report is submitted. The JMA is allowed to close the project and decide the final payment after this period on the basis of the available information. This possibility may have been used in previous years as an adequate tool to try to solve cases where substantial delays had been incurred. Unfortunately, the use of this long period of time during the closing phase might make it impossible to close the programme by the set deadline. As a modification of the grant contract is not possible anymore, except for the LSP exceptionally extended to 31<sup>st</sup> December 2017, other types of measures have to be implemented, such as:

- Carrying out a specific risk assessment in order to identify the projects which are likely to submit delayed or low-quality reports;
- Ensuring strong support to beneficiaries, partners and auditors from the programme bodies and national authorities, including site visits, if necessary;
- Issuing information notes to the beneficiaries stressing the importance of prompt reports submission and possibly providing revised instructions for closure;
- Revising the procedures and criteria for administrative checks by the JTS/JMA, reducing the formal burdens and minimizing the time needed for contradictory procedures;
- Not requesting any non-fundamental re-submission of documents by project beneficiaries and partners when the errors identified can be easily quantified and conclusions may be reached to allow for the approval of the report and the determination of the grant balance payment;
- Improving, when needed, the flow of communication between projects and programme bodies and between the different units of these bodies working in closure;
- Selecting early in year N+1 the sample of projects for the on-the-spot checks as referred to in article 37, taking into account that the population is already known (see scenario 2 in page 16).

## 5.2. Checking effectiveness and efficiency

### ❖ Verification of project results

Article 15 of the ENPI CBC IR stipulates that:

*The JMA shall be responsible for managing and implementing the JOP (...), in line with the **principle** of sound financial management and the principles of economy, **efficiency and effectiveness** (...).*

*The various tasks of the JMA shall include (...) (h) carrying out operational follow-up and financial management of the projects.*

The JMA ensures this operational follow-up of the projects implemented under the programme through an on-going process of analysis and documentation, by constantly observing the activities made, the indicators achieved and the results envisaged.

In the monitoring process, information on the following two categories of indicators is provided by the project and considered by the JMA, since they are integral part of the grant contract:

1. Programme indicators towards which the project will contribute;
2. Project indicators.

Progress in achieving these indicators is monitored during the whole project implementation, according to the specific monitoring procedures. However, after the finalization of the project implementation period, the extent by which the indicators have been achieved is reported by the Beneficiaries within the final reports and checked by the JMA, in accordance with the relevant applicable procedures.

Therefore, collecting the results from projects - i.e. **checking its effectiveness**, is one of the key tasks in the closing procedure. It is indeed the basis for the assessment of the programme's results achievement and hence of the programme contribution to the global strategy of ENPI CBC, as stated in the "*Strategy Paper 2007-2013*".

#### ❖ **Project implementation and amount of grant**

The project implementation check not only provides inputs to the programme results assessment (which will be described in the programme's final report); it also supports the decision on the final amount of grant paid to the project. In this process, the provisions of article 17.4 of the grant contracts General Conditions may need to be taken into account:

In addition, and without prejudice to the right to terminate the contract in accordance with Article 12.2, the Contracting Authority may, by a duly reasoned decision, if the **Action** is not implemented or **is implemented poorly, partially or late**, **reduce the grant initially provided for** in line with the actual implementation of the Action on the terms laid down in this contract.

The JMA should assess the quality of each project's implementation. It also has to decide on the final grant amount, which can be lower than requested, should implementation be considered as "poor" for any given project.

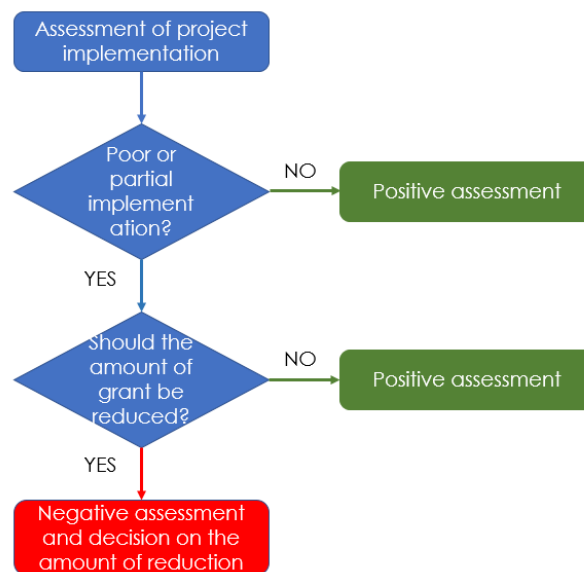
In order to carry out this assessment, the JMA should:



- Verify the degree of achievement of the indicators, based on the information presented in the report, compared with the targets mentioned in the grant contract,
- Check the relevant monitoring reports,
- Gather the available documentary evidence and information collected during the site-visits.

If a low degree of achievement of target values for indicators or the non-/poor implementation of certain key activities is identified, the programme bodies have to assess if the achievement of results is seriously affected and if the provisions of article 17.4 need to be applied.

As programmes have not defined specific criteria in the documents included in the call for proposals or in the Special Conditions of the grant contract, at this stage **ex-post automatic criteria may not be imposed** to the project beneficiaries. The process to take a duly justified decision should be:



The decision to **reduce the grant should be based on a detailed assessment** of cases where project results are significantly hampered, for example, due to negligence, intentional non-performance of key tasks, unjustified higher costs of some activities preventing the implementation of others, or lack of adequate resources devoted to the project.



In case of underperformance by one or more partners in a project, while other partners performed adequately, any reduction of the grant should ideally not penalize the latter.

Article 17.4 of the grant contract states that the reduction of grant has to be *“in line with the actual implementation of the Action on the terms laid down in this contract”*. This introduces the obligation of programmes to take into account the principle of **efficiency**. **The reason for the reduction** is not only the poor or partial implementation, but a **non-efficient use of resources for the activities actually carried out**.

Nevertheless, the **reduction of the amount paid cannot be seen as a penalty**, but as a readjustment of the grant to the amount which complies with two of the principles of sound financial management: effectiveness and efficiency.

**In conclusion**, this complex decision should be based on a combination of elements, such as:

- Analysis of activities performed,
- The confirmation that any investment is operational,
- Degree of achievement of output and results indicators,
- Analysis of the cost-effectiveness of the activities carried out,
- Assessment of the adequacy of project management and monitoring – has the beneficiary/partner demonstrated that he took all possible measures to implement the action as planned,
- Assessment of results achievement

Therefore, the JMA will need to prepare a **duly justified decision** relying on the expertise and professional experience of the staff of the programme bodies and having also in view the conditions in which the project was selected and contracted. The decision should be communicated to the JMC. In case of non-acceptance by the project beneficiary, this kind of decision may lead to a **complaint in the courts** by the project beneficiaries, with will generate substantial delays and most probably prevent the programme closure by the set deadline.

### 5.3. Financial aspects

#### ❖ Eligibility of expenditure

There are **no additional eligibility rules for projects at the stage of closure**. **The JMA needs to confirm that all declared and accepted** expenditures by the

project beneficiaries and partners have been incurred during the period of execution and respect the eligibility requirements, in accordance with article 36 of the ENPI CBC IR. JMA should also check that the expenditures have been paid out and respect all the eligibility criteria set out in article 14 of the General Conditions of the grant contract.

There is no specific provision in the ENPI CBC IR concerning the **LSPs** apart from the definition and the selection procedures. Nevertheless, some programmes have introduced additional conditions on **sustainability** after the end of the project implementation period. In such case, the compliance with the latter should also be checked.

#### ❖ Sources of funding and non-profit

The co-financing sources shall comply with the provisions of article 19 of ENPI CBC IR, as well as with any additional rule included by the JOP.

At project closure, the JMA will specifically ensure that the non-profit principle is respected, as defined in article 17.3 of the General Conditions of the grant contracts:

*The Beneficiary accepts that the grant can under no circumstances result in a profit for itself and that it must be limited to the amount required to balance income and expenditure for the Action. Profit shall be defined as (...) a surplus of actual receipts over the actual costs of the Action in question when the request is made for payment of the balance.*

#### ❖ Contentious recoveries

In case of non-resolved contentious recoveries within the 12-months period mentioned in article 27 of ENPI CBC IR, the JMA will report them and explain the actions taken so far and assess the recovery success likelihood, while ensuring **due diligence** in the process. The treatment of these recoveries will depend on the country where the beneficiary, contractor or partner is established:

- Where the recovery relates to an organisation established **in a Member State**, the amount shall be deducted by the EC from the final payment, as the JMA shall in any way be either finally successful in recovering the amount or reimbursed by the concerned Member State;

- Where the recovery relates to an organisation established **in a Partner Country** and even if one year of issuing the recovery order has not elapsed yet, the JMA shall take advantage of the final report to refer the case to the European Commission and inform the concerned organization. The unrecoverable amount shall be accepted in the final report as long as it is clearly demonstrated that the Managing Authority took all possible measures to recover the undue amounts (principle of due diligence).

❖ **Projects suspended due to a legal proceeding before judicial courts or arbitral bodies**

Article 86.5 of the Financial Regulation (Regulation (EU, Euratom) No 966/2012) stipulates that:

*The amount of a budgetary commitment corresponding to a legal commitment for which no payment within the meaning of Article 90 has been made within two years of the signing of the legal commitment shall be decommitted, **except** where that amount relates to a case under litigation before judicial courts or arbitral bodies or where there are special provisions laid down in sector-specific rules.*

As there are no specific provisions in the ENPI CBC IR, other than article 24 related to the annual commitments by the EC, this article of the Financial Regulation applies. To this purpose, the JMA shall inform the EC in the final report about any project suspended due to a legal proceeding before judicial courts or arbitral bodies and the amount that could not be declared, so as to keep the commitment open. The JMA shall also:

- Prove that there is a legal proceeding with regard to the project;
- Demonstrate that the legal proceeding has a suspensory effect;
- Justify the amounts concerned by the exception to decommitment.



## 6. Closure of technical assistance

### 6.1. Closure of related contracts

Despite the EC decisions on extensions approved for the programs, all the contracts related to the use of technical assistance, both for staff or external contractors, need to be finalized before drawing the final programme accounts, as indicated in section 3.2 of this guide, so they can be audited and included in the final report. The **cut-off date** will be clearly indicated in the report.

### 6.2. Calculation of the final amount

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.*

*However, on a case-by-case basis and if warranted by the level of expenditure incurred during previous years of implementation and forecast legitimate programme requirements, an increase in the amount of the technical assistance initially allocated to the programme may be considered.*

**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 by EC.**

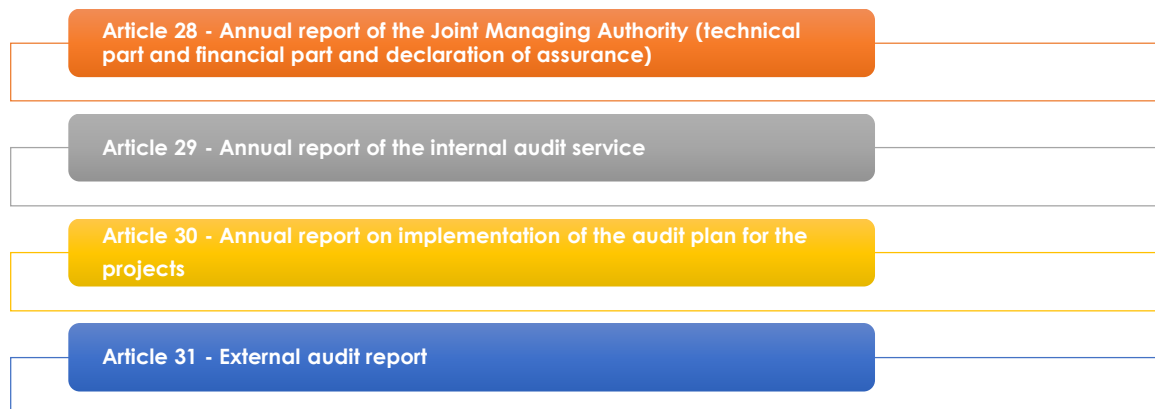
## 7. Content of closure documents

### 7.1. Provisions in the ENPI CBC IR

In accordance with article 32 of the ENPI CBC IR, the final report on the implementation of the JOP:

*“(...) shall contain **mutatis mutandis the same elements as the annual reports, including their annexes, for the entire duration of the programme.**”*

The relevant articles in the ENPI CBC IR concerning the report are:



Articles 28 to 31 of the ENPI CBC IR describe in detail the elements of the annual reports and its annexes. However, some of them will have to be adapted to the context of **'the entire duration of the programme'**, as requested in article 32.

When preparing the final report, the bodies responsible for the closure should be aware of significant differences between various EU financial instruments (such as IPA CBC, ERDF programmes and others) in terms of terminology and closure documents requested. For example, the responsible authorities might be familiar with the term *'closure declaration'*, which usually describes the document issued by the auditors, together with the audit/control report. However, in the context of the ENPI CBC IR such term is not used and the regulation refers to three types of the audit reports that have to be prepared (always in the context of the **'entire duration of the programme'**, as presented in the graph above).

## 7.2. Final report of the Joint Managing Authority

The final report should include the information described in article 28 of the ENPI CBC IR. While having the same structure as the annual report, the aggregated data and information for the whole implementing period, as well as for the last reported year, should be provided.

### ❖ Executive summary

The final report should provide, in a narrative way, a summary description of the programme achievements towards the initially set objectives and implementation lessons learned, as well as a short assessment on the contribution to the global ENPI objectives set out in the Strategy Paper. For communication purposes, this summary should be easy to read and understand by any stakeholder, including those with little knowledge of the programme and of ENPI CBC. The amount of statistics and data should be preferably kept limited. This summary should be limited to **maximum 2 pages**.

### ❖ Technical part

#### A) Assessment of the programme results and achievements

During the implementation period, the programmes were asked to include in the annual reports the progress achieved in implementing the programme.

The final report should focus on the achievements of the programme over its whole duration. In this respect, the indicators defined in the ENPI CBC Strategy Paper serve the purpose of monitoring and evaluating the extent to which the programme has achieved its objectives (effectiveness), and the efficiency with which it has done so. Nevertheless, the indicators in the ENPI CBC Strategy Paper are presented “for illustration purposes”, so the main reference remains the JOP.

Therefore, the final report should include:

- **the contribution of the programme to the global objectives and expected results of the Strategy Paper;**
- **a quantitative and qualitative overview of the achievement of the programme objectives, impact and result indicators;**

- **a quantitative overview** of the achievement of the **outputs at priority level**;
- **the lessons learned**.

In case the implementation of the programme foresees LSPs, this section should also refer to the results and objectives achieved by these projects.

At the closure, in case the reported indicators prove to divert significantly (e.g. by more than 25%) from the targets set in the programme (if the JOP mention any target), the JMA should provide an explanation and a justification of why the targets have not been met and why corrective actions have not been taken during the implementation period (for significant underachievement of indicators). This should take the form of a short summary of maximum 2 pages.

**B) The detailed list of the concluded contracts and summary of difficulties encountered**

In the context of the final report, **this section should include the list of the concluded contracts** and the **confirmation by the JMA** that all the **contracts concluded** under the programme **have been closed**, including LSPs, when relevant.

In addition, a qualitative summary of good practices, lessons learned and difficulties faced in the implementation of the contracts, both at programme (contract management by JMA/JTS) and project level (project contract management), should be provided.

**C) The summary of the technical assistance activities**

The final report should provide a summary of the technical assistance activities for the whole programme duration. If relevant, information about the technical assistance used to support the launch of the ENI CBC 2014-2020 programmes should be included as well.

In the financial part of the report the EC share for the technical assistance activities should be easily identifiable.

Either continuity or changes of ownership or use of any asset acquired through technical assistance funds should be indicated in this section as well.



#### **D) Summary of the project monitoring, evaluation and audit**

The final report should summarise the conclusions from the project monitoring, evaluation and audits, including the results and actions undertaken to remedy the problems identified over the whole programme duration.

The section on audit work should include details about the audit strategy<sup>8</sup>, the sampling method, the assurance on the control strategy and the follow-up of the recommendations on the corrections of errors.

In addition, a summary of the monitoring and evaluation measures taken by the JMA or the JMC, including difficulties encountered and steps taken to solve them, should be described, if applicable.

If any audit mission performed by the EC identified weaknesses in the system and/or issued recommendations, the report should indicate the corrective and follow-up measures taken by the programme.

Finally, the JMA needs to indicate if and how financial corrections have been applied, in accordance with modified article 26 of the ENPI CBC IR (EC Regulation 1343/2014).

#### **E) Summary of the information and communication activities**

The final report should include a summary of the information and communication activities carried out during the programme duration, especially focusing on the achievements, examples of good practices and significant events. Where existing, capitalization activities should be presented as well.

While in the annual report it is required that the **programme of activities to be implemented the following year** is presented, this element will not be described in the final report! Nevertheless, the report might give details on how the communication of the launching phase of ENI CBC will built upon the results and communication tools of the previous period.

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<sup>8</sup> Even if a fully fledged audit strategy was not a regulatory requirement under ENPI CBC, it is assumed that the internal audit service has defined in a way or the other the methodology and timing of the tasks it should have accomplished.



❖ **Financial part**

**A) Reconciliation with financial table of the JOP**

The programme should report the following financial information:

- the amounts planned and actually incurred and paid of expenditure by projects (with a breakdown by priority and measure) and technical assistance;
- the amounts planned and actually allocated to the Joint Managing Authority by the EC as Community contribution and by the participating countries as co-financing, as well as any other possible revenue for the programme for its whole duration.

The tables shall show the compliance with the ceilings for technical assistance and co-financing rate (article 18 and 20 of ENPI CBC IR).

**Financial table N°1**

EXPENDITURE PLANNED AND PAID				
Amounts planned <sup>9</sup>		Amounts paid <sup>10</sup>		
PROJECTS				Absorption rate (%)
Priority 1, total	(EUR)	Priority 1, total	(EUR)	
• Priority 1, Measure 1		• Priority 1, Measure 1		
• Priority 1, Measure 2		• Priority 1, Measure 2		
• Priority 1, Measure 3		• Priority 1, Measure 3		
...		...		
TECHNICAL ASSISTANCE				
Amount used for 2007-2013 period		Amount used for 2007-2013 period		
Amount used for the preparatory actions of 2014-2020 period		Amount used for the preparatory actions of 2014-2020 period		
<b>Total</b>	<b>(EUR)</b>	<b>Total</b>	<b>(EUR)</b>	

<sup>9</sup> Amounts planned in the JOP in force.

<sup>10</sup> Amounts paid to the beneficiaries/partners (including the amount that will be recovered at later stages, where applicable).

### Financial table N°2

RECONCILIATION WITH AMOUNTS PLANNED IN THE JOP						
	Projects			Technical assistance		
	Planned according to the JOP <sup>11</sup> , EUR	Actual amount at the end of the programme, EUR	Absorption rate (%)	Planned according to the JOP, EUR	Actual amount at the end of the programme	Absorption rate (%)
EU commitments <sup>12</sup>						
National co-financing						
Programme's commitments (EU funds) <sup>13</sup>						
Programme's payments (EU funds)						
FINAL COFINANCING RATE	$\frac{\text{Actual national co – financing declared by projects}}{\text{Actual payment of EU funds to the projects}}$ (in %)					
FINAL TECHNICAL ASSISTANCE RATE				$\frac{\text{Actual technical assistance expenditure}}{\text{Actual EU funds for the programme}}$ (in %)		

### Financial table N°3

ADDITIONAL REVENUE AND EXPENDITURE IN THE PROGRAMME	
Other revenue from <b>projects</b> (penalties, interest on recoveries, etc.)	(EUR)
Revenue from <b>technical assistance</b> (penalties, interest on recoveries, etc.)	(EUR)
Interest on <b>pre-financing</b>	(EUR)
<b>Total additional revenue</b>	<b>(EUR)</b>
<b>Additional expenditure</b> not covered by technical assistance (e.g. staff cost from bodies hosting MA covered by the Member State) ( <i>please describe the type of expenditure</i> )	(EUR)
<b>Excess or deficit (additional revenue - additional expenditure)</b>	<b>(EUR)<sup>14</sup></b>

<sup>11</sup> Amounts planned according to the JOP in force.

<sup>12</sup> The actual amount of EU committed has to be calculated from the letters received every year from EC, which indicates the amount committed in EU budget

<sup>13</sup> The "planned amount" is the same that the line "EU commitment", but the "actual amount" needs to correspond to the amount included in the contracts signed with project beneficiaries or TA contractors

<sup>14</sup> **Financial leftover**, as per section 4.6.

In case of programmes with LSPs, an additional table should be added:

**Financial table N°4A**

EXPENDITURE PLANNED AND PAID FOR LARGE SCALE PROJECTS				
Amounts planned		Amounts paid		Absorption rate for LSP (%)
Priority 1, total	(EUR)	Priority 1, total	(EUR)	
• Priority 1, Measure 1		• Priority 1, Measure 1		
• Priority 1, Measure 2		• Priority 1, Measure 2		
...		...		
<b>Total planned for LSPs</b>	<b>(EUR)</b>	<b>Total paid to LSPs</b>	<b>(EUR)</b>	

**Financial table N°4B**

PROPORTION OF LARGE SCALE PROJECTS TO ALL PROJECTS				
Large scale projects		All projects		Proportion (%)
Expenditure planned	(EUR)	Expenditure planned	(EUR)	
Expenditure paid	(EUR)	Expenditure paid	(EUR)	

**B) Payments, expenditure reported, financial corrections and recoveries from the projects and technical assistance**

The following information should be presented for the whole duration of the programme:

- the payments made and amounts recovered by the JMA for technical assistance with a breakdown by programme bodies and the budget categories in the JOP;
- the list of projects with the amount of eligible expenditure incurred and paid as declared by the project beneficiaries, as well as accepted by the programme and declared to the EC;
- the list of financial corrections decided by the JMA in accordance with article 26a.1 (EC Regulation 1343/2014);

- the amounts of recoveries waived, together with a detailed list indicating the justification for waiver and the date of approval by the JMC.

**Financial table N°5A**

TECHNICAL ASSISTANCE						
Budget Category <sup>15</sup>	Programme body, if relevant	Amount planned (EUR)	Amount paid (EUR)	Amount planned (EUR) (EU share) <sup>16</sup>	Amount paid (EUR) (EU share)	Absorption rate, % (EU share)
[Staff]		0,00	0,00	0,00	0,00	
[Travel]		0,00	0,00	0,00	0,00	
[...]		0,00	0,00	0,00	0,00	
<b>TOTAL AMOUNT</b>		<b>0,00</b>	<b>0,00</b>	<b>0,00</b>	<b>0,00</b>	<b>%</b>

**Financial table N°5B**

LIST OF PROJECTS				
Identification of project	Priority / measure	Amount contracted, ENPI funds <sup>17</sup> (EUR)	Amount paid by the JMA, ENPI funds (EUR)	Absorption rate, %
		0,00	0,00	
		0,00	0,00	
		0,00	0,00	
...		0,00	0,00	
<b>TOTAL AMOUNT</b>		<b>0,00</b>	<b>0,00</b>	<b>%</b>

<sup>15</sup> Budget categories according to the annual reporting practices of the programme.

<sup>16</sup> Please indicate the exact EU share applied (some programmes used co-financing to cover the TA costs)

<sup>17</sup> Separate columns may be added in case of other sources of funding, such as IPA.

### Financial table N°5C

LIST OF ALL FINANCIAL CORRECTIONS APPLIED				
Identification of project	Priority / measure	Amount corrected, EU funds (EUR)	Date of the decision by <u>JMA</u>	Description of correction
		0,00		
		0,00		
		0,00		
...		0,00		
<b>TOTAL AMOUNT CORRECTED</b>		<b>0,00</b>		

### Financial table N°5D

LIST OF AMOUNTS RECOVERED (EU funds) IN PROJECTS				
Identification of project	Priority / measure	Amount recovered (EUR)	Date of the decision by relevant body (JMC/JMA)	Justification of the recovery
		0,00		
		0,00		
...		0,00		
<b>TOTAL AMOUNT RECOVERED (EU share)</b>		<b>0,00</b>		

### Financial table N°5E

LIST OF RECOVERIES WAIVED (EU share) IN PROJECTS <sup>18</sup>					
Identification of project	Priority / measure	Amount waived (EUR)	Date of the decision by JMC	Date of the decision by the EC	Justification of the waiver
		0,00			
		0,00			
		0,00			
...		0,00			
<b>TOTAL AMOUNT WAIVED (EU share)</b>		<b>0,00</b>			

According to the Article 25.7 of the Implementing Rules, the waiver decision must be substantiated and submitted **both** to the Commission and to the Joint Monitoring Committee for prior approval.

### C) The final statement on pending contentious recoveries

The amounts of pending contentious recoveries should be included in the final report. See section 5.3. for details on its treatment. The information should clearly indicate if the recovery is due from a beneficiary or partner located in a Member State or in a CBC Partner Country.

### Financial table N°6A

LIST OF PENDING CONTENTIOUS RECOVERIES IN MEMBER STATES (EU share)					
Identification of project	Priority / measure	Amount pending (EUR)	Country of establishment of beneficiary/ partner	Status description of pending recovery	Indicative date of the recovery
		0,00			
		0,00			
...		0,00			
<b>TOTAL AMOUNT PENDING RECOVERIES IN MEMBER STATES (EU share)</b>		<b>0,00</b>			

<sup>18</sup> Even if not explicitly contemplated in the ENPI CBC regulatory framework, programmes are suggested to limit waivers to amounts below 200€. This threshold can be applied both to on-going recovery cases where the recoverable amount has been already fixed as well as to future cases.

**Financial table N°6B**

LIST OF PENDING CONTENTIOUS RECOVERIES IN PARTNER COUNTRIES (EU share)					
Identification of project	Priority / measure	Amount pending (EUR)	Country of establishment of beneficiary/ partner	Status description of pending recovery	Indicative date of the recovery
		0,00			
...		0,00			
<b>TOTAL AMOUNT PENDING RECOVERIES IN PARTNER COUNTRIES (EU share)</b>		<b>0,00</b>			

**D) Suspended amounts due to legal proceedings**

A list of suspended contracts with pending legal proceedings should be included, indicating the amounts, the reference for the proceeding and the justification for suspension. See section 5.3. for further details.

**Financial table N°7**

LIST OF SUSPENDED AMOUNTS FOR LEGAL PROCEEDINGS					
Identification of project	Priority / measure	Amount suspended (EUR)	Country of establishment of beneficiary/partner	Status of legal proceeding <sup>19</sup>	Justification of suspensory effect
		0,00			
...		0,00			
<b>TOTAL SUSPENDED AMOUNTS FOR LEGAL PROCEEDINGS</b>		<b>0,00</b>			

<sup>19</sup> In addition to the status description, the nature of the amount suspended should be described. As a result of legal proceeding, two possibilities apply: 1) the amount is expected to be returned to the programme (the programme claims the amount from the beneficiary/partner) or 2) the amount is expected to be transferred to the beneficiary/partner (it/they claim towards the programme against the financial correction).

### **E) Calculation of final balance amount of EU funds**

The JMA should prepare a preliminary calculation of the balance amount of ENPI contribution, excluding national co-financing at programme level by participating countries:

#### **Financial table N°8A**

<b>REVENUE</b>	
Payments received from the European Commission	0,00
Amount recovered from projects (EU share)	0,00
<b>TOTAL REVENUE</b>	<b>0,00</b>

#### **Financial table N°8B**

<b>EXPENDITURE</b>	
Amount paid to the projects (EU share)	0,00
Amount of pending contentious recoveries in Member States <sup>20</sup>	(0,00)
Amount paid for Technical Assistance (EU share)	0,00
<b>TOTAL EXPENDITURE</b>	<b>0,00</b>

#### **Financial table N°8C**

<b>FINAL BALANCE</b>	<b>0,00</b>
<i>Total revenue – Total expenditure. If value is negative, final balance of payment is requested from the EC. If value is positive, the programme will reimburse the amount of excess pre-financing to the EC.</i>	

#### **Financial table N°8D**

<b>EXCEPTION TO DECOMMITMENT</b>	<b>0,00</b>
Total suspended amounts for legal proceedings	0,00

### **❖ Declaration of assurance**

A declaration of assurance on management and control systems, as referred to in article 28.2c) of the ENPI CBC IR shall be provided.

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<sup>20</sup> This amount should be indicated in negative, as this amount should be recovered by the JMA, either from the beneficiary or from the Member State, according to article 27 of the ENPI CBC IR.



### **7.3. Final report of the internal audit service**

The final report of the internal audit service should include two elements:

- **report on the implementation of the control programme** to check the internal circuits and ensure that the procedures have been correctly applied within the JMA **in the last year of the programme**;
- the **summary and conclusions** on the application of the **internal procedures in the JMA** over the **whole duration of the programme**.

As was the case for the annual reports, the final report of the internal audit service shall be sent by the JMA to the JMC and the EC as an annex to the final report referred to in Article 28 of the ENPI CBC IR.

### **7.4. Final report on the audits for the projects**

The final report should include following elements:

- **results of the implementation** of the **audit plan for the projects** for the last year of the programme;
- the **summary** of recommendations **and conclusions** on the financial management of the projects, based on the annual audits for the projects over the **whole duration of the programme**.
- The detailed list of audits has to be annexed to the report, including the ineligible amount identified by the auditor and the amount recovered.

As was the case for the annual report, the JMA shall send the final report on the audits for the projects to the JMC and the EC as an annex to the annual report referred to in Article 28 of the ENPI CBC IR.

### **7.5. Final external audit report**

The scope of the final external audit report shall cover:

- the results of the audit on the JMA's direct expenditure on technical assistance and project management (payments) **on all the expenditure since the last audit**.

In this respect, the final external audit report shall certify the statement of revenue and expenditure of the last year of the programme presented by the JMA in its financial report, and in particular, it shall certify that the stated expenditure has actually been incurred and is accurate and eligible. In case there have been no payments to the projects since the last audit, the report

shall cover only the results of the audit on technical assistance, as well verifications related to the data presented for the whole duration of the programme:

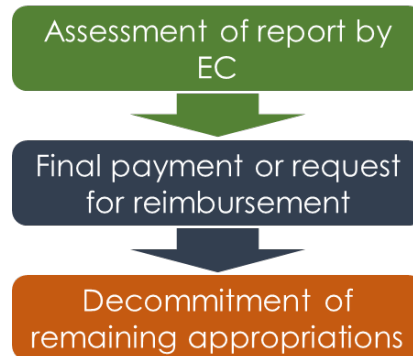
- the verification results of the reconciliation with the bank account and the financial table of the JOP;
- the verification results of the JMA calculation for the payments, expenditure reported and recoveries for the project and technical assistance;
- the verification results on the JMA final statement on pending recoveries and irrecoverable amounts;
- the verification on the suspended amounts due to legal proceedings;
- the verification on the amount of EU contribution;
- the verification that the minimum co-financing rate, in accordance with article 20 of ENPI CBC IR has been respected.

In this respect, the final external audit report should verify whether the calculations carried out by the JMA included in the financial part of the report are correct.



## 8. Closure procedures by the EC

The closing procedures will include three steps:



The assessment of the final report may be subject to a request for clarifications or additional documentation to programmes and will lead to a decision on the final amount of community contribution. This amount will be determined by:

- Examining and accepting the final amount of expenditure, both by projects and for technical assistance for the entire duration of the programme;
- Checking that the ceiling for technical assistance stipulated in article 18 of the ENPI CBC IR has not been exceeded, unless a special approval has been granted;
- Checking that the expenditure by priority does not exceed the 20% of flexibility provided for in article 13.2 of the ENI Regulation (Regulation EC 1638/2006);
- Checking that the minimum co-financing rate stipulated in article 20 of the ENPI CBC IR is respected;
- Clearing all pending pre-financing payments and calculating the final balance.

A provisional confirmation on the admissibility of the report and acceptance of the amounts declared, as well as the calculation of the amount of the balance community contribution shall be sent to the programme within two months of submission. Any comments or request for clarification or additional information or documentation shall also be sent.

Once the EC has provided comments on the final report, the programme will be given six weeks to respond and provide the necessary information. This deadline may not be extended.

In case the JMA is not able to improve the final report, the EC will reject it and will carry out closure on the basis of the available documents. At the same time, the EC may apply financial corrections, where relevant. The objective is to have the final report revised and accepted by the EC within 3,5 months from submission, so there is enough time for the final payment by the EC or reimbursement by the programme, and for the decommitment of the remaining appropriations.

Once the final amount is paid or reimbursed, all non-used amounts shall be decommitted, except for the operations suspended due to legal proceedings, as indicated in section 5.3 of this guide.



## 9. Financial checks and controls after programme closure

### 9.1. Programme level

The possibility of controls at programme level after closure is mentioned in article 46 of the ENPI CBC IR, as indicated in section 2.2 of this document. The type of controls which may take place are indicated in article 38 on “Community controls”:

*The Commission, OLAF, the European Court of Auditors and any external auditor authorised by these institutions may verify, by examining the documents or conducting on-the-spot checks, the use of Community funds by the Joint Managing Authority and the various project beneficiaries and partners. These checks may take the form of a full audit on the basis of the supporting documents for the accounts, accounting documents and any other document relevant to the financing of the joint operational programme (including, for the Joint Managing Authority, all documents related to the selection procedures and to contracts) and of the project.*

As mentioned in article 45, the controls by EU bodies may have a specific focus on selection procedures and contracts, both with project beneficiaries and with contractors in the framework of the use of technical assistance. The detailed provisions relevant at project level, as presented in the next section, may be applied *mutatis mutandis* at programme level.

***The JMA needs to ensure that all institutions having managed technical assistance funds (JTS and BO), as well as any contractor, are aware of these provisions included in the grant contract. Specific instructions for closure should be prepared for this purpose.***

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.

### 9.2. Project level

Article 16 of General Conditions of the grant contract includes provisions on financial checks after closure. Taking into account the actual end of implementation date in most projects, the seven-years period after closure will

come to an end after programme closure. The grant contract stipulates in its article 16:

*The Beneficiary shall allow the European Commission, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6<sup>21</sup> to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, the implementation of the Action and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Action. **These inspections may take place up to 7 years after the payment of the balance.***

*Furthermore, the Beneficiary shall allow the European Anti-Fraud Office and any external auditor authorised by the Contracting Authority carrying out verifications (...) in accordance with the procedures set out in the European Union **legislation for the protection of the financial interests of the European Union against fraud and other irregularities**<sup>22</sup>. To this end, the Beneficiary undertakes to give **appropriate access** to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as to any external auditor authorised by the Contracting Authority carrying out verifications (...) **to the sites and locations at which the Action is implemented, including its information systems, as well as all documents and databases concerning the technical and financial management of the Action** and to take all steps to facilitate their work.*

*Access given to agents (...) shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. **Documents must be easily accessible and filed so as to facilitate their examination** and the Beneficiary must inform the Contracting Authority of their precise location.*

*The Beneficiary guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as of any external auditor authorised by the Contracting Authority carrying out verifications (...) shall be **equally applicable**, under the same conditions and according to the same rules as those set out in this Article 16, to the **Beneficiary's partners, contractors and sub-grantees**. Where a partner, contractor or sub-grantee is an international organisation, any verification agreement concluded between such organisation and the European Commission applies.*

**The JMA needs to ensure that all project beneficiaries are aware of these provisions included in the grant contract. Specific instructions for closure should be prepared for this purpose.**

<sup>21</sup> This article refers to the expenditure verification carried out by project-contracted auditors or by national controllers in EU countries with centralized control systems.

<sup>22</sup> COUNCIL REGULATION (EC, EURATOM) No 2988/95 on the protection of the European Communities financial interests.



Technical support to the implementation and management of ENI CBC programmes

