

**WRITTEN QUESTIONS TO COMMISSIONER GEORGIEVA**

Hearing on 25 January 2016

**Questions related to the ECA Annual Report**

23. The question relates to paragraph 6.79 of the ECA Annual Report 2014

- c. recommendation 5: The Commission should submit a legislative proposal to amend, through a legislative act of equal legal value, Regulation (EC) No 1083/2006. Could the Commission please provide Parliament with the opinion of the Commissions legal service as EP rights could be affected?

**Commission's answer:**

In the Context of an Inter-Service Consultation on this issue, the Commission's Legal Service came to the following conclusions:

Article 78(6) of Regulation (EC) No 1083/2006 provides specific modalities for the declaration of the expenditure for financial engineering instruments.

While for all other forms of contributions, Article 78(1) of Regulation (EC) No 1083/2006 refers back to Article 56 setting out that the end date for eligibility is the 31 December 2015, Article 78(6) with regard to financial engineering instruments clearly indicates to be applied "by way of derogation from Article 78(1)". Further, different from other eligibility rules, Article 78(6) sets out a list of what constitutes eligible expenditure from financial engineering instruments to final beneficiaries.

The legislator has introduced specific modalities in Article 78(6) of Regulation (EC) No 1083/2006 because it is aware that financial engineering instruments imply an implementation via two layers: first, a contribution from operational programmes to financial engineering instruments and then expenditure by financial engineering instruments to final beneficiaries. The expenditure by financial engineering instruments to final beneficiaries, which serves to justify the contribution from operational programmes, is different in nature from expenditure in grants etc. and is necessarily incurred at a later stage, namely once the financial engineering instrument is up and running. This difference justified that the determination of eligibility of underlying expenditure under Article 78(6) is to be different from the usual rules contained in Article 56 and to be made at any moment until partial or final closure of the operational programme. Article 78 (6) contains rules both about the eligibility of underlying expenditure in time - at partial or final closure - and about the type of such expenditure.

In sum, the eligibility rules for underlying expenditure by a financial engineering instrument are not set out in Article 56 of Regulation (EC) No 1083/2006, but in Article 78(6) itself.

The Commission's revised closure guidelines for the programming period 2007-2013 (C(2015) 2771) merely reflect this reality. The closure guidelines clearly spell out that it is only for expenditure underlying financial engineering instruments that the dates in Article 56 of Regulation (EC) No 1083/2006 do not apply. The Commission's closure guidelines hence fully respect Regulation (EC) No 1083/2006 and do not contain any modification of that Regulation. It would hence be misleading to state that there was an extension of the 2007-2013 eligibility period through a Commission decision.

The Commission's view on the end date of eligibility with regard to expenditure underlying financial engineering instruments is perfectly covered by Article 78(6) of Regulation (EC) No 1083/2006 as it currently stands and does not alter its sense. As the Commission's closure guidelines just reflect the wording, the purpose and the systematic position of Article 78(6) of Regulation (EC) No 1083/2006, no amendment is necessary or desirable.

**ECA's view:**

The ECA does not share the Commission's claim in its reply to question 23(c) that "the eligibility rules for underlying expenditure by a financial engineering instrument are not set out in Article 56 of Regulation (EC) No 1083/2006, but in Article 78(6) itself". Article 56(1), headed "Eligibility of expenditure", clearly states that the expenditure shall be eligible only if it has been actually paid by 31 December 2015. Derogations from Article 56(1) are set out in Article 56(2). If the legislator had the intention to stipulate any derogation as to the eligibility period of financial instruments payments, it would have included the derogation here.

In contrast, Article 78, headed "Statement of expenditure", is only about requirements for a statement of expenditure. It repeats in paragraph 1 that the statement must be in line with Article 56. Subparagraph 1 of Article 78(6) allows authorities in Member States to declare the total expenditure paid in establishing or contributing to funds without specifying the eligible use. It so maintains the level of pre-financing of the operational programmes concerned which otherwise may have run out of cash for funding other expenditure during the lifetime of the operational programme. The second part of Article 78(6) specifies when (at partial or final closure) and the categories (management costs, investments, loans and guarantees) under which eligible expenditure should be declared. Article 78(6) does not extend the eligibility period.

Therefore, in the ECA's view, as already expressed in paragraph 6.52 of the 2014 annual report, the exception in Article 78(6) invoked by the Commission does not alter the generally applicable eligibility period stipulated in Article 56(1).