An assessment of the arrangements for closure of the 2007-2013 cohesion and rural development programmes
Special Report

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(pursuant to Article 287(4), second subparagraph, TFEU)
The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber II — headed by ECA Member Iliana Ivanova — which specialises in investment for cohesion, growth and inclusion spending areas. The audit was carried out in cooperation with Audit Chamber I which specialises in sustainable use of natural resources. The audit was led by the Reporting Member Ladislav Balko, supported by Branislav Urbanič, Head of Private Office; Niels-Erik Brokopp, Principal Manager; Mariya Zhekova, Head of Task; Charlotta Törneling, Deputy Head of Task; Milan Smid, Judit Oroszki and Maria Ploumaki, Auditors.

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The Commission provided adequate and timely support to help Member States prepare for the closure of 2007-2013 programmes, but needs to remain vigilant to ensure a robust implementation by the Member States.

The Commission issued comprehensive and timely guidance on the 2007-2013 closure.

Certain requirements in the cohesion guidelines go beyond the regulatory provisions.

Member States are satisfied with the Commission’s support, but coordination between national and regional authorities is essential.

The Commission needs to remain vigilant to guarantee the robustness of the 2007-2013 closure exercise.

Conclusions and recommendations

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Reply of the Commission
Annual activity report (AAR): AARs indicate the results of operations by reference to objectives set, associated risks and the form of internal control, inter alia. Since the 2001 budget exercise for the Commission and since 2003 for all European Union (EU) institutions, the ‘authorising officer by delegation’ must submit an AAR to his/her institution on the performance of his/her duties, together with financial and management information.

Clearance of accounts: A two-stage procedure, operated by the Commission, to ensure that the Member States carry out, in a proper manner, their responsibilities concerning payments made under the common agricultural policy (CAP). The procedure comprises an annual financial clearance of the accounts of each paying agency and a multiannual conformity clearance regarding the conformity of transactions with the EU rules.

Cohesion policy: Cohesion policy is one of the biggest policy areas on which the EU budget is spent. It aims to reduce development disparities between different regions, restructuring declining industrial areas and diversifying rural areas, and to encourage cross-border, transnational and interregional cooperation. It is funded from the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF).

Conformity clearance: Commission decisions on expenditure to be excluded from EU financing because they have not been effected in compliance with the EU rules. Such decisions generally cover expenditure incurred over more than one financial year.

European Structural and Investment Funds (ESIF): The ESIFs are five separate funds that aim to reduce regional imbalances across the Union, with policy frameworks set for the 7-year MFF budgetary period. The funds are the European Regional Development Fund (ERDF) the European Social Fund (ESF) the Cohesion Fund (CF) the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

Final balance: The amount paid or recovered at the closure of an operational programme or rural development programme, as defined in the closure guidelines.

Financial clearance: Annual Commission decision covering the completeness, accuracy and veracity of the annual accounts submitted by the accredited paying agencies. For the purpose of this decision, the Commission requires the accounts to be certified by independent certification bodies.

Financial corrections: The purpose of financial corrections is to protect the EU budget from the burden of erroneous or irregular expenditure. For expenditure under shared management, the task of recovering payments incorrectly made is primarily the responsibility of the Member State. Financial corrections can be made by withdrawing irregular expenditure from the Member State’s expenditure declarations or through recoveries from beneficiaries. Financial corrections may also be imposed by the Commission.

Financial instruments: A generic term for contracts which provide the holder with a claim on an obligor. The EU provides support for three possible types of financial instruments: equity, loan and guarantee instruments. Equity and loan instruments are contracts between an investor and an investee or between a lender and a borrower. Guarantees are contracts in which a guarantor guarantees the rights of an investor or a lender.
**Major project:** A project which comprises an economically indivisible series of works fulfilling a precise technical function, having clearly identified aims and whose total cost assessed when determining the contribution of the funds exceeds 50 million euros (for the 2007-2013 programme period). Commission approval is required at overall project level.

**Materiality level:** Auditors express an opinion as to whether financial statements are prepared, in all material respects, in conformity with a certain set of rules. The assessment of what is material is a matter of professional judgement. The materiality level used by the Commission is currently 2 %, which refers to the ratio of erroneous or irregular expenditure to the EU spending audited.

**Multiannual financial framework (MFF):** The MFF establishes the spending priorities and maximum amounts that the EU may spend in particular areas over a fixed period of several years. The expenditure ceilings in the MFF regulation are always higher than those in the EU budget. The MFF also includes income sources for the EU budget and correction mechanisms for the period in question. The current MFF covers 2014-2020, while the previous ones covered 2007-2013 and 2000-2006 (Agenda 2000).

**Net financial corrections:** Financial corrections imposed by the Commission where the Member States are required to reimburse irregular funds to the EU budget, thus leading to a definitive reduction of funds to the Member State concerned.

**Operation:** A project, group of projects or other action selected according to the criteria laid down for the operational programme or rural development programme and implemented by one or more beneficiaries with a view to achieving the goals and objectives of the programme.

**Operational programme (OP):** An OP sets out a Member State’s priorities and specific objectives and describes how funding (EU and national public and private co-financing) will be used during a given period (currently 7 years) to finance projects. The projects within an OP must contribute to a certain number of objectives. OP funding may come from the ERDF, CF and/or ESF. The OP is prepared by the Member State and has to be approved by the Commission before any payments can be made from the EU budget. OPs can only be modified during the programme period if both parties agree.

**Performance reserve:** Resources constituting 6 % of the resources allocated to the ERDF, ESF and CF or to EAFRD, to be made available after the 2019 performance review if certain requirements are met or exceeded.

**Recovery:** One of two ways to implement a financial correction (the other being withdrawal). The Member State leaves the expenditure in the programme until the unduly paid amount is recovered from the beneficiaries and deducts it from the next expenditure declaration once recovery has been effected.

**Residual risk rate:** An estimate of the part of the cumulative expenditure declared, for each programme during the entire programme period, which is not legal and regular. The residual risk rate takes account of all financial corrections implemented since the start of the period and the total expenditure declared at closure.
Rural development policy: The second pillar of the common agricultural policy, co-financed by the EAFRD. The policy aim is to improve the countryside and the situation for people living there by enhancing competitiveness of the agricultural and forestry sector, improving the environment and quality of life in rural areas and encouraging diversification of the rural economy. This policy comprises area-related and non-area-related measures. The latter are typically investment measures, such as the modernisation of agricultural holdings and the setting up of public infrastructures in rural areas.

Rural development programme (RDP): A programming document prepared by a Member State and approved by the Commission for use in planning and monitoring the implementation of the EU’s rural development policy at regional or national level. The RDP sets out the Member State’s priorities and specific objectives and describes how funding (EU and national public co-financing) will be used during a given period (currently 7 years). RDPs are co-financed by the EAFRD.

Shared management: A method of implementing the EU budget in which the Commission delegates implementation tasks to the Member States, while retaining final responsibility.
Executive summary

I
Cohesion and rural development policy expenditure makes up a large part (approximately 44%) of the overall European Union (EU) budget. The two policies have complementary objectives and are delivered through instruments with similar management and control systems.

II
EU spending is generally planned and implemented within a multiannual ‘financial framework’ (MFF) covering programming for a fixed period of several years. This period coincides with the programme periods for the cohesion and rural development areas. The three recent programme periods cover 2000-2006, 2007-2013 and 2014-2020. Our audits during the 2007-2013 period showed that both cohesion and rural development are prone to material levels of irregular spending.

III
After the end of a programme period, cohesion and rural development programmes have to be closed and financially settled. This entails identifying the EU share in co-financing of any irregular expenditure and returning it to the EU budget. Both the Commission and the Member States have specific tasks and responsibilities in the closure process. These are prescribed in the regulations and further clarified in guidelines issued by the Commission.

IV
In this audit we examined whether the rules and procedures for the closure provide a basis for the Commission and Member States to close cohesion and rural development programmes in an efficient and timely manner. We compared the closure arrangements of three programme periods for the two policy areas and assessed in particular how the Commission obtains assurance that the final declaration contains expenditure that is legal and regular and used in accordance with the programme objectives. We also analysed the timeliness of the closure process and whether the budgetary authority is informed about the outcome of programme closure.

V
The closure arrangements in cohesion and rural development have evolved over those three programme periods. For the 2000-2006 period, the arrangements were the same for both areas. Expenditure was declared cumulatively and only accepted by the Commission at closure. In the 2007-2013 period, Member States were required to provide annual assurance to the Commission that expenditure on EU-funded operations was legal and regular, but this was implemented differently between the two areas.

VI
In the cohesion area, closure can generally be seen as denoting final acceptance that the expenditure is legal and regular. To allow this, the Commission calculates a residual risk rate for each programme, taking into account the financial corrections for the period as a whole. In rural development, however, programme expenditure was cleared annually and the Commission continues its verifications of legality and regularity even after the formal closure of the programme. Thus, closure is purely a financial transaction, with no acceptance of the expenditure as legal and regular and no calculation of a residual risk rate for each rural development programme.

VII
For the 2014-2020 period, the assurance framework has been further improved and aligned between the two spending areas. Annual acceptance of the accounts is now a feature of both policy areas. However, certain differences remain in terminology, timing, and deadlines.
Executive summary

VIII For the 2007-2013 period, we found that there is a limited focus on the achievement of outputs and results. While Member States’ reporting of their programme results is mandatory and duly evaluated by the Commission, payment of the final balance at closure is not directly linked to the actual achievement of outputs and results in either of the two areas.

IX As to the time of closure, it coincides neither with the end of the programme period nor with that of the period of eligibility. Formal closure is generally initiated after the end of the eligibility period, when the next programme period is already running at full speed; depending on the circumstances, it can take several more years to be completed. The significant overlap between tasks for the different periods and the administrative difficulties faced when following up activities, some of which took place more than a decade earlier, pose a risk to the effectiveness of programme closure. In addition, the possibility to spend the programme budget up to two (n+2) and for the 2014-2020 period even up to three (n+3) years after the end of the programme period creates a disincentive to start the programmes of the subsequent period.

X Another concern relates to the Commission’s reporting on the outcome of programme closure in both areas. In particular, the Commission does not inform the budgetary authority about the final outcome of the closure process (the regularity of expenditure and the outputs and results achieved). Given that the EU’s budget system is built around multiannual programming, we consider that the Commission should provide the European Parliament and the Council with a consolidated closure report containing key information on the most relevant performance and compliance aspects of programme implementation.

XI In order to ensure that the closure arrangements for the cohesion and rural development policy areas improve accountability and transparency in the use of EU funds, we recommend that the Commission:

− proposes to further align the regulatory provisions for closure between cohesion and rural development, aiming at a harmonised annual assurance process in both areas;

− introduces a final acceptance by the Commission concerning the legality and regularity of expenditure and the outputs and results achieved once the programmes have been closed. This would include laying down procedures for calculating a residual risk rate at programme level and ensuring that the rate does not exceed the materiality threshold at closure, as well as assessing whether targets have been achieved and, if necessary, imposing financial corrections for underperformance;

− specifies how it will inform the budgetary authority about the outcome of the closure process; and

− eliminates the overlap of eligibility periods, aligning as far as possible the eligibility with the programme period, and requires programmes to be closed promptly after the end of the eligibility period (a maximum of 6 months for Member States to submit closure documents and a further 6 months for the Commission decision).

These recommendations should be implemented when preparing for the post-2020 legislative framework.
Executive summary

XII
We also assessed whether the Commission provided adequate and timely guidance and support to Member States as they prepared for the closure of their 2007-2013 programmes. Overall, we found that the Commission’s closure guidelines for the 2007-2013 period in both cohesion and rural development provide an adequate basis for Member States to prepare effectively for closure. The guidelines were timely, and comprehensive, and the Commission delivered additional support addressing the needs of Member States. The Member States were satisfied with the Commission’s support and considered, largely, that they were well prepared for the closure exercise.

XIII
We identified certain risks that need to be addressed during the 2007-2013 closure of cohesion and rural development programmes. In particular, there are no binding deadlines for some areas relevant to closure which may contribute to additional delays in the closure process. We also found that some requirements, namely those related to non-functioning projects and the reporting of a residual risk rate, help to mitigate the risks associated with closure. Others, such as the phasing of non-major projects, are necessary, but, as currently formulated may complicate the closure exercise. Lastly, we are concerned that checks at Member State and/or Commission level are not sufficient to ensure the legality and regularity at closure of expenditure concerning financial instruments, contractual advances and some state aid-relevant major projects.

XIV
The Commission therefore needs to remain vigilant to guarantee the robustness of the 2007-2013 closure exercise. To make sure that all risks are properly addressed during the closure of 2007-2013 cohesion and rural development programmes, we recommend that the Commission should ensure that:

- major project approval decisions are taken promptly, and
- Member States implement specific procedures to verify the eligibility of expenditure, in particular that related to financial instruments and contractual advances.

XV
We also recommend that the Member State managing authorities pay the full EU contribution to project beneficiaries in a timely manner.
Introduction

Closure of multiannual programmes in the cohesion and rural development policy areas

Programme periods and budget allocation

01 Cohesion and rural development policy expenditure makes up a large part (approximately 44%) of the overall EU budget. These and other EU spending policies are planned and implemented within a multiannual ‘financial framework’ (MFF) covering programming for a fixed period of several years. This period coincides with programme periods for the cohesion and rural development areas. The three last periods cover 2000-2006, 2007-2013 and 2014-2020.

02 The cohesion and rural development areas have similar characteristics in terms of their delivery mechanisms, instruments and control systems. Both aim at reducing regional disparities (see Box 1) and for the 2014-2020 period both areas are financed by the European Structural and Investment Funds (ESIFs) 1.


Box 1: Policy objectives of the cohesion and rural development policy areas

Cohesion policy aims to reduce development disparities between different regions, restructuring declining industrial areas and diversifying rural areas, and to encourage cross-border, transnational and interregional cooperation.

Rural development policy aims to improve the countryside and the situation for people living there by enhancing competitiveness of the agricultural and forestry sector, improving the environment and quality of life in rural areas and encouraging diversification of the rural economy.
For the 2014-2020 programme period, around 460 billion euros was allocated to cohesion and rural development programmes from the EU budget, compared with around 430 billion euros for 2007-2013 and 300 billion euros for 2000-2006 (see Figure 1). This represents approximately 40 % of the total EU budget for 2000-2006, 44 % for 2007-2013 and 43 % for 2014-2020.

Figure 1


NB: The MFFs adjusted for 2006 (EU-25), 2013 (EU-27) and 2017 (EU-28) respectively were used to compile the diagram.

Source: ECA based on Commission data.
Introduction

Shared management of cohesion and rural development policies

04
The responsibility for implementing cohesion and rural development policies is shared between the Member States and the European Commission. The Commission approves multiannual programmes on the basis of Member States’ proposals.

05
At the Commission, the Directorates-General for Regional and Urban Policy (DG REGIO), Employment, Social Affairs and Inclusion (DG EMPL) and Agriculture and Rural Development (DG AGRI) are responsible for the management of these policy areas. In the Member States, national and/or regional programme authorities for cohesion and rural development are tasked with ensuring the legality and regularity of co-financed operations under the Commission’s supervision and final responsibility.

Closure as the last step in the programme lifecycle

06
The approval, implementation and closure of multiannual programmes are a cyclical process. The three stages in the life of a programme are explained in Figure 2.

07
Closure, the last stage in the lifecycle of a programme, is defined in the EU financial regulation and the sectoral regulations for both policy areas as taking place upon the payment of the balance which clears all preceding expenditure (also referred to as final balance) to the Member State or the recovery of sums paid in excess by the Commission.
Introduction

Figure 2

The lifecycle of multiannual programmes in cohesion and rural development

- **Programme approval**
  - The Member States prepare programmes for implementing the policy at national or regional level, which are approved by the Commission.
  - In order to ensure liquidity so that funds are available for the support to beneficiaries from the start of the programme the Commission provides pre-financing to the Member States.

- **Implementation**
  - The Member States implement the programmes through selection of individual operations on the basis of agreed criteria.
  - During the programming period the Member States reimburse the beneficiaries for costs incurred based on expenditure declarations. These declarations are then aggregated into periodic payment claims certified by the Member State authorities and submitted to the Commission for co-financing.
  - The Commission makes interim payments to the Member States based on these payment claims.
  - The Member States have two years after the end of the programming period to finalise the implementation of the programmes; therefore the latest date for making payments under the 2007-2013 period was 31 December 2015.

- **Closure**
  - After the end of the period, the programmes have to be closed.
  - For both policy areas, the closure of a programme is defined as the financial settlement through the payment of the final balance to the Member State or the recovery of sums paid in excess by the Commission.
  - The Member States have 6 months (for rural development) or 15 months (for cohesion) to submit closure documents to the Commission.

Source: ECA.
Introduction

08 However, ‘closure’ also refers to the process of terminating a programme, which involves the submission of documents by Member States to the Commission, resulting in the payment of the final balance. In both policy areas the terms of closure arrangements are set in the respective regulations, which are listed in Annex I.

09 Closure is a crucial moment in the lifecycle of a programme because:

- the Commission is required to accept only expenditure implemented in accordance with the EU and national rules. In particular, this means that only expenditure used in accordance with the objectives of the programmes and spent in a legal and regular manner can be reimbursed from the EU budget; and

- Member States have to make sure that spending is in line with the applicable legal requirements and the principles of sound financial management. All irregular spending detected and corrected by the Commission after closure can result in a net reduction in EU funding for the programme. In rural development, all such corrections have a net effect on the EU funding.

10 At the same time, the EU regulations require the EU funds made available to co-finance operations in the Member States to be spent within the deadlines specified in the regulations. The pressure on Member States to use up these funds increases as the end of the eligibility period approaches, since they could risk losing any unspent share of their initial allocation.

Responsibilities in the closure process: Member States and Commission

Member State authorities submit closure documents

11 The authorities responsible for management and control of the 2007-2013 cohesion and rural development programmes at Member State level are described in Annex II. Their respective responsibilities in the closure process are presented in Table 1.
The responsibilities of Member State authorities at closure

<table>
<thead>
<tr>
<th>Cohesion</th>
<th>Rural development</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) The managing authority submits a final implementation report which covers the full programme period.</td>
<td>(i) The managing authority submits the last annual progress report on implementation.</td>
</tr>
<tr>
<td>(ii) The certifying authority submits an application for payment of the final balance and a statement of expenditure.</td>
<td>(ii) The paying agency submits the annual accounts for the last execution year.</td>
</tr>
<tr>
<td>(iii) The audit authority assesses the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which is supported by a final control report.</td>
<td>(iii) The certification body submits an opinion and draws up a report on the completeness, accuracy and veracity of the last annual accounts and the functioning of the internal control system.</td>
</tr>
</tbody>
</table>

In its closure declaration, the audit authority has to disclose a residual risk rate per OP (or group of OPs) for the whole programme period. If this is above the Commission’s materiality level of 2 %, it would normally trigger a financial correction. Programmes should not be closed with a verified residual risk rate above the materiality threshold.

5 Article 7(3) and 37 of Regulation (EU) No 1306/2013.

Source: ECA.
Introduction

The Commission assesses and accepts closure documents

12

In cohesion, for the 2007-2013 closure, the Commission has 5 months to analyse the documents submitted by the Member States and give an opinion on the final implementation report\textsuperscript{4} and the closure declaration\textsuperscript{5}. Once these are accepted, the Commission has to pay the final balance within 45 calendar days\textsuperscript{6}. During the programme period, verifications carried out by the Member States or the Commission could lead to financial corrections for an OP. Generally, all unresolved issues relating to control activities and audit findings should be clarified and settled during the closure process. However, the Commission can undertake further audit work which may result in financial corrections after the payment of the final balance\textsuperscript{7}.

13

In rural development, closure is, to a large extent, based on the annual financial clearance process: the Commission's yearly verification of the certification body’s report and acceptance of the accounts. At closure, the Commission has 5 months to comment on the last annual progress report\textsuperscript{8}. Once that report is considered to be receivable and the last annual accounts are cleared, the Commission has to pay the final balance within 6 months\textsuperscript{9}. Throughout the programme period, in order to protect the EU budget from irregular expenditure, the Commission also carried out checks on the legality and regularity of expenditure (multiannual conformity clearance), which were independent of the financial clearance. These checks frequently resulted in net financial corrections and can still be carried out or finalised after closure of the RDPs.

14

Whereas the deadline for Member State authorities to submit the closure documents for rural development was 30 June 2016, the deadline for cohesion was set at 30 March 2017. At the time of our audit, because of the different deadlines, the directorates-general were at different stages in their preparation. DG AGRI had finalised its internal manual and procedures for closure, but this task was still ongoing at DG REGIO and DG EMPL and scheduled for completion by the end of 2016, before the deadline for the submission of closure documents.

\textsuperscript{4} Article 67(4) of Regulation (EC) No 1083/2006.
\textsuperscript{5} Article 89(3) of Regulation (EC) No 1083/2006.
\textsuperscript{6} Article 89(4) of Regulation (EC) No 1083/2006.
\textsuperscript{7} Under Article 90 of Regulation (EC) No 1083/2006, the managing authority must ensure that all the supporting documents regarding expenditure and audits on the programme concerned are kept available for the Commission and the European Court of Auditors for a period of 3 years following the date of closure.
\textsuperscript{9} Article 37 of Regulation (EU) No 1306/2013.
Audit scope and approach

Through this audit we examined whether the rules and procedures for cohesion and rural development provide a basis for the Commission and Member States to close the programmes in an efficient and timely manner.

Firstly, we examined:

- whether the regulatory provisions governing closure in cohesion and rural development require the final acceptance of programme expenditure as legal and regular and assurance that outputs and results were achieved;

- whether the budgetary authority (the European Parliament and the Council) is informed about the outcome of the closure of multiannual spending programmes; and

- whether the closure process is timely.

Secondly, we assessed whether the Commission provided adequate and timely support to Member States to help them prepare for the closure of their 2007-2013 OPs and RDPs.

Our audit focused on the strengths and weaknesses of the arrangements for closure of cohesion and rural development programmes for the 2007-2013 period, the lessons learnt from the closure of the 2000-2006 programmes and the extent to which the weaknesses identified for both periods have been addressed in the regulations for 2014-2020.
Audit scope and approach

17
The audit work consisted of the following elements:


- Analysis of the support the Commission provided to the Member States through guidance and training for the 2007-2013 closure;

- An electronic survey of national and regional authorities involved in the closure of the programmes to obtain their views on the rules, the Commission’s guidance and support and their own preparedness. The survey was carried out from November 2015 to January 2016. It was addressed to managing authorities and audit authorities in the cohesion policy area and paying agencies and certification bodies in the rural development policy area. 337 of the 480 authorities invited to participate in the survey responded (around 70% response rate); and

- Interviews with representatives of Member State authorities that participated in the survey. Altogether we held interviews with 25 national and regional authorities for cohesion and 12 authorities for rural development.

18
The audit work was carried out between September 2015 and September 2016.
The rules for closure have improved but further steps are needed to make it more efficient and timely

19 Closure is the last stage in the lifecycle of a multiannual programme. To ensure accountability and transparency, the Commission should accept the final expenditure to be legal and regular and to have been used in line with the programme objectives. Closure should take place as soon as possible after the end of the programme period and the Commission should report on the closure outcome to the budgetary authority.

20 Given the similarities in the cohesion and rural development policy areas (in particular the non-area-related investment measures) and the fact that since 2014 both are a part of European Structural and Investment Funds, closure arrangements should be aligned in order to increase transparency and facilitate comparisons. Aligned closure arrangements would also facilitate the stakeholders’ understanding of the closure process. Lastly, common rules could lead to efficiency gains in the implementation of programmes.

Considerable changes in the closure arrangements since the 2000-2006 period in cohesion and rural development

2000-2006 period: no annual assurance provided by the Member States in either of the policy areas

21 For the 2000-2006 period the closure process and guidelines were common to cohesion and rural development and no annual assurance was provided by the Member State authorities in either policy area. At closure these authorities had to provide assurance, based on a sample check, as to the legality and regularity of all expenditure during the period. The Commission’s analysis and verifications led in many cases to requests for clarification or additional work at Member State level, which often extended the closure process. For example, for 14% of ERDF operational programmes closure took more than 4 years. An overview of the time it took the Commission DGs to close 2000-2006 cohesion and rural development programmes is provided in Figure 3.
Observations

2007-2013 period: requirement for the Member States to provide annual assurance for both policy areas

The 2007-2013 programme period brought a requirement for the Member States to present annual assurance in both policy areas. Providing the basis for programme closure, these annual declarations were intended to make the process easier and quicker than in the previous period. In the cohesion area they took the form of annual control reports submitted by the audit authorities and accepted by the Commission. In rural development, the Commission developed the ‘clearance of accounts’ procedure for the final recognition of expenditure, comprising annual financial clearance and multiannual conformity clearance (see paragraph 13). An overview of the responsible Member State authorities’ management and control tasks for the 2007-2013 programme period is presented in Annex II.


Figure 3

Time taken to close 2000-2006 OPs and RDPs

Source: ECA based on Commission data.
23. In cohesion policy, during 2007-2013, expenditure was declared cumulatively from the start of the period and the Commission did not accept it annually. The annual control reports and audit opinions submitted by the audit authorities and accepted by the Commission nevertheless constituted an important part of the Commission’s annual assurance. The Commission also had the possibility of interrupting or suspending payments if there were doubts about the legality and regularity of expenditure. The system of annual control reports and opinions, together with the Commission’s acceptance of annual implementation reports, provide the foundation for the closure process.

24. For rural development, on the other hand, the Commission did accept the declarations of expenditure annually during the 2007-2013 period. The Commission was required to verify the certification body’s report and audit opinion and accept the accounts every year (annual financial clearance). This procedure covered not only the accounts but also the functioning of the paying agency’s internal control system and the statement of assurance issued by the agency’s director; however, it did not extend to the legality and regularity of expenditure. Independently from this, the Commission was required to examine and accept the annual progress report on implementation. Programme closure in rural development is based on the annual accounts submitted by the Member States for each financial year in the programme period (2007 to 2015) and the corresponding acceptance by the Commission (financial clearance decisions). However, legality and regularity are excluded from the scope of the annual financial clearance and instead covered by the multiannual conformity clearance procedure, which can continue even after closure. For rural development, closure can thus be seen as a process consisting of necessary steps throughout the implementation period and continuing after the formal closure of an RDP, rather than a one-off exercise at a specific moment in time.

25. The development of the management and control system over three programme periods (2000-2006, 2007-2013 and 2014-2020) for cohesion and rural development relevant for closure is shown in Annex III. It also illustrates how the Member State authorities and the Commission provide monitoring information and assurance over the three periods.
2014-2020 period: Closure arrangements in cohesion and rural development again converging, but not yet fully aligned

For the 2014-2020 programme period, an annual acceptance of accounts is applied in both cohesion and rural development\textsuperscript{12}, bringing ‘annual closure’ in both policy areas. For cohesion, issues relating to the legality and regularity of expenditure are taken into account for the annual acceptance of accounts as long as they are detected and corrected by the national authorities before submitting the accounts to the Commission, but can also be addressed at a subsequent stage by the multiannual conformity audits which then result in net financial corrections imposed by the Commission subject to specific conditions\textsuperscript{13}. This generally corresponds to the process in place for rural development since the 2007-2013 period. For rural development the annual assurance has been extended to legality and regularity as from 2015 the certification bodies are required to include these aspects in their annual reports. As in the case of cohesion policy, multiannual compliance audits with the possibility to apply net financial corrections are carried out separately.

In both policy areas, the closure of the 2014-2020 period will be almost identical to the annual acceptance of the accounts, with the difference that for cohesion a final implementation report will be required in addition to the annual documents\textsuperscript{14} submitted for the final year. For rural development, no additional documents will be required for closure; the format of reporting will be the same as for the annual exercise.

For 2014-2020, the rules on assurance and closure have been further improved and aligned between the two spending areas. Notwithstanding efforts to streamline procedures through the common provisions regulation\textsuperscript{15}, a few differences remain in the closure arrangements for the two policy areas. The main differences are listed in Table 2.

\begin{table}[h]
\centering
\caption{Closure arrangements for 2014-2020}
\label{tab:closure安排}
\begin{tabular}{|c|c|}
\hline
Policy Area & Description \\
\hline
Cohesion & Final implementation report in addition to annual documents. \\
Rural Development & No additional documents required for closure. \\
\hline
\end{tabular}
\end{table}

\textsuperscript{12} Article 84 of Regulation (EU) No 1303/2013.
\textsuperscript{13} Articles 139(5) and 145(7) of Regulation (EU) No 1303/2013.
\textsuperscript{14} Article 141 of Regulation (EU) No 1303/2013.
\textsuperscript{15} Regulation (EU) No 1303/2013.
Observations

Table 2

Differences in closure arrangements in the 2014-2020 period between cohesion and rural development

<table>
<thead>
<tr>
<th>Topic</th>
<th>Cohesion</th>
<th>Rural development</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Terminology and roles of the Member State authorities</strong></td>
<td>The tasks and responsibilities of managing authorities and audit authorities are described in Annex II. The 2014-2020 period introduces the new term 'acceptance of accounts'.</td>
<td>The tasks and responsibilities of managing authorities, paying agencies and certification bodies are described in Annex II. The term 'acceptance of accounts' from the common provisions regulation is applicable, but the specific rules for rural development maintain the terms 'clearance of accounts' and 'conformity clearance'.</td>
<td>Although their tasks are broadly similar, the Member State authorities have different names and different roles in the respective policy areas. The term 'acceptance of accounts' is used for cohesion, but for rural development 'clearance of accounts' and 'conformity clearance' are also used.</td>
</tr>
<tr>
<td><strong>Legality and regularity</strong></td>
<td>In cohesion the initial pre-financing of the programmes is supplemented by annual pre-financing. 10% of interim payments is systematically withheld to protect the EU budget from the effects of irregular expenditure. This amount is to be released upon acceptance of the annual accounts. The legislation specifically states that issues of legality and regularity should not be taken into account for the annual acceptance of accounts.</td>
<td>In rural development only initial pre-financing is paid to the Member States, there is no annual pre-financing and no sum is withheld from the interim payments. However, the cumulative payments for a programme are capped at 95% and the remaining 5% is released only at the payment of the final balance. The specific rules on rural development expand annual reporting by the certification bodies on legality and regularity.</td>
<td>While in rural development only initial pre-financing is paid to the Member States, this is supplemented with annual pre-financing in cohesion. In rural development no part of the interim payment is withheld while in cohesion there is retention of 10%. For rural development, on the other hand, payments for a programme are capped at 95% implementation, which is not the case for cohesion. It is not clear for either area to what extent the Commission in practice will consider the legality and regularity for the annual acceptance.</td>
</tr>
</tbody>
</table>

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1 Article 84 of Regulation (EU) No 1303/2013.
3 Article 52 of Regulation (EU) No 1306/2013.
4 Article 139(5) of Regulation (EU) No 1303/2013.
5 Article 9 of Regulation (EU) No 1306/2013.
In essence, these differences mean that the closure will start later for cohesion than for rural development, and that the Member States will only have to submit a final implementation report to the Commission for programmes in the cohesion area\(^6\). The closure process could also benefit from further alignment between the two policy areas.

---

**Table 2**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Cohesion</th>
<th>Rural development</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting year, financial year and the last annual accounts</td>
<td>A new accounting year, 1 July-30 June(^6), has been introduced. The last annual accounts have to cover expenditure up to the final eligibility date (31 December 2023)(^8); they will formally cover the accounting year from 1 July 2023 to 30 June 2024.</td>
<td>The accounting year remains 16 October-15 October as for the 2007-2013 period. While the final eligibility date is the same (31 December 2023), the last annual accounts will cover 15 October 2022 to 31 December 2023.</td>
<td>The accounting years cover different periods. The period covered by the last annual accounts is different as well.</td>
</tr>
<tr>
<td>Deadlines</td>
<td>The deadline for submission of the final documents for closure is 15 February 2025, 13.5 months after the final eligibility date of 31 December 2023.</td>
<td>The deadline for submission of the final documents for closure is 30 June 2024, 6 months after the final eligibility date of 31 December 2023.</td>
<td>There are different deadlines for submission of the final documents for closure.</td>
</tr>
<tr>
<td>Closure documents</td>
<td>A final implementation report has to be submitted(^9).</td>
<td>No additional documents are required for closure.</td>
<td>Unlike rural development, a final implementation report has to be submitted for cohesion.</td>
</tr>
</tbody>
</table>

8 Article 65(2) of Regulation (EU) No 1303/2013.

Source: ECA.

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25

In essence, these differences mean that the closure will start later for cohesion than for rural development, and that the Member States will only have to submit a final implementation report to the Commission for programmes in the cohesion area\(^6\). The closure process could also benefit from further alignment between the two policy areas.
Legality and regularity is taken into account for the closure of 2007-2013 programmes in cohesion, but is treated separately from closure for rural development.

The understanding and expected consequences of 2007-2013 closure differ somewhat.

The Member States interpret the purpose of closure more broadly than its definition in the legal framework.

30 The purpose of programme closure should be clearly stated in the regulations and communicated so as to foster a common understanding by the Commission and the Member States.

31 Most respondents to our survey of Member State authorities replied that the purpose of closure was clear. However, their perception of the purpose of closure, in both policy areas, was broader than the definition given in the regulations (i.e. the payment of the final balance). A significant proportion of respondents also identified other purposes of closure, such as ‘final verification that reimbursed expenditure is legal and regular’, ‘legal certainty for the Member State that declared expenditure for the period is accepted by the European Commission’ and ‘evaluation whether objectives were achieved’.

32 In the cohesion area this broader view was shared by the Commission. According to DG REGIO and DG EMPL the payment of the final balance follows on from an examination of the programme achievements set out in the final implementation report, and is dependent on certification by the audit authority that the expenditure declared to the Commission is legal and regular.

However, the perception that the closure of a cohesion programme offers legal certainty that the expenditure is accepted by the Commission is not supported by the regulations, as financial corrections are possible even after closure. In practice subsequent financial corrections need rarely to be applied. In rural development the expectation gap is rather greater, as post-closure conformity audits (potentially leading to financial corrections) are frequent and ‘real’ closure is not achieved until all audits have been finalised and settled through the Commission’s financial correction decisions.

**In cohesion, a cumulative residual risk rate is calculated during programme implementation and at closure to assess the legality and regularity of expenditure; this is not done for rural development**

In both areas, the Commission has established a framework for Member States to provide assurance of the legality and regularity of declared expenditure throughout the programme period. At the end of the period, account being taken of any financial corrections, the expenditure should be legal and regular for the programme as a whole. Calculation of a residual risk rate for the entire period would indicate the error remaining after allowing for all financial corrections and permit an assessment as to whether the level of irregular expenditure is below the Commission’s materiality threshold currently set at 2 % in both policy areas. The calculation and analysis of residual risk rate at programme level would also make it possible to identify the causes of the remaining error and allow further corrective measures to bring irregular expenditure down to an acceptable level.

In cohesion, we found that a residual risk rate is calculated at closure for each programme and the entire programme period, account being taken of financial corrections. DG REGIO and DG EMPL can impose additional financial corrections at closure if the verified residual risk rate for an OP is material.
Observations

36 In rural development, neither the certification bodies nor the Commission calculate a residual risk rate at programme level after the impact of all financial corrections. Because no such calculation is made annually or for the whole programme period, there is no assurance at closure that the risk is below the materiality level even after corrections. DG AGRI’s 2015 annual activity report states that ‘it cannot be expected with any real certainty that a remaining financial risk below 2 % would be attainable with reasonable efforts for rural development’.

37 The DG AGRI annual activity report has details of the estimated amount at risk and the estimated corrective capacity for the EAFRD as a whole. This gives an indication of the remaining financial risk to the EU budget when all corrective actions are taken into account. However, this exercise is limited to a single financial year, and no calculations are done at this stage at programme or paying agency level. Moreover, in contrast to the way it is used in cohesion, the information is not used to ensure that the residual risk rate remains below the Commission’s materiality level.

38 In neither policy area do the regulations for the 2014-2020 period require audit authorities and certification bodies to submit an audit opinion or a report for the whole programme period, or to calculate a residual risk rate for each programme at closure. We note, however, that annual residual error rates are reported by the audit authorities and error rates and incompliance rates by the certification bodies and are verified by the Commission. These take account of the financial corrections at Member State level.

There is no final acceptance of rural development expenditure as legal and regular at or after closure

39 The final acceptance of programme expenditure as legal and regular would have certain practical implications. In particular, it would provide clarity for the Member States. It would also provide useful information for the discharge procedure — the process through which the European Parliament, on a recommendation from the Council, grants to the Commission final approval of the way the EU budget has been implemented. Discharge is one of the means whereby the Parliament and the Council can hold the Commission accountable for the implementation of the EU budget.
40 For cohesion, we examined the process which culminates in payment of the final balance for each OP. Generally speaking, all unresolved issues relating to the legality and regularity of expenditure should be clarified and settled before the closure of an OP. Having completed its assessment, the Commission sends a closure letter to the Member State stating the amount of expenditure which is accepted as eligible for the programme. This essentially amounts to final acceptance of that expenditure as legal and regular. As beneficiaries are required to keep documents for 3 years after programme closure, DG REGIO and DG EMPL can undertake audits after closure. However, in practice they very seldom do so.

41 In rural development, the Commission recognises the final declaration of expenditure through the clearance of accounts procedure, under which it takes annual financial clearance and multiannual conformity clearance decisions (see paragraph 13). We examined how these decisions are taken into account for the calculation of the final balance. Although all financial clearance decisions are taken into account for the final balance calculation, the conformity decisions are treated separately since they directly lower the available budget envelope (i.e. representing a net financial correction). This can occur even after the Commission has taken a formal decision to clear the last annual accounts of the programme.

42 Conformity clearance decisions frequently contain financial corrections resulting from conformity audits carried out by the Commission throughout the period to verify that expenditure is in compliance with the rules. Conformity clearance is an essential element of DG AGRI’s clearance of accounts procedure; however, it is separate from the annual financial clearance procedure. Conformity audits can be carried out, and decisions taken, after programme closure. At the end of 2016, by which time the Commission expects to have taken most of its last annual clearance of accounts decisions for 2007-2013, it estimates that around 80 conformity audits will still be ongoing.

43 The fact that conformity clearance decisions can still be taken after closure means that the balance settled at closure is not necessarily ‘final’, as the outcome of conformity audits might still lead the Commission to recover funds from the Member State.

21 As defined in Article 37 of Regulation (EU) No 1306/2013.
In our Special Report No 7/2010, we noted that separating the annual financial clearance from the multiannual conformity clearance can provide some operational advantages. The Commission considered that splitting the procedure was necessary due to the length of conformity audits and would allow it to monitor the annual financial execution of programmes more closely. However, we criticised the fact that the Commission does not prepare a summary recognising the expenditure of a specific year after all conformity audits have been finalised. We found that at closure such a summary does not exist either. Such a decision would acknowledge the net expenditure accepted after implementation of all financial corrections and at the same time inform the discharge authority. It would also furnish one of the elements necessary for the calculation of a residual risk rate at programme level for rural development. This issue has not been addressed by the Commission for the 2014-2020 period.

For the 2014-2020 period the split between annual acceptance of the accounts and multiannual conformity audits is maintained and extended to the cohesion area.

The achievement of outputs and results is not sufficiently taken into account at closure

Closure should cover the final reporting and evaluation of the programme, including monitoring and analysis of the achievement of outputs and results for the entire period. Reliable data on the achievement of targets should be provided to the Commission to enable it to evaluate how efficiently and effectively EU funds were used during the period.
2007-2013 period: Member States have to report on specific and verifiable targets, using the indicators defined in the programmes

47
During the programme period, Member States were required to report on the progress made in implementing their programmes²⁴. In this they were to include information about specific, verifiable targets, using the indicators defined in the programmes. The regulations also provided for a mid-term evaluation for RDPs (in 2010) and an ex post evaluation in both policy areas (in 2015)²⁵.

48
At closure, reporting on the achievement of targets is a requirement in both policy areas — in the final implementation report for cohesion and the last annual progress report on implementation for rural development — before payment of the final balance (see *Table 1*). However, the amount of the final payment is not directly linked to the actual achievement of outputs and results.

49
In cohesion, some Member State authorities indicated that it was unclear how operations not finalised by the closure deadline should be taken into account when reporting on performance. Others were uncertain about the possible financial consequences of not achieving the targets set in their programmes. Although the Commission replied to the Member States that there would be no automatic financial corrections if the indicators were not achieved, the responsible authorities were still unsure about the approach taken by DG REGIO and DG EMPL.

50
In rural development, some Member State authorities indicated that the rules for reporting on the outputs and results of operations financed under two programme periods were still unclear.

51
The Member States’ audit authorities and certification bodies indicated, through the survey and interviews, that they did not envisage verifying whether the targets were achieved or why they were not. This, combined with the authorities’ uncertainty about how to report on operations not finalised by the end of the programme period, represents a risk to the reliability and accuracy of the data reported on the achievement of targets for 2007-2013.
Observations

2014-2020 period: Allocation of the performance reserve conditional on the achievement of the milestones of the programme at priority level

52
For the 2014-2020 period, a stronger focus has been placed on outputs and results in the course of programme implementation and controls (including adoption of a programme and in evaluation and audit). This has been reinforced by the modification of the performance framework, including the reintroduction of a performance reserve amounting to 6% of the programme budget. Allocation of the reserve is conditional on the achievement of milestones set at the level of programme priorities26. If targets are not achieved, the Commission may also apply financial corrections27. However, we have noted in a previous report a number of weaknesses in the design of the performance framework in both areas28. Moreover, it remains to be seen how the performance reserve will be applied in practice and what its actual impact will be.

A consolidated closure report on the legality and regularity of spending as well as the outputs and results achieved is not provided to the European Parliament and the Council

53
The EU’s budget system is based on multiannual programming. To ensure there is accountability and transparency in programme implementation, the outcome of the closure process should be reported to the budgetary authority. Thus the Commission should inform the European Parliament and the Council of the final situation for the programme period in terms of the regularity of expenditure and the objectives achieved.

54
Currently, a number of different documents are available to the budgetary authority on programme implementation:

- Communication on the protection of the European Union budget;
- Annual activity reports for DGs AGRI, EMPL and REGIO;
- Annual synthesis report on the Commission’s management achievements;
- Ex post evaluations of the achievement of OP and RDP objectives during the period;

26 Article 20 and Article 22(2) of Regulation (EU) No 1303/2013.
27 Article 22(7) of Regulation (EU) No 1303/2013.
Observations

- Synthesis report on *ex post* evaluation;
- Commission decisions on the conformity of expenditure with EU rules; and
- For rural development, the Commission’s annual financial clearance decisions (the last of which includes the final balance).

55
The Commission reports to the budgetary authority through the Annual Activity Report of respective directorates-general on the basis of the annual state of play, but there is no specific report envisaged on the final outcome of closure for the programme period as a whole. This situation remains unchanged for the 2014-2020 period.

56
As regards the 2000-2006 period, we note that the Commission has issued an ad hoc report on the financial corrections and status of closure of the ERDF and ESF programmes and CF projects in 2013.

**Closure is initiated only several years after the end of the programme period due to overlapping of eligibility periods**

57
Closure should take place as soon as possible after the end of the programme period so that the subsequent programmes can start promptly. To ensure effectiveness at closure, it is also vital to allocate sufficient time and resources to the related tasks.
Additional time to spend EU funding: from n+2 in 2000-2006 period to n+3 in 2014-2020 period

58
During the last three periods, the EU regulations have given Member States additional time to spend the funding allocated to them. In 2000-2006 and 2007-2013, they were allowed to continue spending for 2 years beyond the end of the programme period. Thus the eligibility period for 2007-2013 continued until 31 December 2015 (rather than the end of 2013).

59
For 2014-2020, the eligibility period (time to spend the programme budget) has been extended by 3 years after the end of the programme period (n+3)\(^5\) instead of 2 years (n+2) allowed for the previous programme periods. As a result, the eligibility period will end in 2023, a full 10 years after the adoption of the legislative framework by the European Parliament and the Council (in late 2013). This will be followed by the closure which adds, for cohesion, at least another 2 years. By then, the constellation of the European Parliament will have changed twice and possibly three times once closure has been finalised.

In cohesion Member States have more time to submit the closure documents

60
The rules on the 2000-2006 closure allowed the eligibility period to be extended a further 6 or 12 months in individual cases. No such extensions were possible for 2007-2013 in either of the two policy areas, which is expected to lead to a shortening of the closure process. However, there is a major difference between cohesion and rural development in terms of the time allowed for the preparation and submission of closure documents to the Commission\(^6\); in cohesion the Member States are granted 15 months after the end of the eligibility period to do this, but in rural development they have only 6 months\(^7\). As a result, for the 2007-2013 programme period, Member States have to complete the closure process by 31 March 2017 for cohesion and by 30 June 2016 for rural development (see Figure 4).
This difference can be explained by the fact that, for rural development, a lot of the work has been already done during the period, so that closure mainly focuses on the last financial year. In contrast, for cohesion the closure exercise is more extensive and involves validation of the expenditure for the whole programme period (see also paragraphs 22 to 25).

For 2014-2020, although the closure arrangements for the two policy areas are more closely aligned, cohesion continues to have a significantly longer deadline for submission of documents to the Commission: 13.5 months after the final eligibility date, compared to 6 months for rural development.
The overlapping of eligibility periods contributes to a late start of subsequent programmes

Many programmes for the 2014-2020 period were approved in 2015 or even 2016, as shown in Table 3. Since the adoption of the legal base in December 2013, implementation for the new period has been in full swing in the Member States and has required the attention of the Commission DGs. Following the negotiation of the partnership agreements and the OPs and RDPs, in cohesion many Member States are in the process of designating managing authorities and certifying authorities which have to be verified by the audit authorities. Notification of these designations to the Commission is a condition for the submission of interim payment claims.

Adoption of programmes for the 2014-2020 period

<table>
<thead>
<tr>
<th>Directorate-General</th>
<th>Number of programmes adopted</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DG REGIO</td>
<td>132 (45 %)</td>
<td>143  (48 %)</td>
<td>20   (7 %)</td>
<td>295</td>
<td></td>
</tr>
<tr>
<td>DG EMPL</td>
<td>153 (71 %)</td>
<td>62   (29 %)</td>
<td></td>
<td>215</td>
<td></td>
</tr>
<tr>
<td>DG AGRI</td>
<td>9 (8 %)</td>
<td>109  (92 %)</td>
<td></td>
<td>118</td>
<td></td>
</tr>
<tr>
<td>Total per year</td>
<td>294 (47 %)</td>
<td>314  (50 %)</td>
<td>20   (3 %)</td>
<td>628</td>
<td></td>
</tr>
</tbody>
</table>

Source: ECA based on Commission data.

At the beginning of November 2016, the designation for 140 (out of 215) programmes for DG EMPL and 163 (out of 295) programmes for DG REGIO has been notified. Sixty-six programmes reporting to DG EMPL and 53 reporting to DG REGIO had submitted interim payment claims for 2016\textsuperscript{32}, showing that they were already implementing operations. In the Member States, therefore, the authorities have generally begun implementing their 2014-2020 programmes. For a large majority of programmes, however, implementation has not started simply because unspent funding was still available under the 2007-2013 programmes for which the eligibility period ended only on 31 December 2015. This overlapping of the eligibility periods creates a disincentive to start the programmes of the subsequent period.
Overlapping of eligibility periods also increases the overall administrative burden of programme management and control at Member State and Commission level

65
The Commission considers closure to be part of the regulatory requirements and does not separately budget for or monitor the cost of the closure exercise in either policy area. The Commission does not require the Member States to provide information on their own costs or resource requirements for the closure exercise; nor does it draw up a comprehensive estimate of the overall resource requirements of its directorates-general. As the Member States see closure as part of their programme management responsibilities, they also do not separately estimate or monitor the resource requirements for closure in either policy area.

66
The main concern expressed by the Member States through our survey and interviews was the time pressure generated both by the overlapping of eligibility periods and the work required for closure. Audit authorities and certification bodies in particular perceive this time pressure as a major risk. Some authorities indicated that they were tackling the problem by hiring additional staff or outsourcing activities. However, owing to budget cuts several others were in no position to do this. Also the Commission has identified a need for additional staff resources during closure and is considering outsourcing certain tasks.

67
Furthermore, some of the Member State authorities involved in closure had been adversely affected by administrative reorganisation leading to the laying off or reassignment of staff. There is therefore a serious risk that insufficient experienced staff will be available for closure activities at national level.

68
The 2014-2020 period will exacerbate the problem of implementing programmes related to two periods simultaneously, as expenditure will continue to be eligible for 3 years after the end of the programme period instead of the 2 years allowed for 2007-2013. Assuming the subsequent period is not delayed, therefore, the work of Member States in connection with the annual acceptance of accounts of 2014-2020 programmes will overlap with the implementation of new programmes between 1 January 2021 and either 30 June 2024 (for rural development) or 15 February 2025 (for cohesion).
Observations

The Commission provided adequate and timely support to help Member States prepare for the closure of 2007-2013 programmes, but needs to remain vigilant to ensure a robust implementation by the Member States.

The Commission issued comprehensive and timely guidance on the 2007-2013 closure.

Rules should be clear, simple and practical, and they should be easy to find in the regulations. A complex legal framework could increase the incidence of mistakes at closure if the authorities do not understand the requirements properly or interpret them differently from the Commission. It could also lead to inefficiencies if the Commission is required to issue clarifications to the Member States. To mitigate these risks, the Commission needs to prepare guidelines in advance that summarise and further clarify the provisions for closure. While the regulations provide a general framework for the programme period as a whole (programming, financial management, audit, etcetera), the guidelines should focus more on technical and practical aspects of the Commission’s interpretation of the regulations.

The Commission’s guidelines facilitated understanding of the rules applicable to closure in both policy areas.

Our review of the legal framework showed that, for both policy areas, the rules on closure need to be taken from different regulations. This is especially the case for rural development, where the many regulations relevant to closure add to the complexity. Moreover, the financial aspects of the 2007-2013 closure process are covered by the new regulations adopted in 2013 and 2014 for the 2014-2020 period, while the eligibility conditions for expenditure are set out in the regulations for the 2007-2013 period. Control arrangements and transitional rules are covered by still other regulations.

33 The regulations defining the closure arrangements in the respective policy areas are listed in Annex I.


71
For both policy areas, however, the Commission addressed the complexity of the legal framework by preparing closure guidelines. These summarise the key requirements and deadlines of the process and provide further clarifications, which were welcomed by the majority of the authorities involved in the closure exercise.

72
Overall, we found that the Commission had issued comprehensive guidelines clarifying the applicable provisions in the regulations for both areas. Draft guidelines were presented to the Member States at an early stage, which gave them an opportunity to comment on the content. Table 4 shows the timeline for the adoption of guidelines in both policy areas. The amended guidelines included very few changes.

Table 4

<table>
<thead>
<tr>
<th></th>
<th>Cohesion</th>
<th>Rural development</th>
</tr>
</thead>
<tbody>
<tr>
<td>First draft of guidelines presented to the Member States</td>
<td>June 2012¹</td>
<td>April 2013⁴</td>
</tr>
<tr>
<td>Guidelines adopted</td>
<td>March 2013²</td>
<td>March 2015⁵</td>
</tr>
<tr>
<td>Amended guidelines adopted</td>
<td>April 2015³</td>
<td>December 2015⁶</td>
</tr>
</tbody>
</table>

¹ At the Coordination Committee of the Funds meeting of 7 June 2012.
⁴ At the Rural Development Committee meeting of 19 April 2013.

Source: ECA.
In both policy areas, the guidelines add clarifications and practical guidance on matters that were not covered in detail or were not sufficiently clear in the regulations.

Almost all the authorities in both policy areas which participated in the survey considered that the Commission provided the guidelines sufficiently ahead of time to prepare for closure. Two thirds of the respondents indicated that the guidelines clarified many issues which were not sufficiently addressed in the regulations (see Figure 5). Almost all authorities also found the guidelines to be clear regarding the organisation of closure, including responsibilities and deadlines.

Around one fifth of the surveyed authorities indicated that they still needed further guidance or clarification on specific issues. The areas for which 15 % or more of the respondents considered the guidance to be unclear or rather unclear are set out in Annex IV.

Survey responses by Member State authorities on whether sufficient clarification was provided in the Commission’s guidelines

Source: ECA survey.
Observations

The absence of deadlines for certain aspects of the closure process could imperil the completion of closure on time

76
Clear deadlines are an important feature of the rules governing closure, as they help to ensure that tasks are completed on time and the closure process as a whole is effective.

77
Overall, the regulations included deadlines for most aspects, but in three areas there were no deadlines: for Member States’ replies to Commission questions on the closure documents, for the Commission’s approval of major projects, and for the public contribution paid by Member States to beneficiaries in the cohesion area.

No deadline in the regulations for Member State replies to Commission questions: risk of protracting closure

78
If the closure documents are of good quality, the provisions in the regulations are sufficient to guarantee closure on schedule. However, if the Commission is not satisfied with the information provided by a Member State, the absence of a timeframe in the regulation for replies to the Commission’s questions could further protract the closure process.

79
None of the regulations for the 2007-2013 period specify a deadline for Member States to reply to Commission questions on the closure documents. In cohesion, the guidelines set a deadline of 2 months in this respect, extendable on request by two more; the rural development guidelines contain no such provision.
**Observations**

**No deadline for the submission and approval of major projects in cohesion: complicates closure and poses a risk to the spending of funds**

80.

For the 2007-2013 period, major projects in the cohesion area were defined as operations with a total cost exceeding 50 million euros\(^{38}\). As such projects involve significant EU funding, they had to be appraised and approved for financing by the Commission\(^ {39}\).

81.

The regulatory framework for the 2007-2013 period contained no deadline for the submission of major project applications and, in practice, no final deadline for the Commission to adopt the related decisions. As of 15 November 2016, 19 major project applications from seven Member States were still pending approval by DG REGIO. The associated total eligible cost of these projects was 1 billion euros and the EU contribution was 854 million euros.

82.

A pending major project decision complicates the closure of an OP, as the managing and audit authorities do not know how to handle the expenditure in question when preparing the closure documents. Pending decisions also create legal uncertainty for the Member State. In particular, with the closure deadline approaching, if the Commission rejects a major project there is an increased risk that the Member State will not be able to replace it with other eligible expenditure, which may lead to difficulties in fully using up the EU contribution.

83.

For the 2014-2020 period, expenditure relating to a major project may be included in a request for payment\(^ {40}\) if the Commission is first notified of a positive appraisal by independent experts or after the submission for approval by the Commission. The Commission should adopt a decision on the approval of the financial contribution to the major project within 3 months\(^ {41}\).

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\(^{40}\) Article 102(6) of Regulation (EU) No 1303/2013.

\(^{41}\) Article 102(1) and (2) of Regulation (EU) No 1303/2013.
Observations

No deadline in cohesion for payment of the public contribution to beneficiaries: a reputational risk

As a general rule, cohesion expenditure is eligible for EU co-financing if actually paid by a beneficiary to implement operations during the eligibility period\(^42\). Therefore it is not necessary for the beneficiary to have received the corresponding public co-financing before the Member State claims reimbursement from the Commission.

Managing authorities must ensure that beneficiaries receive the total amount of the public contribution as quickly as possible and in full\(^43\), but there is no specific deadline in the cohesion regulatory framework for 2007-2013 regarding payments to beneficiaries. Thus at closure the Member States can seek reimbursement for expenditure which has not yet been paid to the beneficiaries\(^44\).

We have previously drawn attention to serious delays in the payment of the public contribution to beneficiaries (see Box 2). The Commission does not require Member States to report at closure, or subsequently, what part of the public contribution has actually been disbursed. As a result, there is a possibility that beneficiaries will not receive the full contribution at the appropriate time, even if the Commission has paid its contribution in full to the Member State. In principle, this could mean, even after closure (in 2018 or later), that beneficiaries may still not have received the EU contribution to their projects. We consider that late payments are a considerable reputational risk for the EU.

Delayed payment of the EU contribution to beneficiaries

In France there were serious delays in the transfer of EU funds from the national authorities to regional bodies acting as beneficiaries: in two cases the delay was longer than 5 months\(^45\).

Under a project in Italy to draw up a report mapping training needs in various Italian regions, the beneficiary submitted the cost claim to the managing authority in March 2014. The costs included in the claim were certified by the national authorities and submitted to the Commission. Although the Commission settled the costs declared in June 2014, the beneficiary received the interim payment only 5 months later, in November 2014.

Similar cases were found in four more projects in Italy, one in France and six in the Netherlands\(^46\).

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\(^{42}\) Articles 56(1) and 78(1) of Regulation (EC) No 1083/2006.


\(^{44}\) Section 5.1.1 of the Cohesion closure guidelines.

\(^{45}\) Box 6(3)(a) of the ECA’s annual report for 2013 (OJ C 398, 12.11.2014).

\(^{46}\) Box 6(5)(a) of the ECA’s annual report for 2014.
Observations

87 Unlike in cohesion, in rural development only expenditure for which the relevant aid has actually been paid to the beneficiary is eligible for the EU contribution\(^\text{47}\).

88 For the 2014-2020 period, the regulation specifies that the public contribution to beneficiaries must be paid within 90 days of the date on which the beneficiary submits a payment claim\(^\text{48}\). The regulation also features a back-up clause requiring the Member State to ensure, by the date of closure, that the amount of the public contribution paid to beneficiaries is at least equal to the contribution received from the EU budget\(^\text{49}\).

Certain requirements in the cohesion guidelines go beyond the regulatory provisions

89 We found that the cohesion guidelines introduced some requirements which went beyond the regulatory provisions. The requirements in question related to financial instruments, non-functioning projects, the phasing of projects and the residual risk rate. They are presented in Table 5, which also indicates how they are addressed in rural development and whether any changes have been made for 2014-2020. No additional requirements were introduced by the rural development guidelines.

90 Around 19% of managing authorities and 24% of audit authorities also noted in their replies to the survey that some requirements in the guidelines went beyond the provisions in the regulations.

91 The requirements listed in Table 5 were all introduced to address specific shortcomings. The requirements concerning non-functioning projects and the reporting of a residual risk rate help to mitigate the risks associated with closure. The clarifications related to the phasing of non-major projects are needed, but, as formulated, may complicate the closure exercise. We have previously reported on the extension of the eligibility period for financial instruments through the Commission’s closure guidelines\(^\text{50}\) which poses a problem of the hierarchy of norms. The Commission contests this view and has refused to submit a legislative proposal amending Regulation (EC) No 1083/2006 so as to provide legal certainty to the Member States\(^\text{51}\).
### Requirements in the cohesion guidelines which go beyond the regulations

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description of the issue in cohesion</th>
<th>Approach in rural development</th>
<th>Approach in 2014-2020 period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligibility period for expenditure under financial instruments</strong>&lt;sup&gt;1&lt;/sup&gt;</td>
<td>In our 2015 annual report we noted that Article 56(1) of Regulation (EC) No 1083/2006 established 31 December 2015 as final date of eligibility for payments. In April 2015, the Commission decided to extend the eligibility period until 31 March 2017. It did this unilaterally, through a Commission decision amending the closure guidelines, instead of asking the Council and Parliament to amend the regulation. Since there is still no legislation of sufficient hierarchy we consider disbursements made after 31 December 2015 to be irregular.&lt;sup&gt;2&lt;/sup&gt;</td>
<td>No change to the eligibility period, which remains 31 December 2015 as for all other expenditure.</td>
<td>In both policy areas, the expenditure under financial instruments generally has to have been actually paid or, in the case of guarantees, committed within the eligibility period.&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Phasing of major projects</strong> vs. <strong>non-major projects.</strong></td>
<td>The regulation provides for the phasing of major projects&lt;sup&gt;4&lt;/sup&gt; (splitting them into separate stages to be carried out in different programme periods), but the guidelines&lt;sup&gt;5&lt;/sup&gt; contain further rules on phasing covering the financing of non-major projects over two programme periods (2007-2013 and 2014-2020). The requirements governing the financing of projects over two programme periods are more complicated and restrictive in cohesion than in rural development.</td>
<td>The regulation does not provide for the division of projects into phases. Unfinished projects are generally eligible&lt;sup&gt;6&lt;/sup&gt; (without a requirement relating to the total cost of the project) for further co-financing in the new period based on the transitional rules. The cut-off point is the date of payment of expenditure.</td>
<td>As with the 2007-2013 period, the regulations for the 2014-2020 period cover only the phasing of major projects.</td>
</tr>
</tbody>
</table>

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1 Payments from a financial instrument to final recipients, the reimbursement of management costs and the issuance of guarantees.
3 Article 42(1) of Regulation (EU) No 1303/2013: ‘at closure of a programme, the eligible expenditure of the financial instrument shall be the total amount of programme contributions effectively paid or, in the case of guarantees, committed by the financial instrument within the eligibility period’. This is subject to the exceptions in Article 42(2) and (3).
4 Article 39 of Regulation (EC) No 1083/2006 defines a major project as an operation whose total cost exceeds 50 million euros.
5 Article 40(d) of Regulation (EC) No 1083/2006.
6 Sections 3.3 and 3.4 of the Cohesion closure guidelines.
7 With the exception of three discontinued measures.
### Observations

#### Table 5

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description of the issue in cohesion</th>
<th>Approach in rural development</th>
<th>Approach in 2014-2020 period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition and requirements for non-functioning projects</td>
<td>No legal requirement for operations to be functioning by closure, hence a risk that operations receiving EU co-financing may never be completed. This requirement is introduced in the guidelines. However, as an exception and under certain conditions, non-functioning projects can be co-financed. They have to be completed by 31 March 2019; otherwise the Commission will proceed with a financial correction.</td>
<td>Unfinished projects are generally eligible as explained above.</td>
<td>Still no requirement for operations to be functioning at closure.</td>
</tr>
<tr>
<td>Requirement to calculate a residual risk rate</td>
<td>The guidelines expand the regulatory requirement of calculation of an annual error rate to a requirement for the audit authorities to disclose a residual risk rate in the closure declaration for each OP. The residual risk rate at closure is defined as the sum of the annual residual risk amounts (taking account of withdrawals and recoveries) divided by the sum of the total expenditure declared at closure. The audit authorities should take into consideration the residual risk rate when formulating their audit opinion at closure. While this may mean a good deal of additional work for some audit authorities, it provides the Commission with additional assurance that the remaining level of error for a programme is below materiality at closure.</td>
<td>The regulations do not require certification bodies to submit an audit opinion or a report for the whole period, or to calculate a residual risk rate for the programme at closure.</td>
<td>The regulations do not require audit authorities or certification bodies to submit an audit opinion or a report for the whole period, or to calculate a residual risk rate for the programme at closure.</td>
</tr>
</tbody>
</table>

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8 Section 3.5 ‘Non-functioning projects’: ‘at the time of the submission of the closure documents, Member States have to ensure that all projects included in the programme closure are functioning, meaning completed and in use, so considered as eligible’.

9 Annex VI of the Cohesion closure guidelines (Guidance on preparation for the final control report and closure declaration).

Source: ECA.
Observations

Member States are satisfied with the Commission’s support, but coordination between national and regional authorities is essential

92
The Commission should help the authorities in the Member States to prepare for closure by providing timely and appropriate support in the form of training and ongoing clarification as and when issues arise. Member States should start their preparations well in advance and organise closure activities nationally and regionally at the appropriate time.

Member States are satisfied with the Commission’s support; overall, they consider themselves prepared for closure

93
Our analysis showed that the Commission had provided adequate support, in the form of training, conferences, seminars, meetings and Q&A documents with a bearing on both policy areas. All the responsible authorities had access to these documents and were invited to attend a series of training sessions organised by the Commission.

94
Most authorities that participated in our survey, from both policy areas, found the Commission’s training and support to be useful and reported that their questions were answered at the appropriate time. The majority of respondents were also satisfied with the type of support provided by the Commission, with just one tenth of all authorities expressing a preference for support to be given in some other way.

95
Nearly one third of respondents (29 %) found the Commission’s support for the 2007-2013 closure exercise to be an improvement on the 2000-2006 period (see Figure 6).
89% of the respondents to the survey found themselves well prepared or fairly well prepared for closure as early as September 2015. A majority also indicated that they were ready or well advanced with the preparation of internal manuals and procedures. 85% of respondents considered that they would have sufficient time to complete their tasks properly.

**Coordination between different Member State authorities is perceived as a risk to the thorough completion of closure tasks**

In order to ensure the effectiveness and efficiency of closure, it is vital to set up an effective coordination process among the different authorities in a Member State. All authorities should have sufficient time to perform their closure tasks satisfactorily.
Observations

98 The survey showed that 44% of authorities with responsibilities in rural development and 56% of authorities in cohesion considered that coordination with other authorities posed a moderate or high risk to closure.

99 Audit authorities and certification bodies in particular raised concerns as to whether the timetable agreed at national level would give them sufficient time to carry out their work satisfactorily. Appropriate agreed deadlines are of greater concern to these authorities than to managing authorities and paying agencies, as their tasks are carried out last.

100 In cohesion, where the rules make certain types of expenditure eligible until the deadline for the submission of documents on 31 March 2017 (see paragraphs 106 to 113) the closure process may leave insufficient time for the audit authorities to check final statements of expenditure. This is perceived as a particularly high risk.

101 Especially for programmes which have not spent the full EU contribution, the timetable at Member State level might include a late deadline for the managing authority to submit final expenditure to the audit authority. Sometimes the agreed submission date is at the end of 2016, which increases the burden on the audit authority and can result in a limitation of scope in the audit opinion that needs to be issued by 31 March 2017. For such cases the Commission can either request the audit authority to carry out additional verifications of this expenditure, which de facto means giving supplementary time to the audit authorities and prolonging the closure exercise, or impose financial corrections. It is unclear how such a limitation of scope will be considered for the calculation of the residual risk rate.

102 Box 3 gives an example of a ‘good practice’ in the form of a timetable agreed by the various authorities.
Some respondents considered that the Commission should have set binding deadlines for all the authorities concerned. However, for the 2014-2020 period, timetabling the work of the various national and regional authorities remains the responsibility of the Member States.

The Commission needs to remain vigilant to guarantee the robustness of the 2007-2013 closure exercise

Appropriate design and preparation are essential, but not sufficient, elements to ensure an effective and timely closure of cohesion and rural development programmes. This will mainly depend on the way the closure process is implemented in practice on the ground, on the quality of the closure documents submitted by the Member States and on the consistent and thorough examination by the Commission within the deadlines set out in the regulations.

### Box 3

**A binding timetable agreed in a German region**

In the German region of Schleswig-Holstein, the managing, certifying and audit authorities agreed on a timetable which was binding for all three. The aim was to provide sufficient time for each authority to carry out its work.

<table>
<thead>
<tr>
<th>Task</th>
<th>Responsible authority</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of last interim payment claim to Commission</td>
<td>MA, CA</td>
<td>29.4.2016</td>
</tr>
<tr>
<td>Preparation of final payment claim</td>
<td>MA, CA</td>
<td>30.11.2016</td>
</tr>
<tr>
<td>Final implementation report</td>
<td>MA</td>
<td>30.11.2016</td>
</tr>
<tr>
<td>Audit of closure documents</td>
<td>AA</td>
<td>31.1.2017</td>
</tr>
<tr>
<td>Approval by monitoring committee</td>
<td>MA</td>
<td>20.2.2017</td>
</tr>
<tr>
<td>Submission of closure package to Commission</td>
<td>MA, CA, AA</td>
<td>1.3.2017</td>
</tr>
</tbody>
</table>
In a previous audit of the initial phase of the 2000-2006 closure in the area of cohesion, we found that it was only partially effective because, in order to avoid financial corrections at closure, Member States had submitted declarations containing unjustified reductions in final error rates\(^{52}\). Despite improvements in the control framework, this risk is also present for the closure of the 2007-2013 programme period. Moreover, we identified a number of risks that need to be particularly addressed during the 2007-2013 closure exercise.

**Specific risks to the regularity of expenditure remain in relation to financial instruments, contractual advances and some state aid-relevant major projects**

**A risk that the eligibility of expenditure under financial instruments will not be adequately verified at closure**

Financial instruments are a funding mechanism under the EU budget which may take the form of loans, guarantees or equity (or quasi-equity) investments. They are used both in cohesion and rural development.

When a financial instrument was set up in the 2007-2013 period, an advance amount was paid to the instrument and the Commission reimbursed the EU contribution\(^{53}\) to the Member State. However, the eligible expenditure for financial instruments can be determined only at closure and comprises the actual amounts of loans, guarantees and equity investments provided to final recipients as well as eligible management costs and fees\(^{54}\). As audit authorities and certification bodies were not required to audit this expenditure during the period, there is a risk that this expenditure will not be checked adequately for eligibility. Allowing financial instruments in cohesion to provide financial support to final recipients until 31 March 2017 (see Table 5) further restricts the audit authorities’ ability to obtain assurance that the expenditure is legal and regular (see also paragraph 100).

For the 2014-2020 period, public contributions to a financial instrument are to be paid in tranches. The payment of a given tranche is conditional on the actual use of a certain percentage of the previous tranche\(^{55}\), with the audit authorities and certification bodies required to verify that use. However, the amount of eligible expenditure is still determined only at closure\(^{56}\). Taken together, these measures reduce the risk of the EU budget co-financing irregular expenditure.

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55 Article 41(1) of Regulation (EU) No 1303/2013.
56 Article 42 of Regulation (EU) No 1303/2013.
The arrangements for contractual advances in cohesion: a challenge for the verification of eligibility

109
Contractual advances are payments on account relating to the execution of works or services in accordance with normal commercial law and practice on the basis of contracts entered into by a final beneficiary or final recipient.

110
The Commission considers contractual advances paid by a beneficiary up to 31 December 2015 as eligible expenditure as long as they are converted into actual expenditure before 31 March 2017. This payment has to be compliant with national rules and contractual obligations.

111
The declaration of contractual advances, especially where these represent a high percentage of the contract value, introduces a significant risk that there will be ineligible expenditure at closure. To minimise this risk, it is necessary to examine very carefully whether high advance payments were made in accordance with commercial law and practice. The freedom to convert advances into actual expenditure at any time until 31 March 2017 also means that the audit authorities will often be unable to verify such expenditure and thus provide assurance as to its eligibility (see also paragraph 100).

112
In view of the considerable risk associated with the declaration of contractual advances at closure, several Member States (for example Bulgaria, Denmark, Estonia) have decided not to include them in their final payment claims.

113
We note that the Commission also identified the eligibility of expenditure related to financial instruments and contractual advances as a risky area and in September 2016 provided further guidance on those issues to the audit authorities57.
Observations

Major projects approved before the end of 2012: a higher risk of non-compliance with state aid rules

114
Of the 918 major projects approved by the Commission for the 2007-2013 programme period, decisions on 440 were adopted before the end of 2012. The Directorate-General for Competition did not systematically verify whether investments in public infrastructure concerned by these projects might involve state aid. In November 2012, the Commission issued a guidance note to Member States, stating that it did ‘not intend to examine systematically compliance with the State aid rules of major infrastructure projects covered by this note […] before the date of this note’\(^{58}\). In principle, it is thus possible for a Member State to have received a Commission decision approving a major project while being in breach of state aid rules\(^{59}\).

115
Moreover, prior to 2012 and the clarifications provided by the European Court of Justice in a judgment on a state aid case (the Leipzig Halle judgment), Member States rarely notified the Commission about investments in infrastructure\(^{60}\).

60 Paragraph 121 of Special Report No 24/2016.
Conclusions and recommendations

The rules for closure have improved but further steps are needed to make it more efficient and timely

The closure arrangements in cohesion and rural development need to be still further aligned for the post-2020 period

116
The concept of closure has evolved over the last three programme periods, in line with improvements to the management and control systems in both cohesion and rural development. Increasingly, assurance has been provided at regular intervals throughout the programme period, resulting in a reduced focus at the end of the period and limiting the work that needs to be carried out specifically at closure.

117
In the 2000-2006 period, the closure arrangements were the same for both cohesion and for the investment-related measures under rural development and the two policy areas applied common guidelines. Expenditure was declared cumulatively and only accepted by the Commission at closure. The 2007-2013 period placed more weight on annual assurance, but otherwise the two policy areas diverged, with the introduction of the annual acceptance of expenditure for the investment-related measures under rural development. For cohesion, the legality and regularity of expenditure was checked by the audit authorities and the Commission on an annual basis. Moreover, whenever necessary, the Commission could interrupt and suspend payments. However, expenditure continued to be declared cumulatively and is formally accepted by the Commission only at closure.

118
For the 2014-2020 period, EU spending on both cohesion and rural development comes from the European Structural and Investment Funds (ESIFs). We welcome the alignment of assurance and closure arrangements between the policy areas, which has resulted from this change. The increased focus on providing assurance during the period and reducing the number of tasks specific to closure is a positive development, as it could also reduce the associated risks and could lead to a shorter closure process. Notwithstanding efforts to streamline procedures through the common provisions regulation, differences remain in the closure arrangements between the two policy areas (see paragraphs 21 to 29).
Conclusions and recommendations

Recommendation 1

In its legislative proposals for the post-2020 period the Commission should propose further alignment of the regulatory provisions for closure between cohesion and for the investment-related measures under rural development, aiming to achieve a harmonised annual assurance process in both areas.

Specifically, this alignment should aim for convergence in the terminology and roles of the Member State authorities active in the two policy areas, legality and regularity in the annual acceptance exercise and a standard accounting year.

Target implementation date: when preparing the post-2020 legislative proposals.

Closure, as defined in the regulations, does not yet encompass the Commission’s final acceptance of the legality and regularity of expenditure and the programmes’ results

Differences in expectations regarding the purpose and consequences of closure

119

There is no definition of closure in the respective regulations for cohesion and rural development. The Commission has set out the modalities and practical considerations in several guidance documents which were also discussed with the Member States. In cohesion, we found that the Commission and Member States have a similar view of the purpose of closure, both interpreting it more broadly than its definition in the regulations of providing only financial clearance. In rural development, however, the Member States’ understanding of closure is somewhat different from that of the Commission.

120

In both areas, and in particular in that of rural development, there is an expectation gap owing to the Member States’ understanding that closure provides legal certainty as to the legality and regularity of the expenditure accepted by the Commission. Strictly speaking, however, this is not the case (see paragraphs 30 to 33).
Conclusions and recommendations

In the 2007-2013 period, final acceptance of programme expenditure for the period as legal and regular is only done for cohesion

121
The 2007-2013 closure procedure for cohesion takes account of the results of all EU and national checks and audits of programme activities. Closure can therefore be seen as demonstrating acceptance that the expenditure for the period was legal and regular. DG REGIO and DG EMPL may also carry out additional checks that can lead to financial corrections up to 3 years after closure, although in practice this only happens in exceptional cases. In contrast, in the area of rural development conformity audits are still ongoing at closure, which is therefore purely a financial transaction with no acceptance of the expenditure as legal and regular. The Commission does not issue final acceptance of the expenditure as legal and regular, either annually or for the period as a whole. This situation remains unchanged for the 2014-2020 period (see paragraphs 39 to 45).

The Commission should inform the budgetary authority about the final outcome of the closure procedure

122
Reporting on the outcome of public spending is a key accountability tool. The Commission reports to the budgetary authority through the Annual Activity Report of respective directorates-general on the basis of the annual state of play, but there is no specific report envisaged on the final outcome of closure for the programme period as a whole. This situation remains unchanged for the 2014-2020 period.

123
In the EU’s budget system, which is built on multiannual programming, we consider that programme closure should entail a final acceptance by the Commission that the expenditure for the programme period as a whole was legal and regular, account being taken of the results of all EU and national checks and audits, together with a report on programme implementation and results. Information on these most relevant performance and compliance aspects should then also be reported to the budgetary authority. Such arrangements should be considered when preparing the legislative proposal for the post-2020 period (see paragraphs 53 to 55).
Conclusions and recommendations

A residual risk rate should be calculated to assess the legality and regularity of expenditure in the course of programme implementation and at closure

124 We consider that the calculation of a residual risk rate for each cohesion programme is an appropriate and useful measure which can provide assurance that the remaining error at closure does not exceed the materiality level.

125 In rural development, however, we found that the current procedures do not ensure either through the annual or final clearance of accounts or after finalisation of the conformity audits that the residual error at programme level is below the Commission’s 2% materiality threshold. The Commission does not calculate a residual risk rate at programme level taking into account the financial corrections resulting from conformity audits and thus there is no assurance that the remaining error for a programme does not exceed the materiality level (see paragraphs 34 to 38).

Closure should include an evaluation of programme performance and the achievement of outputs and results

126 There was little emphasis on the achievement of outputs and results in the regulatory framework and design for the closure of the 2007-2013 period. Member State authorities are required to report on the achievement of programme targets, but this information is usually not verified by audit authorities or certification bodies. While the Commission is required to evaluate this reporting, the payment of a final balance is not directly linked to the achievement of targets.

127 We welcome the increased focus on performance in the regulatory framework for the 2014-2020 period. One of the main changes is the re-introduction of a performance reserve aiming to create a link between payments and achievement of outputs and results. It remains to be seen how the performance reserve will be applied in practice during the 2014-2020 period (see paragraphs 46 to 52).
Conclusions and recommendations

**Recommendation 2**

In its legislative proposals for the post-2020 period, the Commission should introduce in the legislative proposals a final acceptance concerning the legality and regularity of programme expenditure and the outputs and results achieved at programme closure. In this connection, in both policy areas the Commission should:

- lay down procedures for calculating a residual risk rate at programme level after implementation of all financial corrections, and ensure that the rate does not exceed the materiality threshold at closure; and

- assess whether programme targets have been achieved and, if necessary, impose financial corrections for underperformance.

Target implementation date: when preparing the post-2020 legislative proposals.

**Recommendation 3**

In its legislative proposals for the post-2020 period, the Commission should specify how it will inform the budgetary authority about the outcome of the closure procedure once the Commission has issued its final acceptance.

Target implementation date: when preparing the post-2020 legislative proposals.

**There should be no overlap of eligibility periods and closure should take place as soon as possible after the end of the eligibility period**

For the 2000-2006 and 2007-2013 periods the Member States had two additional years after the end of the period in which to spend the money allocated to them. For the 2014-2020 programme period, this has been extended to 3 years in addition to the original programme period of 7 years. As a result, the eligibility period will end in 2023, a full 10 years after the adoption of the legislative framework by the European Parliament and the Council (in late 2013). This will be followed by the closure which adds, for cohesion, at least another 2 years.
Conclusions and recommendations

129 Closure will always overlap with the subsequent period. We consider that the availability of human resources is a key challenge for the effective closure of programmes. This is why the time during which programmes of two programme periods are implemented simultaneously needs to be as short as possible to reduce the overall administrative burden. Moreover, the possibility to spend the programme budget after the end of a programme period creates a disincentive to start the programmes of the next period.

130 We therefore consider that there should be no overlap of eligibility periods and the end of the eligibility period should coincide, as far as possible, with the beginning of the subsequent programme period. This would increase the pressure on the Member States to spend EU funds in a timely and meaningful manner and would ensure a prompt start of the subsequent programme period. Simplified rules on phasing, particularly in the cohesion area, could alleviate the transition between the programme periods.

131 In addition, the annual acceptance of the accounts is a feature of both policy areas for the 2014-2020 period, and as a result closure activities, in particular in cohesion, should be less onerous than in the past. However, we found that the time given Member State authorities for the preparation and submission of closure documents is still different in the two policy areas: 13.5 months for cohesion and 6 months for the rural development policy area (see paragraphs 58 to 68).

Recommendation 4

In its legislative proposals for the post-2020 period, the Commission should ensure that eligibility periods no longer overlap with the subsequent programme period and that the closure procedure is finalised promptly after the end of the eligibility period. Specifically, in both policy areas:

- the overlap of eligibility periods should be discontinued and the end of the eligibility period should coincide, as far as possible, with the beginning of the subsequent programme period;

- Member States should be required to submit all closure documents no later than 6 months after the final eligibility date; and

- the Commission should reduce the time needed for its decision on acceptance of the final implementation report and the last annual accounts, including calculation of the final balance. A maximum of 6 months (12 months counted from the final eligibility date) should be sufficient.

Target implementation date: when preparing the post-2020 legislative proposals.
Conclusions and recommendations

The Commission provided adequate and timely support to help Member States prepare for the closure of 2007-2013 programmes, but needs to remain vigilant to ensure a robust implementation by the Member States

132 Overall, we found that the closure guidelines helped Member States with their understanding and organisation of closure: in both policy areas they summarise the key requirements and deadlines to be found in a number of different regulations and provide additional explanation where necessary. The Commission also delivered training on closure and support which generally addressed Member States’ needs at the appropriate time. The Member States generally consider themselves prepared for the closure exercise, and the Commission is finalising the necessary internal procedures.

Certain risks remain in respect of the 2007-2013 closure

133 We identified certain risks that need to be particularly addressed during the 2007-2013 closure exercise. For example, certain deadlines relating to closure are either not defined at all or only defined in the guidelines. This could contribute to an overly long closure process. Moreover, if payments to beneficiaries are delayed by a Member State, this could also lead to a reputational risk for the EU. Finally, as of mid-November 2016, major project applications corresponding to an EU contribution of 854 million euros had not yet been approved by the Commission (see paragraphs 70 to 88 and 93 to 96).

Recommendation 5

Member State managing authorities should ensure that all beneficiaries receive the full EU contribution to their ERDF, CF and ESF projects on time. The deadline set for the 2014-2020 programme period of 90 calendar days from the date of submission of a payment claim is appropriate in this regard.

Target implementation date: March 2017.
Conclusions and recommendations

Recommendation 6

The Commission should adopt major project decisions still pending for the 2007-2013 period promptly. For the 2014-2020 period, DG REGIO should formulate internal procedures to guarantee that major project decisions are taken quickly, in line with the regulatory deadline of 3 months.

Target implementation date: January 2017.

The Commission’s closure guidelines go beyond the regulatory provisions

134
We found that the Commission’s closure guidelines for cohesion sometimes go beyond the requirements in the regulations. We have previously reported on the most serious such issue in relation to the extension of the eligibility period for financial instruments⁶¹. There are, however, a few other areas in which this is also the case.

135
Some of these requirements, namely the requirement concerning functioning projects and the reporting of a residual risk rate, help to mitigate the risks associated with closure. Others, such as the phasing of non-major projects, are necessary but, as currently formulated, may complicate the closure exercise (see paragraphs 89 to 91).

The Commission needs to remain vigilant to guarantee the robustness of the 2007-2013 closure exercise

136
Appropriate design and preparation are essential, but not sufficient, elements to ensure the effective and timely closure of cohesion and rural development programmes. Just as important are the way the closure process is implemented in practice, the quality of the closure documents submitted by Member States and the Commission’s examination of them in a consistent and thorough manner within the deadlines set in the regulations.
We found that coordination between different authorities in a Member State, including the careful timetabling of their work is crucial to the success of the closure exercise. Deadlines need to be agreed to allow sufficient time for audit authorities and certification bodies to provide sufficient assurance as to the eligibility of all expenditure declared at closure. Furthermore it remains to be seen whether the deadlines agreed at national and regional level will be respected.

In a previous audit of the initial phase of the 2000-2006 closure in the area of cohesion, we found that it was only partially effective because, in order to avoid financial corrections at closure, Member States had submitted declarations containing unjustified reductions in final error rates. Despite improvements in the control framework, we consider that this risk is also present for the closure of the 2007-2013 programme period.

We have also observed in a previous report that the Commission, particularly at the beginning of the 2007-2013 programme period, did not systematically verify major projects for their compliance with state aid requirements. As a result, there is a risk that some EU co-financed major projects are incompatible with the internal market, also due to the fact that, prior to 2012, Member States rarely notified the Commission about investments in infrastructure.

We recommended that the Commission ask audit authorities to check the state aid compliance of major projects approved before the end of 2012. The Commission did not accept this recommendation, and we therefore consider that compliance with the state aid rules remains a risk for the closure of major projects approved before the end of 2012.

We also consider that, in relation to financial instruments and contractual advances in particular, there is a remaining risk of ineligible expenditure being declared at closure (see paragraphs 97 to 115).
Recommendation 7

At closure the Commission should ensure that Member States implement specific procedures to verify, in particular, the eligibility of expenditure relating to financial instruments and contractual advances. If audit authorities and certification bodies are unable to provide sufficient assurance as to the eligibility of such expenditure, additional audit procedures may be necessary.

Target implementation date: March 2017.

This report was adopted by Chamber II, headed by Mrs Iliana IVANOVA, Member of the Court of Auditors, in Luxembourg at its meeting of 14 December 2016.

For the Court of Auditors

Klaus-Heiner LEHNE
President
Legal basis for the closure of 2007-2013 programmes

The closure arrangements for 2007-2013 cohesion operational programmes are defined in:

- Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund; and


The closure arrangements for 2007-2013 rural development programmes are given in:


- Commission regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures.
Management and control of 2007-2013 programmes at Member State level

In both cohesion and rural development, three types of authority are responsible in the Member States for the management and control of OPs/RDPs. These bodies work together, under Commission supervision and responsibility, to ensure the legality and regularity of:

<table>
<thead>
<tr>
<th>Cohesion</th>
<th>Rural development</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Managing authorities (MA) are responsible for planning and implementing an OP, including the selection of individual operations and programme evaluation. They also carry out first-level checks of operations and expenditure. They submit annual implementation reports which have to be accepted by the Commission.</td>
<td></td>
</tr>
<tr>
<td>(i) Managing authorities (MA) are responsible for planning, implementation, delivery and evaluation of an RDP. They submit annual progress reports on the implementation of the RDP to the Commission.</td>
<td></td>
</tr>
<tr>
<td>(ii) Certifying authorities (CA) certify the legality and regularity of the expenditure declared and submit interim payment claims to the Commission.</td>
<td></td>
</tr>
<tr>
<td>(ii) Paying agencies (PA) are responsible for the management and control of expenditure. They should have a system of internal control which provides sufficient guarantees that payments are legal and regular. They submit quarterly payment claims to the Commission and prepare annual accounts.</td>
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</tr>
<tr>
<td>(iii) Audit authorities (AA) must be independent from the managing authority and certifying authority. They provide assurance to the Commission on the effective functioning of the management systems and internal controls for an OP and the legality and regularity of the expenditure certified by the certifying authorities. They are required to submit annual control reports to the Commission, as well as an annual audit opinion covering the functioning of the systems and giving an estimated annual error rate; these have to be verified and accepted by the Commission.</td>
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</tr>
<tr>
<td>(iii) Certification bodies (CB) provide assurance to the Commission regarding the completeness, accuracy and veracity of the paying agency’s annual accounts and the proper functioning of its internal control system. They must be independent from the paying agency. Since 2015, certification bodies have also to provide assurance on the legality and regularity of the expenditure for which reimbursement has been requested from the Commission.</td>
<td></td>
</tr>
</tbody>
</table>

1 Article 317 of the Treaty on the Functioning of the European Union.
2 Articles 67(1) and 67(3) of Regulation (EC) No 1083/2006.

Source: ECA.
Annexes

Evolution of the Commission’s assurance framework and closure arrangements over three periods

(a) Cohesion

Cohesion 2000-2006

End of programming period | Final eligibility date | Submission of closure documents | Payment of the final balance
--- | --- | --- | ---

**Annual monitoring and evaluation**
- MA: Annual implementation report
- Commission: Acceptance of annual implementation report

**Closure**
- MA: Final implementation report
- PA: Certified statement of final expenditure
- WuB: Declaration on winding-up of the assistance (providing assurance for the whole period)
- Commission: Acceptance of final implementation report and winding-up declaration, payment of the final balance

Multiannual assurance
- Commission: Audits on legality and regularity

01/2000 | 12/2006 | 12/2008 | 03/2010 | ???
--- | --- | --- | --- | ---

Programming period: 7 years
- 2 years
- 15 months
- 3 years

Cohesion 2007-2013

End of programming period | Final eligibility date | Submission of closure documents | Payment of the final balance
--- | --- | --- | ---

**Annual monitoring and evaluation**
- MA: Annual implementation report
- Commission: Acceptance of annual implementation report

**Annual assurance**
- AA: Annual control report and opinion
- Commission: Acceptance of annual control report

**Multiannual assurance**
- Commission: Audits on legality and regularity

01/2007 | 12/2013 | 12/2015 | 03/2017 | ???
--- | --- | --- | --- | ---

Programming period: 7 years
- 2 years
- 15 months
- Commission goal: 1 year
- 3 years
Annex III

Cohesion 2014-2020

End of programming period | Final eligibility date | Submission of closure documents | Payment of the final balance
---|---|---|---
Annual monitoring and evaluation
- **MA**: Annual implementation report
- **Commission**: Acceptance of annual implementation report

Annual assurance package
- **MA**: Management declaration and annual summary of controls and audits
- **CA**: Certified accounts
- **AA**: Annual control report and opinion on accounts
- **Commission**: Acceptance of annual accounts, calculation of the balance

Closure
- **Commission**: Acceptance of final implementation report and last annual accounts, calculation of the balance of the last year
- **MA**: Final implementation report
- **Additional to annual assurance package:**

Multiannual assurance
- **Commission**: Conformity audits with possible net financial corrections

01/2014 | 12/2020 | 12/2023 | 15/02/2025 | ???

- **Programming period**: 7 years
- **3 years**
- **13,5 months**
- **3 years**
(b) Rural development

RD 2000-2006

End of programming period | Final eligibility date | Submission of closure documents | Payment of the final balance
--- | --- | --- | ---
Annual monitoring and evaluation | Closure | Closure | Multiannual assurance
Commission: Audits on legality and regularity | | | Commission: Acceptance of final implementation report and winding-up declaration (for full period, calculation of final balance)

01/2000 | 12/2006 | 12/2008 | 03/2010 | ???

Programming period 7 years | 2 years | 15 months | Closure took on average 20 months | 3 years

RD 2007-2013

End of programming period | Final eligibility date | Submission of closure documents | Payment of the final balance
--- | --- | --- | ---
Annual monitoring and evaluation | Closure | Closure | Multiannual conformity clearance
MA: Annual progress report on implementation | MA: Implementation report for last year | MA: Acceptance of final implementation report and last annual accounts, calculation of final balance | Commission: Conformity audits on legality and regularity with possible net financial corrections
PA: Annual accounts, management declaration, annual summary of audits and controls | PA: Account for last execution year | PA: Final accounts, settlement of the balance | Commission: Acceptance of final implementation report and winding-up declaration (for full period, calculation of final balance)
CB: Opinion and report on annual accounts | CB: Opinion on the accounts of the last execution year | CB: Declaration on winding-up of the assistance (providing assurance for the whole period)

01/2007 | 12/2013 | 12/2015 | 06/2016 | 01/2018

Commission goal: 1 year

Programming period 7 years | 2 years | 6 months | Commission goal: 1 year | 2 years
Annexes

Source: ECA.

RD 2014-2020

- **MA**: Annual implementation report
- **PA**: Management declaration, annual summary of controls and audits
- **CB**: Opinion and report on annual accounts (including legality and regularity)
- **Commission**: Acceptance of annual implementation report
- **Commission**: Acceptance of annual accounts, calculation of the balance
- **Commission**: Acceptance of the annual implementation report and last annual accounts, calculation of balance of the last year
- **Commission**: Conformity audits on legality and regularity with possible net financial corrections

**Payment of the final balance**

**End of programming period**

**Final eligibility date**

**Submission of closure documents**

**Closure**

- 01/2014 12/2020 30/06/2024 12/2023
- Programming period 7 years
- 3 years
- 6 months
- 2 years
- No additional documents required
Overview of the main issues in need of further clarification for the 2007-2013 closure — survey/interview responses by Member State authorities

<table>
<thead>
<tr>
<th>Issues</th>
<th>Cohesion</th>
<th>Rural development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calculation of residual error rate and consequences if it is above the materiality threshold (2 %)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Definition and treatment of anomalous errors</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Financial instruments</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Reporting on programme performance and potential consequences of failing to achieve targets</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Operations suspended due to legal or administrative proceedings</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Further practical examples</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Non-functioning projects</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Revenue generating projects</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Reporting and taking account of withdrawals, recoveries and pending recoveries</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Transitional rules</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

1 This list contains only issues that were reported as unclear or rather unclear by more than 15 % authorities.

Source: ECA survey and interviews with Member State authorities.
Executive summary

II
The Commission is working with the Member States to address the causes of irregular spending.

For cohesion policy the Court’s audits since 2009 have shown that the level of error for the 2007-2013 programming period is significantly lower than for the 2000-2006 programming period.

For rural development the error rate has also been decreasing over the last 3 years.

VI
In rural development the legality and regularity of EAFRD spending is ensured through the conformity clearance procedure, independently from the closure. If through the conformity clearance procedure enquiry deficiencies are identified in the management and control of the expenditure, the Commission applies financial corrections for expenditure effected for up to 24 months prior to notification by the Commission, in accordance with Article 52 of Regulation (EU) No 1306/2013.

Every year the Annual Activity Report of DG AGRI discloses both the estimated error rates of the transactions between Member States and the beneficiaries and the corrective capacity of the \textit{ex post} controls and procedures leading to recoveries from beneficiaries and net financial corrections. Comparing the two enables the Commission to conclude on the annual residual risk to the EU budget after all controls and corrections are taken into account.

The Commission maintains the view expressed in the 2015 Annual Activity Report of DG AGRI. Indeed, for the rural development policy, the need to ensure the legality and regularity must be balanced against the ambitious policy objectives, which sometimes led to a complex design of measures. The situation remains under close scrutiny and the Commission is committed to assist the Member States in combatting the root causes of errors.

VII
The Commission considers that the aligned yearly assurance on the accounts improves legality and regularity of payments and will contribute to swiftly closing the 2014-2020 programmes.

VIII
The legal framework in place for cohesion policy 2007-2013 does not allow for conditioning payments on results or achievements. The closure guidelines require systematic reporting on indicators by priority axis where achievements diverge by more than 25% from targets including a justification on why targets were not met and why corrective actions were not taken.

The Member States should provide explanations and justifications on the divergences on the achievement of the indicators. A financial correction could be decided on a case-by-case basis whereby divergences would disclose cases referred to in Article 99 of the general regulation (irregularities, serious deficiencies of management and control systems).

The outputs and results oriented approach has been more extensively introduced in the period 2014-2020 for both policy areas.
IX
The Commission is bound by the legal framework in place and decided by the legislator.

An overlap between two periods is considered necessary given that many operations take several years to be implemented and that there will always be a start-up phase and wrapping up phase for any programming period.

The issue related to a final closure generating a high intensity of administrative work for authorities at the time they should focus on the start-up of new programmes has been already addressed in the 2014-2020 regulation through annual acceptance of accounts (see Commission reply to VII above).

In addition, the Commission has encouraged Member States to increase capacities related to closure and use allocations of technical assistance for 2007-2013 or 2014-2020 for this purpose.

The closure process started with preparation before the end of the eligibility period and has been in full swing immediately when the eligibility period ended. Indeed, Member States were given two extra years (3 years in the case of 2014-2020 programmes) to implement their programmes.

The Commission considers that this allows better management and implementation of the programmes, lowers the pressure and workload on authorities involved and enables better transition between periods.

X
The Commission informs the budgetary authority about the progress of the closure process (regularity of expenditure and outputs and results achieved) in the Annual Activity Report of directorates-general concerned.

In addition, in 2013, DG REGIO and DG EMPL presented a report on closure and the overall level of financial corrections at closure for 2000-2006 programmes for the attention of the discharge authority.

Moreover, all financial clearance decisions on EAFRD are published in the Official Journal.

XI — First indent
The Commission does not accept this recommendation.

The Commission is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

A significant effort was already made to harmonise rules for the ESI Funds for the 2014-2020 period, both for the annual accounting years and at closure. The Commission will seek to further harmonise regulatory provisions between the funds, including on terminology, assurance and closure processes, whenever it enables improvement in the management of EU funds and it contributes to a simpler and more effective implementation in Member States and regions.

The Commission considers that alignment of arrangements in rural development and cohesion must not undermine the consistency of implementation of the CAP. The importance of preserving the synergies achieved between the two pillars (EAGF and EAFRD) was recognised by the legislator (Recital 4 of Regulation 1303/2013). For both pillars of the CAP, the conformity clearance is separate from the annual financial clearance.
XI — Second indent
The Commission does not accept this recommendation.

The Commission is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

In cohesion policy the rules in place for the 2014-2020 programming period already provide for the elements requested by the Court.

Regarding the second part of the recommendation on performance, Article 22.7 of the common provisions regulation already enables the Commission to apply financial corrections when it establishes serious failure to achieve the targets relating to financial indicators, output indicators and key implementation steps set out in the performance framework.

The Commission considers that further alignment between different policy areas should not undermine the synergies achieved in the management of the two Funds of the CAP-EAGF and EAFRD. The importance of preserving the synergies achieved between the two pillars (EAGF and EAFRD) was recognised by the legislator (Recital 4 of Regulation 1303/2013).

XI — Third indent
The Commission does not accept this recommendation.

The Commission will continue to inform the budgetary authority in full transparency about programme implementation, including about the outcome of closure. However, it is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

XI — Fourth indent
The Commission does not accept this recommendation.

The Commission strongly believes that discontinuing the overlap of eligibility periods will result in less policy implementation, will reduce the possibility for multiannual projects to be decided in the last year of implementation period by imposing additional administrative burden and will cause disruption in transition between periods. For EAFRD, this would negatively affect the smooth implementation of multiannual environmental commitments or business start-up projects based on multi-annual business plans.

XIII
For cohesion policy the key areas relevant to closure are the implementation (addressed with the final implementation report), the legality and regularity of the expenditure (addressed with the closure declaration and final control report) and finally the final statement of expenditure. For these key areas, the deadlines are indicated in the regulation. In particular, the Commission has 5 months to inform the Member State of its opinion on the content of the final implementation report and the closure declaration.
For rural development the key deadlines are outlined in the legislation (e.g. delivery of the documents for closure, final payment). However, some deadlines are not specified which provide for sufficient time to ensure proper closure decision and protection of the EU budget.

The Commission issued guidelines on closure which aimed to clarify the Commission's understanding of the applicable provisions as well as its expectations.

Concerning the specific risks at closure identified by the Court, the Commission has drawn the attention of programme authorities, including audit authorities, to these risks.

The Commission will apply financial corrections where necessary.

**XIV — First indent**
The Commission accepts the recommendation.

**XIV — Second indent**
The Commission accepts the recommendation.

**XV**
The Commission notes that this recommendation is addressed to the Member States.

## Introduction

**02**
For the 2007-2013 period cohesion and rural development policies have separate legal frameworks, different governance of the programmes, distinct reimbursement mechanisms and independent policy objectives.

**09**
Closure is a legal requirement set in the EU regulations.

Under the multiannual control framework for 2007-2013 programmes under cohesion policy, Member States had to ensure that irregularities are prevented, detected and corrected throughout the programming period. If the Commission detected additional irregularities, not yet corrected, it imposed additional financial corrections.

**09 — First indent**
For rural development, in the framework of the annual financial clearance, the certification bodies are requested to present the Commission with an opinion on the annual accounts of the Paying Agencies, which the Commission accepts at this stage. At the time of the annual financial clearance exercise, the Commission is not required to confirm the legality and regularity of the expenditure.

Legality and regularity of expenditure is further checked through the conformity clearance procedure that is carried out separately and independently from the closure exercise, as established by the legislator.

Conformity clearance procedures take around 2 years, a time period that is necessary to ensure a fully transparent process of arbitration, allowing for time to discuss findings and establish the risk to the EU budget to be covered by a net financial correction.
09 — Second indent

The Commission’s ad hoc decisions resulting from the conformity clearance procedure ensure that any identified non-eligible expenditure is excluded from financing and from being actually reimbursed by the EU budget (net financial corrections). In agriculture, including rural development, all financial corrections have a net effect on the EU funding.

Furthermore, the Member States for rural development are obliged to pursue the recovery of irregular expenditure from beneficiaries and refund that to the Commission even after closure.

14

dg REGIO and DG EMPL are on track to meet the year-end deadline for the completion and validation of their closure manuals and procedures.

Observations

19
Closure is a legal requirement set in the EU regulations for which the Commission is preparing itself in the most efficient way.

Regarding the 2007-2013 programming period for cohesion, the Member States authorities are requested to provide the closure documents to the Commission at the latest by 31 March 2017. The Commission has 5 months to provide Member States with its opinion on the final implementation report and the closure declaration. The final payment will be made only after an assessment of the closure documents to ensure that no material errors are left in the final statement of expenditure.

For rural development, the Commission must respect all legal rules fixed by the legislator, notably the independence of the closure procedure from the conformity clearance procedure applied to get assurance on legality and regularity of the CAP expenditure. The Commission shall also respect the deadline of paying the balance within 6 months after the receipt of the relevant documents. Conformity clearance procedures take around 2 years, a time period that is necessary to ensure a fully transparent process of arbitration, allowing for time to discuss findings and establish the risk to the EU budget to be covered by a net financial correction.

The directorates-general report in their Annual Activity Reports on financial corrections carried out each year, including for closed programmes from the programming periods 1994-1999 and 2000-2006. These reports are presented to the budgetary authority in the frame of the discharge procedure.

20
In cohesion, a Task Force was set up for drafting the closure guidelines which included several key services in DG REGIO and DG EMPL. The guidelines and their modifications went through Inter Service Consultation and several consultations with national authorities.

The Commission considers that alignment of arrangements in rural development and cohesion must not undermine the consistency of implementation of the CAP. The importance of preserving the synergies achieved between the two pillars (EAGF and EAFRD) was recognised by the legislator (Recital 4 of Regulation 1303/2013).

1 ‘As regards the Common Agricultural Policy (CAP), significant synergies have already been obtained by harmonising and aligning management and control rules for the first pillar (European Agricultural Guarantee Fund — EAGF) and the second pillar (EAFRD) of the CAP. The strong link between the EAGF and the EAFRD should therefore be maintained and the structures already in place in the Member States preserved.’
23 Each year the Commission analyses the Annual Control Reports and requests corrective measures in case of material annual error rates or cumulative residual risk (residual risk rates at closure).

The Commission has also adopted a robust policy of interruptions and suspensions of interim payments where serious deficiencies were found. This should reduce the workload at closure as many issues have already been identified and corrected during implementation.

24 In rural development the closure exercise is a financial clearance exercise of the last execution year. A final balance is calculated and payable at closure only if all annual accounts of the programming period are cleared (financial clearance).

The legality and regularity of EAFRD spending is ensured through the conformity clearance procedure, independently from the closure. If, through the conformity clearance procedure, deficiencies are identified in the management and control of the expenditure, the Commission applies financial corrections for expenditure effected for up to 24 months prior to notification by the Commission, in accordance with Article 52 of Regulation (EU) No 1306/2013.

See also Commission’s reply to paragraph 19.

28 In the case of cohesion funds the annual budgets of the Commission are protected with payment of only 90 % of interim expenditure. This is comparable to the 95 % rule for EAFRD at the end of the programming period (Article 34 of Regulation 1306/2013).

EAFRD does not have this additional annually cleared pre-financing system and therefore does not need to withhold anything from the interim payments before 95 % implementation.

29 Potential further alignment should respect the need to preserve the consistency between the two pillars of the CAP.

See also Commission’s reply to paragraph 20.

32 For cohesion policy the purpose of closure is already clearly set out in the regulations for the 2014-2020 period.
Repil of the Commission

33 For cohesion policy the regulation foresees a period of 3 years after the payment of the balance to keep supporting documents and in that period audits can be carried out and consequently financial corrections applied.

For rural development beneficiaries have the obligations to maintain the co-financed investment for a period of 5 years after the payment or the obligation of Member State to recover unduly spent amounts. The Commission must be in a position to check the compliance with these obligations and impose financial corrections in case of breaches.

It is clearly set out in the guidelines for the closure of the 2007-2013 rural development programmes that the conformity audits continue to be carried out independently from the closure. The financial corrections do not influence the calculation of the final balance. The amounts of the financial corrections are established in Commission's conformity clearance decisions and executed by recovery orders (net financial corrections).

34 For rural development, there is no legal basis to impose financial corrections based on an estimated error rate and in order to reduce the error rate below the level of materiality. It can only be done by conformity clearance procedure, which the Commission will carry out where appropriate.

See also Commission's reply to paragraph 36.

35 For cohesion policy, the Commission is calculating the cumulative residual risk throughout the programming period, thus allowing for the reduction of the risk of errors below the materiality level at any moment in time during the programming period. The audit authorities are requested to disclose the residual risk rate at closure and, where material, programme authorities are requested to take the necessary additional financial corrections before submitting their final closure declaration.

36 In the current legal framework for rural development, conformity clearance decisions can continue to be taken even after the closure of the programme. Therefore, the concept of a 'residual risk rate at closure is currently not compatible with the legislation underpinning the second pillar of the CAP.

However, every year the annual activity report of DG AGRI discloses, both the estimated error rates of the transactions between Member States and the beneficiaries and the corrective capacity of the ex post controls and procedures leading to recoveries from beneficiaries and net financial corrections. Comparing the two enables the Commission to conclude on the annual residual risk to the EU budget after all controls and corrections are taken into account.

The Commission maintains the view expressed in the 2015 annual activity report of DG AGRI. Indeed, for the rural development policy, the need to ensure the legality and regularity must be balanced against the ambitious policy objectives, which sometimes led to a complex design of measures. The situation remains under close scrutiny and the Commission is committed to assist the Member States in combatting the root causes of errors.
37 Every year the DG AGRI Annual Activity Report discloses an adjusted error rate and an estimated amount at risk for the rural development area. An adjusted error rate is calculated at Paying Agency level and then aggregated at Activity area.

Under the current rules governing cap expenditure (including rural development), assurance on legality and regularity results from the conformity clearance procedure and not from a calculation of a residual error rate at closure.

The conformity clearance procedure is launched when the total error at the fund level is reported by the certification body as being above materiality. Financial corrections are applied when the certification bodies’ findings are confirmed.

38 For 2014-2020 programmes, a block of expenditure is certified annually in the accounts which will be subject to an annual acceptance/clearance and to further examination of its legality and regularity. Expenditure is no longer certified cumulatively during the programming period and therefore there is no need to calculate a cumulative residual risk rate or to request an audit opinion concerning the whole programming period at closure. For the last year of the period, for cohesion the audit authorities will provide their annual residual risk rate and issue their last annual audit opinion based on it. For Rural Development the certification bodies will provide the error rates and the incompliance rates in their last annual audit opinion.

39 The European Parliament and the Council are informed in the Annual Activity Reports about the progress of the closure of cohesion and rural development programmes.

40 The Commission underlines that the closure process should serve to clarify and settle all open issues related to control activities and audit findings and considers that the cumulative audit work gathered during the programming period and at closure will provide for a sufficient level of assurance at closure without the need to perform additional audit work thereafter.

Concerning the 2007-2013 period, the audit plan in the last years 2015-2016 is clearly targeted at checking the level of preparation of the Member States for closure focusing on re-performance of audits carried out by audit authorities but also including audits of risky operational programmes and of the reliability of the withdrawals and recoveries reported by Member States. Audits after closure are not excluded though, depending on the assessment of any remaining risk following the analysis of closure documents.

43 The Commission considers that the current set-up of the conformity clearance procedure ensures an adequate protection of the financial interests of the EU budget.

See also Commission reply to paragraph 24.
46
The Commission considers that the closure process would take much longer and would require much more resources if final reporting and evaluation of the programme, including monitoring and analysis of the achievement of outputs and results for the entire period is to be covered.

48
The legal framework in place for cohesion policy 2007-2013 does not allow for conditioning payments on results or achievements. Section 5.2.6 of the closure guidelines requires systematic reporting on indicators by priority axis where achievements diverge by more than 25% from targets including a justification on why targets were not met and why corrective actions were not taken.

The Member States should provide explanations and justifications on the divergences on the achievement of the indicators. A financial correction could be decided on a case-by-case basis whereby divergences would disclose cases referred to in Article 99 of the general regulation (irregularities, serious deficiencies of management and control systems).

The outputs and results-oriented approach has been more extensively introduced in the period 2014-2020 for both policy areas (see paragraph 52). This approach has been reinforced by the introduction of a performance reserve amounting to 6% of the programme budget. The performance framework builds indeed on elements of the results orientation. Its objective is to give incentives to programme and priority managers to deliver what is under their control. It will reward programmes which progress well towards the objectives through the allocation of the performance reserve, but will also trigger measures for priorities which fail to do so. There are milestones set for these indicators to be achieved by the end of 2018 and targets to be achieved by the end of 2023. Allocation of the reserve is conditional on the achievement of those milestones set at the level of programme priorities (Article 20 and Article 22(2) of Regulation (EU) No 1303/2013). If targets are not achieved, the Commission may also apply financial corrections with a link of the payments to the actual achievements of the outputs and results.

49
The Commission considers that section 3.5 of the closure guidelines clearly explains how to treat uncompleted operations.

On the financial consequences of not achieving the targets set in the programmes, the Commission refers to the Questions and Answers on closure see replies to questions 200-205, where it explains that the Member State should report in the Final Implementation Report on the programme achievements as measured by physical and financial indicators and should provide information on indicators. And only if there is a significant divergence should an explanation and a justification be provided as requested by the closure guidelines.

See also Commission reply to paragraph 48.

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The Commission has provided relevant guidance to Member States on the subject, e.g. in the framework of the rural development committee and the evaluation expert group.

According to the closure guidelines for cohesion, at the time of submission of the closure documents, Member States have to ensure that all projects included in the programmes closure are functioning, meaning completed and in use. The Commission makes an exception for the non-functioning projects and phased projects which will be monitored (annexes III, IV and V). These will be a complement on the data reported on the achievement of targets. More specifically, phasing and its concrete implementation has been subject of several replies provided under the ‘questions and answers’ document on closure, closure trainings and specific support provided to the Member States in the context of the task force for better implementation.

For rural development the reporting on achievements of the targets is done in the last annual progress report (table G.3 submitted by the MS indicates the level of achievement of these targets). The ex post evaluations will take into account these indicators and the achievements of the targets.

The Commission refers to its reply in paragraph 48.

The performance framework provides a mechanism for monitoring whether the implementation of the priorities is on track. The performance reserve provides an incentive to achieve the milestones, which necessarily are the precondition for obtaining the intended results. The performance reserve is only one of the elements supporting an increased focus on results. The core element of the results orientation is the intervention logic embedded in each programme with the output and result indicators associated.

The Commission also refers to the observations of Chapter III of the Annual Report of the Court of Auditors for the year 2014.

The Commission also notes that the ex post evaluation of the programme is only required by 31 December 2024 (Article 57 R1303/2013). Furthermore, conclusions stemming from the 2019 Implementation Report will assess the progress towards achieving the objectives of the programmes and its contribution to the Union strategy for smart, sustainable and inclusive growth. This will also be supported by the introduction of the performance review.

The Commission considers that the necessary accountability and transparency in programme implementation is annually provided in the Annual Activity Reports (AARs) of the respective DGs. These AARs disclose every year all financial and performance details for the programmes in question.
Please refer to the Commission’s replies in paragraphs 54 and 39.

The budgetary authority will be provided with information on the outcome of the 2007-2013 closure process in the Annual Activity Report of respective DGs.

Common Commission reply to paragraphs 57 and 58
The Commission acknowledges that closure should indeed take place as soon as possible, but still Member States need enough time to finalise their actions before submitting the closure package. In addition, closure can only start upon the submission of the closure documents. The Commission considers that it is vital to allocate sufficient time and resources to the related tasks.

There will always be overlap in work on two periods. Before one period ends work on another one has to start. There would be a risk that there would be a gap between programming periods.

Cohesion policy programmes are complex to manage and many circumstances change during the 7-year programming period. This can cause delays in project preparation and implementation. An indication of this is the effect of the 2008 financial crisis where the commission allowed the Member States to extend the eligibility period further to complete projects which had been delayed by the crisis. Continuing the eligibility period beyond the 7-year programming period gives Member States the possibility to complete delayed projects and thus maximise the impact of the union budget contribution.

The Commission notes that the 2014-2020 closure exercise will be simplified through the annual acceptance of accounts. This was a specific objective of the legislator when adopting the rules of 2014-2020, based on experience from previous periods.

The financial framework defines the annual budget commitments, which are distributed for 7 years. It is natural that in multiannual projects payments cannot exactly follow the same rhythm as the commitments.

Common Commission reply to paragraphs 60 to 62
The Commission notes that the deadlines mentioned by the Court are legal deadlines as provided in the general regulation for cohesion and these are legally binding for the Commission.
It has to be noted that implementation on the ground may happen without EU payments being submitted.

Project selection and expenditure on the ground give a more accurate picture of implementation than EU payments. The project selection rate doubled in the first half of 2016 from 8 to 15% and this proves that implementation on the ground has taken off. By June 2016, EUR 48 billion of EU funds has already been granted to some 200,000 concrete projects already being implemented on the ground. Including national co-financing, over EUR 68 billion has already been invested in the real economy and is delivering jobs and growth across Europe. Some countries are significantly outperforming these figures (e.g. Denmark, Ireland, Finland and Sweden). The pre-financing amounts transferred largely cover expenditure on the ground. While overlapping of the periods may not help, the significant differences across Member States regarding implementation indicate that other factors are more pertinent in this regard (i.e. administrative capacities).

The Commission considers that transitional arrangements and overlapping periods are needed in order to ensure a smooth continuation of the policies and better programme implementation. Additional extension (from n+2 to n+3) provided more flexibility to implement programmes and ensure achieving policy goals. The overlap of the periods decreases pressure on resources and spikes in workload.

The Commission recalls that closure is a legal requirement foreseen in the EU regulations for which directorates-general prepare in the most efficient way, in a context of a reduction of staff, but the preparation of cost estimates or the follow-up on the costs of closure are not considered relevant or desirable. The Commission is not reporting any costs of specific activities but the overall administrative costs of its overall activities.

The Commission has raised awareness of the Member States on the importance of the resources allocated to closure through the different meetings with the Member States (i.e. Homologues Group meetings and annual coordination meetings) since 2014 and through the trainings and seminars given to all Member States on closure of 2007-2013 programmes in cohesion.

In the context of shared management, the resources allocated to closure are a responsibility of the Member States; they are responsible for their planning and monitoring.

For both policy areas the technical assistance resources are also available for the purposes of the closure exercise and may finance closure-related activities irrespective of the period (i.e. 2014-2020 technical assistance resources are also available to carry out closure activities for 2007-2013).

If the overlapping period was reduced, the time pressures and peak workload would increase all the more.
67 The issue of administrative reorganisation in national authorities was raised during the seminars organised in the Member States where the Commission has been repeating the need to have dedicated staff to deal with the closure work.

See also Commission replies to paragraphs 65 and 66.

68 The Commission notes that the closure process for the 2014-2020 programming period will be more simplified due to the annual acceptance of accounts and further examination of the legality and regularity aspects. In particular, the last year will only deal with the closure of the block of expenditure certified in relation to the last accounting year.

69 The Commission refers to its reply in paragraph 20.

70 In order to regulate the transitional arrangements there will always be the need to observe rules applicable for two different programming periods and most likely, some specific ones (in terms of derogations) to further specify or allow certain commitments or use of the funds.

75 The Commission continued in 2016 to provide targeted assistance to Member State authorities which required it (2015 and 2016 sessions on closure in Homologue Group meetings with audit authorities, and additional written clarifications provided).

For EAFRD a Questions & Answers document was developed that addressed the most common questions and topics raised by the Member States. Additionally to the Closure conference another 2-day expert group for paying agencies and certifying bodies was held in 2015.

77 Not all aspects of the contradictory procedures between the Commission and the Member States are indicated at the level of the general regulation for cohesion, nevertheless this was addressed in the closure guidelines.

In order to accelerate the process, the closure guidelines provide Member States with 2 months to reply to the Commission’s questions plus two additional months, if requested.

Payments to beneficiaries are dealt in Regulation 2007-2013 (Article 80 of the general regulation) even if the number of days is not reflected; it says it should be done as quickly as possible and in full. Regulation 2014-2020 has established a deadline of 90 days to make the payments to the beneficiaries.

DG REGIO is currently adopting the remaining major project decisions with the intention of finishing them by the end of 2016.
The closure guidelines (point 5.2) for cohesion state a deadline for both the Commission and Member States regarding the comments on the final report. Furthermore, the closure guidelines provide that in case the Member State is not able to improve the final report, the Commission will reject it and will carry out closure on the basis of the available documents. At the same time, the Commission may apply financial corrections in the context of Article 99 of the general regulation. This possibility of rejection of the report by the Commission and the possibility to apply financial corrections is an incentive for the Member States to reply timely to the requests of the Commission.

The Commission refers to its reply in paragraph 78.

For rural development the examination of the last annual progress report does not delay the closure process. The balance can be paid when all accounts are cleared and the annual progress report is considered receivable.

The Commission refers to its reply in paragraph 78.

A Member State either has expenditure exceeding the programme allocation or it does not depending on the implementation conditions and the approach to apply overbooking. This decision had to be made prior to the end date for eligibility, i.e. 31 December 2015.

Common Commission reply to paragraphs 84 and 85

According to Article 80 of Regulation 1083/2006 the Member States should ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full. This is the message the Commission delivered to Member States during the closure seminars. This has been addressed in the 2014-2020 programming period (Article 132 of Regulation 1303/2013 which provides that subject to the availability of funding from initial and annual pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiaries).

The Commission considers that the Member States mentioned in the example in Box 2 had either used a prudent approach for their payments to ESF beneficiaries (balance payment only after detailed verification of all expenditure) or had paid advances at the request of the beneficiaries which allowed for the smooth execution of the projects concerned.

Furthermore, the Commission notes that measures have been taken to avoid payment delays in the 2014-2020 programming period (see Commission’s reply to paragraph 85).
Guidelines aim to clarify the Commission’s understanding of the applicable provisions as well as its expectations; they therefore cannot be seen as an additional requirement. They also provide some recommendations to Member States which, if followed, should facilitate the closure process. In this way, the guidelines ensure better consistency and transparency of rule for Member States and as such provide assurance for Member States as regards the Commission’s closure requirements. They establish a common understanding on how the Commission interprets the regulation that should help to avoid conflicts during the closure process between the Commission and the Member State. The guidelines are only binding for the Commission, not for the Member States.

The Commission notes that the majority of the authorities consulted do not perceive that the guidelines impose additional requirements.

Furthermore, the points are not new requirements; however there was a need for clarification of certain details, in order to strengthen assurance on certain issues and on legality and regularity at closure.

The clarification regarding the completion of operation and its functionality at closure aims (in the spirit of Article 57 of the general regulation) at the effective spending of the EU funds for the objectives defined in the programmes. The concept and treatment of non-functional projects has already been applied at the closure of the 2000-2006 programmes.

In relation to the residual risk rate, the closure guidelines clarify that for the purposes of the audit opinion to be issued by the audit authority at closure, the latter can take into account the financial corrections applied before the submission of the closure documents. The commission itself calculates a cumulative error rate since 2011 and it has been a condition for the reservation in the annual activity reports. This further mitigates the risks at closure and provides information on the remaining level of errors in the cumulative certified expenditure (see paragraph 91).

The phasing concept was present in the closure guidelines from its first adoption. Phasing of projects is motivated by the need to ensure continuity of investments between programming periods, to reduce the artificial investment demand cycle (resulting in high prices) the 7-year programming cycle entails and to ensure fulfilment of the ultimate objective.

The Commission considers that the Closure Guidelines adequately clarify the specific rules for phasing of non-major projects and this will not complicate the closure process.

Regarding the financial instruments, the modification decision on the closure guidelines of the Commission does not affect the provisions of Regulation 1083/2006 according to which the contribution from the funds into financial instruments must have been paid at latest at 31 December 2015. Therefore, the guidelines have only provided clarifications under existing rules. See also Commission replies to, paragraph 6.45 and recommendation 3 of the Court’s 2015 annual report.
Common Commission reply to paragraphs 98 and 99
The recommended deadlines in the Commission’s closure guidelines for cohesion aim to help the different authorities to perform their work in due time.

It is the Member States’ responsibility to ensure appropriate division of tasks and coordination within the national administration.

Common Commission reply to paragraphs 100 and 101
In the ‘Questions and answers’ document on closure for the Member States (question 98) the Commission acknowledges this time lag to be factored in by the managing authority regarding financial instruments in order to allow the certifying authority and audit authority to complete their work on time. It was recommended that the certifying authority sends the last interim payment claim (including the expenditure that will be certified at closure) to the audit authority by 30 June 2016 to enable it to perform the necessary audit work. The Commission has provided specific instructions to the audit authorities in that respect, e.g. in the Homologues Group Meeting held in Riga in September 2015.

105
The Commission already pays special attention to the validation of the changes to previous reported error rates. For the more risky operational programmes, specific audit work is being carried out before closure.

The Court has examined the Commission’s assessment of the error rates disclosed in the annual control reports provided by national authorities since 2010.

107
In line with Article 78(6) of Regulation (EC) No 1083/2006, the funds’ contribution into financial instruments is included in the payment claims to the Commission. Following the Commission guidance, this expenditure should be always included in the audit population. In addition as set out in the agreed audit methodology, audit authorities may carry out thematic audits on financial instruments which cover both the constitution of the fund and the actual implementation of projects through the audit of a sample of transactions at the level of the financial intermediaries and/or final recipients. The audit authorities, for the purpose of the closure declaration, will have to obtain and provide assurance on the legality and regularity not only of the OP contribution paid into funds implementing financial instruments but also of the use of the OP contribution through underlying transactions implemented by the final recipients.

For EAFRD, the Commission required that the certifying bodies confirm for the last clearance of accounts the eligible expenditure for financial instruments.

The Commission refers to its reply in paragraph 100.
As regards rural development, the paying agencies and certification bodies should verify actual use of the previous tranche before granting following payment. In addition, exhaustive reporting requirements established under Article 46 of R1303/2013 also ensure proper implementation and sound financial management.

**Common Commission reply to paragraphs 109 and 110**

National and international standards require that advances are paid with contract signature. The payment of the advance is thus a prerequisite for the start of implementation of works and services.

**111**

Contractual advances are only eligible insofar as they are paid following national rules and usual market practice. Therefore it is unlikely that these represent high percentages, if they do, there is a market-based reason for it.

The Commission has established that advance payments are only eligible if the physical value of the corresponding implementation is at least equal to the advances at closure. This is an element to verify already through the management verifications. In this respect, the national authorities need to check that payments are done on the basis of the granting decision and that payments have been converted into real works or services.

This issue was already clarified during the 2000-2006 programming period.

The audit assurance provided by the audit authorities at closure will also cover the issue of the contractual advances and the fact that the managing authorities have verified their eligibility, as reminded to all audit authorities during 2016 annual audit coordination meeting and in the Homologues Group Meeting in September 2016 (see paragraph 113).

**Common Commission reply to paragraphs 114 and 115**

The Commission recalls that the obligation to notify state aid measures lies with the Member States and that the Commission decision on the major project is not a decision on compliance of the major project with state aid rules.

However, only for a limited number of major projects a state aid notification is necessary (a notification is not required, e.g. where no state aid involved or the project falls within the scope of a Block Exemption Regulation or an approved aid scheme).

Moreover, a distinction needs to be made between the situation before and after the Leipzig-Halle judgment and between the 2007-2013 and the 2014-2020 programming periods.
The Commission also notes that the DG COMP was consulted in formal inter-service consultations by DG REGIO on major projects decisions already before the end of 2012, although not systematically.

Following the Leipzig-Halle judgement, DG REGIO and DG COMP have enhanced their cooperation in relation to the assessment of major project applications. The Commission stresses that there is no major project for which the Commission adopted a decision approving ERDF or CF funding in recent years and for which subsequently a negative decision under state aid rules was adopted. This shows that the cooperation arrangements put in place work well in practice.

Conclusions and recommendations

Recommendation 1
The Commission does not accept this recommendation.

The Commission is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

A significant effort was already made to harmonise rules for the ESI Funds for the 2014-2020 period, both for the annual accounting years and at closure. The Commission will seek to further harmonise regulatory provisions between the funds, including on terminology, assurance and closure processes, whenever it enables to improve the management of EU funds and it contributes to a simpler and more effective implementation in Member States and regions.

The Commission considers that alignment of arrangements in rural development and cohesion must not undermine the consistency of implementation of the CAP. The importance of preserving the synergies achieved between the two pillars (EAGF and EAFRD) was recognised by the legislator (Recital 4 of Regulation 1303/2013). For both pillars of the CAP, the conformity clearance is separate from the annual financial clearance.

Common Commission reply to paragraphs 119 and 120
For rural development, the Commission has not come across any complaints as to the expectation gap from the Member States. The closure exercise is a settlement of financial issues. It is a separate exercise from conformity clearance.

In line with the applicable legislation (Article 52, Regulation 1306/2013), conformity clearance procedures cover a period of 24 months prior to launching the enquiry. Member States are acquainted with the set-up of the system. They are clearly informed about the period covered by each enquiry. Also in the previous programming period, in rural development, there were financial corrections adopted after the closure of the 2000-2006 period. Member States did not question the timing of the financial correction decisions.

3 ‘As regards the Common Agricultural Policy (CAP), significant synergies have already been obtained by harmonising and aligning management and control rules for the first pillar (European Agricultural Guarantee Fund — EAGF) and the second pillar (EAFRD) of the CAP. The strong link between the EAGF and the EAFRD should therefore be maintained and the structures already in place in the Member States preserved.”
For CAP expenditure, including rural development, the distinction between on the one hand annual financial clearance and closure procedures and, on the other hand, the conformity clearance procedure, has been established by the legislator for the 2007-2013 period and confirmed for the 2014-2020 period. The distinction between accounting and legality and regularity issues has proven to be effective and efficient.

The Commission considers that such specific reporting on the final outcome of closure for the programme period as a whole can take place in the context of the Annual Activity Report of respective directorates-general.

The Commission refers to its replies in paragraphs 40 and 54.

For cohesion policy, the Annual Activity Reports give details on internal processes aimed at ensuring adequate management of risk related to the legality and regularity of underlying transactions, taking into account multiannual character of programmes as well as the nature of the payments concerned. In this respect, for 2007-2013 the control objective is to ensure that the cumulative residual risk of each programme does not exceed 2 % on a cumulative basis, based on all available audit results. For 2014-2020, the regulation introduces the annual acceptance of accounts and accordingly the annual acceptance by the Commission of blocks of legal and regular expenditure, as well as the acceptance of a final implementation report per programme as a condition for the acceptance of the final balance.

For EAFRD, 2007-2013 and 2014-2020, the legislator has provided for closure based on the annual financial clearance of accounts with a possibility for application of financial corrections through conformity audits after payment of the final balance. The Annual Activity Reports will continue to give details on the performance of the rural development measures and report on compliance based on the annual financial clearance exercises and the results of conformity audits.

The Commission is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

For rural development, the Commission has set up processes aimed to ensure the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned with an objective that the remaining risk to the EU budget does not exceed 2 %.

The legality and regularity of expenditure is checked through the conformity clearance procedure that is carried out separately and independently from the closure exercise. As a result of a conformity clearance procedure, the financial corrections are imposed.

In the current legal framework, conformity clearance decisions can continue to be taken even after the closure of the programme.
Common Commission reply to paragraphs 126 and 127
For the 2007-2013 period there is indeed no legal basis allowing the Commission to link directly the payment of the final balance at closure to the actual achievements at programme/priority axis level.

The fact that there is no close regulatory link between performance and payments does not mean that evaluation and performance assessment of programmes do not take place.

For the 2014-2020 period the performance framework put in place will create a link between payments and achievement of outputs and results at priority axis level.

Recommendation 2
The Commission does not accept this recommendation.

The Commission is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

In cohesion policy the rules in place for the 2014-2020 programming period already provide for the elements requested by the Court under both indents.

Regarding the second part of the recommendation on performance, Article 22.7 of the common provisions regulation already enables the Commission to apply financial corrections when it establishes serious failure to achieve the targets relating to financial indicators, output indicators and key implementation steps set out in the performance framework.

The Commission considers that further alignment between different policy areas should not undermine the synergies achieved in the management of the two funds of the CAP-EAGF and EAFRD. The importance of preserving the synergies achieved between the two pillars (EAGF and EAFRD) was recognised by the legislator (Recital 4 of Regulation 1303/2013).4

Recommendation 3
The Commission does not accept this recommendation.

The Commission will continue to inform the budgetary authority in full transparency about programme implementation, including about the outcome of closure. However, it is not in a position at this stage to make any specific commitment in relation to legislative proposals for the post-2020 period.

4 ‘As regards the Common Agricultural Policy (CAP), significant synergies have already been obtained by harmonising and aligning management and control rules for the first pillar (European Agricultural Guarantee Fund — EAGF) and the second pillar (EAFRD) of the CAP. The strong link between the EAGF and the EAFRD should therefore be maintained and the structures already in place in the Member States preserved.’
The Commission is bound by the legal framework in place, decided by the legislator. The overlap between two periods is necessary given that many operations take several years to be implemented and that there will always be a start-up phase and wrapping up phase.

The Commission services have encouraged Member States to increase capacities related to closure and use allocations of technical assistance for 2007-2013 or 2014-2020 for this purpose.

The closure process started with preparation before the end of the eligibility period and has been in full swing immediately when the eligibility period ended. Indeed, Member States were given two extra years (3 years in case of 2014-2020 programmes) to implement their programmes. This allows better management and absorption of the programmes, taking account of the need for multiannual projects to be implemented, lowers the pressure and workload on authorities involved and enables better transition between periods.

The Commission strongly believes that discontinuing the overlap of eligibility periods will result in less policy implementation.

The shorter period given under rural development can be explained by the fact that the certification and clearance of accounts process has existed for over a decade, and in general terms it can be said that certification bodies and paying agencies understand the requirements.

The Commission believes there is a need for balance between alleviating administrative burden and providing assurance as to legality and regularity of expenditure.

Recommendation 4
The Commission does not accept this recommendation.

The Commission strongly believes that discontinuing the overlap of eligibility periods will result in less policy implementation, will reduce the possibility for multiannual projects to be decided in the last year of implementation period by imposing additional administrative burden and will cause disruption in transition between periods. For EAFRD, this would negatively affect the smooth implementation of multiannual environmental commitments or business start-up projects based on multi-annual business plans.
The Commission considers that for all key areas relevant to closure there are deadlines specified. For cohesion policy the key areas relevant to closure are the implementation (addressed with the final implementation report), the legality and regularity of expenditure (addressed with the closure declaration and final control report) and finally the final statement of expenditure. For these areas, the deadlines are indicated in the regulation. In particular, the Commission has 5 months to inform the Member State of its opinion on the content of the final implementation report and the closure declaration. Concerning major projects in the 2007-2013 period, less than 2% of them remain to be approved.

For rural development the key deadlines are outlined (e.g. delivery of the documents for closure, final payment) in the legislation. However, some deadlines are not specified which provide for sufficient time to ensure proper closure decision and protection of the EU budget.

Recommendation 5
The Commission notes that this recommendation is addressed to the Member States.

Recommendation 6
The Commission accepts this recommendation.

The Commission is currently processing the remaining major project decisions for the 2007-2013 with the intention of adopting them as far as possible by the end of 2016. Procedures are in place to adopt major project decisions within 3 months as required by the regulations. Less than 2% of all major projects in the 2007-2013 period remain to be approved.

As regards the 2014-2020 programming period the Commission has accelerated the treatment of major projects which are currently being approved in an average of 110 days.

Common Commission reply to paragraphs 134 and 135
In general, the closure guidelines cannot be seen as additional requirements but aim at clarifying the Commission’s understanding of the applicable provisions as well as its expectations. It also provides some recommendations to Member States which, if followed, should facilitate the closure process. In this way, the guidelines ensure better consistency and transparency of rule for Member States and as such provide assurance for Member States as regards the Commission’s closure requirements.

The Commission notes that the Court considers such clarification as useful and appropriate for example for the residual risk rate (see paragraphs 123 and 135).

The Commission has explained its position on the legal possibility offered in Article 78(6) of the General Regulation for 2007-2013 to consider eligible expenditure for financial instruments at closure. See the Commission reply to Recommendation 3 of the Court’s 2015 Annual Report.

The Commission also refers to its reply in paragraph 89.
The Commission considers that the closure guidelines adequately clarify the specific rules for phasing of non-major projects and this will not complicate the closure process.

137
The Commission considers that the internal preparation for the closure is well on track in order to ensure a smooth closure process.

It is the Member States’ responsibility to ensure appropriate division of tasks and coordination within the national administration.

138
The Commission underlines that for the closure of the 2007-2013 period, the risk of unjustified reductions in final error rates reported by Member States is mitigated by the issuance of the annual control reports and the implementation of financial corrections when the residual error rates are above the materiality level. The Commission thoroughly analyses and validates the error rate reported by the audit authorities year on year and at closure. This process is annually reviewed by the Court.

Common Commission reply to paragraphs 139 and 140
It should be noted that only for a limited number of major projects a state aid notification is necessary (a notification is not required, e.g. if no state aid involved or when the project falls within the scope of a Block Exemption Regulation or an approved aid scheme).

The Commission refers to its reply to recommendation 4 in Special Report No 24/2016.

As regards the verification of the compliance of major projects with state aid rules, the Commission rejected the recommendation as it believed that it goes against the Commission’s objectives pursued through its guidance given to Member States in 2012 not to systematically re-examine the projects decided before that date — leaving it to Member States the possibility to notify or not — and to provide stability to Member States and beneficiaries as regards the treatment of such projects.

141
For rural development, the Commission is aware that, as for any other measure managed by a Paying Agency, the risk of declaring ineligible expenditure is present in the financial instruments.

However, the Commission would like to underline that, already in previous audits it has warned Member States of possible irregular spending.

Audits dedicated to the closure of guarantee funds are already planned and may result in financial corrections, if necessary.

In relation to eligibility of expenditure relating to financial instruments and contractual advances, specific clarifications have been already provided to national authorities for their assurance at closure.

For cohesion policy, the Commission refers to its replies in paragraphs 100 and 107.
**Recommendation 7**
The Commission accepts this recommendation.

In relation to eligibility of expenditure relating to financial instruments and contractual advances, specific clarifications have been already provided to programme authorities for their assurance at closure.
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After the end of a programme period, cohesion and rural development programmes have to be closed and financially settled. Both the Commission and the Member States have specific tasks and responsibilities in the closure process. In this audit we examined whether the rules and procedures for the closure provide a basis for the Commission and Member States to close programmes in an efficient and timely manner. Overall, we found that the Commission’s closure guidelines for the 2007-2013 period in both cohesion and rural development provide an adequate basis for Member States to prepare effectively for closure but we identified some weaknesses and certain risks that need to be addressed during the closure exercise. We also make a number of recommendations concerning the post-2020 legislative framework.