

I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 14/98

on the closure of the forms of ERDF assistance together with the Commission's replies

*(submitted pursuant to Article 188c(4) (b) of the EC Treaty)**(98/C 368/01)*

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1. INTRODUCTION

1.1. As part of its Annual Report concerning the financial year 1996 ⁽¹⁾, the Court examined the closure of measures jointly financed by the ERDF covering the period prior to the 1988 reform of the Structural Funds ⁽²⁾ and the 1989-1993 programming period ⁽³⁾. The Court recommended, in particular, a more active closure policy in respect of the measures and greater strictness in granting deferrals of commitment and payment deadlines in the Member States. In the light of the anomalies it observed, the Court emphasised the need for inspection systems which would make it possible genuinely to check the reliability of the declarations of expenditure submitted by the Member States.

1.2. Given the large number of measures yet to be closed on 31 December 1996 ⁽⁴⁾, this survey was extended in 1997 to include checks in six Member States (Germany, Greece, Spain, France, Italy and the United Kingdom) and at the Commission. These checks concerned a sample of 53 measures decided upon prior to 1994, 18 of which had been closed and 35 had not. This sample was taken in order to illustrate the closure process and therefore does not aim to be statistically representative. This selection was considered to be the most appropriate given the stages of closure that had been reached. As well as looking at regularity and legality, the Court wished to place emphasis on assessing progress made with closing the measures. Lastly, the Community Support Frameworks (CSFs) and the programmes for the 1989-1993 period were examined and their impact assessed in the Court's report on the evaluation of Structural Fund measures.

1.3. The checks carried out in the aforementioned Member States confirmed the observations the Court had made in paragraphs 6.21 to 6.30 of its Annual Report concerning the financial year 1996 as regards the

unreliability of the declarations of expenditure made by the designated authorities in the Member States ⁽⁵⁾, the unreliability of the final beneficiaries' supporting documents and the ineligibility of much of the expenditure. The corresponding observations were sent to the appropriate authorities in the Member States concerned and to the Commission which, pursuant to Article 24 of amended Regulation (EEC) No 4253/88, is responsible for carrying out the necessary checks and, where appropriate, for recovering amounts paid in error. Thus, rather than re-examining these aspects, the following paragraphs will assess the extent to which measures had been closed by 31 December 1997 and will examine the closure process itself.

2. STATE OF CLOSURE ON 31 DECEMBER 1997

2.1. The majority of measures approved prior to 1994 had to be covered by legal and financial commitments in the Member States by 31 December 1993 ⁽⁶⁾, except where an extension had been granted. As a rule, final beneficiaries in the Member States then had two years to make their payments and the Member States were required to submit to the Commission within six months the documents needed for closure, in particular the request for payment of the balance and the final implementation report. As a rule, and provided that these documents were admissible, the Commission then had to pay the remainder of the financial assistance within two months, i. e. by 31 August 1996 ⁽⁷⁾. In some cases the Commission deferred deadlines for commitments and payments by a maximum of one year; for some Objective 1 programmes during the 1989-1993 period in Italy the deadlines were extended until 1998 with the Commission's consent ⁽⁸⁾.

⁽¹⁾ OJ C 348, 18.11.1997.

⁽²⁾ Non-quota measures (NQ), integrated development operations (IDO), national programmes of Community interest (NPCI), integrated Mediterranean programmes (IMP), Community initiative programmes (CIP) and projects governed by Council Regulation (EEC) No 1787/84 (OJ L 169, 28.6.1984, p.1).

⁽³⁾ In particular, operational programmes (OP) or projects decided on in the context of the Community Support Frameworks (CSF) and Community initiatives (CI). The corresponding legislation is based on:

- Council Regulation (EEC) No 2052/88, as amended by Regulation (EEC) No 2081/93 (OJ L 193, 31.7.1993, p. 5);
- Council Regulation (EEC) No 4253/88, as amended by Regulation (EEC) No 2082/93 (OJ L 193, 31.7.1993, p. 20);
- Council Regulation (EEC) No 4254/88, as amended by Regulation (EEC) No 2083/93 (OJ L 193, 31.7.1993, p. 34).

⁽⁴⁾ Not including projects governed by Regulation (EEC) No 1787/84 (see paragraph 2.5).

⁽⁵⁾ The statement of expenditure is the document issued by a designated authority in the Member State and sent to the Commission. It includes actual expenditure incurred in connection with payments effected by the final beneficiaries of the measures. This expenditure must be justified by receipted invoices or accounting documents of equivalent evidentiary effect which are not sent to the Commission but must remain available from final beneficiaries in the Member States.

⁽⁶⁾ With the exception of Objective 2 OPs in the 1989-1991 period, for which commitments had to be made by 31 December 1991. The Objective 2 OPs were actually covered by two programming periods (1989-1991 and 1992-1993).

⁽⁷⁾ 31 August 1994 in the case of the Objective 2 OP during the 1989-1991 period to which reference is made in footnote 7. These deadlines are set by Article 21(4) and Article 25(4) of Regulation (EEC) No 4253/88.

⁽⁸⁾ The reasons for this consent are described in the sixth and seventh reports on the Structural Funds concerning 1994 and 1995 (COM(95) 583 final, Chapter 5, paragraph 1.1, p. 148 and COM(96) 502 final, Chapter 1, pp. 56-57).

2.2. The commitments still to be settled are shown by budget heading in *Table 1* and by Member State in *Table 2*. However, these two tables do not include outstanding commitments (shown in *Table 3*) in respect of:

- (a) projects decided upon by the Commission prior to 1 January 1989 and subject to the automatic decommitment provisions laid down in Article 12 of Regulation (EEC) No 4254/88 on the ERDF;
- (b) projects adopted by the Commission in 1989 that are governed by Regulation (EEC) No 1787/84 but are not subject to automatic decommitment provisions.

2.3. Outstanding commitments in respect of all ERDF measures totalled ECU 2 389,7 million on 31 December 1997 (ECU 2 067 million in *Table 1*, and ECU 271,9 million and ECU 50,8 million in *Table 3*), as against ECU 3 290,7 million on 31 December 1996 and ECU 4 658,9 million on 31 December 1995⁽⁹⁾.

2.4. The amount still to be settled in respect of measures decided upon after the 1988 reform was ECU 1 795,3 million on 31 December 1997, as against ECU 2 527,4 million on 31 December 1996 and ECU 3 259,4 million on 31 December 1995 (see first part of *Table 1*). This outstanding amount accounted for 6,2 % of total commitments entered into during the financial years 1989 to 1995, i. e. ECU 28 597,5 million⁽¹⁰⁾, as against 8,8 % on 31 December 1996 and 11,4 % on 31 December 1995. As the remaining amount outstanding essentially represented only the balance of the last annual instalment in respect of the measures (i. e. in general 20 % of this last instalment)⁽¹¹⁾, the number of measures still to be closed provides a more accurate picture of the scale of the task still to be completed. For the period after the 1988 reform, the figure is 435, as against 617 on 31 December 1996 and 753 on 31 December 1995; the total number of measures begun over the period concerned was approximately 800.

2.5. As regards measures jointly financed by the ERDF, initial decisions in respect of which predate the 1988 reform, the amount to be settled on 31 December 1997 totalled ECU 594,4 million, as against ECU 763,3

million on 31 December 1996 and ECU 1 399,5 million on 31 December 1995. This amount concerns:

- (a) commitments totalling ECU 271,7 million entered into under budget headings for CSFs and CIs and special budget headings for NQ measures, IDOs, IMPs, NPCIs and CIPs (as against ECU 385,9 million on 31 December 1996 and ECU 496,9 million on 31 December 1995) (see second part of *Table 1*);
- (b) commitments totalling ECU 271,9 million in respect of projects decided upon by the Commission before 1 January 1989 under the ERDF and subject to the automatic decommitment provisions laid down in Article 12 of the amended ERDF Regulation (as against ECU 325,5 million on 31 December 1996 and ECU 842,4 million on 31 December 1995) (see *Table 3*);
- (c) commitments totalling ECU 50,8 million in respect of projects adopted by the Commission in 1989 but governed by former Regulation (EEC) No 1787/84 and not subject to the automatic decommitment provisions (as against ECU 51,9 million on 31 December 1996 and ECU 60,2 million on 31 December 1995) (see *Table 3*).

2.6. ERDF measures in Italy accounted for more than 50 % of the outstanding amounts. In Italy, the 1997 closure exercise concerned almost exclusively measures prior to the 1988 reform; only four out of 123 subsequent programmes had been closed. Of the four other Member States which accounted on 31 December 1996 for approximately 10 % of amounts still to be closed, the sums outstanding for the United Kingdom and France fell by 25 %, whereas Spain's fell by 37 % and Greece's by 68 % when compared with the situation on 31 December 1996. In terms of the number of measures still to be closed, the main Member States are Italy, France and the United Kingdom, which account respectively for 30 %, 20 % and 11 % of the total.

3. OBSERVATIONS ON THE CLOSURE PROCESS

3.1. The Court noted that the Commission had drawn up for Belgium, Germany, France, Italy and the United Kingdom a summary of programmes not closed by 31 December 1997 which sets out the financial data and describes the problem preventing closure and the steps taken to resolve them. A summary of this kind and covering the other seven Member States concerned would have been a useful management tool.

⁽⁹⁾ In the light of additional reappraisals and commitments, the data given in paragraphs 2.3-2.5 may differ from those contained in paragraphs 6.10-6.12 of the Annual Report concerning the financial year 1996.

⁽¹⁰⁾ The sum of ECU 34 507,8 million indicated in the fifth annual report on the implementation of the reform of the Structural Funds (Annex on financial implementation) also includes other commitments.

⁽¹¹⁾ Article 21 of Regulation (EEC) No 4253/88.

Delays

General comments

3.2. A significant weakness in the closure process is failure by the Member States and the Commission to observe the deadlines laid down in the Regulations (see paragraph 2.1). The closure of measures by these deadlines is however important for the beneficiaries of aid and for the Member States' central or regional authorities which are responsible for implementing them, as the balance of the last instalment is settled by the Commission only at the end of the closure procedure.

3.3. Furthermore, the avoidance of unjustified closure delays is a sound budgetary practice entailing the regular decommitment of unused amounts allocated to Structural Fund interventions, which accumulate as new programmes commence.

3.4. Lastly, closure delays result in increasing overlapping between the various programming periods, which affect the adoption of new programmes. The fact is that part of the resources available in the Member States' regions are still accounted for by closure tasks which are sometimes regarded by the manager concerned as purely formal, such as the submission of a final implementation report on the impact of a programme completed several years earlier while other measures have commenced in the interim. Furthermore, the shortcomings responsible for these delays are likely to recur when new measures are introduced.

Delays in the initial submission of closure documents by the Member States

3.5. On 31 December 1997, in most of the Member States there were programmes in respect of which closure documents had not yet been sent to the Commission. This was true, for example, of two measures in Belgium, six in Germany, eight in France and six in the United Kingdom. In the case of approximately half of the 53 measures in the sample examined, these documents were first submitted by the Member States after delays of up to 30 months.

3.6. Contact had supposedly been made several times, as early as 1996, with the relevant authorities in those regions of the United Kingdom which had not yet submitted closure documents. However, the Commission departments questioned were unable to produce documents describing the action they had taken and the corresponding follow-up.

3.7. The following reasons explain delays in providing the documents required by the Commission:

- (a) the difficulty experienced by the national authorities concerned in obtaining supporting documents from final beneficiaries, which delays the updating of closure tables and of final reports;
- (b) the lack of transparency of certain Community concepts due to the lack of a precise definition, in the Regulations and in Commission Decisions, of some of the Commission's requirements, in particular as regards the nature and content of documents to be sent to it during the closure (certificate of expenditure, tables and final reports⁽¹²⁾). This imprecision often leads to different interpretations of the concepts in question. However, as regards the eligibility of expenditure, the sheets adopted by the Commission should, in future, contribute to facilitating closure⁽¹³⁾

Delays in processing applications for payment of the balance

3.8. Once the closure documents have been provided, the geographical unit of DG XVI with responsibility for the Member State is asked to give an opinion on the adequacy of the final report and on the declaration of expenditure. It is sometimes difficult to identify the definitive financial plan because of successive amendments. The 'Budgetary and Financial Management, Controls (COFIN)' unit subsequently determines the balance to be paid and prepares the payment order, which must be submitted to DG XX for approval.

3.9. The Member States often experience delays when the Commission is slow to close programmes for which it has been sent the closure documents. At the same time, they are not informed of the reason why the two-month deadline for paying over the balance has not been observed. For example, in November 1997 the Italian authorities sent a letter to the Commission criticising the total lack of action in respect of 99 requests for payment of the balance which had been submitted between three and 28 months earlier. Two measures had experienced delays of more than two years, 29 measures delays of one to two years and 68 measures delays of between one and seven months. Furthermore, in the case of France,

⁽¹²⁾ As regards the final report, the Commission drew up a standard document to be used by the Member States during the 1994-1999 period only in June 1995.

⁽¹³⁾ See the eligibility documents annexed to the Commission Decisions of 23 April 1997 amending the decisions approving the Community Support Frameworks, Single Programming Documents and Community initiative programmes adopted in respect of the 15 Member States (OJ L 146, 5.6.1997, p.32).

although in December 1997 19 requests for payment of the balance had been submitted more than one year earlier the corresponding measures had not still been closed.

3.10. It was observed that four of the 53 measures examined had resulted neither in a request for additional information nor in the authorisation of the final balance, even though the Commission had received the closure documents between six and 22 months earlier.

3.11. Nevertheless, it must be pointed out that a frequent cause of delay in processing requests for payment of the balance is the unsatisfactory nature of the documents submitted: either the final report is considered inadequate or the declarations of expenditure provided by the Member State's authorities are incomplete or incorrect (data are not broken down by individual measure; there is a lack of information needed to establish a link between expenditure listed in ecus and in national currency; reference is made to an incorrect eligibility period or financial plan; declarations of expenditure and final reports contradict one another, or expenditure is ineligible). These problems are generally the consequence of serious shortcomings in terms of organisation and internal control which should have been noted earlier, especially given the mechanisms envisaged within the framework of partnership and, in particular, the Monitoring Committees, on which the Commission is represented.

3.12. Where inconsistencies are identified in closure documents (18 of the 53 measures in the sample examined), the Commission and the authorities of the Member State concerned exchange correspondence so as to clear up the problem. In two of these cases, the Commission took a year to send its request for clarification to the Member State. In five cases, the Member States subsequently took more than a year to meet the Commission's requests for information and in four cases the Member States did not submit the information requested. The maximum interval noted between the initial submission of a request for payment of the balance and the establishment of a payment order after clarification of problems raised was 29 months.

Inspections in the Member States

Volume of the Commission's checks

3.13. In its reply to paragraphs 6.19 to 6.20 of the Annual Report concerning the financial year 1996, the Commission stated that it had taken appropriate action to guarantee the legality and regularity of Community payments, including the final payment. Furthermore, in its eighth report on the Structural Funds, the Commission states that the 26 checks made in 1996 by DG XVI were

primarily intended to check the existence and effectiveness of systems applicable to the management and inspection of operations, and the reliability of the information sent to the Commission (in particular of certificates of expenditure). Secondly, they must make it possible to check the regularity of the use of ERDF appropriations, the accuracy of the accounts and the legitimacy, regularity and quality of the financial management, in the light of the objectives of each form of assistance and of the Community rules. Following these checks, the Commission takes the necessary steps to ensure that any irregularities discovered by its own officials or by the Court of Auditors are monitored and corrected.

3.14. As regards the volume of checks made by the Commission, some 120 measures belonging to the 1989-1993 programming period were checked over the 1994-1997 period. Given the shortcomings noted by DG XX during its audit of the systems for checking and managing Structural Fund measures⁽¹⁴⁾, it cannot be concluded, even assuming that each check meets the requisite criteria, that the percentage of measures checked during the programming period or prior to closure can adequately guarantee the legality and regularity of Community payments, including the final payment.

Inspection reports

3.15. Only 27 % of the reports by DG XVI which the Court has obtained contain analysis of or opinions on the Member States' management and inspection systems. The reports, which are limited in scope, contain only a description of jointly financed measures and an examination of specific problems. No report was produced in respect of several missions.

Account taken of inspection findings

3.16. Another shortcoming observed in the closure process, on the basis of the sample of measures examined, is the difficulty experienced by the Commission in taking account within a reasonable time of the comments made as a result of its own inspections in the Member States or of the Court's audits. This is the case, in particular, where irregularities detected in the course of inspections lead to an enquiry by the Commission's Anti-Fraud Unit (UCLAF). Given the

⁽¹⁴⁾ Document SEC(94) 1654 final.

nature and complexity of the problems to be examined, the corresponding work is particularly time-consuming.

3.17. Although the problems identified during the audits generally concern only a very small number of projects, or even a single project, in the majority of cases the whole programme is suspended, thereby often delaying closure by several years.

3.18. The Commission formally decides to reduce Community aid only in exceptional cases⁽¹⁵⁾. The Commission's internal instructions of 15 October 1997⁽¹⁶⁾ on net financial corrections within the framework of Article 24 of Regulation (EEC) No 4253/88 are certainly a sign of progress, but that does not mean that regulatory standards should not be drafted at a later date.

3.19. The following examples, which are taken from the sample examined, illustrate the problems which may arise.

(a) An on-the-spot inspection carried out in February 1996 by DG XVI in respect of the Extremadura (E) Objective 1 OP detected several shortcomings. In July 1996, the Commission authorised payment of the balance even though it was only at the stage of sending its inspection findings to the Member State. Furthermore, although the Spanish authorities' reply dated October 1996 gave assurances that the problems encountered could not recur because a computerised system for monitoring the projects had been introduced, the audit carried out by the Court in April 1997 once again did not enable the declaration of expenditure to be reconciled with the management department's accounts. It was also noted that ineligible projects totalling approximately ECU 15 million had been included in the declaration of expenditure and that five road projects worth a total of ECU 3,8 million had been financed both by the OP in question and by the Spain-Portugal Interreg OP.

(b) Following an inspection of the Objective 1 Saxony-Anhalt (D) OP carried out on the spot by DG XVI in November 1996 on the basis of closure documents received in June 1996, amendments were made to the final report. In April 1997, the final balance was authorised even though a difference of ECU 3,2 million still existed between the final report and the declared expenditure and although account was taken of expenditure which had merely been approved rather than of expenditure which had actually been incurred (see also paragraph 3.22).

(c) In April 1996, DG XX inspected the Ireland and Northern Ireland Interreg CI on the spot. In January 1997, the closure documents were submitted by the Member State and in February 1997 the inspection report, which drew particular attention to categories of ineligible expenditure, was sent to DG XVI and to the appropriate authorities in the Member State. In November 1997, payment of the final balance was made on the basis of the documents submitted 10 months earlier; no detailed analysis was performed and account was not taken of any adjustment.

3.20. Lastly, in the sample examined the Court drew attention to five Commission inspections (three by DG XVI and two by DG XX) the findings of which were sent, together with a request for comments, to the national authorities more than a year after the inspection. In one of these cases, DG XVI sent its observations two years after the on-the-spot inspection of two Objective 2 OPs (1989-1991 and 1992-1993 programming periods).

Events following closure

3.21. In practice, the closure of a programme and payment of the balance do not result in discontinuation of the monitoring which the designated authorities in the Member State and the Commission are required to carry out. The Court noted that in Germany and in the United Kingdom projects may still be inspected by external auditors on behalf of the Member States' managing authorities after the certificate of expenditure has been submitted. For example, the Annual Report concerning the financial year 1996⁽¹⁷⁾ noted that, following an audit subsequent to the presentation of the certificate of expenditure in respect of the East Midlands (UK) Objective 2 OP (1990-1991), the declared eligible cost should have been reduced by ECU 1,32 million. This reduction was not subsequently taken into account by the Commission. In the case of the Objective 1 (1990-1993) Brandenburg (D) OP, for 179 out of 761 jointly-financed projects (23,5 %) compulsory checks in respect of definitive documentation of expenditure were not carried out when the declaration of expenditure was drawn up by the region. Similarly, in the case of the Objective 1 (1990-1993) Saxony-Anhalt OP, 417 out of 1 428 jointly-financed projects (29,2 %) were still to be checked. Revenue totalling approximately ECU 70,7 million from these projects, the collection of which was deemed necessary by the regional authorities, had not been excluded from the Member State's certificate of expenditure.

3.22. Furthermore, certain conditions for granting the aid concerned, such as the creation or preservation of jobs, can be checked only several years after the

⁽¹⁵⁾ Decision taken pursuant to Article 24 of Regulation (EEC) No 4253/88.

⁽¹⁶⁾ C(97)3151 final-II.

⁽¹⁷⁾ See paragraph 6.26.

investment has been completed. Thus, in Germany there is a five-year surveillance period during which created or preserved posts must be occupied permanently for at least three years, failing which the surveillance period is extended by three years. If the requisite number of posts is not created, the final beneficiary is asked to refund all or part of the aid.

3.23. It is therefore possible that refunds to the Community budget may still be made after the three-year period, following the last payment in respect of the measure, during which the relevant body and authorities are required to keep at the Commission's disposal all supporting documents relating to the measures⁽¹⁸⁾. For the projects concerned by these events, beneficiaries' commitments should continue to be monitored by the authorities designated by the Member States and a final settlement procedure should be introduced.

4. CONCLUSION

4.1. The Court's audit revealed shortcomings in the Member States (final account of final beneficiaries, certification of expenditure, final reports and submission of documents) and at the Commission (analysis of closure documents, and calculation and payment of the balance). These shortcomings occasionally resulted in significant delays and in decisions and payments that were incorrect or lacking in transparency (see paragraphs 1.3, 3.5-3.12 and 3.19).

4.2. Swifter closure of ERDF measures is necessary, not only in the interest of the beneficiaries of completed measures but also in order to allow proper implementation of programmes in the 1994-1999 period (see paragraphs 3.2-3.4) which are soon to be closed, in particular Objective 2 OPs in the first programming period (1994-1996). Thus, it is essential for the Commission to take the necessary measures, in partnership with the Member States, to remedy the shortcomings that have been identified.

4.3. In order to close measures more quickly, the Commission should:

- (a) introduce, within the framework of an active closure policy, concrete procedures for requesting additional

⁽¹⁸⁾ Article 24(3) of Regulation (EEC) No 4253/88 lays down that any amount subject to the recovery of undue payments procedure must be refunded to the Commission. Furthermore, Article 23(3) of the same Regulation lays down that the supporting documents must be kept for three years after the last payment in respect of a measure.

information, for examining information received and for systematically pursuing Member States which have not provided closure documents by the stipulated deadlines or which have not submitted replies to additional requests (paragraphs 3.5-3.12);

- (b) send to the Member States a document explaining how the closure balance is calculated, as it emerged that the national authorities responsible for managing measures were not always able to explain the calculation in question;

- (c) apply provisional closure where one or more measures are still to be examined (see paragraph 3.17).

4.4. As regards checks carried out by the Community authorities in the Member States, the Commission should:

- (a) strengthen the administrative procedures for monitoring checks that have been carried out (see paragraphs 3.16-3.19);

- (b) ensure that the findings of its inspections are sent to the Member States within a much shorter time, not only to speed up the closure of the measures concerned but also to enable the Member States to introduce as quickly as possible corrective measures that will also benefit the more recent programmes still being implemented (see paragraph 3.20).

4.5. In future, the Commission should also ensure that the new Commission Regulation (EC) No 2064/97⁽¹⁹⁾, which adopts detailed arrangements for financial inspections carried out by the Member States, is properly implemented and, in particular, that the financial control for which it provides is genuinely independent. Furthermore, as the moment when the final balance is paid over is the stage at which there is a risk that ineligible expenditure may be definitively co-financed by the Community, the Commission should pay particular attention to payments made during the closure stage and, if necessary, check the measures to be closed itself so as to guarantee the validity of all corresponding Community payments on the basis of samples (see paragraphs 3.13-3.15).

4.6. Lastly, as regards financial adjustments, although the Commission's internal instructions represent a step forward, they do not preclude the possibility of subsequent legislation (see paragraph 3.18). As regards events occurring after closure which may lead to the collection of revenue, a final settlement procedure should be introduced (see paragraphs 3.21-3.23).

⁽¹⁹⁾ OJ L 290, 23.10.1997, p. 1.

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 23 September 1998.

For the Court of Auditors

Bernhard FRIEDMANN

President

Table 1

Situation of sums still to be settled in respect of ERDF measures approved prior to 1994, by budget heading ⁽¹⁾ — 1 January/31 December 1997 ⁽²⁾

(million ECU)

Budget heading	Amount on 1.1.1997	Number of measures commenced	Decommitments 1.1.1997- 31.12.1997	Number of measures closed	Payments 1.1.1997- 31.12.1997	Number of measures closed	Situation at 31.12.1997	Number of measures commenced
B2-1 2 0 0 Objective 1	1 184,3	147	21,6	12	319,3	35	843,4	100
B2-1 2 0 1 Objective 2	481,5	110	22,7	2	105,2	18	353,7	90
B2-1 2 0 2 Objective 5b	107,7	53	2,5	4	15,3	9	89,9	40
B2 148 IC	593,2	178	17,7	11	163,7	45	411,8	122
B2 1 9 0 New. L.	77,6	6	1,8	1	36,4	1	39,4	4
B2 1 8 2 ERDF	83,1	123	7,0	3	19,0	41	57,0	79
Subtotal	2 527,4	617	73,3	33	658,9	149	1 795,3	435
<i>Programmes/projects after the reform (first generation)</i>								
IMPs, OQ, NCIPs, CIPs, etc. from various budget headings	385,9	152	35,5	17	78,7	31	271,7	104
Total	2 913,3	769	108,8	50	737,5	180	2 067,0	539

Source: SINCOM.

⁽¹⁾ Except for individual projects decided upon on the basis of the old rules, which are included in Table 3.

⁽²⁾ Differences when compared with the tables included in the report on the financial year 1996 are due to additional re-evaluations and commitments.

Table 2

Situation of sums still to be settled in respect of ERDF measures approved prior to 1994, by budget heading ⁽¹⁾ — 1 January/31 December 1997 ⁽²⁾

(million ECU)

Country	Amount on 1.1.1997	Number of measures commenced	Decommitments 1.1.1997- 31.12.1997	Number of measures closed	Payments 1.1.1997- 31.12.1997	Number of measures closed	Amount on 31.12.1997	Number of measures commenced
Belgium	43,8	27	1,3	1	7,9	5	34,6	21
Denmark	2,9	8	0,2	0	0,9	2	1,8	6
Germany	158,2	46	4,8	11	59,5	15	93,8	20
Greece	269,1	54	15,8	8	167,9	21	85,4	25
Spain	290,4	59	6,7	1	101,3	22	182,4	36
France	261,0	143	5,1	4	55,4	32	200,5	107
Ireland	33,4	13	2,8	0	13,4	7	17,2	6
Italy	1 332,6	180	24,6	8	233,4	11	1 074,6	161
Luxembourg	6,7	5	0,1	1	0,0	0	6,7	4
Netherlands	23,2	16	1,3	1	5,7	4	16,3	11
Portugal	58,9	18	3,9	1	7,0	5	48,0	12
United Kingdom	331,5	83	35,6	4	46,7	17	249,1	62
Subtotal	2 811,6	652	102,2	40	698,9	141	2 010,5	471
Unspecified	101,7	117	6,6	10	38,6	39	56,5	68
Total	2 913,3	769	108,8	50	737,5	180	2 067,0	539

Source: SINCOM.

⁽¹⁾ Except for individual projects decided upon on the basis of the old rules, which are included in Table 3.⁽²⁾ Differences when compared with the tables included in the report on the financial year 1996 are due to additional re-evaluations and commitments.

Table 3

Situation of sums still to be settled in respect of individual projects decided upon on the basis of the old Regulations — 1 January/31 December 1997

(million ECU)

	Amount on 1.1.1997	Decommitments in 1997	Payments in 1997	Re-evaluation on closure of the financial year	Situation at 31.12.1997
Individual projects decided upon by the Commission prior to 1 January 1989 under the ERDF and subject to Article 12 of the amended ERDF Regulation	325,5	27,1	25,2	-1,3	271,9
Individual projects decided upon in 1989, but governed by Regulation (EEC) No 1787/84	51,9	0,1	0,4	-0,6	50,8

Source: SINCOM.

COMMISSION REPLIES

1. INTRODUCTION

1.1-1.3. As the Court remarks, it has already addressed, in its previous annual report, the subject of the financial closure of ERDF-co-financed operations. The Commission gave a full reply on that occasion. The Commission continues to close operations as rapidly as its resources and the quality of the Member States' closure documentation permit; it only approves extensions to programmes' commitment and payment periods when the extensions are justified. Commission Regulation (EC) No 2064/97 now specifically provides, in Article 8, for presentation by the Member State at programme closure of a statement providing an independent opinion on the validity of its request for final payment. It remains the responsibility of the Member States to ensure the accuracy of their declarations of expenditure.

The Commission corrects or requires the correction of all known Member State financial irregularities. However, many corrections are made by the Member State itself and do not require the formal application of Article 24 of Regulation (EEC) No 4253/88.

The Commission understands that the sample of 53 ERDF interventions consists mainly of interventions audited by the Court in the Member States. The sample may therefore not be representative, since:

- the Court, in selecting operations for audit in the Member States, works on the basis of risk assessment; it is thus more likely to control operations posing problems,
- where the Court does indeed identify a problem, the action required of the Commission to settle the problem may in itself tend to delay the closure of the programme concerned.

Many of the Court's observations in this report are based on findings in the Commission's files. The Court presented summary information on its findings in July at the Commission's request. Because of the tight timetable for the preparation of its reply, the Commission was not in a position to examine and comment on this information.

2. STATE OF CLOSURE ON 31 DECEMBER 1997

2.2-2.6. The Commission explained in its reply to the Court's 1996 Annual Report why a significant number of pre-1994 operations remain open:

1. many Member State final reports are of insufficient quality;
2. other information necessary for the closure of many programmes has not been provided by the Member States (e.g. results of court cases, satisfactory settlement of control observations, presentation of programme financial plans as modified by the Monitoring Committees);
3. the closure date for a number of programmes has been deferred for justified reasons; this concerns in particular Italy and helps explain why (point 2.6) a considerable proportion of the outstanding commitments involve this Member State.

The Court's figures show that both the number of open operations and the volume of outstanding commitments have been significantly reduced during 1997. As the Court remarks, it only remains in any case to make the payment of the balance (20 %) of the final annual instalment of the multiannual operation. Moreover, the volume of outstanding commitments does not represent the sum owed by the Commission to the Member States: in many cases, underspending on programmes will mean that decommitments or even recoveries may be necessary. The Commission is continuing and, indeed, intensifying its efforts to settle all operations which can properly be settled on the basis of the information available. In the first six months of 1998, for example, 48 further projects and 75 further programmes were closed and the total volume of outstanding commitments was reduced by ECU 220 million. Outstanding commitments now represent only some 3 % of the total ERDF envelope of the pre-1994 programmes, or about six weeks' worth of commitments in respect of the current 1994-99 programmes.

3. OBSERVATIONS ON THE CLOSURE PROCESS

*Delays**General remarks*

3.2-3.4. As the Court states in paragraph 2.1, the regulatory requirement on the Commission as regards the making of payments is that payments are to be made 'as a general rule' within two months, and depend on receipt of an acceptable application. So there is no absolute

deadline for these payments. However, the Commission is aware of the problems which may be created by the late settlement of operations and it does its best to advance matters. The overlapping of financial operations relating to successive programming periods is inevitable under the Regulations and Structural Fund managers in the Member States need to be able to cope with this and, in particular, to retain the ability to provide the documentation required for programme closure.

Delays in initial submission of closure documents by the Member States

3.5. The Commission regularly reminds the Member States of the need to present the information required for the closure of programmes.

3.6. It is not necessarily a good use of limited Commission staff resources to make a written record of every telephone contact or meeting with a Member State or to produce a document such as that mentioned by the Court.

Contacts with the United Kingdom authorities on closure of the 1989-1993 programmes have been maintained at a variety of levels at least since 1995. For example, a letter was sent by the Department of Trade and Industry to the Commission in January 1996 undertaking to present all outstanding final reports by April 1996. A considerable correspondence on final reports has been exchanged with the United Kingdom national authorities and the Regional Government Offices. A number of meetings have also been organised with the Government Offices. The same issues have frequently been raised by Commission representatives in Monitoring Committee meetings.

3.7 (b) The Commission considers that the application of Regulation (EC) No 2064/97 and the eligibility rules adopted in April 1997 together with the increasing use by Member States of the annual report model (see the Commission's reply to paragraphs 6.34-6.36 of the 1996 Annual Report) will considerably improve the quality of closure documents and allow quicker closure of the programmes.

It should be noted that Article 36 of the new general Regulation proposed by the Commission for the next programming period gives details of what should be contained in the annual and final report.

Delays in processing applications for payment of the balance

3.9-3.12. The Commission cannot form an opinion on the specific findings resulting from the Court's sample for

the reasons explained in the fourth paragraph of its reply to points 1.1-1.3. However, the Commission acknowledges that in many cases programme closure takes a long time. This is partly because of the limited human resources which can be devoted to the task and partly because of weaknesses in Member States' closure documentation which have to be taken up with the authorities concerned.

The Commission would refer also to the Court's statement in paragraph 6.40 of the 1996 Annual Report that it is at the moment of programme closure that any ineligible expenditure in Member States' declarations risks being definitively co-financed by the Community budget. For this reason, a considerable number of verifications by the Commission are necessary.

Problems which such verifications raise may result either in a formal request to the national authorities for clarifications or, often, in informal requests to the competent national officials. The absence of a written record of such a request does not mean that the problem has not been raised with the Member State in the course of the multiple informal contacts which take place between the services concerned.

In the case of Italy the Commission has given a specific assurance that outstanding closures will be made as soon as possible in spite of the considerable complexity of the operation.

3.13. The Commission is not in a position to guarantee that all its payments are correct, since they are based on certified Member State payment declarations which may nevertheless include ineligible expenditure, in spite of the Commission's efforts to ensure that Member States discharge efficiently their duty of ensuring proper financial management and control of Structural Fund programmes.

Inspections in the Member States

Volume of the Commission's checks

3.14. The Commission carries out as many on-the-spot checks as its resources allow. But these checks cannot, in themselves, ensure the absence of irregularities. They lead, however, to the correction of the irregularities which are discovered.

Inspection reports

3.15. The services concerned are seeking to improve the documentation relating to their on-the-spot checks and

the speed with which it is produced. However, the DG XVI control reports are intended to include only necessary information: the control objectives, a short description of the operations, the findings and the recommendations.

Given the variety, the number and the geographical spread of the co-financed operations and the beneficiaries, it may be difficult to form a valid overall opinion on the Member State management system on the basis of a one-week check by two officials; in such cases, DG XVI limits its observations to problems, including system aspects, which have been sufficiently documented by the control.

Account taken of inspection findings

3.16. The Commission follows up all reported problems with a view to correcting them, or requiring their correction by the Member State, before the closure of the programme concerned. This procedure is often laborious, depending on the information available about the problem and the reactions of national authorities and beneficiaries. Article 7 of Regulation (EC) No 2064/97 includes specific provision for the satisfactory settlement by Member States of reported problems.

Problems engaging the attention of UCLAF often involve court cases which may take a long time to settle. Conversely, a considerable number of problems identified by the Commission services may be corrected quickly, without a formal exchange of letters with the national authorities.

It is true however that the Commission encounters difficulties and delays in relation to the Court's preliminary audit findings included in the 'sector letters' which are sent to the Member States for comments. The Commission receives copies of such letters and of the Member State's reply, but it would also be useful for it to be informed of the Court's final position on such cases; it is discussing this possibility with the Court.

3.17. The Regulations imply that partial closure of a programme should not normally take place. However, in certain exceptional cases, where the Member State presented, for example, clear evidence of judicial delays affecting certain projects forming part of a programme, the Commission has adopted a decision permitting closure of the rest of the programme.

3.18. As mentioned in reply to paragraphs 1.1-1.3, financial corrections are often made without the Commission having to take a formal decision under Article 24. The Commission has proposed a new regulatory basis for making financial corrections in the next programming period.

3.19 (a) The Spanish authorities were made aware informally of the DG XVI control findings at an early stage. This allowed them to follow the problems up and present corrected information to the Commission in June 1996, on the basis of which the Commission effected the closure of the programme in July 1996. The Commission has now seen the Spanish authorities' reply to the Court's observations. The national authorities take a different view from the Court, with which the Commission therefore intends to discuss the case before adopting a final position.

The Commission would point out however that this case may well have no impact on the Community budget because of the considerable overspending by the Member State for this programme: according to the financial plans, the ERDF co-financiable expenditure amounted to ECU 439 million and the expenditure declared amounted to ECU 470 million; the difference of ECU 31 million not co-financed by ERDF may well be sufficient to compensate for these errors. However, the exact calculations by sub-programme will be made by the Commission only after receipt of the corrected declaration of expenditure.

(b) The German authorities have presented to the Court of Auditors sufficient information to reconcile the amounts indicated in the final report with those indicated in the final declaration of expenditure. Please see also the reply at paragraph 3.21(b) below.

(c) The file on this control mission remains open, a letter of reminder having been sent to the national authorities on 21 January 1998. Should any modification of the ERDF contribution already paid be necessary following receipt of the required information, an appropriate adjustment will be made.

However, the amounts of expenditure declared for the sub-programmes affected by the problems are considerably higher than the co-financiable sums indicated in the programme financial plans; the likelihood of any financial correction being necessary is therefore limited.

3.20. Delays in the presentation of control reports often result from the workload of the control departments as well as from the need, in certain cases, to make a supplementary mission before drawing a final conclusion.

Events subsequent to closure

3.21 (a) UK: The Commission has reminded the United Kingdom authorities of the requirement to present a revised expenditure declaration.

(b) DE: The Commission will request from the *Land* authorities the conclusions of their controls and, if necessary, a corrected declaration of expenditure.

3.22. Under the German *Gemeinschaftsaufgabe* (common task), if the conditions set for granting the aid are not respected, all or part of the aid may be recalled. In such a case, the national authorities should present a corrected declaration of expenditure to the Commission in order to allow it to make the necessary adjustment to the Community aid paid, even after programme closure.

3.23. The documentation requirements of Article 23 of Regulation (EEC) No 4253/88 constitute a minimum; Member States may and should establish more rigorous national rules where necessary.

4. CONCLUSION

4.1-4.2. The Commission accepts that there is room for improvement, in particular of the time sometimes required for the closure of a programme. It underlines however that the delays in the closure of the 1989-1993 programmes have resulted mainly from extensions of the programme period for justified reasons and from the lack of information (or satisfactory information), necessary for the closure procedure from the Member States. Shortage of human resources in the Commission, and probably in the Member States, is also a permanent problem.

4.3 (a) The Commission considers that the annual report model (which also provides the basis for final reports) made available to the Member States and the application of Article 8 of Regulation (EC) No 2064/97 providing for the presentation of a control statement by an independent authority to the Commission at programme closure will substantially improve the quality of closure documents, thus allowing their more rapid settlement.

(b) The Member States normally have the information in question in their possession; the Commission provides any clarifications requested by Member States in relation to the closure calculations and the amount of the final payment.

(c) The Commission effects partial closures in certain cases, but the Regulations imply that programmes should normally be closed in their entirety.

4.4. The Commission shares the Court's opinion that the results of on-the-spot checks should be communicated to the Member State as soon as possible. One of the principal objectives of the protocols concluded between the Commission's Financial Controller and Member State audit services is to improve cooperation, in particular by providing faster and more complete information on the results of on-the-spot checks. The regular bilateral meetings held with Member States within the framework of the protocols provide a forum for discussion of these results. Furthermore, the Directorate-General for Financial Control is currently developing the means necessary to rationalise the preparation and execution of on-the-spot checks as well as the reports on these checks. The use of these means should thus allow a faster transmission of results to Member States.

The Commission's proposal for new regulations for the forthcoming programming period includes formal provision for extensive cooperation between Member States and the Commission in respect of financial control, with special reference to on-the-spot checks.

4.5. Commission Regulation (EC) No 2064/97 provides for all the steps necessary to ensure proper financial control by Member States: system examination, on-the-spot checks, satisfactory settlement of problems, annual reporting to the Commission and the presentation of an independent control statement providing an overall conclusion as to the validity of the final payment claim and the final declaration of expenditure. The Commission reserves the right to make controls of its own at closure but emphasises the primary responsibility of the Member States for ensuring that closure takes place on a proper basis.

4.6. The Commission's regulatory proposals for the new programming period include substantial improvements concerning financial corrections. Existing rules and procedures enable the Commission to make any necessary financial recoveries after programme closure.