

Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

[<sup>XI</sup>COMMISSION REGULATION (EC) No 1828/2006

of 8 December 2006

setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund]

[<sup>XI</sup>THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 repealing Regulation (EC) No 1260/1999<sup>(1)</sup>, and in particular Article 37(1) (d), the third paragraph of Article 44, Articles 59(6), 60(b) and 66(3), Article 67(2)(c), Articles 69(1), 70(3), 71(5), 72(2), 74(2) and 76(4) and the second subparagraph of Article 99(5) thereof,

Having regard to Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999<sup>(2)</sup>, and in particular the second subparagraph of Article 7(2) and the second paragraph of Article 13 thereof,

Whereas:

- (1) Regulation (EC) No 1083/2006 replaces Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds<sup>(3)</sup>, and Regulation (EC) No 1080/2006 replaces Regulation (EC) No 1783/1999 of the European Parliament and of the Council of 12 July 1999 on the European Regional Development Fund<sup>(4)</sup>, both Regulations taking into account new developments in the field of Structural Funds. It is therefore appropriate also to lay down new provisions implementing Regulations (EC) No 1080/2006 and (EC) No 1083/2006.
- (2) Experience has shown that citizens of the European Union are insufficiently aware of the role played by the Community in funding programmes aimed at reinforcing economic competitiveness, creating jobs and strengthening internal cohesion. It is therefore appropriate to provide for the preparation of a communication plan which identifies in detail the information and publicity measures necessary to bridge this communication and information gap. For the same purpose, it is also necessary to identify the responsibilities and the roles that should be played by each of the actors involved.

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**Changes to legislation:** There are currently no known outstanding effects for the  
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- (3) In order to guarantee that information on possible funding opportunities is disseminated widely to all interested parties and for the sake of transparency, the minimum content of the information measures needed to inform potential beneficiaries about the financing opportunities offered jointly by the Community and the Member States through the Funds should be set out, including an obligation to publicise the steps that a potential beneficiary should take to submit an application for funding and the selection criteria that will be used.
- (4) In order to enhance transparency regarding use of the Funds, the list of beneficiaries, the names of the operations and the amount of public funding allocated to operations should be published, electronically or otherwise.
- (5) In order to ensure a better implementation of the information measures and to allow a better exchange of information between the Member States and the Commission on the information and publicity strategies and results, contact persons responsible for the information and publicity measures should be designated and should participate in appropriate Community networks.
- (6) For the purposes of Articles 37 and 67 of Regulation (EC) No 1083/2006, it is necessary to lay down detailed rules and categories to allow the Member States to submit to the Commission uniform information on the programmed use of the Funds, as well as information on the cumulative allocation of the Funds by categories throughout the life of a programme, and to enable the Commission to inform the other Institutions and the citizens of the European Union in an appropriate manner about the use of the Funds, including the achievement of the targets set out in Article 9(3) of Regulation (EC) No 1083/2006.
- (7) With regard to Article 60 of Regulation (EC) No 1083/2006 and in the light of the experience gained, it is necessary to lay down the obligations which the managing authorities should have with regard to beneficiaries in the phase leading to the selection and approval of the operations to be funded, with regard to the aspects which the verifications of the expenditure declared by the beneficiary should cover, including administrative verifications of the applications for reimbursement, and on-the-spot verifications of individual operations and with regard to the conditions to be observed when on-the-spot verifications are carried out on a sample basis.
- (8) It is also necessary to set out in detail the information which should be included in the accounting records of operations and the information to be kept as data on implementation which the managing authorities should record, store and send to the Commission upon request.
- (9) In order to ensure that expenditure under operational programmes can be properly audited, it is necessary to set out the criteria with which an audit trail should comply so as to be considered adequate.
- (10) The audit of operations is carried out under the responsibility of the audit authority. To ensure that the scope and effectiveness of those audits are adequate and that they are carried out according to the same standards in all Member States, it is necessary to set out the conditions which those audits should fulfil.

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- (11) Experience has shown that it is necessary to set out in detail the basis for the sampling of operations to be audited, which the audit authority should observe in establishing or approving the sampling method, including certain technical criteria to be used for a random statistical sample and factors to be taken into account for a complementary sample.
- (12) In order to simplify and harmonise standards for the preparation and presentation of the audit strategy, the annual control report and the closure declarations for which the audit authority is responsible pursuant to Article 62 of Regulation (EC) No 1083/2006, it is necessary to make detailed provision about their content and specify the nature and quality of the information on which they rely.
- (13) In order to ensure the most effective application of Article 90 of Regulation (EC) No 1083/2006 with regard to the availability of documents and the right of the Court of Auditors and the Commission to have access to all supporting documents regarding expenditure and audits, managing authorities should ensure that information on the identity and location of the bodies holding the supporting documents is readily available and those documents should be readily supplied to a minimum list of persons and bodies. For the same purpose, it is necessary to set out which data carriers can be considered as commonly accepted for the purpose of keeping such documents. To this end, the national authorities should lay down the procedures necessary to ensure that the documents kept are in conformity with the originals, when this is relevant, and can be relied on for audit purposes.
- (14) In order to harmonise standards for the certification of expenditure and for the preparation of applications for payments, the content of such certificates and applications should be laid down and the nature and quality of the information on which they rely specified. Detailed procedures should be set out for keeping, in accordance with Article 61(f) of Regulation (EC) No 1083/2006, an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation and for informing the Commission accordingly.
- (15) Pursuant to Article 71 of Regulation (EC) No 1083/2006, the Member States are, before the submission of the first interim application for payment or at least within twelve months of the approval of each operational programme, to submit to the Commission a description of the management and control systems, a report setting out the results of an assessment of the systems set up and an opinion on their compliance with the provisions of that Regulation on management and control systems. Since those documents are among the principal elements on which the Commission relies, in the context of the shared management of the Community budget, to satisfy itself that the financial assistance concerned is used by the Member States in accordance with the applicable rules and principles necessary for protecting the Community's financial interests, it is necessary to set out in detail the information that such documents should contain and the basis for the assessment and the opinion.
- (16) Operational programmes funded under the European territorial cooperation objective referred to in Article 3 of Regulation (EC) No 1083/2006 are presented by two or more Member States and have specific features, which are laid down in Regulation

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(EC) No 1080/2006. It is therefore appropriate to set out the specific information which the description of the management and control system for those programmes should contain.

- (17) Article 74 of Regulation (EC) No 1083/2006 provides, *inter alia*, that for operational programmes for which the total eligible public expenditure does not exceed EUR 750 million and for which the level of Community co-financing does not exceed 40 % of the total public expenditure, a Member State may choose to rely more on national bodies and rules for carrying out certain functions related to the control and audit requirements. It is therefore necessary to set out which verifications, which audits of operations and which obligations can be carried out and executed according to national rules and by national bodies.
- (18) As part of their management and control obligations Member States are required to report and monitor irregularities. Detailed rules to implement that requirement were laid down in Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field<sup>(5)</sup>, and Commission Regulation (EC) No 1831/94 of 26 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organisation of an information system in this field<sup>(6)</sup>. It is appropriate, for reasons of clarity and simplification, to incorporate those rules into this Regulation.
- (19) Provision should be made for the Commission to reimburse judicial costs when it requests a Member State to initiate or continue legal proceedings with a view to recovering amounts unduly paid following an irregularity, and for it to be supplied with information enabling it to decide on the apportionment of the loss from irrecoverable amounts pursuant to Article 70(2) of Regulation (EC) No 1083/2006. Regular contact should also be provided for between the Commission and the Member States on the subject of irregularities, for the use of the information supplied for making risk analyses and compiling reports, and for the provision of information to the relevant committees.
- (20) In order to limit the administrative burden imposed by the reporting system while safeguarding the necessary level of information, Member States should, without prejudice to the obligations arising directly from Article 61(f) of Regulation (EC) No 1083/2006, not be obliged to report irregularities involving amounts below a certain threshold unless the Commission expressly so requests.
- (21) In the light of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(7)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(8)</sup>, it is necessary to provide, in relation to the information and publicity measures and the audit work pursuant to this Regulation, that the Commission and the Member States should prevent any unauthorised disclosure of or access to personal data, and to specify the purpose for which the Commission and the Member States can process such data.

- (22) For reasons of legal certainty and of equal treatment of all Member States, it is necessary to fix the rate applicable to the financial correction which the Commission may make when a Member State does not comply with its obligation to maintain in all the regions concerned during the programming period an agreed target level of public or equivalent structural expenditure. For reasons of simplification and proportionality, no financial correction should be applied if the difference between the agreed target level and the level achieved is equal to or less than 3 % of the agreed target level (*de minimis* threshold); for the same reasons, when the difference between the two levels is higher than 3 % of the agreed target level, the rate should be calculated by subtracting that *de minimis* threshold.
- (23) The use of electronic means for the exchange of information and financial data leads to simplification, increased efficiency and transparency and to savings in time. In order to exploit these advantages fully, while preserving the security of exchanges, a common computer system should be established as well as a list of documents of common interest to the Commission and the Member States. It is therefore necessary to specify the format each document should have and to provide a detailed description of the information such documents should contain. For the same reasons, it is necessary to specify how such a computer system functions with regard to the identification of the party responsible for uploading the documents and any updates thereto.
- (24) In the framework of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures<sup>(9)</sup>, taking account of the level of security and confidentiality required for the financial management of the use of the Funds, of the state of the art and of a cost-benefit analysis, it is necessary to require the use of an electronic signature.
- (25) In order to ensure the quick development and proper functioning of the common computer system, the cost of its development should be financed by the budget of European Communities pursuant to Article 45 of Regulation (EC) No 1083/2006, and the costs of the interface with national, regional, and local computer systems should be eligible for a financial contribution from the funds pursuant to Article 46 of the same Regulation.
- (26) Building on the experience of the 2000-2006 programming period, it is necessary to set out in detail the conditions which financial engineering instruments should fulfil to be funded under an operational programme, it being understood that contributions to financial engineering instruments from the operational programme and other public sources, as well as the investments made by financial engineering instruments in individual enterprises, are subject to the rules on State aid including the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises<sup>(10)</sup>.
- (27) It is necessary to adopt the list of criteria to be used for identifying the areas where expenditure on housing can be eligible for a contribution from the European Regional Development Fund pursuant to Article 7(2) of Regulation (EC) No 1080/2006 and the list of eligible interventions. Given the diversity of the situations prevailing in the Member States concerned, it is appropriate to establish a list of criteria for identifying