

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

[^{XI}CHAPTER II

PROVISIONS IMPLEMENTING REGULATION (EC) No 1083/2006

Section 1

Information and publicity

Article 2

Preparation of the communication plan

1 A communication plan, as well as any major amendments to it, shall be drawn up by the managing authority for the operational programme for which it is responsible or by the Member State to cover several or all operational programmes co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF) or the Cohesion Fund.

2 The communication plan shall include at least the following:

- a the aims and target groups;
- b the strategy and content of the information and publicity measures to be taken by the Member State or the managing authority, aimed at potential beneficiaries, beneficiaries and the public, having regard to the added value of Community assistance at national, regional and local level;
- c the indicative budget for implementation of the plan;
- d the administrative departments or bodies responsible for implementation of the information and publicity measures;
- e an indication of how the information and publicity measures are to be evaluated in terms of visibility and awareness of operational programmes and of the role played by the Community.

Article 3

Examination of compatibility of the communication plan

The Member State or the managing authority shall submit the communication plan to the Commission within four months of the date of adoption of the operational programme or, where the communication plan covers two or more operational programmes, of the date of adoption of the last of these operational programmes.

In the absence of observations made by the Commission within two months of receipt of the communication plan, the plan shall be deemed to comply with Article 2(2).

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If the Commission sends observations within two months of receipt of the communication plan, the Member State or the managing authority shall within two months send a revised communication plan to the Commission.

In the absence of further observations by the Commission within two months of submission of a revised communication plan, it shall be considered that the communication plan may be implemented.

The Member State or the managing authority shall commence the information and publicity activities provided for in Articles 5, 6 and 7, where relevant, even in the absence of the final version of the communication plan.

Article 4

Implementation and monitoring of the communication plan

1 The managing authority shall inform the monitoring committee for each operational programme of the following:

- a the communication plan and progress in its implementation;
- b information and publicity measures carried out;
- c the means of communication used.

The managing authority shall provide the monitoring committee with examples of such measures.

2 The annual reports and the final report on implementation of an operational programme, referred to in Article 67 of Regulation (EC) No 1083/2006, shall include:

- a examples of information and publicity measures for the operational programme carried out when implementing the communication plan;
- b the arrangements for the information and publicity measures referred to in Article 7(2) (d) including, where applicable, the electronic address at which such data may be found;
- c the content of any major amendments to the communication plan.

The annual implementation report for the year 2010 and the final implementation report shall contain a chapter assessing the results of the information and publicity measures in terms of visibility and awareness of operational programmes and of the role played by the Community, as provided for in Article 2(2)(e).

3 The means used for implementing, monitoring and evaluating the communication plan shall be proportional to the information and publicity measures identified in the communication plan.

Article 5

Information measures for potential beneficiaries

1 The managing authority shall, in accordance with the communication plan, ensure that the operational programme is disseminated widely, with details of the financial contributions from the Funds concerned, and that it is made available to all interested parties.

It shall in addition ensure that information on the financing opportunities offered by joint assistance from the Community and the Member State through the operational programme is disseminated as widely as possible.

2 The managing authority shall provide potential beneficiaries with clear and detailed information on at least the following:

- a the conditions of eligibility to be met in order to qualify for financing under an operational programme;
- b a description of the procedures for examining applications for funding and of the time periods involved;
- c the criteria for selecting the operations to be financed;
- d the contacts at national, regional or local level who can provide information on the operational programmes.

In addition, the managing authority shall inform potential beneficiaries of the publication provided for in Article 7(2)(d).

3 The managing authority shall involve in information and publicity measures, in accordance with national laws and practices, at least one of the following bodies that can widely disseminate the information listed in paragraph 2:

- a national, regional and local authorities and development agencies;
- b trade and professional associations;
- c economic and social partners;
- d non-governmental organisations;
- e organisations representing business;
- f information centres on Europe as well as Commission representations in the Member States;
- g educational institutions.

Article 6

Information measures for beneficiaries

The managing authority shall inform beneficiaries that acceptance of funding is also an acceptance of their inclusion in the list of beneficiaries published in accordance with Article 7(2)(d).

Article 7

Responsibilities of the managing authority relating to information and publicity measures for the public

1 The managing authority shall ensure that the information and publicity measures are implemented in accordance with the communication plan and that they aim at the widest possible media coverage using various forms and methods of communication at the appropriate territorial level.

2 The managing authority shall be responsible for organising at least the following information and publicity measures:

- a a major information activity publicising the launch of an operational programme, even in the absence of the final version of the communication plan;
- b at least one major information activity a year, as set out in the communication plan, presenting the achievements of the operational programme(s) including, where relevant, major projects;

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- c flying the flag of the European Union for one week starting 9 May, in front of the premises of each managing authority;
- d the publication, electronically or otherwise, of the list of beneficiaries, the names of the operations and the amount of public funding allocated to the operations.

Participants in an operation of the ESF shall not be named.

Article 8

Responsibilities of beneficiaries relating to information and publicity measures for the public

1 The beneficiary shall be responsible for informing the public, by means of the measures laid down in paragraphs 2, 3 and 4, about the assistance obtained from the Funds.

2 The beneficiary shall put up a permanent explanatory plaque that is visible and of significant size no later than six months after completion of an operation that fulfils the following conditions:

- a the total public contribution to the operation exceeds EUR 500 000;
- b the operation consists in the purchase of a physical object or in the financing of infrastructure or of construction operations.

The plaque shall state the type and name of the operation, in addition to the information referred to in Article 9. [^{F1}The information referred to in Article 9 shall take up at least 25 % of the plaque.]

[^{F2}Where it is not possible to place a permanent explanatory plaque on a physical object as referred to in point (b) of the first subparagraph, other appropriate measures shall be taken in order to publicise the Community contribution.]

3 The beneficiary shall, during the implementation of the operation, put up a billboard at the site of each operation which fulfils the following conditions:

- a the total public contribution to the operation exceeds EUR 500 000;
- b the operation consists in the financing of infrastructure or of construction operations.

The information referred to in Article 9 shall take up at least 25 % of the billboard.

When the operation is completed, the billboard shall be replaced by the permanent explanatory plaque referred to in paragraph 2.

4 Where an operation receives funding under an operational programme co-financed by the ESF and, in appropriate cases, where an operation receives funding under the ERDF or the Cohesion Fund, the beneficiary shall ensure that those taking part in the operation have been informed of that funding.

The beneficiary shall provide clear notice to the effect that the operation being implemented has been selected under an operational programme co-financed by the ESF, the ERDF or the Cohesion Fund.

Any document, including any attendance or other certificate, concerning such an operation shall include a statement to the effect that the operational programme was co-financed by the ESF or, where appropriate, the ERDF or the Cohesion Fund.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F2** Inserted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 9

Technical characteristics of information and publicity measures for the operation

[^{F1}All information and publicity measures provided by managing authorities or beneficiaries and aimed at beneficiaries, potential beneficiaries and the public shall include the following:]

- (a) the emblem of the European Union, in accordance with the graphic standards set out in Annex I, and reference to the European Union;
- (b) reference to the Fund concerned:
 - (i) for the ERDF: ‘European Regional Development Fund’;
 - (ii) for the Cohesion Fund: ‘Cohesion Fund’;
 - (iii) for the ESF: ‘European Social Fund’;
- (c) a statement chosen by the managing authority, highlighting the added value of the intervention of the Community, and preferably ‘Investing in your future’.

For small promotional objects, points (b) and (c) shall not apply.

[^{F2}Where an information or publicity measure promotes several operations co-financed by more than one Fund, the reference provided for in point (b) of the first paragraph shall not be required.]

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
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Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 10

Network and exchange of experience

1 Each managing authority shall designate the contact persons to be responsible for information and publicity and shall inform the Commission accordingly. In addition, Member States may designate a single contact person for all operational programmes.

2 Community networks comprising the persons designated under paragraph 1 may be set up to ensure exchanges of good practice, including the results of implementation of the communication plan, and exchanges of experience in implementing the information and publicity measures under this Section.

3 Exchanges of experience in the field of information and publicity may be supported through technical assistance pursuant to Article 45 of Regulation (EC) No 1083/2006.

Section 2

Information on use of the Funds

Article 11

Indicative breakdown of use of the Funds

1 Member States shall submit to the Commission the indicative breakdown by category of the programmed use of the Funds at operational programme level, as referred to in Article 37(1)(d) of Regulation (EC) No 1083/2006 and Article 12(5) of Regulation (EC) No 1080/2006, in accordance with Parts A and B of Annex II to this Regulation.

2 The annual and final implementation reports referred to in Article 67 of Regulation (EC) No 1083/2006 shall contain updated information at operational programme level on the cumulative allocation of the Funds by categories, as from the start of the operational programme, to the operations selected under the operational programme, presented for each combination of codes, in accordance with Parts A and C of Annex II to this Regulation.

3 The data provided by Member States pursuant to paragraphs 1 and 2 shall be used by the Commission only for information purposes.

Section 3

Management and control systems

Article 12

Intermediate bodies

Where one or more of the tasks of a managing authority or certifying authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

The provisions of this Regulation concerning the managing authority and certifying authority shall apply to the intermediate body.

Article 13

[^{F1}Managing authority and controllers]

1 For the purposes of the selection and approval of operations pursuant to Article 60(a) of Regulation (EC) No 1083/2006, the managing authority shall ensure that beneficiaries are informed of the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution and the financial and other information to be kept and communicated.

It shall satisfy itself that the beneficiary has the capacity to fulfil these conditions before the approval decision is taken.

2 [^{F1}The verifications to be carried out by the managing authority pursuant to Article 60(b) of Regulation (EC) No 1083/2006, or by the relevant controllers designated by Member States in the case of the European territorial cooperation objective programmes pursuant to Article 16 of Regulation (EC) No 1080/2006, shall cover, as appropriate, administrative, financial, technical and physical aspects of operations.]

Verifications shall ensure that the expenditure declared is real, that the products or services have been delivered in accordance with the approval decision, that the applications for reimbursement by the beneficiary are correct and that the operations and expenditure comply with Community and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

Verifications shall include the following procedures:

- a administrative verifications in respect of each application for reimbursement by beneficiaries;
- b on-the-spot verifications of individual operations.

[^{F13} Where on-the-spot verifications pursuant to point (b) of the third subparagraph of paragraph 2 are carried out on a sample basis for an operational programme, the managing authority, or the relevant controllers in the case of European territorial cooperation objective programmes, shall keep records describing and justifying the sampling method and identifying the operations or transactions selected for verification.

The managing authority, or the relevant controllers in the case of European territorial cooperation objective programmes, shall determine the size of the sample in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions, having regard to the level of risk identified by the managing authority, or the relevant controllers as appropriate, for the type of beneficiaries and operations concerned. The managing authorities or the relevant controllers shall review the sampling method each year.

4 The managing authority, or the relevant controllers in the case of European territorial cooperation objective programmes, shall establish written standards and procedures for the verifications carried out pursuant to paragraph 2 and shall keep records for each verification, stating the work performed, the date and the results of the verification, and the measures taken in respect of irregularities detected.]

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5 Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in paragraphs 2, 3 and 4 shall ensure adequate separation of functions in accordance with Article 58(b) of Regulation (EC) No 1083/2006.

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 14

Accounting records

1 The accounting records of operations and the data on implementation referred to in Article 60(c) of Regulation (EC) No 1083/2006 shall include the information set out in Annex III to this Regulation.

The managing, certifying and audit authorities and the bodies referred to in Article 62(3) of Regulation (EC) No 1083/2006 shall have access to that information.

2 At the written request of the Commission, the Member State shall provide the Commission with the information referred to in paragraph 1 within 15 working days of receipt of the request, or any other agreed period, for the purpose of carrying out documentary and on-the-spot checks.

[^{F23} In the accounting records maintained in accordance with Article 61(f) of Regulation (EC) No 1083/2006, any amount related to an irregularity reported to the Commission under Article 28 of this Regulation shall be identified by the reference number attributed to that irregularity or by any other adequate method.]

Textual Amendments

- F2** Inserted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 15

Audit trail

For the purposes of Article 60(f) of Regulation (EC) No 1083/2006, an audit trail shall be considered adequate where, for the operational programme concerned, it complies with the following criteria:

- (a) it permits the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority,

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- managing authority, intermediate bodies and beneficiaries as regards operations co-financed under the operational programme;
- (b) it permits verification of payment of the public contribution to the beneficiary;
 - (c) it permits verification of application of the selection criteria established by the monitoring committee for the operational programme;
 - (d) it contains in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.

Article 16

Audits of operations

1 The audits referred to in Article 62(1)(b) of Regulation (EC) No 1083/2006 shall be carried out each 12-month period from 1 July 2008 on a sample of operations selected by a method established or approved by the audit authority in accordance with Article 17 of this Regulation.

The audits shall be carried out on-the-spot on the basis of documentation and records held by the beneficiary.

- 2 The audits shall verify that the following conditions are fulfilled:
- a the operation meets the selection criteria for the operational programme, has been implemented in accordance with the approval decision and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
 - b the expenditure declared corresponds to the accounting records and supporting documents held by the beneficiary;
 - c the expenditure declared by the beneficiary is in compliance with Community and national rules;
 - d the public contribution has been paid to the beneficiary in accordance with Article 80 of Regulation (EC) No 1083/2006.

3 Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the operational programme, the audit authority shall ensure that further examination is carried out, including additional audits where necessary, to establish the scale of such problems. The necessary preventive and corrective action shall be taken by the relevant authorities.

4 Only expenditure falling within the scope of an audit carried out pursuant to paragraph 1 shall be counted towards the amount of expenditure audited, for the purposes of reporting in the tables in point 9 of Annex VI and point 9 of Annex VIII.

Article 17

Sampling

1 The sample of operations to be audited each year shall in the first instance be based on a random statistical sampling method as set out in paragraphs 2, 3 and 4. Additional operations may be selected as a complementary sample as set out in paragraphs 5 and 6.

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2 The method used to select the sample and to draw conclusions from the results shall take account of internationally accepted audit standards and be documented. Having regard to the amount of expenditure, the number and type of operations and other relevant factors, the audit authority shall determine the appropriate statistical sampling method to apply. The technical parameters of the sample shall be determined in accordance with Annex IV.

3 The sample to be audited each twelve-month period shall be selected from those operations for which, during the year preceding the year in which the annual control report pursuant to Article 18(2) is communicated to the Commission, expenditure has been declared to the Commission for the operational programme or, where appropriate, for the operational programmes covered by a common management and control system. For the first 12-month period, the audit authority may decide to group the operations for which expenditure has been declared to the Commission in 2007 and 2008 as a basis for the selection of the operations to be audited.

4 The audit authority shall draw conclusions on the basis of the results of the audits relating to expenditure declared to the Commission during the year referred to in paragraph 3 and communicate them to the Commission in the annual control report.

In operational programmes for which the projected error rate is above the materiality level, the audit authority shall analyse its significance and take the necessary actions, including making appropriate recommendations, which will be communicated in the annual control report.

5 The audit authority shall regularly review the coverage provided by the random sample, having regard in particular to the need to have sufficient audit assurance for the declarations to be provided at partial and final closure for each operational programme.

It shall decide on the basis of professional judgment whether it is necessary to audit a complementary sample of additional operations in order to take account of specific risk factors identified and to guarantee for each programme sufficient coverage of different types of operation, beneficiaries, intermediate bodies and priority axes.

6 The audit authority shall draw conclusions on the basis of the results of the audits of the complementary sample and communicate them to the Commission in the annual control report.

Where the number of detected irregularities is high or where systemic irregularities have been detected, the audit authority shall analyse the significance thereof and take the necessary actions, including making appropriate recommendations, which shall be communicated in the annual control report.

The results of the audits on the complementary sample shall be analysed separately from those of the random sample. In particular, irregularities detected in the complementary sample shall not be taken into account when the error rate of the random sample is calculated.

Article 18

Documents presented by the audit authority

1 The audit strategy referred to in Article 62(1)(c) of Regulation (EC) No 1083/2006 shall be established in accordance with the model in Annex V to this Regulation. It shall be updated and reviewed annually and, if necessary, during the course of the year.

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2 The annual control report and the opinion referred to in Article 62(1)(d) of Regulation (EC) No 1083/2006 shall be based on the systems audits and audits of operations carried out pursuant to Article 62(1)(a) and (b) of that Regulation in accordance with the audit strategy and shall be drawn up in accordance with the models set out in Annexes VI and VII to this Regulation.

[^{F1}For European territorial cooperation objective programmes, the annual control report and the opinion shall cover the whole of the programme and all programme expenditure eligible for a contribution from the ERDF.]

3 The closure declaration referred to in Article 62(1)(e) of Regulation (EC) No 1083/2006 shall be based on all the audit work carried out by, or under the responsibility of, the audit authority in accordance with the audit strategy. The closure declaration and final control report shall be drawn up in accordance with the model set out in Annex VIII to this Regulation.

[^{F1}For European territorial cooperation objective programmes, the closure declaration and final control report shall cover the whole of the programme and all programme expenditure eligible for contribution from the ERDF.]

4 If there is a limitation in the scope of examination or if the level of irregular expenditure detected does not allow the provision of an unqualified opinion for the annual opinion referred to in Article 62(1)(d) of Regulation (EC) No 1083/2006 or in the closure declaration referred to in point (e) of that Article, the audit authority shall give the reasons and estimate the scale of the problem and its financial impact.

5 In the event of partial closure of an operational programme, the declaration relating to the legality and regularity of the transactions covered by the statement of expenditure referred to in Article 88 of Regulation (EC) No 1083/2006 shall be drawn up by the audit authority in accordance with the model in Annex IX to this Regulation and submitted with the opinion referred to in Article 62(1)(d)(ii) of Regulation (EC) No 1083/2006.

Textual Amendments

F1 Substituted by [Commission Regulation \(EC\) No 846/2009 of 1 September 2009 amending Regulation \(EC\) No 1828/2006 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.](#)

Article 19

Availability of documents

1 For the purposes of Article 90 of Regulation (EC) No 1083/2006, the managing authority shall ensure that a record is available of the identity and location of bodies holding the supporting documents relating to expenditure and audits, which includes all documents required for an adequate audit trail.

2 The managing authority shall ensure that the documents referred to in paragraph 1 are made available for inspection by, and extracts or copies thereof are supplied to, persons and bodies entitled thereto, including at least authorised staff of the managing authority, certifying authority, intermediate bodies and audit authority and the bodies referred to in Article 62(3) of

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Regulation (EC) No 1083/2006, and authorised officials of the Community and their authorised representatives.

3 The managing authority shall keep information necessary for the purposes of evaluation and reporting, including the information referred to in Article 14, in relation to operations referred to in Article 90(2) of Regulation (EC) No 1083/2006 for the whole of the period referred to in paragraph (1)(a) of that Article.

4 The following at least shall be considered commonly accepted data carriers as referred to in Article 90 of Regulation (EC) No 1083/2006:

- a photocopies of original documents;
- b microfiches of original documents;
- c electronic versions of original documents;
- d documents existing in electronic version only.

5 The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6 Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

Article 20

Documents submitted by the certifying authority

1 Certified statements of expenditure and payment applications referred to in Article 61(a) of Regulation (EC) No 1083/2006 shall be drawn up in the format in Annex X to this Regulation and transmitted to the Commission.

2 ^[F1]By 31 March 2010 and by 31 March of each year thereafter, the certifying authority shall send a statement to the Commission in the format set out in Annex XI, identifying for each priority axis of the operational programme:]

- a the amounts withdrawn from statements of expenditure submitted during the preceding year following cancellation of all or part of the public contribution for an operation;
- ^[F1]b the amounts recovered which have been deducted from statements of expenditure submitted during the preceding year;]
- c a statement of amounts to be recovered as at 31 December of the preceding year, classified by the year in which recovery orders were issued^[F1];
- ^[F2]d a list of amounts for which it was established during the preceding year that they cannot be recovered or which are not expected to be recovered, classified by the year in which the recovery orders were issued.]

^[F2]For the purposes of points (a), (b) and (c) of the first subparagraph, aggregate amounts related to irregularities reported to the Commission under Article 28 shall be provided for each priority axis.

For the purposes of point (d) of the first subparagraph, any amount related to an irregularity reported to the Commission under Article 28 shall be identified by the reference number of that irregularity or by any other adequate method.]

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[^{F2a} For each amount referred to in point (d) of the first subparagraph of paragraph 2 the certifying authority shall indicate whether it requests the Community share to be borne by the general budget of the European Union.

If, within one year from the date of the submission of the statement, the Commission does not request information for the purposes of Article 70(2) of Regulation (EC) No 1083/2006, inform the Member State in writing about its intention to open an enquiry in respect of that amount or request that the Member State continue the recovery procedure, the Community share shall be borne by the general budget of the European Union.

The time limit of one year shall not apply in cases of suspected or established fraud.

2b For the purposes of the statement provided for in paragraph 2, Member States which have not adopted the euro as their currency by the date when the statement is submitted shall convert amounts in national currency into euro using the exchange rate referred to in Article 81(3) of Regulation (EC) No 1083/2006. Where the amounts relate to expenditure registered in the accounts of the certifying authority during more than one month, the exchange rate in the month during which expenditure was last registered may be used.]

3 In order to proceed to the partial closure of an operational programme, the certifying authority shall send to the Commission a statement of expenditure referred to in Article 88 of Regulation (EC) No 1083/2006 in the format set out in Annex XIV to this Regulation.

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F2** Inserted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 21

Description of management and control systems

1 The description of the management and control systems for operational programmes referred to in Article 71(1) of Regulation (EC) No 1083/2006 shall contain information on the matters referred to in Article 58 of that Regulation in respect of each operational programme, and the information set out in Articles 22, 23, and, where applicable, Article 24 of this Regulation.

That information shall be submitted in accordance with the model set out in Annex XII.

2 The description of the management and control systems of operational programmes under the European territorial cooperation objective shall be provided by the Member State on whose territory the managing authority is located.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 22

Information concerning the managing authority, the certifying authority and intermediate bodies

As regards the managing authority, the certifying authority and each intermediate body, the Member State shall provide to the Commission the following information:

- (a) a description of the tasks entrusted to them;
- (b) the organisation chart of each of them, a description of the allocation of tasks between or within their departments, and the indicative number of posts allocated;
- (c) the procedures for selecting and approving operations;
- (d) the procedures by which beneficiaries' applications for reimbursement are received, verified and validated, and in particular the rules and procedures laid down for verification purposes in Article 13, and the procedures by which payments to beneficiaries are authorised, executed and entered in the accounts;
- (e) the procedures by which statements of expenditure are drawn up, certified and submitted to the Commission;
- (f) reference to the written procedures established for the purposes of points (c), (d) and (e);
- (g) eligibility rules laid down by the Member State and applicable to the operational programme;
- (h) the system for keeping the detailed accounting records of operations and data on implementation referred to in Article 14(1), under the operational programme.

Article 23

Information concerning the audit authority and bodies carrying out audits

As regards the audit authority and the bodies referred to in Article 62(3) of Regulation (EC) No 1083/2006, the Member State shall provide to the Commission the following information:

- (a) a description of their respective tasks and their inter-relationship, including, where applicable, the relation with the coordination body referred to in Article 73(1) of Regulation (EC) No 1083/2006;
- (b) the organisation chart of the audit authority and of each of the bodies involved in carrying out audits concerning the operational programme, describing how their independence is ensured, the indicative number of posts allocated and the qualifications or experience required;
- (c) the procedures for monitoring the implementation of recommendations and corrective measures resulting from audit reports;
- (d) the procedures, where appropriate, for the supervision by the audit authority of the work of bodies involved in carrying out audits concerning the operational programme;

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

- (e) the procedures for the preparation of the annual control report and closure declarations.

Article 24

Description of the management and control systems of the European territorial cooperation objective

In addition to the information set out in Articles 21, 22 and 23, the description of the management and control system shall include the arrangements agreed between the Member States for the following purposes:

- (a) to provide the managing authority with access to all the information which it requires to discharge its responsibilities pursuant to Article 60 of Regulation (EC) No 1083/2006 and Article 15 of Regulation (EC) No 1080/2006;
- (b) to provide the certifying authority with access to all the information which it requires to discharge its responsibilities pursuant to Article 61 of Regulation (EC) No 1083/2006;
- (c) to provide the audit authority with access to all the information which it requires to discharge its responsibilities pursuant to Article 62 of Regulation (EC) No 1083/2006 and Article 14(2) of Regulation (EC) No 1080/2006;
- (d) to ensure compliance by the Member States with their obligations as regards the recovery of amounts unduly paid as set out in Article 17(2) of Regulation (EC) No 1080/2006;
- (e) to ensure the legality and regularity of expenditure paid outside the Community and included in the statement of expenditure, where the Member States taking part in a programme avail themselves of the flexibility allowed by Article 21(3) of Regulation (EC) No 1080/2006, in order to allow the managing authority, the certifying authority and the audit authority to exercise their responsibilities as regards expenditure paid in third countries and the arrangements for recovering amounts unduly paid relating to irregularities.

Article 25

Assessment of management and control systems

The report referred to in Article 71(2) of Regulation (EC) No 1083/2006 shall be based on an examination of the systems description, of relevant documents concerning the systems and of the system for keeping accounting records and data on implementation of operations, and on interviews with the staff in the main bodies considered important by the audit authority or other body responsible for the report in order to complete, clarify or verify the information.

The opinion referred to in Article 71(2) of Regulation (EC) No 1083/2006 shall be drawn up in accordance with the model set out in Annex XIII to this Regulation.

Where the management and control systems concerned are essentially the same as those in place for assistance approved pursuant to Regulation (EC) No 1260/1999, account may be taken of the results of audits carried out by national and Community auditors in relation to those systems for the purpose of establishing the report and opinion pursuant to Article 71(2) of Regulation (EC) No 1083/2006.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 26

Derogations concerning operational programmes referred to in Article 74 of Regulation (EC) No 1083/2006

1 For operational programmes in respect of which a Member State has exercised the option referred to in the first subparagraph of Article 74(2) of Regulation (EC) No 1083/2006, paragraphs 2 to 5 of this Article shall apply.

2 The verifications referred to in Article 13(2) of this Regulation shall be carried out by the national body referred to in Article 74(2) of Regulation (EC) No 1083/2006.

3 The audits of operations referred to in point (b) of Article 62(1) of Regulation (EC) No 1083/2006 shall be carried out in accordance with national procedures. Articles 16 and 17 of this Regulation shall not apply.

4 Article 18(2) to (5) of this Regulation shall apply, *mutatis mutandis*, to the preparation of the documents issued by the national body referred to in Article 74(2) of Regulation (EC) No 1083/2006.

5 The annual control report and the annual opinion shall be drawn up following, as appropriate, the models set out in Annexes VI and VII to this Regulation.

The obligations laid down in Article 20(2) of this Regulation shall be carried out by the national body referred to in Article 74(2) of Regulation (EC) No 1083/2006.

The statement of expenditure shall be drawn up following the models set out in Annexes X and XIV to this Regulation.

6 The information to be included in the description of the management and control systems referred to in Articles 21(1), 22 and 23 of this Regulation shall, where applicable, include the information concerning the national bodies referred to in Article 74(2) of Regulation (EC) No 1083/2006.

Section 4

Irregularities

Article 27

Definitions

For the purposes of this section, the following definitions shall apply:

- (a) ‘economic operator’ means any natural or legal person or other entity taking part in the implementation of assistance from the Funds, with the exception of a Member State exercising its prerogatives as a public authority;
- (b) ‘primary administrative or judicial finding’ means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure;

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

- (c) ‘suspected fraud’ means an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests⁽¹⁾;
- (d) ‘bankruptcy’ means insolvency proceedings within the meaning of Article 2(a) of Council Regulation (EC) No 1346/2000⁽²⁾.

Article 28

Initial reporting — derogations

1 Without prejudice to the other obligations pursuant to Article 70 of Regulation (EC) No 1083/2006, within two months following the end of each quarter, Member States shall report to the Commission any irregularities which have been the subject of a primary administrative or judicial finding.

In that report Member States shall in all cases give details concerning the following:

- a the Fund, objective, operational programme, priority axis and operation concerned and the Common Identification Code (CCI) number;
- b the provision which has been infringed;
- c the date and source of the first information leading to suspicion that an irregularity has been committed;
- d the practices employed in committing the irregularity;
- e where appropriate, whether the practice gives rise to a suspicion of fraud;
- f the manner in which the irregularity was discovered;
- g where appropriate, the Member States and third countries involved;
- h the period during which, or the moment at which, the irregularity was committed;
- i the national authorities or bodies which drew up the official report on the irregularity and the authorities responsible for administrative or judicial follow-up;
- j the date on which the primary administrative or judicial finding on the irregularity was established;
- k the identity of the natural and legal persons involved or of any other participating entities, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;
- [^{F1}l the total eligible expenditure and the public contribution approved for the operation together with the corresponding amount of the Community contribution calculated by application of the co-financing rate of the priority axis;
- m the expenditure and the public contribution certified to the Commission which are affected by the irregularity and the corresponding amount of the Community contribution at risk calculated by application of the co-financing rate of the priority axis;
- n in case of a suspected fraud and where no payment of the public contribution has been made to the persons or other entities identified pursuant to point (k), the amounts which would have been unduly paid had the irregularity not been identified;
- o the code of region or area where the operation has been located or carried out, by specifying the NUTS level or otherwise;]
- p the nature of the irregular expenditure.

2 By way of derogation from paragraph 1, the following cases need not be reported:

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

- a cases where the irregularity consists solely in the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- [^{F1}b cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either of them, whether before or after the inclusion of the expenditure concerned in a certified statement submitted to the Commission;
- c cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.]

However, irregularities preceding a bankruptcy and cases of suspected fraud must be reported.

[^{F13} Where some of the information referred to in paragraph 1, and in particular information concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available or needs to be rectified, Member States shall as far as possible supply the missing or correct information when forwarding subsequent quarterly reports of irregularities to the Commission.]

4 Irregularities relating to operational programmes under the European territorial cooperation objective shall be reported by the Member State in which the expenditure is paid by the beneficiary in implementing the operation. The Member State shall at the same time inform the managing authority, the certifying authority for the programme and the audit authority.

5 If national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent court or tribunal.

6 Where a Member State has no irregularities to report pursuant to paragraph 1, it shall inform the Commission of that fact within the time limit set out in that paragraph.

Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 846/2009 of 1 September 2009 amending Regulation \(EC\) No 1828/2006 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.](#)

Article 29

Urgent cases

Each Member State shall immediately report to the Commission and, where necessary, to the other Member States concerned, any irregularities discovered or supposed to have occurred, where it is feared that they may very quickly have repercussions outside its territory or they show that a new malpractice has been employed.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

[^{F1}Article 30

Follow-up reporting

1 In addition to the information referred to in Article 28(1), Member States shall provide the Commission within two months following the end of each quarter, with reference to any previous report made pursuant to that Article, with details concerning the initiation, conclusion or abandonment of any procedures for imposing administrative or criminal penalties related to the reported irregularities as well as of the outcome of such procedures.

With regard to irregularities for which penalties have been imposed, Member States shall also indicate the following:

- (a) whether the penalties are of an administrative or a criminal nature;
- (b) whether the penalties result from a breach of Community or national law;
- (c) the provisions in which the penalties are laid down;
- (d) whether fraud was established.

2 At the written request of the Commission, the Member State shall provide information in relation to a specific irregularity or group of irregularities.]

Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 846/2009 of 1 September 2009 amending Regulation \(EC\) No 1828/2006 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.](#)

Article 31

Electronic transmission

The information referred to in Articles 28, 29 and 30(1) shall be sent, whenever it is possible to do so, by electronic means, using the module provided by the Commission for this purpose via a secure connection.

Article 32

Reimbursement of judicial costs

Where the competent authorities of a Member State decide, at the express request of the Commission, to initiate or continue judicial proceedings with a view to recovering amounts unduly paid, the Commission may undertake to reimburse to the Member State all or part of the judicial costs and costs arising directly from the proceedings, on presentation of documentary evidence, even if the proceedings are unsuccessful.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 33

[^{F1}Co-operation with Member States]

1 The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 28, on the procedures referred to in Article 30, and, in particular, on the possibility of recovery.

[^{F12} Without prejudice to the contacts referred to in paragraph 1, where the Commission considers that, due to the nature of the irregularity, identical or similar practices could occur in other Member States, it shall submit the matter to the advisory Committee for the Coordination of Fraud Prevention set up by Commission Decision 94/140/EC⁽³⁾.

The Commission shall, each year, inform that Committee and the committees referred to in Articles 103 and 104 of Regulation (EC) No 1083/2006 of the order of magnitude of the Funds affected by the irregularities which have been discovered and of the various categories of irregularities, broken down by type and number.]

3 The Commission shall organise information meetings at Community level for representatives of the Member States in order to examine with them the information obtained pursuant to Articles 28, 29 and 30, and paragraph 1 of this Article. The examination shall focus on the lessons to be learned from the information in connection with irregularities, preventive measures and judicial proceedings.

4 At the request of a Member State or of the Commission, the Member States and the Commission shall consult one another for the purpose of closing any loopholes prejudicial to Community interests, which become apparent in the course of the enforcement of provisions in force.

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 34

Use of information

The Commission may use any information of a general or operational nature communicated by Member States under this Regulation to perform risk analyses and may, on the basis of the information obtained, produce reports and develop early-warning systems serving to identify risks more effectively.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

^{F3}Article 35

[^{F3}Provision of information to committees]

Textual Amendments

- F3** Deleted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Article 36

Irregularities under the reporting threshold

1 Where the irregularities relate to amounts of less than EUR 10 000 chargeable to the general budget of the European Communities, Member States shall not send the Commission the information provided for in Articles 28 and 30, unless the Commission expressly requests it.

[^{F3}.....

^{F3}.....]

[^{F12} Member States which have not adopted the euro as their currency by the date when the report under Article 28(1) is submitted shall convert amounts in national currency into euro using the exchange rate referred to in Article 81(3) of Regulation (EC) No 1083/2006.

Where the amounts relate to expenditure registered in the accounts of the certifying authority during a period of more than one month, the exchange rate in the month during which expenditure was last registered may be used. Where the expenditure has not been registered in the accounts of the certifying authority, the most recent accounting exchange rate published electronically by the Commission shall be used.]

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F3** Deleted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Section 5

Personal data

Article 37

Protection of personal data

1 Member States and the Commission shall take all necessary measures to prevent any unauthorised disclosure of, or access to, the information referred to in Article 14(1), information collected by the Commission in the course of its audits and information referred to in Section 4.

2 The information referred to in Article 14(1), together with information collected by the Commission in the course of its audits, shall be used by the Commission for the sole purpose of fulfilling its responsibilities pursuant to Article 72 of Regulation (EC) No 1083/2006. The European Court of Auditors and the European Anti-Fraud Office shall have access to that information.

3 The information referred to in Section 4 may not be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it, unless the Member State supplying such information has expressly so agreed.

4 Any personal data included in the information referred to in Article 7(2) (d) shall be processed only for the purpose specified in that Article.

Section 6

Financial correction for non-respect of additionality

Article 38

Rates of financial correction

1 Where the Commission makes a financial correction in accordance with Article 99(5) of Regulation (EC) No 1083/2006, the correction shall be calculated in accordance with paragraph 2 of this Article.

2 The rate of financial correction shall be obtained by subtracting 3 percentage points from the difference between the agreed target level and the level achieved, expressed as a percentage of the agreed target level, and then dividing the result by 10.

The financial correction shall be determined by applying that rate of financial correction to the Structural Fund contribution to the Member State concerned under the convergence objective for the full programming period.

3 If the difference between the agreed target level and the level achieved, expressed as a percentage of the agreed target level, referred to in paragraph 2, is 3 % or less, no financial correction shall be made.

4 The financial correction shall not exceed 5 % of the Structural Fund allocation to the Member State concerned under the convergence objective for the full programming period.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Section 7

Electronic exchange of data

Article 39

Computer system for data exchange

For the purposes of Articles 66 and 76 of Regulation (EC) No 1083/2006, a computer system for exchange of data shall be established as a tool for the exchange of all data relating to the operational programme.

The exchange of data between each Member State and the Commission shall be carried out using a computer system established by the Commission which permits the secure exchange of data between the Commission and each Member State.

The Member States shall be involved in the further development of the computer system for data exchange.

Article 40

Content of computer system for data exchange

1 The computer system for data exchange shall contain information of common interest to the Commission and the Member States, and at least the following data necessary for financial transactions:

- a the indicative annual allocation of each Fund in each operational programme, as set out in the national strategic reference framework, in accordance with the model set out in Annex XV;
- b the financing plans for operational programmes, in accordance with the model set out in Annex XVI;
- c statements of expenditure and applications for payment, in accordance with the model set out in Annex X;
- d annual forecasts of likely payment of expenditure, in accordance with the model set out in Annex XVII;
- e the financial section of the annual reports and final implementation reports, in accordance with the model set out in Annex XVIII, point 2.1.

2 In addition to paragraph 1, the computer system for data exchange shall contain at least the following documents and data of common interest enabling monitoring to be carried out:

- a the national strategic reference framework referred to in Article 27(1) of Regulation (EC) No 1083/2006;
- b data establishing compliance with additionality, in accordance with the model set out in Annex XIX;
- c the operational programmes, including data concerning categorisation following the model set out in Part B of Annex II and in accordance with the tables set out in Part A of Annex II;
- d the Commission decisions concerning the contribution of the Funds;
- e the requests for assistance for major projects referred to in Articles 39, 40 and 41 of Regulation (EC) No 1083/2006, in accordance with Annexes XXI and XXII to this Regulation, together with selected data from those Annexes identified in Annex XX;

Changes to legislation: There are currently no known outstanding effects for the Commission

Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

- f the implementing reports in accordance with Annex XVIII, including data concerning categorisation following the model set out in Part C of Annex II and in accordance with the tables set out in Part A of Annex II;
 - g data on participants in ESF operations by priority, in accordance with the model set out in Annex XXIII;
 - h the description of management and control systems, in accordance with the model set out in Annex XII;
 - i the audit strategy, in accordance with the model set out in Annex V;
 - j the reports and opinions on audits, in accordance with the models set out in Annexes VI, VII, VIII, IX and XIII, and correspondence between the Commission and each Member State;
 - k the statements of expenditure concerning partial closure, in accordance with the model set out in Annex XIV;
 - l the annual statement on withdrawn and recovered amounts and pending recoveries, in accordance with Annex XI;
 - m the communication plan referred to in Article 2.
- 3 The data referred to in paragraphs 1 and 2 shall, where applicable, be transmitted in the format given in the Annexes.

Article 41

Functioning of computer system for data exchange

1 The Commission and the authorities designated by the Member State pursuant to Regulation (EC) No 1083/2006, as well as the bodies to which that task has been delegated, shall record into the computer system for data exchange the documents for which they are responsible, and any updates thereto, in the format required.

2 Member States shall centralise and send to the Commission requests for access rights to the computer system for data exchange.

3 Exchanges of data and transactions shall bear an electronic signature within the meaning of Directive 1999/93/EC. The Member States and the Commission shall recognise the legal effectiveness and admissibility of the electronic signature used in the computer system for data exchange as evidence in legal proceedings.

4 The cost of developing the computer system for data exchange shall be financed by the general budget of the European Communities pursuant to Article 45 of Regulation (EC) No 1083/2006.

Any costs of an interface between the common computer system for data exchange and national, regional and local computer systems, and any costs of adapting national, regional and local systems to requirements pursuant to Regulation (EC) No 1083/2006, shall be eligible pursuant to Article 46 of that Regulation.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 42

Transmission of data through the computer system for data exchange

1 The computer system for data exchange shall be accessible to the Member States and the Commission either directly or via an interface for automatic synchronisation and recording of data with national, regional and local computer management systems.

2 The date taken into account for the forwarding of documents to the Commission shall be the date on which the Member State records the documents into the computer system for data exchange.

3 In cases of *force majeure*, and in particular of malfunctioning of the computer system for data exchange or a lack of a lasting connection, the Member State concerned may forward to the Commission the documents required by Regulation (EC) No 1083/2006 in hard copy, using the forms set out in Annexes II, V, VI, VII, IX, X, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII and XXIII to this Regulation. As soon as the cause of *force majeure* ceases, the Member State shall record the corresponding documents into the computer system for data exchange without delay.

By way of derogation from paragraph 2, the date taken into account for forwarding shall be deemed to be the date of sending of the documents in hard copy.

Section 8

Financial engineering instruments

Article 43

[^{F1}General provisions]

[^{F41} Articles 43 to 46 shall apply to financial engineering instruments in the form of actions which make repayable investments, or provide guarantees for repayable investments, or both, in the following:

- a enterprises, primarily small and medium-sized enterprises (SMEs), including micro-enterprises, as defined in Commission Recommendation 2003/361/EC⁽⁴⁾ as of 1 January 2005;
- b public-private partnerships or other urban projects included in integrated plans for sustainable urban development, in the case of urban development funds;
- c funds or other incentive schemes for energy efficiency and use of renewable energy in buildings, including in existing housing.]

[^{F12} Financial engineering instruments, including holding funds, shall be independent legal entities governed by agreements between the co-financing partners or shareholders or as a separate block of finance within a financial institution.

Where the financial engineering instrument is within a financial institution, it shall be set up as a separate block of finance, subject to specific implementation rules within the financial institution, stipulating, in particular, that separate accounts are kept which distinguish the new resources invested in the financial engineering instrument, including

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

those contributed by the operational programme, from those initially available in the institution.

The Commission may not become a co-financing partner or shareholder in financial engineering instruments.

3 When managing authorities or holding funds select financial engineering instruments, the financial engineering instruments shall submit a business plan or other appropriate document.

The terms and conditions for contributions from operational programmes to financial engineering instruments shall be set out in a funding agreement, to be concluded between the duly mandated representative of the financial engineering instrument and the Member State or the managing authority, or the holding fund where applicable.

The funding agreement shall include at least the following elements:

- (a) the investment strategy and planning;
- (b) provisions for monitoring of implementation;
- (c) an exit policy for the contribution from the operational programme out of the financial engineering instrument;
- (d) provisions for the winding-up of the financial engineering instrument, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured that are attributable to the contribution from the operational programme.]

4 [F¹Management costs may not exceed, on a yearly average, for the duration of the assistance any of the following thresholds, unless a higher percentage proves necessary following a competitive tender, in accordance with applicable rules:]

- a 2 % of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds;
- b 3 % of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of micro-credit instruments directed at micro-enterprises;
- c 4 % of the capital contributed from the operational programme or the holding fund to micro-credit instruments directed at micro-enterprises.

[F¹⁵ Returns from equity, loans and other repayable investments, and from guarantees for repayable investments, less a *pro rata* share of the management costs and performance incentives, may be allocated preferentially to investors operating under the market economy investor principle. Such returns may be allocated up to the level of remuneration laid down in the by-laws of the financial engineering instruments, and they shall then be allocated proportionally among all co-financing partners or shareholders.

[F⁴⁶ Enterprises, public private partnerships and other projects included in an integrated plan for sustainable urban development, as well as operations for energy efficiency and use of renewable energy in buildings, including in existing housing which are supported by financial engineering instruments, may also receive a grant or other assistance from an operational programme.]

7 Managing authorities shall take precautions to minimise distortion of competition in the venture capital or lending markets and the private guarantee market.]

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F4** Substituted by Commission Regulation (EU) No 832/2010 of 17 September 2010 amending Regulation (EC) No 1828/2006 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.

Article 44

[^{F1}Holding funds]

1 Where the Structural Funds finance financial engineering instruments organised through holding funds, the Member State or managing authority shall conclude a funding agreement with the holding fund, setting out the funding arrangements and objectives.

The funding agreement shall, where appropriate, take account of the following:

- [^{F4}a as regards financial engineering instruments supporting enterprises, primarily SMEs, including micro-enterprises, the conclusions of an evaluation of gaps between supply of such instruments, and demand for such instruments;]
- b as regards urban development funds, urban development studies or evaluations and integrated urban development plans included in operational programmes[^{F4};]
- [^{F5}c as regards funds or other incentive schemes for energy efficiency and use of renewable energy in buildings, including in existing housing the relevant Union and national regulatory frameworks and the relevant national strategies.]

[^{F12} The funding agreement referred to in paragraph 1 shall, in particular, make provision for:

- a the terms and conditions for contributions from the operational programme to the holding fund;
- b calls for expression of interest addressed to financial engineering instruments in accordance with applicable rules;
- c the appraisal and selection of financial engineering instruments by the holding fund;
- d the setting up and monitoring of the investment policy or the targeted urban development plans and actions;
- e reporting by the holding fund to Member States or managing authorities;
- f monitoring of the implementation of investments;
- g audit requirements;
- h an exit policy for the holding fund out of the financial engineering instruments;
- i the provisions for the winding-up of the holding fund, including the reutilisation of resources returned from investments made or left over after all guarantees have been honoured which are attributable to the contribution from the operational programme.

In the case of financial engineering instruments supporting enterprises, the provisions on the setting up and monitoring of the investment policy referred to in point (d) of the

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

first subparagraph shall comprise at least an indication of the targeted enterprises and the financial engineering products to be supported.]

F³

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F3** Deleted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F4** Substituted by Commission Regulation (EU) No 832/2010 of 17 September 2010 amending Regulation (EC) No 1828/2006 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.
- F5** Inserted by Commission Regulation (EU) No 832/2010 of 17 September 2010 amending Regulation (EC) No 1828/2006 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.

[^{F6}Article 45

Additional provisions applicable to financial engineering instruments for enterprises

Financial engineering instruments for enterprises referred to in Article 43(1)(a) shall invest only in activities which the managers of the financial engineering instruments judge potentially economically viable.

They shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁵⁾ as of 10 October 2004.]

Textual Amendments

- F6** Substituted by Commission Implementing Regulation (EU) No 1236/2011 of 29 November 2011 amending Regulation (EC) No 1828/2006 as regards investments through financial engineering instruments.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

Article 46

[^{F1}Urban development funds]

[^{F1}1 Where Structural Funds finance urban development funds, those funds shall invest in public-private partnerships or other projects included in an integrated plan for sustainable urban development. Such public-private partnerships or other projects shall not include the creation and development of financial engineering instruments such as venture capital, loan and guarantee funds for enterprises.

2 For the purposes of paragraph 1, urban development funds shall invest by means of loans and guarantees, or equivalent instruments and by means of equity.]

3 Where Structural Funds finance urban development funds, the funds concerned shall not re-finance acquisitions or participations in projects already completed.]

Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 846/2009 of 1 September 2009 amending Regulation \(EC\) No 1828/2006 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.](#)

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 371 of 27 December 2006\).](#)

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II. (See end of Document for details)

- (1) [^{X1}OJ C 316, 27.11.1995, p. 49.]
- (2) [^{X1}OJ L 160, 30.6.2000, p. 1.]
- (3) [^{X1}[^{F1}OJ L 61, 4.3.1994, p. 27.]]
- (4) [^{X1}[^{F4}OJ L 124, 20.5.2003, p. 36.]]
- (5) [^{X1}[^{F6}OJ C 244, 1.10.2004, p. 2.]]

Editorial Information

- X1** Substituted by Corrigendum to 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 (Official Journal of the European Union L 371 of 27 December 2006).

Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 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.
- F4** Substituted by Commission Regulation (EU) No 832/2010 of 17 September 2010 amending Regulation (EC) No 1828/2006 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.
- F6** Substituted by Commission Implementing Regulation (EU) No 1236/2011 of 29 November 2011 amending Regulation (EC) No 1828/2006 as regards investments through financial engineering instruments.

Changes to legislation:

There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, CHAPTER II.