

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>X1</sup>CHAPTER II

### **PROVISIONS IMPLEMENTING REGULATION (EC) No 1083/2006**

#### [<sup>X1</sup>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.

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

##### *Article 13*

#### **[<sup>F1</sup>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 [<sup>F1</sup>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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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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.

[<sup>F13</sup> 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.]

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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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[<sup>F23</sup> 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, 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;

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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- 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.

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

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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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.

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.

[<sup>F1</sup>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.

[<sup>F1</sup>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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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#### **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 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.

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*Changes to legislation: There are currently no known outstanding effects for the  
Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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2 <sup>[F1]</sup>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;
- <sup>[F1]</sup>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<sup>[F1]</sup>;
- <sup>[F2]</sup>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.]

<sup>[F2]</sup>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.]

<sup>[F2]</sup>2a 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

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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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.

### *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.



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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)*

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### *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;
- (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

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*Changes to legislation:* There are currently no known outstanding effects for the  
Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)

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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.

#### 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,

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 1828/2006, Section 3. (See end of Document for details)

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include the information concerning the national bodies referred to in Article 74(2) of Regulation (EC) No 1083/2006.]

**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, Section 3.