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

COMMISSION REGULATION (EC) No 846/2009

of 1 September 2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999[(1)], and in particular the third paragraph of Article 44, and Article 59(6), Article 66(3), Article 69(1), Article 70(3), Article 72(2), Article 74(2) and Article 76(4) thereof,

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

Whereas:

(1) The experience acquired since the start of the 2007-2013 programming period has shown the necessity to simplify and clarify certain provisions concerning the implementation of the Structural Funds and Cohesion Fund interventions.

(2) In the light of recent amendments to Regulation (EC) No 1083/2006 and Regulation (EC) No 1080/2006 concerning certain provisions of the financial management of operational programmes and the eligibility of energy efficiency and renewable energy investments in housing, respectively, it is necessary to align certain provisions of Commission Regulation (EC) No 1828/2006[(3)] with those Regulations.

(3) Several inconsistencies have been identified in the provisions of Regulation (EC) No 1828/2006 during its application. For reasons of legal certainty, it is appropriate to eliminate those inconsistencies.

(4) Since some information and publicity requirements were difficult to apply to certain types of operations in practice and thus represented a disproportionate administrative

burden to the beneficiaries, it is appropriate to provide for more flexibility. For reasons of legal certainty, more flexible requirements should also apply to operations and activities that have already been selected for co-financing from the date of entry into force of Regulation (EC) No 1828/2006.

(5) It is necessary to clarify that in the case of the European Territorial Co-operation Objective, certain responsibilities of the managing authority related to the regularity of operations and expenditure in relation to national and Community rules also apply to controllers designated in accordance with Article 16 of Regulation (EC) No 1080/2006.

(6) It is necessary to clarify that the annual control report and opinion as well as the closure declaration and final control report have to cover the whole of the programme and all programme expenditure eligible for a contribution from the European Regional Development Fund in the European territorial co-operation objective.

(7) In the light of the experience gained by the Commission and by the Member States with regard to the application of Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field[(4)], the procedures for reporting on follow-up to irregularities should be simplified. Furthermore, in order to reduce the administrative burden imposed on Member States it is necessary to determine more precisely which information the Commission requires. To that end, information on irrecoverable amounts and on the aggregated amounts related to reported irregularities should be included in the annual statement to be submitted to the Commission pursuant to Article 20 of Regulation (EC) No 1828/2006.

(8) The procedures for reporting on irrecoverable amounts should accurately reflect the obligations of Member States laid down in Article 70 of Regulation (EC) No 1083/2006 and in particular the obligation to ensure an effective pursuit of recoveries. It is also appropriate to simplify the procedures whereby the Commission monitors compliance with those obligations in order to render them more efficient and cost-effective.

(9) In line with Article 61 of Regulation (EC) No 1083/2006, it should be clearly stated that the certifying authority is responsible for keeping complete accounting records, including, in particular, references to amounts reported as irregular to the Commission in accordance with Article 28 of Regulation (EC) No 1828/2006.

(10) In order to ensure an efficient flow of information concerning irregularities and to avoid overlaps of different contact points, it is appropriate to group the provisions on cooperation with Member States in a single Article.

(11) It is necessary to facilitate the implementation of financial engineering instruments with assistance from the Funds by simplifying and rendering the interaction between the financial engineering instruments and the managing authorities more flexible. Furthermore, in order to mitigate the difficulties entailed by the remoteness of the outermost regions, it is appropriate to increase the threshold for management costs for financial engineering instruments operating in those regions.

(12) It is also appropriate to clarify that those enterprises and projects targeted at urban areas supported by the financial engineering instruments are not precluded from receiving a grant from an operational programme.

(13) In order to facilitate the interventions in the housing sector under Article 7(2) of Regulation (EC) No 1080/2006, more flexibility should be provided as regards the criteria for selection of areas and the eligibility of those interventions.

(14) It is appropriate to clarify the rules for eligibility of costs paid by public authorities which do not form part of the technical assistance where the public authority is itself a beneficiary in the operational programmes under the European territorial co-operation objective.

(15) Since Article 7(4)(i) of Regulation (EC) No 1080/2006 lays down rules for the calculation of indirect costs the application of parallel rules laid down in Article 52 of Regulation (EC) No 1828/2006 should be avoided. However, in order to safeguard legitimate expectations, it is appropriate to maintain the possibility for Member States to apply those rules to operations under the European territorial co-operation objective programmes that were selected before the entry into force of this Regulation.

(16) It is necessary to simplify and align the information in the list of data on operations for the purpose of documentary and on-the-spot checks with other provisions of Regulation (EC) No 1828/2006 as well as with Article 7 of Regulation (EC) No 1080/2006.

(17) It is appropriate to provide for more flexibility for random statistical sampling in case of operations covering small size population.

(18) Pursuant to Article 78(4) of Regulation (EC) No 1083/2006, it is possible to include expenditure for a major project in the statement of expenditure before the adoption of the Commission decision on the major project. It is therefore appropriate to delete the reference to 'declaration of expenditure' concerning major projects in the certificate of expenditure accompanying the interim payments pursuant to Article 78 of that Regulation.

(19) In order to reduce the administrative burden for the Member States, it is appropriate to delete the requirement to report on the annual breakdown of the total certified eligible expenditure from the statement of expenditure for interim payment and payment of the balance, which has only a limited relevance.

(20) It is necessary to align the information required in the statement of expenditure for partial closure with the information required in the statement of expenditure for interim payment and payment of the balance.

(21) In order to improve reporting mechanisms, it is necessary to clarify requirements for the annual and final reports. In particular, it is appropriate to clarify the use of indicators and the requirements as regards the information on the use of the Funds, and to specify the information required for major projects and for information and publicity measures.

(22) Experience has also shown that it is necessary to clarify the content and reduce the range of information requested in the context of major project applications.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 846/2009. (See end of Document for details)*

(23) Regulation (EC) No 1828/2006 should therefore be amended accordingly.

(24) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee of the Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1828/2006 is amended as follows:

(1) In Article 8, paragraph 2 is amended as follows:

(a) in the second subparagraph, the second sentence is replaced by the following:

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

(b) the following subparagraph is added:

> 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.

(2) Article 9 is amended as follows:

(a) in the first paragraph, the introductory sentence is replaced by the following:

> All information and publicity measures provided by managing authorities or beneficiaries and aimed at beneficiaries, potential beneficiaries and the public shall include the following:

(b) the following paragraph is added:

> 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.

(3) Article 13 is amended as follows:

(a) the title is replaced by the following:
Managing authority and controllers

(b) in paragraph 2, the first subparagraph is replaced by the following:

> 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.

(c) paragraphs 3 and 4 are replaced by the following:

> 3. 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.

(4) In Article 14, the following paragraph 3 is added:

3. 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.

(5) Article 18 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

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.

(b) in paragraph 3, the second subparagraph is replaced by the following:

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.

(6) Article 20 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

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:

(ii) point (b) is replaced by the following:

(b) the amounts recovered which have been deducted from statements of expenditure submitted during the preceding year;