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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 13.3.2014
supplementing Regulation (EU) No 223/2014 of the European Parliament
and of the Council on the Fund for European Aid to the Most Deprived

Delegations will find attached document C(2014) 1627 final.

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Brussels, 13.3.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 13.3.2014

**supplementing Regulation (EU) No 223/2014 of the European Parliament and of the
Council on the Fund for European Aid to the Most Deprived**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Considering the objectives, potential beneficiaries and target populations of the Fund for European Aid to the Most Deprived (FEAD), it is essential that its delivery mechanisms reinforce assurance and simplify the day-to-day management of the Fund through simpler and clearer rules. In certain cases this requires detailed rules in form of delegated acts supplementing the provisions set out in European Parliament and Council Regulation No 223/2014 (FEAD Regulation)¹.

To ensure reliable management and control arrangements that provide consistent data for the purposes of monitoring, evaluation, financial management, verifications and audits, managing authorities need computerised systems. Detailed rules on the list of data to be included in these systems take into account the reporting requirements and management needs. Detailed 'audit trail' rules ensure that sufficient records are maintained not only for management and supervision but for audit.

As regards assurance, the Commission should be able to rely on the work of national audit authorities as far as possible. Supplementary detailed rules on audit should ensure that all the audit authorities across the Union perform their work on the same bases for this purpose.

While the aim is to set up robust management and control systems and so prevent irregularities and fraud, Regulation (EU) No 223/2014 also provides for financial corrections to be made. Criteria for determining that there is a serious deficiency in the functioning of management and control systems, for deciding on the level of financial correction and for applying flat rates or extrapolated financial corrections are set out to ensure this provision is applied in an effective, consistent and proportionate way.

As it is the case for the management and control provisions of the FEAD Regulation, the content of this delegated act has been aligned to the corresponding delegated act pursuant to the provisions relating to the management and control arrangements of the Common Provisions Regulation for the ESI Funds (CPR)²

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations have been carried out in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

¹ Regulation (EU) No 223/2014 of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived (OJ L 72, 12.03.2014, p.1).

² Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

All parts of the CPR delegated act have been discussed at expert group meetings involving experts from all Member States. The European Parliament was duly notified of the dates of the meetings, agendas and relevant documents to enable requests to attend the meetings. The meetings discussed all parts of the act at least once, most of them two or three times, and some parts four times, depending on the issues raised by experts, the complexity of the subject and the extent of changes needed as a result of Trilogue negotiations on the basic acts.

The expert group meetings were held in 2013 and 2014 as follows:

- The list of data to be maintained by managing authorities in computerised form: 4 meetings (4 and 30 October, 12 December 2013 and 6 February 2014).
- The rules concerning arrangements for the audit trail and the use of data collected during audits carried out by the Commission: 5 meetings (16 July, 4 October and 30 October, 17 December 2013 and 6 February 2014).
- The rules on audit work: 5 meetings (16 July, 4 October, 30 October, 17 December 2013 and 6 February 2014).
- The criteria for financial corrections: 4 meetings (16 July, 30 October, 17 December 2013 and 6 February 2014).

Considering the limited differences between the delegated act for the CPR and the delegated act for the FEAD, stemming from the alignment of the corresponding provisions in the two regulations, comments provided by experts from MS on the delegated act for the CPR, have been fully taken into consideration when formulating the content of the FEAD delegated act.

In addition, an ad hoc meeting of experts took place on 13 February 2014, focusing on the adaptations of the CPR delegated act introduced in the FEAD delegated act.

This meeting allowed for a full presentation of the Commission's adapted draft provisions and a thorough exchange of views on all adaptations of the draft. The procedure consisted of clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly. This allowed rules to be clarified and specified in response to experts' comments. The experts were also able to submit written comments following the meeting, and some used this option. The questions and comments informed the drafting of the rules concerned.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Regulation (EU) No 223/2014 empowers the Commission to adopt delegated acts as regards the following:

- laying down requirements for the data to be recorded and stored in computerised form in the monitoring system set up under point (d) of Article 32(2) (Article 32(8));
- laying down the detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and supporting documents to be held by the certifying authority, managing authority, intermediate bodies and beneficiaries (Article 32(9));

- to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in Article 34(7);
- laying down detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives (Article 34(8));
- laying down detailed rules concerning the criteria for determining whether there are serious deficiencies in the functioning of management and control systems, and what kind of deficiencies, criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections (Article 55(4)).

COMMISSION DELEGATED REGULATION (EU) No .../..

of 13.3.2014

supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived, and in particular Articles 32(8), 32(9), 34(7), 34(8), 55 (4) thereof,

Whereas:

- (1) Regulation (EU) No 223/2014³ allows the Commission to adopt delegated acts supplementing its non-essential elements with regard to the Fund for European Aid to the Most Deprived (FEAD)
- (2) Regulation (EU) No 223/2014 requires the managing authority to establish a system to record and store, in computerised form, data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including, with regard to social inclusion of the most deprived persons operational programmes (OP II), data on individual participants. It is therefore necessary to set out a list of data to be recorded and stored in that system.
- (3) Certain data is relevant for particular types of operations or for one of the types of operational programme only; the applicability of data requirements should therefore be specified. Regulation (EU) No 223/2014 set out specific requirements for the recording and storage of data on individual participants in operations supported by OP II, which need to be taken into account.
- (4) The list of data should take into account the reporting requirements set out under Regulation (EU) No 223/2014 in order to ensure that the data necessary for financial management and monitoring, including data needed to prepare payment applications, accounts and implementation reports exists for every operation in a form in which it can be easily aggregated and reconciled. The list should take into account that certain basic data on operations in computerised form is necessary for effective financial management of operations and to fulfil the requirement to publish basic information

³ Regulation (EU) No 223/2014 of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived (OJ L 72, 12.03.2014, p. 1).

on operations. Certain other data is necessary to effectively plan and carry out verifications and audit work.

- (5) The list of data to be recorded and stored should not prejudice the technical characteristics or structure of the computerised systems set up by managing authorities or pre-determine the format of the data recorded and stored, unless these are specifically stated in this Regulation. Nor should it prejudice the means by which data is entered or generated within the system; in some cases, the data included in the list may require the entry of multiple values. Nevertheless, it is necessary to set out certain rules on the nature of this data, to ensure that the managing authority can fulfil its responsibility for monitoring, evaluation, financial management, verification and audit, including where this requires processing of data on individual participants.
- (6) In order to ensure that expenditure under operational programmes can be checked and audited, it is necessary to set out the criteria with which an audit trail should comply to be considered adequate.
- (7) It is necessary to provide, in relation to the audit work pursuant to Regulation (EU) No 223/2014, that the Commission and the Member States should prevent any unauthorised disclosure of or access to personal data, and to specify the purposes for which the Commission and the Member States can process such data.
- (8) The audit authority is responsible for audits of operations. To ensure that the scope and effectiveness of such audits are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.
- (9) It is necessary to set out in detail the sampling basis for operations to be audited, which the audit authority should observe in establishing or approving the sampling method, including the determination of the sampling unit, certain technical criteria to be used for the sample and where necessary factors to be taken into account in taking additional samples.
- (10) The audit authority should draw up an audit opinion covering the accounts referred to in Regulation (EU) No 223/2014. To ensure that the scope and the content of audits on accounts are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.
- (11) To ensure legal certainty and equal treatment of all Member States in making financial corrections, consistent with the principle of proportionality, it is necessary to set out the criteria for determining serious deficiencies in the effective functioning of management and control systems, define the main types of such deficiencies and set out the criteria for establishing the level of financial correction to be applied and criteria for applying extrapolated or flat rates financial corrections.
- (12) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter

This Regulation lays down the following provisions supplementing Regulation (EU) No 223/2014:

- (a) rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established by the managing authority;
- (b) detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries;
- (c) the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations;
- (d) detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives;
- (e) detailed rules concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

Chapter II

SPECIFIC PROVISIONS FOR MANAGEMENT AND CONTROL SYSTEMS

Article 2

Data to be recorded and stored in computerised form

(Article 32(8) of Regulation (EU) No 223/2014)

1. The information on data to be recorded and stored in computerised form for each operation in the monitoring system set up in accordance with Article 32(2)(d) of Regulation (EU) No 223/2014 is set out in Annex I to this Regulation.
2. Data shall be recorded and stored for each operation, including, in case of operations supported by OP II, data on individual participants, broken down by gender where available, in order to allow it to be aggregated where this is necessary for the purposes of monitoring, evaluation, financial management, verification and audit. It shall also allow the aggregation of such data cumulatively for the entire programming period.

Article 3

Detailed minimum requirements for the audit trail

(Article 32(9) of Regulation (EU) No 223/2014)

1. The detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held shall be the following:
 - (a) the audit trail shall allow the application of the selection criteria established in the food and/or basic material assistance operational programme (OP I), or by the monitoring committee for OP II to be verified;
 - (b) in relation to grants under Article 25(1)(a) of Regulation (EU) No 223/2014, the audit trail shall allow 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;
 - (c) in relation to grants under Articles 25(1)(b) and (c), the audit trail shall allow the aggregate amounts certified to the Commission to be reconciled with the detailed data relating to outputs or results and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries, including where applicable documents on the method of setting the standard scales for unit costs and the lump sums, as regards operations co-financed under the operational programme;
 - (d) in relation to costs determined in accordance with Articles 25(1)(d) of Regulation (EU) No 223/2014, the audit trail shall demonstrate and justify the calculation method, where applicable, and the basis on which the flat rates have been decided, and the eligible direct costs or costs declared under other chosen categories to which the flat rate applies;
 - (e) in relation to costs determined in accordance with Article 26(2)(b),(c), (e) and 26(3) second part, of Regulation (EU) No 223/2014, the audit trail shall allow the eligible direct costs or cost declared under other categories of costs to which the flat rate applies to be substantiated;

- (f) the audit trail shall allow the payment of the public contribution to the beneficiary to be verified;
- (g) for each operation, as appropriate, the audit trail shall include the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, reports by the beneficiary and reports on verifications and audits carried out;
- (h) the audit trail shall include information on management verifications and audits carried out on the operation;
- (i) the audit trail shall allow data in relation to output indicators for the operation to be reconciled with reported data and result and, where appropriate, targets for the programme;

For costs referred to in points (c) and (d), the audit trail shall allow the calculation method used by the managing authority to be verified for compliance with Article 25(3) of Regulation (EU) No 223/2014.

2. The managing authority shall ensure that a record is available of the identity and location of bodies holding all the supporting documents required to ensure an adequate audit trail meeting all the minimum requirements laid down in paragraph 1.

Article 4

Use of the data collected during audits carried out by Commission officials or authorised Commission representatives

(Article 34(8) of Regulation (EU) No 223/2014)

1. The Commission shall take all necessary measures to prevent any unauthorised disclosure of, or access to, the data collected by the Commission in the course of its audits.
2. The Commission shall use the data collected in the course of its audits for the sole purpose of fulfilling its responsibilities under Article 36 of Regulation (EU) No 223/2014. The European Court of Auditors and the European Anti-Fraud Office shall have access to the data collected.
3. The data collected shall not be sent to persons other than those in the Member States or within the Union institutions whose duties require that they have access to it in accordance with the applicable rules without the express agreement of the Member State supplying the data.

Article 5

Audits of operations

(Article 34(7) of Regulation (EU) No 223/2014)

1. Audits of operations shall be carried out in respect of each accounting year on a sample of operations selected by a method established or approved by the audit authority in accordance with Article 6 of this Regulation.
2. Audits of operations shall be carried out on the basis of supporting documents constituting the audit trail and shall verify the legality and regularity of expenditure declared to the Commission, including the following aspects:
 - (a) that the operation was selected in accordance with the selection criteria for the operational programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the operational programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained;
 - (b) that the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 3 of this Regulation;
 - (c) that for expenditure declared to the Commission determined in accordance with Article 25(1)(b) and (c), outputs and results underpinning payments to the beneficiary have been delivered, participant data, where applicable, or other records related to outputs and results are consistent with the information submitted to the Commission and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 3 of this Regulation.

Audits shall also verify that the public contribution has been paid to the beneficiary in accordance with Article 42(2) of Regulation (EU) No 223/2014.

3. Audits of operations shall, where applicable, include on-the-spot verification of the physical implementation of the operation.
4. Audits of operations shall verify the accuracy and completeness of the corresponding expenditure recorded by the certifying authority in its accounting system and the reconciliation of the audit trail at all levels.
5. 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 further examination, including, where necessary, additional audits to establish the scale of such problems, and shall recommend the necessary corrective actions.
6. 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 to the Commission on annual coverage. For those purposes, the model for the control report set out on the basis of Article 34(6) of Regulation (EU) 223/2014 shall be used.

Article 6

Methodology for the selection of the sample of operations

(Article 34(7) of Regulation (EU) No 223/2014)

1. The audit authority shall establish the method for the selection of the sample ('the sampling method') in accordance with the requirements set out in this Article taking into account the internationally accepted auditing standards, INTOSAI, IFAC or IIA.
2. In addition to the explanations provided in the audit strategy, the audit authority shall keep a record of the documentation and professional judgement used to establish the sampling methods, covering the planning, selection, testing and evaluation stages, in order to demonstrate that the established method is suitable.
3. A sample shall be representative of the population from which it is selected and enable the audit authority to draw up a valid audit opinion in accordance with Article 34(5)(a) of Regulation (EU) No 223/2014. That population shall comprise the expenditure of an operational programme which is included in the payment applications submitted to the Commission in accordance with Article 41 of Regulation (EU) No 223/2014 for a given accounting year. The sample may be selected during or after the accounting year.
4. For the purpose of application of Article 34(1) of Regulation (EU) No 223/2014, a sampling method is statistical when it ensures:
 - (i) a random selection of the sample items;
 - (ii) the use of probability theory to evaluate sample results, including measurement and control of the sampling risk and of the planned and achieved precision.
5. The sampling method shall ensure a random selection of each sampling unit in the population by using random numbers generated for each population unit in order to select the units constituting the sample or through systematic selection by using a random starting point and applying a systematic rule to select the additional items.
6. The sampling unit shall be determined by the audit authority, based on professional judgement. The sampling unit may be an operation, a project within an operation or a payment claim by a beneficiary. Information on the type of sampling unit determined and on the professional judgement used for that purpose shall be included in the control report.
7. Where the total expenditure relating to a sampling unit for the accounting year is a negative amount it shall be excluded from the population referred to in paragraph 3 above and shall be audited separately. The audit authority may also draw a sample of this separate population.
8. Where conditions for the proportional control provided for in Article 58(1) of Regulation (EU) No 223/2014 apply, the audit authority may exclude the items referred to in that Article from the population to be sampled. If the operation

concerned has already been selected in the sample, the audit authority shall replace it using an appropriate random selection.

9. All expenditure declared to the Commission in the sample shall be subject to audit.

Where the selected sampling units include a large number of underlying payment claims or invoices, the audit authority may audit them through sub-sampling, selecting the underlying payment claims or invoices by using the same sampling parameters used to select the sampling units of the main sample.

In that case, appropriate sample sizes shall be calculated within each sample unit to be audited and, in any event, shall not be less than 30 underlying payment claims or invoices for each sampling unit.

10. The audit authority may stratify a population by dividing a population into sub-populations, each of which is a group of sampling units which have similar characteristics, in particular in terms of risk or expected error rate or where the population includes operations consisting of financial contributions from an operational programme to high-value items.
11. The audit authority shall evaluate the reliability of the system as high, average or low, taking into account the results of systems audits to determine the technical parameters of sampling so that the combined level of assurance obtained from the systems audits and audits of operations is high. For a system assessed as having high reliability the confidence level used for sampling operations shall not be less than 60%. For a system assessed as having low reliability the confidence level used for sampling operations shall not be less than 90%. The maximum materiality level shall be 2% of the expenditure referred to in paragraph 3.
12. Where irregularities or a risk of irregularities have been detected, the audit authority shall decide on the basis of professional judgement whether it is necessary to audit a complementary sample of additional operations or parts of operations that were not audited in the random sample in order to take account of specific risk factors identified.
13. The audit authority shall analyse the results of the audits of the complementary sample separately, draw conclusions based on those results and communicate them to the Commission in the annual control report. Irregularities detected in the complementary sample shall not be included in the calculation of the projected random error of the random sample.
14. On the basis of the results of the audits of operations for the purpose of the audit opinion and control report referred to in Article 34(5)(a) and (b) of Regulation (EU) No 223/2014, the audit authority shall calculate a total error rate, which shall be the sum of the projected random errors and, if applicable, systemic errors and uncorrected anomalous errors, divided by the population.

Article 7

Audits of accounts

(Article 34(7) of Regulation (EU) No 223/2014)

1. The audits of accounts referred to in Article 49(1) of Regulation (EU) No 223/2014 shall be carried out by the audit authority in respect of each accounting year.
2. The audit of the accounts shall provide reasonable assurance on the completeness, accuracy and veracity of the amounts declared in the accounts.
3. For the purposes of paragraphs 1 and 2, the audit authority shall take into account, in particular, the results of the system audits carried out on the certifying authority and of the audits on operations.
4. The system audit shall include verification of the reliability of the accounting system of the certifying authority and, on a sample basis, of the accuracy of expenditure of amounts withdrawn and amounts recovered recorded in the certifying authority's accounting system.
5. For the purpose of the audit opinion, in order to conclude that the accounts give a true and fair view, the audit authority shall verify that all elements required by Article 49 of Regulation (EU) No 223/2014 are correctly included in the accounts and correspond to the supporting accounting records maintained by all relevant authorities or bodies and beneficiaries during the audit work performed by the audit authority. The audit authority shall in particular, on the basis of the accounts to be provided to it by the certifying authority, verify that:
 - (a) the total amount of eligible public expenditure declared in accordance with Article 49(1)(a) of Regulation (EU) No 223/2014 agrees with the expenditure and the corresponding public contribution included in payment applications submitted to the Commission for the relevant accounting year and, if there are differences, that adequate explanations have been provided in the accounts for the reconciling amounts;
 - (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year and the irrecoverable amounts presented in the accounts correspond to the amounts entered in the accounting systems of the certifying authority and are based on decisions by the responsible managing authority or certifying authority;
 - (c) expenditure has been excluded from the accounts in accordance with Article 49(2) of Regulation (EU) No 223/2014, where applicable, and that all the required corrections are reflected in the accounts for the accounting year concerned;

Verifications referred to in points (b) and (c) may be carried out on a sample basis.

CHAPTER III

SPECIFIC PROVISIONS FOR FINANCIAL MANAGEMENT AND FINANCIAL CORRECTIONS

Article 8

Criteria for determining serious deficiencies in the effective functioning of management and control systems

(Article 55(4) of Regulation (EU) No 223/2014)

1. The Commission shall base its assessment of the effective functioning of management and control systems on the results of all available systems audits, including tests of controls, and of audits of operations.

The assessment shall cover the internal control environment of the programme, the management and control activities of the managing and certifying authorities, monitoring by the managing and certifying authority, and the control activities of the audit authority and shall be based on verification of compliance with the key requirements set out in Table 1 of Annex II.

The fulfilment of these key requirements shall be assessed on the basis of the categories set out in Table 2 of Annex II.

2. The main types of serious deficiency in the effective functioning of the management and control system shall be cases where any of the key requirements referred to in points 2, 4, 5, 13, 15, 16 and 18 of Table 1 of Annex II, or two or more of the other key requirements in Table 1 of Annex II are assessed as falling into categories 3 or 4 set out in Table 2 of Annex II.

Article 9

Criteria for applying flat rates or extrapolated financial corrections and criteria for determining the level of financial correction

(Article 55(4) of Regulation (EU) No 223/2014)

1. Financial corrections shall be applied for all or part of an operational programme , where the Commission identifies one or more serious deficiencies in the functioning of the management and control system.

Notwithstanding the first subparagraph, extrapolated financial corrections shall be applied, for all or part of an operational programme, where the Commission identifies systemic irregularities in a representative sample of operations, allowing for a more accurate quantification of the risk for the Union budget. In this case, the results of the examination of the representative sample shall be extrapolated to the rest of the population from which the sample was drawn for the purpose of determining the financial correction.

2. The level of flat-rate correction shall be fixed taking into account the following elements:
 - (a) the relative importance of the serious deficiency or serious deficiencies in the context of the management and control system as a whole;
 - (b) the frequency and extent of the serious deficiency or serious deficiencies;
 - (c) the degree of risk of loss for the Union budget.
3. Taking into account these elements, the level of financial correction shall be fixed as follows:
 - (a) where the serious deficiency or serious deficiencies in the management and control system is so fundamental, frequent or widespread that it represents a complete failure of the system that puts at risk the legality and regularity of all expenditure concerned, a flat rate of 100% shall be applied;
 - (b) where the serious deficiency or serious deficiencies in the management and control system is so frequent and widespread that it represents an extremely serious failure of the system that puts at risk the legality and regularity of a very high proportion of the expenditure concerned, a flat rate of 25% shall be applied;
 - (c) where the serious deficiency or serious deficiencies in the management and control system is due to the system not fully functioning or functioning so poorly or so infrequently that it puts at risk the legality and regularity of a high proportion of the expenditure concerned, a flat rate of 10% shall be applied;
 - (d) where the serious deficiency or serious deficiencies in the management and control system is due to the system not functioning consistently so that it puts at risk the legality and regularity of a significant proportion of the expenditure concerned, a flat rate of 5% shall be applied.
4. Where the application of a flat rate fixed in accordance with paragraph 3 would be disproportionate, the level of correction shall be reduced.
5. Where, due to a failure of the responsible authorities to take adequate corrective measures following the application of a financial correction in an accounting year, the same serious deficiency or serious deficiencies is identified in a subsequent accounting year, the rate of correction may, due to the persistence of the serious deficiency or serious deficiencies, be increased to a level not exceeding that of the next higher category.

Article 10

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3 shall apply from 1 December 2014, as regards information on data recorded and stored referred to in Annex I.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.3.2014

For the Commission
The President
José Manuel BARROSO