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

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 16.5.2018
amending Commission Delegated Regulation (EU) No 1042/2014 of 25
July 2014 supplementing Regulation (EU) No 514/2014 with regard to the
designation and management and control responsibilities of Responsible
Authorities and with regard to status and obligations of Audit Authorities

Delegations will find attached document C(2018) 2857 final.

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Brussels, 16.5.2018
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COMMISSION DELEGATED REGULATION (EU) .../...

of 16.5.2018

**amending Commission Delegated Regulation (EU) No 1042/2014 of 25 July 2014
supplementing Regulation (EU) No 514/2014 with regard to the designation and
management and control responsibilities of Responsible Authorities and with regard to
status and obligations of Audit Authorities**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management empowers the Commission to adopt delegated acts.

2. REASONS FOR AND OBJECTIVES OF THE PROPOSAL

The first clearance of accounts exercises carried out pursuant to Article 1 of Commission Implementing Regulation (EU) No 2015/378 highlighted the need to clarify certain provisions of Article 14 of Commission Delegated Regulation (EU) No 1042/2014, in particular:

- (a) the scope of system audits;
- (b) the obligation for the Audit Authority to perform audits of expenditure; and
- (c) the need to develop a standard reporting model for the Audit Authority to help Member States comply with the reporting requirement set out in Article 14(7) of Regulation 1042/2014 on the audit work carried out to support the audit opinions.

Article 59(5) of Regulation (EU, Euratom) No 966/2012 requires an audit opinion on whether the accounts ‘give a true and fair view, whether expenditure for which reimbursement has been requested from the Commission is legal and regular, and whether the control systems put in place function properly.’ The opinion should also state whether the audit work calls into question the assertions made in the management declaration.

Similarly, Article 29 of Regulation (EU) No 514/2014 clearly underlines the obligations on the Audit Authority to ‘ensure that audits are carried out on the management and control systems, and on an appropriate sample of the expenditure included in the annual accounts’ and to ‘ensure that audit work meets internationally accepted auditing standards.’

Article 30 of Regulation (EU) No 514/2014 also promotes cooperation between the Commission and the Audit Authorities and in particular the exchange of audit results ‘in order to make best possible and proportionate use of control resources and to avoid unjustified duplication of work.’ The exchange of audit results would allow the Commission to better understand the scope of the audit work performed and to determine the degree of reliance on the Audit’s Authority’s work. If the audit work is not carried out as required, this may reduce the Commission’s reliance on the completeness, accuracy and veracity of the accounts and the audit opinions submitted. As a result, it may impact the Commission’s decision on the payment of the annual balance during the annual clearance of the accounts and may trigger a conformity clearance procedure.

For the following reasons, it is proposed to amend Commission Delegated Regulation (EU) No 1042/2014:

- to clarify the scope of system audits and align them with the key requirements set out in Annex to Commission Implementing Regulation (EU) No 2015/378;

- to clarify the Audit Authority's obligation to perform audits of expenditure, as referred to in Article 29 of Regulation (EU) No 514/2014 and in Article 59(5) of Regulation (EU, Euratom) No 966/2012, and clarify the elements on the sampling methodology and composition of the auditable population;
- to provide the Audit Authorities with the terminology already used for other shared managed funds (European Structural and Investment Funds), in particular by replacing the reference to ‘financial audits’ with ‘audits of accounts’ to make it easier to understand common Commission guidance;
- to provide a standard reporting model (annual control report) to transmit the audit work performed by the Audit Authority and the audit results obtained to the Commission.

3. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission¹, appropriate and transparent consultations, including those at expert level, have been carried out on this delegated act. The draft act was discussed with the Audit Authorities and Responsible Authorities on 26 September 2016, 13 March 2017 and 20 September 2017 and presented to the AMIF ISF Committee² on 25 November 2016.

All elements of this delegated act were discussed at an expert group meeting on 14 March 2017 involving participants from all Member States. The European Parliament was duly notified of the date, agenda and relevant documents for this meeting to enable it to take part.

At the meeting, the Commission gave a full presentation of its draft provisions and a thorough exchange of views took place on all aspects of the draft. The meeting allowed the Commission to clarify its approach, hear views from experts on the draft and refine it. In particular, the Commission was able to clarify and specify rules in response to comments from experts.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 26(4) of Regulation (EU) No 514/2014 empowers the Commission to adopt delegated acts concerning:

- minimum conditions for the designation of the Responsible Authorities with regard to the internal environment, control activities, information and communication, and monitoring, as well as rules on the procedure for making and ending the designation;
- rules relating to supervision and the procedure for reviewing the designation of Responsible Authorities;

¹ As set out in Annex to the Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making, interinstitutional agreement of 13 April 2016 on Better Law-Making, OJ L 123, 12.5.2016, p. 1.

² Asylum, Migration and Integration and Internal Security Fund Committee.

- the obligations of the Responsible Authorities as regards public intervention, as well as on the content of their management and control responsibilities;

Article 29(1) of Regulation (EU) No 514/2014 empowers the Commission to adopt delegated acts ‘on the status of the Audit Authorities and the conditions which their audits shall fulfil.’

4. BUDGET IMPACT

This Regulation does not have any impact on the Union budget.

COMMISSION DELEGATED REGULATION (EU) .../...

of 16.5.2018

amending Commission Delegated Regulation (EU) No 1042/2014 of 25 July 2014 supplementing Regulation (EU) No 514/2014 with regard to the designation and management and control responsibilities of Responsible Authorities and with regard to status and obligations of Audit Authorities

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management³, and in particular Articles 26(4) and 29(1) thereof,

Whereas:

- (1) In order to provide legal certainty it is necessary to clarify that a Delegated Authority may also act as an executing body. In this case, the Audit Authority shall function independently from the Delegated Authority, including when the latter acts as executing body.
- (2) The first clearance of accounts exercises carried out pursuant to Article 1 of Commission Implementing Regulation (EU) No 2015/378 highlighted the need to provide clarity on the scope of system audits to be conducted by the Audit Authority and to align this Regulation with the key requirements set out in Annex to Implementing Regulation (EU) No 2015/378. By clarifying the scope of system audits, the main types of deficiencies should be established and the corresponding level of financial corrections due to system deficiencies should be determined and applied in a consistent and comparable manner by Member States.
- (3) In order to bring Regulation (EU) No 1042/2014 in line with Article 29 of Regulation (EU) No 514/2014 and with Article 59 (5) of Regulation (EU, Euratom) No 966/2012 it is necessary to include a reference to the obligation on the Audit Authority to perform audits on expenditure.
- (4) For the purpose of the audits of expenditure it is necessary to define that the auditable population should include financial data representing payments made by the Responsible Authority throughout a financial year, as well as, for the Asylum, Migration and Integration Fund, the number of persons relocated, resettled, transferred and legally admitted.

³ OJ L 150, 20.5.2014, p. 112

- (5) To ensure that the scope and effectiveness of audits on expenditure are adequate and carried out to the same standards by all the Audit Authorities, it is necessary to set out the minimum requirements for sampling, which an Audit Authority should observe in establishing or approving the sampling method.
- (6) Pursuant to Article 30 of Regulation (EU) No 514/2014, for the purpose of reporting of audit results to the Commission it is necessary to present the model for the annual control report, which sets out the audit information and data to be provided each year to support the Audit Authority's opinions submitted with the accounts. This annual control report should be sent to the Commission via the electronic data exchange system referred to in Article 2 of Commission Implementing Regulation (EU) No 802/2014 ('SFC2014') and, in particular, via the module for national auditors and audit services of the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Commission Delegated Regulation (EU) No 1042/2014 is amended as follow:

- (1) In paragraph 1 of Article 5, the following second sub-paragraph is added:

‘Where authorised by the Responsible Authority, the Delegated Authority may act as executing body as referred to in Article 8.’
- (2) Article 5.2 b) is replaced by the following:

‘b) the task(s) delegated to the Delegated Authority, including where applicable, the projects for which the Delegated Authority may act as executing body as referred to in Article 8;’
- (3) Article 14 is replaced by the following:

Article 14

Audits

1. To deliver the opinion referred to in the second subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁴, the Audit Authority shall conduct system audits, audits of expenditure and audits of accounts.
2. System audits shall verify whether the Responsible Authority's management and control system has functioned effectively so as to give reasonable assurance that the financial data included in the request for payment of the annual balance submitted to the Commission in accordance with Article 44 of Regulation (EU) No 514/2014 is legal and regular.

⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.

Based on these system audits, the Audit Authority shall verify the compliance with the key requirements set out in Annex to Commission Implementing Regulation (EU) No 2015/378⁵ and whether the Responsible Authority continues to comply with the designation criteria set out in Annex I to the present Regulation.

3. Audits of expenditure shall be carried out in respect of each financial year on an appropriate sample drawn from the financial data considered eligible by the Responsible Authority ('the draft accounts') after completion of all its controls referred to in Article 27 of Regulation (EU) No 514/2014 and Commission Implementing Regulation (EU) No 2015/840.

The financial data shall comprise all types of payments made by the Responsible Authority during a financial year as defined in Article 38 of Regulation (EU) 514/2014, including advance payments, interim payments, final payments and payments relating to technical assistance and operating support. The financial data shall also comprise, for the Asylum, Migration and Integration Fund, the number of persons relocated, resettled, transferred or legally admitted.

Audits of expenditure shall:

- be carried out on the basis of supporting documents constituting the audit trail and shall verify the legality and regularity of the financial data in the draft accounts;
- where applicable, include on-the-spot verification of the expenditure incurred by the beneficiaries, including *mutatis mutandis* for payments made under technical assistance and operating support.
- where applicable, include verification of compliance with the requirements set for persons relocated in accordance with Council Decisions (EU) No 2015/1523 and 2015/1601, resettled in accordance with Article 17 of Regulation (EU) No 516/2014, transferred in accordance with Article 18 of Regulation (EU) No 516/2014 and legally admitted in accordance with Council Decisions (EU) No 2015/1601, for which a lump sum is claimed.
- verify the accuracy and completeness of the payments to beneficiaries and recorded by the Responsible Authority in its accounting system and the reconciliation of the audit trail at all levels.

When the Audit Authority detects an error rate in the draft accounts that is material or problems detected appear to be systemic in nature and therefore entail a risk for other payments funded by the national programme, the Audit Authority shall ensure further examination, including, where necessary, additional audits to establish the scale of the problems. The maximum materiality level shall be 2 % of the Union contribution of the financial data in the 'draft accounts'.

⁵ Commission Implementing Regulation (EU) 2015/378 of 2 March 2015 laying down rules for the application of Regulation (EU) No 514/2014 of the European Parliament and of the Council with regard to the implementation of the annual clearance of accounts procedure and the implementation of the conformity clearance, OJ 7.3.2015, L 64, p. 30.

The Audit Authority shall recommend the necessary corrective actions to the Responsible Authority, including where applicable, flat rate financial corrections in line with Commission Implementing Regulation (EU) No 2015/378. The Audit Authority shall report the results of the audits of expenditure and the associated recommendations and corrective measures in the annual control report referred to in Article 14(8).

4. The Audit Authority shall establish the method for the selection of the appropriate sample ('the sampling method') in accordance with internationally accepted auditing standards. The sampling method shall enable the Audit Authority to estimate the total error rate in the 'draft accounts' for the financial year.

The Audit Authority shall document, in the annual control report referred to in Article 14(8), its professional judgment used to establish the statistical or non-statistical sampling method and the applicable sampling parameters. The Audit Authority shall keep records of the sampling methodology applied covering the planning, selection, testing and evaluation stages, in order to demonstrate that the selected sampling method is suitable.

When statistical sampling methods cannot be used, a non-statistical sampling method may be used on the professional judgment of the Audit Authority. Any non-statistical sampling method shall provide for a random selection of the sample items and cover a minimum of 10 % of the value of the financial data included in the 'draft accounts'.

The sampling method chosen and the sample size shall allow the Audit Authority to draw conclusions on the total population from which the sample was drawn.

For this purpose and if applicable, the Audit Authority may stratify the financial data by dividing into strata, each of which is a group of sampling units which have similar characteristics.

When the audit sample includes interim payments and/or final payments clearing advance payments declared in the accounts of previous financial years, these advance payments shall fall within the scope of the audit of expenditure.

However, for reporting in Table 10.2 'Results of audits of expenditure' in the annual control report referred to in Article 14.8, the error rates and audit coverage shall be calculated solely on the basis of the audit sample drawn from the financial data in the 'draft accounts' of the current financial year.

5. Audits on accounts shall be carried out to provide reasonable assurance that the annual accounts give a true and fair view of the financial data reported in the request for payment of the annual balance ('the final accounts') submitted by the Responsible Authority to the Commission in accordance with Article 44 of Regulation (EU) No 514/2014.

In order to conclude whether the final accounts give a true and fair view, the Audit Authority shall verify that all the financial data and public contributions received and entered in the accounts prepared by the Responsible Authority for the financial year are correctly recorded in the accounting system and correspond to the supporting

accounting records maintained by the Responsible Authority. The Audit Authority shall in particular, on the basis of these accounts:

- (a) verify that the total amount of financial data reported in the request for payment of the annual balance agrees with the Responsible Authority's accounting system and, if there are differences, that adequate explanations have been documented for the reconciling amounts;
- (b) verify that the amounts withdrawn and recovered, the amounts to be recovered and the irrecoverable amounts as at the end of the financial year, correspond to the amounts entered in the accounting system of the Responsible Authority and are supported by documented decisions of the Responsible Authority;
- (c) ascertain that the Responsible Authority has performed the administrative and financial and operational on-the-spot controls in compliance with Article 27 of Regulation (EU) No 514/2014 and Commission Implementing Regulation (EU) No 2015/840.

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

On the basis of the total error rate determined by the audits of expenditure and the results of the audit of accounts, the Audit Authority shall calculate the residual error rate to deliver the opinion referred to in the second subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012⁶. The calculation of the residual error rate shall be documented in the annual control report referred to in paragraph 8.

6. If the Audit Authority's audit findings, on completion of all its audit work, suggest material weaknesses in the effective functioning of the Responsible Authority's management and control system, the Audit Authority shall:
 - (a) assess the financial impact of these weaknesses in line with Commission Implementing Regulation (EU) No 2015/378;
 - (b) make appropriate recommendations to the Responsible Authority for corrective and preventive measures;
 - (c) monitor the Responsible Authority's implementation of the measures referred in point (b) above and assess whether an action plan to restore the effective functioning of the management and control systems is in place.
7. Pursuant to Article 3(2), the Audit Authority shall report its findings to the Designating Authority, including whether, in its opinion, the Responsible Authority continues to comply with the designation criteria.
8. The Audit Authority shall ensure that all information related to its audit activity referred to in paragraphs 1, 2, 3, 4, 5, 6 and 7 is adequately reported to the Commission. For this purpose, the Audit Authority shall draw up an annual control

⁶ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.

report setting out the main findings of its audit work. The annual control report shall be drawn up in accordance with the model set out in Annex to this Regulation and shall be sent to the Commission via the electronic data exchange system referred to in Article 2 of Commission Implementing Regulation (EU) No 802/2014. The annual control report shall be sent to the Commission no later than 3 working days after the Responsible Authority submits the request for payment of the annual balance to the Commission in accordance with Article 44 of Regulation (EU) No 514/2014.’

- (4) A new annex II is added to this Regulation.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 16.5.2018

For the Commission
The President
Jean-Claude JUNCKER