

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/646****of 5 April 2017****amending Implementing Regulation (EU) 2015/378 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**

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 management <sup>(1)</sup>, and in particular Article 47(6) thereof,

Whereas:

- (1) The first annual accounts clearance exercise carried out pursuant to Article 1 of Commission Implementing Regulation (EU) 2015/378 <sup>(2)</sup> highlighted the need to clarify the situation of annual pre-financing amounts that are not fully cleared by the annual accounts submitted.
- (2) It is necessary to establish arrangements for the implementation of the conformity clearance and in particular rules on criteria for determining the level of financial correction that the Commission can apply pursuant to Article 47 of Regulation (EU) No 514/2014 following the completion of that procedure.
- (3) To ensure legal certainty and equal treatment of all Member States, it is essential to clarify the criteria for determining deficiencies in the effective functioning of the management and control systems, define the main types of such deficiencies and set out the criteria for determining the level of financial correction.
- (4) Implementing Regulation (EU) 2015/378 should therefore be amended.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the 'Asylum, Migration and Integration and Internal Security Funds' Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

Implementing Regulation (EU) 2015/378 is amended as follow:

(1) Article 1 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Where the amount accepted by the Commission in the decision on the clearance of annual accounts for financial year N is lower than the annual pre-financing amount for financial year N, the latter amount shall be cleared against the former. Any outstanding pre-financing amount shall be cleared in the course of subsequent clearance exercises.

The first subparagraph shall apply also in cases where a Member State submits annual accounts reporting zero payment.;

(b) paragraph 7 is deleted;

<sup>(1)</sup> OJ L 150, 20.5.2014, p. 112.

<sup>(2)</sup> 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 L 64, 7.3.2015, p. 30).

(2) the following articles are inserted:

*Article 3a*

#### **Criteria for determining deficiencies in the effective functioning of the management and control system**

1. The Commission shall base its assessment of the effective functioning of the management and control system on the results of all available audits carried out by the Member States, the Commission services and the Court of Auditors, the results of investigations carried out by European Anti-Fraud Office or any other information on compliance with the designation criteria referred to in Article 2(1) of Commission Delegated Regulation (EU) No 1042/2014 (\*).

The Commission's assessment shall cover the internal control environment of the national programme, the management and control activities of the Responsible Authority, and the control and audit activities of the Audit Authority and shall be based on verification of compliance with the key requirements set out in Table 1 of the Annex.

2. Compliance with the key requirements referred to in paragraph 1 according to the categories set out in Table 2 of the Annex shall be used to assess the effective functioning of each competent authority and to reach an overall conclusion on the management and control system. Any mitigating or aggravating factors shall be taken into account in the overall conclusion on the management and control system.

3. Wherever it is assessed that any of the key requirements 2, 4, 5, 8, 11, 12 or 14 in Table 1 of the Annex, or two or more of the other key requirements in that Table fall into categories 3 or 4 set out in Table 2 of the Annex, it shall be considered as a type of serious deficiency in the effective functioning of the management and control system.

*Article 3b*

#### **Criteria for applying and determining the level of financial corrections**

1. The Commission shall apply financial corrections where it identifies one or more individual or systemic irregularities or one or more deficiencies in the effective functioning of the management and control system ('system deficiencies').

For the purpose of this Regulation, an irregularity means any infringement of Union or national law or any infringement of national rules resulting from an act or omission by a beneficiary or beneficiaries which has, or would have, the effect of prejudicing the general budget of the European Union by charging to it an unjustified item of expenditure.

The amount of the financial correction shall be determined on a case-by-case basis wherever possible and shall be equal to the exact amount of expenditure wrongly charged to the general budget of the Union.

Where the Commission identifies irregularities in a representative sample of expenditure in all or part of a national programme, but it is not cost-effective to verify the regularity of the other expenditure, the correction may be determined by extrapolating the results of the examination of the sample to the rest of the population from which it was drawn.

Where the Commission identifies systemic irregularities or system deficiencies but where it is not possible, even by extrapolation, to quantify the correction precisely, a flat-rate financial correction shall be applied to the expenditure declared for the part of the system affected in accordance with the indicative criteria and scales set out in paragraphs 2 and 3.

Flat-rate corrections may also be applied in respect of individual irregularities.

2. The level of flat-rate correction shall be determined taking into account the following factors:

- (a) the degree of seriousness of the irregularity or of the system deficiency in relation to the overall system or part of it, or to the types of expenditure declared;
- (b) the degree of risk of loss to which the Union budget was exposed as a result of the irregularity or system deficiency;

- (c) the vulnerability of the expenditure to fraud due to the irregularity or system deficiency;
  - (d) any mitigating or aggravating factors.
3. The level of correction shall be determined as follows:
- (a) where the irregularity or irregularities or the system deficiency or deficiencies is/are so fundamental, frequent or widespread that it/they represent(s) a complete failure of the system that puts at risk the legality and regularity of all the expenditure concerned, a flat rate of 100 % shall be applied;
  - (b) where the irregularity or irregularities or the system deficiency or deficiencies is/are so frequent and widespread that it/they represent(s) 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 irregularity or irregularities or the system deficiency or deficiencies is/are due to the system functioning partially, poorly or infrequently so as to put 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 irregularity or irregularities or the system deficiency or deficiencies is/are due to the system functioning inconsistently so as to put at risk the legality and regularity of a significant proportion of the expenditure concerned, a flat rate of 5 % shall be applied.

In accordance with the principle of proportionality, the rate may be reduced to 2 % where the nature and gravity of the irregularity or system deficiency are not considered to justify a 5 % correction rate.

4. Where, due to a competent authority's failure to take adequate corrective measures following the application of a financial correction in a financial year, the same irregularity or irregularities or deficiency or deficiencies is/are identified in a subsequent financial year, the rate of flat rate correction may, due to the persistence of the irregularity or irregularities or deficiency or deficiencies, be raised to a level not exceeding the next level in the scale set out in paragraph 3.

---

(\*) 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 (OJ L 289, 3.10.2014, p. 3).;

(3) a new annex is added as set out in the Annex 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, 5 April 2017.

For the Commission  
The President  
Jean-Claude JUNCKER

## ANNEX

## 'ANNEX

**Key requirements of the management and control systems and their classification with regard to their effective functioning**

(referred to in Article 3a of Implementing Regulation (EU) 2015/378)

Table 1

**Key requirements**

	Key requirements of the management and control systems	Bodies/authorities concerned	Scope
1	Adequate description and separation of functions and adequate systems for reporting and monitoring where the Responsible Authority entrusts execution of tasks to another body	Responsible Authority/ Delegated Authority	Internal environment
2	<b>Appropriate selection of projects</b>	Responsible Authority/ Delegated Authority	Control activities
3	Adequate information to beneficiaries, potential beneficiaries and the public	Responsible Authority/ Delegated Authority	Internal information and communication
4	<b>Adequate controls</b>	Responsible Authority/ Delegated Authority	Control activities
5	<b>Effective systems and procedures to ensure that all the documents regarding expenditure and controls are held to ensure an adequate audit trail</b>	Responsible Authority/ Delegated Authority	Control activities
6	Reliable computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting	Responsible Authority/ Delegated Authority	Control activities/Internal information and communication
7	Effective implementation of procedures for the prevention, detection and correction of irregularities including proportionate anti-fraud measures	Responsible Authority/ Delegated Authority	Control activities
8	<b>Appropriate procedures for drawing up the annual accounts, the management declaration and the annual summary of final audit reports and of controls carried out</b>	Responsible Authority/ Delegated Authority	Control activities
9	Appropriate and complete account of amounts recoverable, recovered and cancelled	Responsible Authority/ Delegated Authority	Control activities
10	Adequate description and separation of functions, functional independence from the Responsible Authority and adequate systems for ensuring that any other body that carries out audits has the necessary functional independence and takes accounts of internationally accepted audit standards	Audit Authority	Internal environment

	Key requirements of the management and control systems	Bodies/authorities concerned	Scope
11	<b>Adequate system audits</b>	Audit Authority	Control activities
12	<b>Adequate audits of expenditure</b>	Audit Authority	Control activities
13	Adequate audits of accounts	Audit Authority	Control activities
14	<b>Adequate procedures for providing reliable audit opinions and audit reports</b>	Audit Authority	Control activities

Table 2

**Classification of key requirements for the management and control systems with regard to their functioning**

Category 1	Works well. No, or only minor improvement(s) needed
Category 2	Works. Some improvement(s) needed
Category 3	Works partially. Substantial improvements needed
Category 4	Essentially does not work'