Commission Delegated Regulation (EU) 2018/1291 of 16 May 2018 amending Delegated Regulation (EU) No 1042/2014 supplementing Regulation (EU) No 514/2014 of the European Parliament and of the Council with regard to the designation and management and control responsibilities of Responsible Authorities and with regard to status and obligations of Audit Authorities

COMMISSION DELEGATED REGULATION (EU) 2018/1291

of 16 May 2018

amending Delegated Regulation (EU) No 1042/2014 supplementing Regulation (EU) No 514/2014 of the European Parliament and of the Council 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 management[(1)], 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) 2015/378[(2)] 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) 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 Commission Delegated Regulation (EU) No 1042/2014[(3)] in line with Article 29 of Regulation (EU) No 514/2014 and with Article 59(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(4)] 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.

(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[(5)] ('SFC2014') and, in particular, via the module for national auditors and audit services of the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) in paragraph 1 of Article 5, the following second subparagraph 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 Council[(6)], 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.

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)

2015/378[7] 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) 2015/840[8].

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) No 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) 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) 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".

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) 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) 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