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

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[(1)], 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[(2)] 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:

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/646. (See end of Document for details)*

(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;

(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[(3)].

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.