Commission Delegated Regulation (EU) 2015/1972 of 8 July 2015 supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the Fund for European Aid to the Most Deprived

COMMISSION DELEGATED REGULATION (EU) 2015/1972

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supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning 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[(1)], and in particular the fifth subparagraph of Article 30(2) thereof,

Whereas:

(1) The purpose of this Regulation is to determine which irregularities Member States should report to the Commission. In order to allow the Commission to perform its tasks concerning the protection of the financial interests of the Union, in particular to allow the Commission to perform risk analysis, it should also be established which data are to be provided.

(2) Financial interests of the Union should be protected in the same way irrespective of the fund used to deliver the objectives for which it was established. To that end Regulation (EU) No 223/2014, as well as Regulations (EU) No 1303/2013[(2)], (EU) No 1306/2013[(3)] and (EU) No 514/2014[(4)] of the European Parliament and of the Council, empower the Commission to adopt rules on the reporting of irregularities. To ensure that identical rules apply in respect of all of the funds governed by those Regulations, it is necessary that this Regulation contains provisions identical to those in Commission Delegated Regulations (EU) 2015/1970[(5)], (EU) 2015/1971[(6)] and (EU) 2015/1973[(7)].

(3) To enable a coherent application of the reporting requirements across the Member States it is necessary to define the term ‘suspected fraud’, taking into account the definition of fraud contained in the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests[(8)], and the term ‘primary administrative or judicial finding’.

(4) Regulations (EU) No 1303/2013 and (EU) No 223/2014 determine the reporting threshold below which irregularities do not need to be reported to the Commission and cases for which there is no need for reporting. In order to simplify and to align the provisions, and to strike a balance between the administrative burden on Member States and the common interest in the provision of accurate data for the purpose of analysis

in the Union's fight against fraud, it is necessary to apply the same reporting threshold and the same derogations for the reporting of irregularities under Regulations (EU) No 1306/2013 and (EU) No 514/2014.

(5) In order to ensure consistency of reporting it is necessary to establish criteria for determining when irregularities are to be initially reported and the data to be provided in such initial reports.

(6) In order for the data provided to the Commission to be accurate, follow-up reporting is necessary. Member States should, therefore, provide the Commission with up-to-date information on any significant progress in the administrative and legal procedures or proceedings related to each initial report.

(7) In light of Directive 95/46/EC of the European Parliament and of the Council[(9)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council[(10)] the Commission and the Member States should, in relation to the information provided pursuant to this Regulation, prevent any unauthorised disclosure of, or access to, personal data. In addition, this Regulation should specify the purposes for which the Commission and the Member States may process that data.

(8) As payments have already been made for the fund and irregularities could occur, the provisions of this Regulation should apply immediately. This Regulation should therefore enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation determines which irregularities are to be reported and establishes which data are to be provided by Member States to the Commission.

Article 2

Definitions

The definitions in Regulation (EU) No 223/2014 shall apply. In addition, for the purposes of this Regulation:

(a) ‘suspected fraud’ means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests;

(b) ‘primary administrative or judicial finding’ means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the

possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

Article 3

Initial reporting

1 Member States shall report irregularities to the Commission which:

a affect an amount that exceeds EUR 10 000 in contribution from the fund;

b have been the subject of a primary administrative or judicial finding.

2 In the initial report Member States shall provide the following information:

a the name and the Common Identification Code (CCI) number of the operational programme and operation concerned;

b the identity of the natural or legal persons concerned, or both, or of any other entity having a role in the commission of the irregularity and their role, except where that information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;

c the provision or provisions which have been infringed;

d the date and source of the first information leading to the suspicion that an irregularity has been committed;

e the practices employed in committing the irregularity;

f where appropriate, whether the practice gives rise to suspected fraud;

g the manner in which the irregularity was discovered;

h where appropriate, the Member States and third countries involved;

i the period during which, or the date on which, the irregularity was committed;

j the date on which the primary administrative or judicial finding on the irregularity was established;

k the total amount of expenditure of the operation concerned expressed in terms of the Union's contribution and the national contribution;

l the amount affected by the irregularity expressed in terms of the Union's contribution and the national contribution;

m in the case of suspected fraud, and where no payment of the public contribution has been made to the beneficiary, the amount which would have been unduly paid had the irregularity not been identified, expressed in terms of the Union's contribution and the national contribution;

n the nature of the irregular expenditure;

o the suspension of payments, where applicable, and the possibility of recovery of amounts paid.

3 By way of derogation from paragraph 1, the Member States shall not report to the Commission irregularities referred to in the second subparagraph of Article 30(2) of Regulation (EU) No 223/2014.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

4 Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.