Commission Implementing Regulation (EU) 2015/840 of 29 May 2015 on controls carried out by Responsible Authorities pursuant to Regulation (EU) No 514/2014 of the European Parliament and of the Council 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

COMMISSION IMPLEMENTING REGULATION (EU) 2015/840

of 29 May 2015

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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 27(5) thereof,

Whereas:

(1) Responsible Authorities are responsible for the management and control of expenditure under Regulation (EU) No 514/2014. For that purpose they are to carry out administrative and on-the-spot controls.

(2) Efficient administrative controls carried out by Responsible Authorities should firstly consist in analysing financial declarations sent by beneficiaries. More detailed checking of individual supporting documents should only be carried out when that analysis reveals inconsistencies or irregularities. In order to ensure a sufficient level of assurance while reducing the administrative burden, it is also important to clarify the circumstances under which the Responsible Authority can rely on an audit certificate.

(3) On-the-spot controls should cover both financial and operational aspects and may need to be performed at different stages of a project. It is therefore necessary to define the scope of each type of on-the-spot control, in order to ensure that they are carried out in the most efficient way.

(4) Operational on-the-spot controls should take place while projects are being implemented, so that timely corrective measures can be taken. Such controls should apply both to a sample of projects that are still in progress on the first day of the relevant financial year and to projects that start during that financial year.

(5) With the aim of ensuring a sufficient level of assurance while reducing the administrative burden, the circumstances should be defined in which the risk of error

is considered immaterial and as a consequence the number of financial on-the-spot controls can be reduced. However, it is also necessary to specify the action to be taken where there is a material error rate, in order to obtain sufficient assurance about the legality and regularity of the Union expenditure.

(6) The main elements of financial on-the-spot controls should be clarified. In particular, Responsible Authorities must verify the non-profit nature of the projects supported by the national programmes. They should check that those projects do not receive double financing of expenditure under the national programmes and other Union programmes, in respect of all programming periods, including funding provided by agencies.

(7) Supporting documents should be kept for a specified period after the completion of each project, in order to allow the Responsible Authorities, the Commission (including OLAF) and the European Court of Auditors to carry out their controls.

(8) In order to allow for the application of this Regulation as soon as the national programmes are approved, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(9) The United Kingdom and Ireland are bound by Regulation (EU) No 514/2014 and are as a consequence bound by this Regulation.

(10) Without prejudice to Recital 47 of Regulation (EU) No 514/2014, Denmark is not bound by Regulation (EU) No 514/2014 or by this Regulation.

(11) 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

Administrative controls

1 The Responsible Authority shall carry out administrative controls on all financial declarations sent by the beneficiaries with the aim of receiving Union funding, in accordance with the grant agreements defined in point (d) of Article 1 of Commission Delegated Regulation (EU) No 1042/2014[(2)] ('financial declarations'). These controls shall, as a minimum, include the following elements:

a checks designed to confirm the formal correctness and the arithmetic accuracy of the financial declarations;

b checks to confirm that the project has achieved the objectives set out in the grant agreement or that progress is being made towards achieving those objective;

c an analytical review to assess the relevance of the declared expenditure in the financial declarations and its compliance with the requirements set out in the grant agreement and the applicable Union and national rules.

2 Where administrative controls reveal inconsistencies or irregularities, the Responsible Authority shall carry out detailed checks in order to assess the legality and regularity of the expenditure, in particular by reviewing a targeted sample of supporting documents.

3 The Responsible Authority may require the beneficiary to obtain an audit certificate and an audit report covering all the aspects referred to in points (a) and (c) of paragraph 1, issued by an independent auditor. In that case, the Responsible Authority shall set out the scope of the controls to be performed by the independent auditor as well as the template of the audit report.

Article 2

General principles regarding on-the-spot controls

The Responsible Authority shall carry out financial and operational on-the-spot controls.

On-the-spot controls shall be carried out on the basis of documentation and records held by the project beneficiaries.

Unannounced on-the-spot controls may be carried out in accordance with the national law where the level of assurance could be undermined if prior notice was given.

Article 3

Financial on-the-spot controls

1 Financial on-the-spot controls shall aim at providing a sufficient level of assurance as to the legality and regularity of the transactions and contracts underlying the financial declarations.

2 The Responsible Authority shall verify that:

a the expenditure in relation to the financial declarations corresponds to the accounting records and supporting documents held by the project beneficiaries;

b the expenditure in relation to the financial declarations satisfies the eligibility requirements set out in the grant agreement and the applicable Union and national rules;

c the sources of financing comply with Article 16(2) of Regulation (EU) No 514/2014.

3 Without prejudice to Article 4(2) of this Regulation, financial on-the-spot controls shall cover a minimum of 10 % of the cumulated Union contribution to the projects declared as finalised in the annual accounts referred to in Article 39 of Regulation (EU) No 514/2014.

Article 4

Conditions for reducing or increasing financial on-the-spot controls

1 The Responsible Authority shall ascertain the level of the error rate in the Union contribution controlled in the annual accounts referred to in Article 39 of Regulation (EU) No 514/2014 for financial year N.

2 The Responsible Authority may reduce the coverage of financial on-the-spot controls in the following financial year N+1 when the two following conditions are met:

a the error rate is less than 2 % of the Union contribution controlled in the annual accounts for financial year N,

b the financial on-the-spot controls carried out since the start of the national programme cover a minimum of 10 % of the cumulated Union contribution to all the projects declared as finalised in the annual accounts since the start of the programme.

3 Where the error rate is greater than or equal to 2 % of the Union contribution controlled in the annual accounts for financial year N, the Responsible Authority shall analyse the significance of this error rate in order to establish the scale and effect of the errors and to determine whether the error rate is representative of the entire population of payments declared. The Responsible Authority shall take the necessary preventive and corrective measures, including additional controls, and shall set out the results of such analysis in the annual summary referred to in point (b) of the first subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(3)].

The financial on-the-spot controls for the following financial year (N+1) shall cover a percentage of the cumulated Union contribution to the projects declared as finalised in the annual accounts for the financial year N+1 that is higher than the corresponding percentage in financial year N. This higher percentage shall not be lower than 10 %. Additionally, up to financial year N+1 the financial on-the-spot controls carried out since the start of the national programme shall cover a minimum of 10 % of the cumulated Union contribution to all the projects declared as finalised in the annual accounts since the start of the programme.

Where the error rate resulting from the increased controls carried out in year N+1 falls below 2 %, the Responsible Authority shall, in the next financial year (N+2) carry out financial on-the-spot controls on a minimum of 10 % of the cumulated Union contribution to the projects declared as finalised in the annual accounts for financial year N+2.

Article 5

Operational on-the-spot controls

1 When carrying out operational on-the-spot controls, the Responsible Authority shall verify that the project in question is being implemented in accordance with the grant agreement. In particular, it shall check that the indicators reported by the beneficiaries are reliable and the project is proceeding without undue delays.

[[F1]2 Operational on-the-spot controls carried out in financial year N shall cover a minimum of 20% of the number of projects being implemented during that financial year, as declared in the corresponding annual accounts referred to in Article 39 of Regulation (EU) No 514/2014. When this minimum cannot be reached in financial year N due to the COVID-19 pandemic, the controls that have not been carried out in financial year N shall be performed at a later stage during the programming period.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/1019 of 13 July 2020 amending Implementing Regulation (EU) 2015/840.

Article 6

Sample methodology for on-the-spot controls

The Responsible Authority shall carry out on-the-spot controls on a sample of projects representing an appropriate mix of types and sizes of projects, transactions, beneficiaries