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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

(OJ L 134, 30.5.2015, p. 1)

Amended by:

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		No	page	date
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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 ([1]) ('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.

([1]) 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).

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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.

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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 ([1]).

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.

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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.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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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 and implementing modes. The sample shall take into account any risk factors as well as cost-benefit aspects of the controls.

Article 7

Control reports

1. The Responsible Authority shall draw up a report on each administrative and on-the-spot control, giving the following information:

(a) full identification of the project and its corresponding grant agreement;

(b) the name and signature of the controller;

(c) the beneficiary's name;

(d) the type of controls (administrative, financial or operational on-the-spot or a combination);

(e) where necessary, the scope of the control;

(f) the expenditure falling within the scope of the control and the expenditure (sample) actually verified;

(g) the amount of expenditure considered ineligible; and

(h) a description of the major findings, weaknesses, errors and irregularities, additional controls and analysis carried out, recommendations and corrective measures proposed and the reaction of the beneficiary.

2. The control report may be presented as a checklist.

Article 8

Specific conditions

Where the Responsible Authority acts as executing body, as referred to in Article 8 of Delegated Regulation (EU) No 1042/2014, the administrative and on-the-spot controls referred to in Articles 1 and 2 of this Regulation shall be carried out by an entity or a person functionally independent from the entities or persons managing the projects.

Article 9

Retention of supporting documents

1. The Responsible Authority shall ensure that all records, documents and metadata regarding the expenditure declared and the assigned revenues and audits and controls performed are kept at the Commission's (including OLAF) and the European Court of Auditors' disposal for at least four years following the financial year in which the final payment was declared.

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To that end, the Responsible Authority shall lay down rules regarding the retention of records, documents and metadata by the beneficiaries.

2. Where irregularities are identified by the Responsible Authority concerned, the supporting documents referred to in paragraph 1 shall be kept at the Commission's disposal for at least three years following the year in which the amounts in question were entirely recovered from the beneficiary and credited to the national programme.

3. Where a conformity clearance procedure as referred to in Article 47 of Regulation (EU) No 514/2014 is launched, the supporting documents referred to in paragraph 1 of this Article shall be kept at the Commission's disposal for at least one year following the year in which that procedure has been concluded.

4. If a conformity decision is the subject of legal proceedings before the Court of Justice of the European Union, the relevant supporting documents shall be kept at the Commission's disposal for at least one year following the year in which those proceedings have been concluded.

5. The supporting documents referred to in paragraphs 1, 2, 3 and 4 shall be kept at the Commission's disposal in paper form or in electronic form.

Documents may be kept exclusively in electronic form only if the national law of the Member State concerned permits the use of electronic documents as evidence of the underlying transactions in national court proceedings.

6. The Member States may prescribe longer periods for the retention of supporting documents.

Article 10

This Regulation shall enter into force on the 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.