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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

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.

⁽¹⁾ OJ L 150, 20.5.2014, p. 112.

⁽²⁾ Commission Implementing Regulation (EU) 2015/378 of 2 March 2015 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 (OJ L 64, 7.3.2015, p. 30).

⁽³⁾ 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).

⁽⁴⁾ 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).

- (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 ⁽¹⁾ ('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 (*), 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 (**) 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 (***).

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,

⁽¹⁾ Commission Implementing Regulation (EU) No 802/2014 of 24 July 2014 establishing models for national programmes and establishing the terms and conditions of the electronic data exchange system between the Commission and Member States 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, prevention and combating crime and crisis management (OJ L 219, 25.7.2014, p. 22).

- 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 rate to deliver the opinion referred to in the second subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012. The calculation of the residual error rate shall be documented in the annual control report referred to in paragraph 8.

6. If the Audit Authority's audit findings, on completion of all its audit work, suggest material weaknesses in the effective functioning of the Responsible Authority's management and control system, the Audit Authority shall:

- (a) assess the financial impact of these weaknesses in line with Commission Implementing Regulation (EU) 2015/378;
- (b) make appropriate recommendations to the Responsible Authority for corrective and preventive measures;
- (c) monitor the Responsible Authority's implementation of the measures referred in point (b) above and assess whether an action plan to restore the effective functioning of the management and control systems is in place.

7. Pursuant to Article 3(2), the Audit Authority shall report its findings to the Designating Authority, including whether, in its opinion, the Responsible Authority continues to comply with the designation criteria.

8. The Audit Authority shall ensure that all information related to its audit activity referred to in paragraphs 1, 2, 3, 4, 5, 6 and 7 is adequately reported to the Commission. For this purpose, the Audit Authority shall draw up an annual control report setting out the main findings of its audit work. The annual control report shall be drawn up in accordance with the model set out in Annex to this Regulation and shall be sent to the Commission via the electronic data exchange system referred to in Article 2 of Commission Implementing Regulation (EU) No 802/2014. The annual control report shall be sent to the Commission no later than 3 working days after the Responsible Authority submits the request for payment of the annual balance to the Commission in accordance with Article 44 of Regulation (EU) No 514/2014.

(*) 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).

(**) Commission Implementing Regulation (EU) 2015/378 of 2 March 2015 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 (OJ L 64, 7.3.2015, p. 30).

(***) 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).;

- (4) a new Annex II is added to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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.

Done at Brussels, 16 May 2018.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

'ANNEX II

Model for the annual control report

Annual control report [FUND]

(1) INTRODUCTION

This section shall include the following information:

- 1.1 Identification of the Audit Authority and other bodies that have been involved in preparing the report.
- 1.2 Reference period (i.e. the financial year ⁽¹⁾).

(2) COMPLIANCE WITH DESIGNATION CRITERIA AND SIGNIFICANT CHANGES IN MANAGEMENT AND CONTROL SYSTEM(S) (if applicable)

This section shall include the following information:

- 2.1 Details of any significant changes in the management and control systems related to the competent authorities' responsibilities (including, where applicable, any delegation of functions), the effective date of such changes as well as the impact of these changes on the audit work.
- 2.2 Based on the audit work carried out by the Audit Authority, confirmation of whether the management and control system still complies with the designation criteria defined in Article 2 and Annex I of Commission Delegated Regulation (EU) No 1042/2014.
- 2.3 Information on reporting to the Designating Authority on the Responsible Authority's compliance with the designation criteria set out in Article 2.2 and Annex I of Commission Delegated Regulation (EU) No 1042/2014.

(3) CHANGES TO THE AUDIT STRATEGY

This section shall include the following information:

- 3.1 Details of changes that have been made to the audit strategy and an explanation of the reasons for those changes, in particular details of any modifications to the sampling method used for audits of expenditure (see section 5 below).

(4) SYSTEM AUDITS

This section shall include the following information:

- 4.1 Details of the bodies that have carried out system audits to verify whether the management and control system of the fund have functioned effectively (as provided for in Article 14(2) of Commission Delegated Regulation (EU) No 1042/2014).
- 4.2 In relation to Table 10.1 "Results of system audits" annexed to the annual control report, a description of the main findings and conclusions drawn from system audits on key requirements.
- 4.3 Indication of whether any problems detected are considered to be systemic in nature, quantification of irregular financial data and applicable corrective measures to address such systemic errors, including any related financial corrections made in accordance with Article 46 of Regulation (EU) No 514/2014 and Implementing Regulation (EU) No 378/2015.
- 4.4 Information on the follow-up of audit recommendations from system audits carried out in previous years.

⁽¹⁾ As defined in Article 38 of Regulation (EU) No 514/2014.

(5) AUDITS OF EXPENDITURE

This section shall include the following information:

- 5.1 Details of the bodies that carried out the audits of expenditure (as provided for in Articles 14.3 and 14.4 of Commission Delegated Regulation (EU) No 1042/2014).
- 5.2 Description of the sampling methodology applied, specifying the sampling parameters ⁽¹⁾ used and the underlying calculations and professional judgement applied to the sample selection ⁽²⁾, the calculation of the total error rate (including stratification where applicable) and information on whether the methodology is in line with the audit strategy. If stratification is applied, the strata parameters need to be described.
- 5.3 Analysis of the principal results of the audits of expenditure, describing the number of sample items audited, the respective amounts and type of financial data audited, the nature ⁽³⁾ and type ⁽⁴⁾ of errors detected and the applicable corrective measures proposed by the Audit Authority (including measures to avoid similar errors in the future, financial corrections for the individual irregularities detected as well as any applicable extrapolated or flat-rate financial corrections ⁽⁵⁾). If stratification is applied, further information by strata is to be provided in this section and summarised in Table 10.2 “Results of audits of expenditure” annexed to the annual control report.
- 5.4 If the audit sample includes interim payments and/or final payment clearing advance payments declared in the accounts of previous financial years, the amount of the advance payments falling within the scope of audits of expenditure, the errors detected and applicable financial corrections relating to these advance payments shall be presented in Table 10.3 “Results of audits on additional expenditure” annexed to the annual control report.
- 5.5 Explanations on how the error rates presented in Table 10.2 are calculated and, if applicable, information on the audits of additional expenditure presented in Table 10.3.
- 5.6 Information on whether any irregularities detected by the audits of expenditure are considered to be systemic in nature and therefore entail a risk to other payments, including the quantification of their impact on the population and any related financial corrections.
- 5.7 Information on the status of implementation by the Responsible Authority of the corrective measures including financial corrections proposed by the Audit Authority as a result of the audits of expenditure before submitting the “final accounts” to the Commission. Any possible deviations between the corrections proposed by the Audit Authority and the corrections implemented by the Responsible Authority should be disclosed.
- 5.8 Information on the follow-up of audits of expenditure carried out in previous years, in particular on deficiencies of a systemic nature.

(6) AUDITS OF ACCOUNTS

This section shall include the following information:

- 6.1 Details of the bodies that have carried out audits of accounts (as provided for in Article 14.5 of Commission Delegated Regulation (EU) No 1042/2014).
- 6.2 Description of the audit approach used to verify the financial data in the accounts accompanying the request for payment of the annual balance submitted by the Responsible Authority defined in Article 14.5 of Commission Delegated Regulation (EU) No 1042/2014. This should include a reference to the audit work carried out as part of the system audits (detailed in section 4) and the audits of expenditure (detailed in section 5) with relevance to the assurance required on the accounts.

⁽¹⁾ The sampling parameters include the sampling unit, population value and size, sample value and size, audit coverage (in EUR and the percentage of items and amounts covered) and the sampling criteria. For statistical sampling, the materiality level, confidence level, expected error rate and sampling interval should also be indicated.

⁽²⁾ If non-statistical sampling is applied, the Audit Authority should indicate the steps taken to ensure randomness of the sample (and its representativity) and provide a sufficient sample size to enable the Audit Authority to estimate the total error of the population and draw up a valid audit opinion.

⁽³⁾ For example: eligibility, public procurement, state aid.

⁽⁴⁾ Random, systemic or anomalous errors.

⁽⁵⁾ Flat-rate and/or extrapolated financial corrections may be applicable for example if there are systemic errors and/or if the total error rate on the draft accounts is material.

6.3 Conclusions drawn from the audit of accounts regarding the true and fair view of the financial data in the accounts accompanying the request for payment of the annual balance submitted by the Responsible Authority, as well as the financial corrections made and reflected in the accounts as a result of such audits.

6.4 Indication of whether any irregularities detected are considered to be systemic in nature and the applicable corrective measures taken.

(7) COORDINATION BETWEEN AUDIT BODIES AND SUPERVISORY WORK BY THE AUDIT AUTHORITY (where applicable)

This section shall include the following information:

7.1 Description of the procedure for coordination between the Audit Authority and any audit bodies that carried out audits as provided for in Article 13 of Commission Delegated Regulation (EU) No 1042/2014, where appropriate.

7.2 Description of the procedure for supervision and quality review applied by the Audit Authority on the audit work carried out by such audit bodies.

(8) OTHER INFORMATION

This section shall include the following information:

8.1 Where applicable, information on reported fraud and suspicions of fraud detected as part of the audits performed by the Audit Authority (including the cases reported by other national or EU bodies and related to the operations audited by the Audit Authority), together with the measures taken.

8.2 Where applicable, subsequent events that occurred after the “draft accounts” for the financial year were transmitted to the Audit Authority and before the associated annual control report was transmitted to the Commission, which may be relevant for the opinion issued by the Audit Authority. In particular, any variances between the financial data presented by the Responsible Authority in the “draft accounts” (i.e. the population from which the audit sample was drawn ⁽¹⁾) and the final accounts submitted to the Commission should be disclosed and explained.

(9) OVERALL LEVEL OF ASSURANCE

9.1 Indication of the overall level of assurance on the proper functioning of the management and control system ⁽²⁾, and explanation of how such a level was obtained from the combination of the results of the system audits, audits of expenditure and accounts. Where relevant, the Audit Authority shall also take into account the results of the audit work carried out by other national or EU audit bodies which may have an impact on the financial data reported for the financial year.

9.2 Assessment of any mitigating and corrective measures implemented by the Responsible Authority such as financial corrections, and an indication of whether additional corrective measures are needed from both a system and financial perspective.

(10) ANNEXES TO THE ANNUAL CONTROL REPORT

10.1 Results of system audits (template defined below)

10.2 Results of audits of expenditure (template defined below)

10.3 Results of audits on additional expenditure (if applicable)

⁽¹⁾ Column B of Table 10.2.

⁽²⁾ The overall level of assurance shall correspond to one of the four categories defined in Commission Implementing Regulation (EU) 2017/646: Category 1 (Works well. No or only minor improvement(s) needed), Category 2 (Works. Some improvement(s) needed), Category 3 (Works partially. Substantial improvements needed) and Category 4 (Essentially does not work).

10.1 Results of system audits

Audited Entity (e.g. Responsible Authority, Delegated Authority, etc.)	Title of the audit	Date of the final audit report	Key requirements (where applicable) [as defined in Table 1- Annex I to Commission Implementing Regulation (EU) No 378/2015]									Overall assessment (category 1, 2, 3, 4) (as defined in Table 2 — Annex I to Commission Implementing Regulation (EU) No 378/2015)	Comments
			KR 1	KR2	KR3	KR4	KR5	KR6	KR7	KR8	KR9		
			(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)		
			(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)		

(¹) Category 1, 2, 3, 4 as defined in Table 2 — Annex I to Commission Implementing Regulation (EU) No 378/2015

10.2 Results of audits of expenditure

A	B	C	D	E	F	G	H	I	J	
Fund/type of payment (¹)	Amount in EUR corresponding to the population or sub- population in the “draft accounts” from which the sample was drawn (²)	Audit sample (EUR amount) (³)	Audit sample (as % of population) [D = C/B]	Amount of errors detected by the Audit Authority in the sample EUR (⁴)	Error rate % in the sample [F = E/C] (⁴)	Total error rate in the population (⁵)	Total errors in the popula- tion (EUR amount) [H = G * B]	Financial corrections (EUR amount) imple- mented by the Re- sponsible Authority as a result of the total error rate (⁶)	Residual total error rate (⁷) [J = (H – I)/B]	Comments
Strata (if ap- plicable) (¹)										
Total (A)	Total (B)	Amount EUR	%							

10.3 Results of audits on additional expenditure (⁸)

K	L	M	N	O	
Description	Fund/project/payment reference n°.	Additional expenditure audited (³)	Amount of errors in the additional expenditure audited (⁴)	Financial corrections implemented by the Responsible Authority on the ad- ditional expenditure audited (⁶)	Comments
Expenditure linked to interim payments or fi- nal payments included in the random/statistical sample					
Other (to be described) ...					

- (1) If the financial data — i.e. the audit population — is divided into different strata (e.g. advance payments, interim payments or final payments, other), the information is to be provided by strata where applicable. One line for each stratum and the strata parameters must be described in section 5 of the annual control report.
- (2) Column B shall refer to the auditable population, i.e. the “draft accounts” representing all payments made by the Responsible Authority in the current financial year from which the sample was drawn.
- (3) If the audit sample drawn from the current financial year 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 for the sampled interim payments and/or final payment.

However, for reporting purposes **only the interim payments or final payments sampled from the draft accounts of the current financial year** shall be reported in Table 10.2 (Column C) and taken into consideration for **calculating the audit coverage for the current financial year** (Column D).

The “amount of the advance payments” cleared by interim payments and/or final payments and verified within the scope of audits of expenditure shall be reported in Table 10.3, Column M. See also footnote 8.

- (4) The Audit Authority shall report the errors detected in the sample (as amounts and as percentage of the sample) **before** any financial corrections are applied by the Responsible Authority as a result of the audit work carried out by the Audit Authority.

Only the amount of errors relating to the **audited interim payments or final payments drawn from the draft accounts of the current financial year** shall be taken into consideration for the calculating and reporting of the amount of errors and the error rate in Table 10.2, columns E and F.

The amount of detected errors that have an impact on the “amount of advance payments” cleared should be reported in Table 10.3, Column N.

- (5) The **total error rate in the population** is the Audit Authority’s estimation of the total error rate in the “**draft accounts**” for the current financial year. The total error rate shall be calculated **before** any financial corrections are applied by the Responsible Authority.

The Audit Authority shall describe the methodology used to estimate the total error rate as well as the underlying calculations (including information on stratification, where applicable) in section 5 of the annual control report. In principle, the total error rate shall be the sum of the projected random errors and, if applicable, the total amount of systemic errors in the population and any uncorrected anomalous errors, divided by the population.

- (6) Column I shall disclose the financial corrections implemented by the Responsible Authority **solely** on the auditable population, i.e. the “draft accounts” for the current financial year from which the sample was drawn.

Any financial corrections relating to the “amount of advance payments” cleared should be reported in Table 10.3, Column O.

- (7) Column J should disclose the residual error rate in the accounts after the Responsible Authority has implemented the financial corrections **for the current financial year only**.

Any non-corrected errors in the “amount of advance payments” cleared should not be included in the calculation of the residual error rate for the accounts for the current financial year.

- (8) In Table 10.3, the Audit Authority must report the results of any audits carried out on items **other** than the sampled amounts reported in Table 10.2. If the Audit Authority considers it necessary to carry out additional audits (e.g. risk-based audits, audits on negative or zero payments), the results of these additional audits should also be presented in Table 10.3.’
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COMMISSION IMPLEMENTING REGULATION (EU) 2018/1292**of 25 September 2018****approving cyphenothrin as an existing active substance for use in biocidal products of product-type 18****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular the third subparagraph of Article 89(1) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾ establishes a list of existing active substances to be evaluated for their possible approval for use in biocidal products. That list includes cyphenothrin.
- (2) Cyphenothrin has been evaluated for use in biocidal products of product-type 18, insecticides, acaricides and products to control other arthropods, as described in Annex V to Directive 98/8/EC of the European Parliament and of the Council ⁽³⁾, which corresponds to product-type 18 as described in Annex V to Regulation (EU) No 528/2012.
- (3) Greece was designated as a rapporteur Member State and its evaluating competent authority submitted the assessment report together with its recommendations on 11 April 2013.
- (4) In accordance with Article 7(2) of Delegated Regulation (EU) No 1062/2014, the opinion of the European Chemicals Agency was formulated on 14 December 2017 by the Biocidal Products Committee, having regard to the conclusions of the evaluating competent authority ⁽⁴⁾.
- (5) It can be derived from Article 90(2) of Regulation (EU) No 528/2012 that substances for which the Member States' evaluation has been completed by 1 September 2013 should be evaluated while taking into account the conditions set out in Article 5 of Directive 98/8/EC. Following the opinion of the European Chemicals Agency, biocidal products of product-type 18 containing cyphenothrin may be expected to satisfy the requirements of Article 5 of Directive 98/8/EC, provided that certain specifications and conditions concerning their use are complied with.
- (6) It is therefore appropriate to approve cyphenothrin for use in biocidal products of product-type 18, subject to compliance with certain specifications and conditions.
- (7) The opinion of the European Chemicals Agency concludes that cyphenothrin meets the criteria for being a persistent (P) and toxic (T) substance in accordance with Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽⁵⁾.
- (8) For the purposes of Regulation (EU) No 528/2012, cyphenothrin meets the conditions set out in point (d) of Article 10(1) of Regulation (EU) No 528/2012 and should be therefore considered a candidate for substitution. The receiving competent authority or, in the case of an evaluation of an application for a Union authorisation, the evaluating competent authority, should perform a comparative assessment as part of the evaluation of an application for authorisation or for renewal of authorisation of a biocidal product containing cyphenothrin.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

⁽³⁾ Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

⁽⁴⁾ Biocidal Products Committee (BPC) Opinion on the application for approval of the active substance Cyphenothrin, Product type: 18, ECHA/BPC/183/2017, Adopted on 14 December 2017.

⁽⁵⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

- (9) Since it can be derived from Article 90(2) of Regulation (EU) No 528/2012 that substances for which the Member States' evaluation has been completed by 1 September 2013 should be approved under the terms of Directive 98/8/EC, the period of approval should be 10 years, in accordance with the practice established under that Directive.
- (10) A reasonable period should be allowed to elapse before an active substance is approved, in order to permit interested parties to take the preparatory measures necessary to meet the new requirements.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Cyphenothrin is approved as an active substance for use in biocidal products of product-type 18, subject to the specifications and conditions set out in the Annex.

Article 2

This Regulation shall enter into force on the twentieth 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 all Member States.

Done at Brussels, 25 September 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance ⁽¹⁾	Date of approval	Expiry date of approval	Product type	Specific conditions
Cyphenothrin	IUPAC Name: (RS)- α -cyano-3-phenoxy- benzyl (1RS,3RS;1RS,3SR)- 2,2-dimethyl-3-(2-methyl- prop-1-enyl)cyclopropane- carboxylate EC No: 254-484-5 CAS No: 39515-40-7	92 % w/w (total isomers)	1 February 2020	31 January 2030	18	Cyphenothrin is considered a candidate for substitution in accordance with point (d) of Article 10(1) of Regulation (EU) No 528/2012. The authorisations of biocidal products are subject to the following conditions: 1) The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any uses covered by an application for authorisation, but not addressed in the Union level risk assessment of the active substance. 2) In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to: a) professional users; b) toddlers; c) surface water, sediment, soil and groundwater, following indoor surface treatment; d) earthworm-eating mammals and fish-eating mammals due to secondary poisoning, following indoor surface treatment. 3) For products that may lead to residues in food or feed, the need to set new or to amend existing maximum residue levels (MRLs) in accordance with Regulation (EC) No 470/2009 of the European Parliament and of the Council ⁽²⁾ or Regulation (EC) No 396/2005 of the European Parliament and of the Council ⁽³⁾ shall be verified, and any appropriate risk mitigation measures shall be taken to ensure that the applicable MRLs are not exceeded.

⁽¹⁾ The purity indicated in this column was the minimum degree of purity of the active substance evaluated. The active substance in the product placed on the market can be of equal or different purity if it has been proven to be technically equivalent to the evaluated active substance.

⁽²⁾ Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ L 152, 16.6.2009, p. 11).

⁽³⁾ Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

