Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union

COUNCIL REGULATION (EU) 2016/369

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on the provision of emergency support within the Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Mutual assistance and support in the face of disasters is both a fundamental expression of the universal value of solidarity between people and a moral imperative, as such disasters may lead to a significant number of people being unable to meet their basic needs, with potential severe adverse effects on their health and lives.

(2) The impact of both man-made and natural disasters within the Union is increasingly severe. This is linked to a number of factors, such as climate change, but also to other contributing external factors and circumstances which are unfolding in the Union's neighbourhood. The migration and refugee situation currently affecting the Union is a notable example of a situation where, despite the efforts undertaken by the Union to address the root causes located in third countries, the economic situation of Member States may be directly affected.

(3) This situation led the European Council, on 19 February 2016, to call upon the Commission to put in place the capacity to provide humanitarian assistance internally, in order to support countries facing large numbers of refugees and migrants.

(4) Man-made or natural disasters may be of such a scale and impact that they can give rise to severe economic difficulties in one or several Member States. They can also occur in one or several Member States already facing severe economic difficulties for other reasons, with the result of exacerbating and aggravating even further the overall economic situation of the Member States concerned. In either case, the response capacity of the Member States concerned would be adversely affected, and the assistance and support being provided to people in need would, in turn, be negatively affected.

(5) While the Union is already in a position to grant support of a macro-financial nature to Member States, and to express European solidarity to disaster-stricken regions through the European Union Solidarity Fund (EUSF) established by Council Regulation (EC) No 2012/2002[(1)], there is currently no appropriate instrument available at Union level to address on a sufficiently predictable and independent basis the humanitarian

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2016/369. (See end of Document for details)*

needs of disaster-stricken people within the Union, such as food assistance, emergency healthcare, shelter, water, sanitation and hygiene, protection and education. Mutual assistance can be offered under the Union Civil Protection Mechanism pursuant to Decision No 1313/2013/EU of the European Parliament and of the Council[(2)], but the operation of that Mechanism is based on voluntary contributions from Member States. There could also be assistance and support provided through existing Union policy and financing instruments, such as those aimed at establishing an area of freedom, security and justice in the Union. Any such assistance and support would, however, be accessory and ancillary to the pursuit of the principal policy objectives of those instruments and, therefore, be limited in its scope and scale.

(6) It therefore seems appropriate for the Union to act in a spirit of solidarity to address the basic needs of disaster-stricken people within the Union, and to contribute to reducing the economic impact of those disasters on the Member States concerned.

(7) Given the similarities in addressing the basic needs of disaster-stricken people within the Union through the provision of emergency support and in providing humanitarian aid to people affected by man-made or natural disasters in third countries, all operations under this Regulation should be conducted in compliance with internationally-agreed humanitarian principles. Those actions constitute measures appropriate to the economic situation of the Member States facing those difficulties and complementing Union action encouraging cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

(8) Given the need to act in a spirit of solidarity, the provision of emergency support under this Regulation should be financed by the general budget of the Union, as well as by contributions which may be made by other public or private donors.

(9) The reimbursement of expenses and award of public procurement contracts and grants under this Regulation should be implemented in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(3)], taking into account the specific nature of emergency support. It is therefore appropriate to provide that grants and public procurement contracts may be awarded directly or indirectly, and that grants may finance up to 100 % of the eligible costs and be awarded with retroactive effect. The Commission should be able to finance emergency support operations of any organisation which, independent of its legal nature, whether private or public, possesses the requisite experience and uses to that effect direct or indirect management, as appropriate.

(10) Furthermore, it is appropriate to rely on organisations with which the Commission has concluded framework partnership agreements pursuant to Council Regulation (EC) No 1257/96[(4)], in light of the relevance of the experience acquired by those organisations in providing humanitarian aid in close coordination with the Commission. Wherever possible the involvement of local non-governmental organisations should be sought, via partner organisations with framework partnership agreements, in order to maximise synergies and the efficiency of any emergency support provided under this Regulation.

(11) The financial interests of the Union should be protected by means of proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, unduly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.

(12) This Regulation should lay down the basis for providing financial support in the event of natural or man-made disasters in respect of which, in a spirit of solidarity, the Union would be better placed than Member States, acting alone and in an uncoordinated manner, to mobilise appropriate levels of financing and use them to implement operations of a potentially life-saving nature in an economic, efficient and effective manner, thereby allowing a more effective action by reason of its scale and complementarity.

(13) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(14) The provision of emergency support under this Regulation should be aptly monitored, relying, where need be, on the most relevant expertise available at Union level. Furthermore, the overall implementation of this Regulation should be evaluated.

(15) Given the urgency of the support needed, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation lays down the framework within which Union emergency support may be awarded through specific measures appropriate to the economic situation in the event of an ongoing or potential natural or man-made disaster. Such emergency support can only be provided where the exceptional scale and impact of the disaster is such that it gives rises to severe wide-ranging humanitarian consequences in one or more Member States and only in exceptional circumstances where no other instrument available to Member States and to the Union is sufficient.

2 Emergency support provided under this Regulation shall be in support of, and complementary to, the actions of the affected Member State. To this end, close cooperation and consultation with the affected Member State shall be ensured.

Article 2

Activation of the emergency support

1 The decision about the activation of the emergency support under this Regulation in case of an ongoing or potential disaster shall be taken by the Council on the basis of a proposal by the Commission, specifying where appropriate the duration of the activation.

2 The Council shall immediately examine the proposal of the Commission referred to in paragraph 1 and shall decide, in accordance with the urgency of the situation, on the activation of the emergency support.

[F1 Article 3

Eligible actions

1 Emergency support under this Regulation shall provide a needs#based emergency response, complementing the response of the affected Member States aimed at preserving life, preventing and alleviating human suffering, and maintaining human dignity, wherever the need arises as a result of a disaster referred to in Article 1(1). Without prejudice to the activation period as referred to in Article 2(1), emergency support may also be granted in view of addressing needs in the aftermath of a disaster or preventing its resurgence.

2 Emergency support, as referred to in paragraph 1 of this Article, may include any of the humanitarian aid actions which would be eligible for Union financing pursuant to Articles 2, 3 and 4 of Regulation (EC) No 1257/96, and may consequently encompass assistance, relief and, where necessary, protection operations to save and preserve life in disasters or in their immediate aftermath. It may also be used to finance any other expenditure directly related to the implementation of emergency support under this Regulation. In particular, emergency support may be used to finance the actions laid down in the Annex.

3 Without prejudice to paragraph 4, emergency support under this Regulation shall be granted and implemented in compliance with the fundamental humanitarian principles of humanity, neutrality, impartiality and independence.

4 The actions referred to in paragraph 2 shall be carried out by the Commission or by partner organisations selected by the Commission. The Commission may in particular select, as partner organisations, non#governmental organisations, specialised services of Member States, national authorities and other public bodies, international organisations and their agencies and, where appropriate and necessary for the implementation of an action, other organisations and entities having the requisite expertise or active in the sectors relevant for disaster relief, such as private service providers, equipment manufacturers as well as scientists and research institutions. In doing so, the Commission shall maintain close cooperation with the affected Member State.

Textual Amendments

F1 Substituted by Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID#19 outbreak.

Article 4

Types of financial intervention and implementing procedures

1 The Commission shall implement the Union's financial support in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(5)]. In particular, Union financing for support actions under this Regulation shall be implemented by means of direct or indirect management in accordance with points (a) and (c), respectively, of Article 62(1) of that Regulation.

2 Emergency support under this Regulation shall be financed by the general budget of the Union and by contributions which may be made by Member States and by other public or private donors as external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046.

3 Union financing for support actions under this Regulation to be implemented by means of direct management may be awarded directly by the Commission without a call for proposals, in accordance with Article 195 of Regulation (EU, Euratom) 2018/1046. To that effect, the Commission may enter into framework partnership agreements or rely on existing framework partnership agreements concluded pursuant to Regulation (EC) No 1257/96.

4 Where the Commission implements emergency support operations through non# governmental organisations, the criteria concerning financial and operational capacity shall be deemed to be satisfied where there is a framework partnership agreement in force between that organisation and the Commission pursuant to Regulation (EC) No 1257/96.

5 Emergency support under this Regulation may be granted in any of the following forms:

a joint procurement with Member States as referred to in Article 165(2) of Regulation (EU, Euratom) 2018/1046 whereby Member States may acquire, rent or lease fully the capacities jointly procured;

b procurement by the Commission on behalf of Member States based on an agreement between the Commission and Member States;

c procurement by the Commission, as wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States or partner organisations selected by the Commission.

6 In the event of a procurement procedure as referred to in point (b) of paragraph 5, the ensuing contracts shall be concluded by either of the following:

a the Commission, whereby the services or goods are to be rendered or delivered to Member States or to partner organisations selected by the Commission;

b the participant Member States whereby they are to directly acquire, rent or lease the capacities procured for them by the Commission.

7 In the event of procurement procedures as referred to in points (b) and (c) of paragraph 5, the Commission shall follow the rules set out in Regulation (EU, Euratom) 2018/1046 for its own procurement.**]**