Regulation (EU) No 661/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2012/2002 establishing the European Union Solidarity Fund

REGULATION (EU) No 661/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

amending Council Regulation (EC) No 2012/2002 establishing the European Union Solidarity Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 175 and Article 212(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The European Union Solidarity Fund ('the Fund') was established by Council Regulation (EC) No 2012/2002[(4)].

(2) It is important for the Union to have at its disposal a sound and flexible instrument to allow it to show solidarity, send a clear political signal and provide genuine assistance to citizens affected by major natural disasters that have serious repercussions on economic and social development.

(3) The Union's declared intention to assist candidate countries on the path towards stability and sustainable economic and political development through a clear European perspective should not be set back by the adverse effects of major natural disasters. The Union should, therefore, continue to show solidarity with the third countries that are involved in accession negotiations with it, and with which an intergovernmental accession conference has been opened. The inclusion of those countries in the scope of this Regulation entails, as a consequence, recourse to Article 212 of the Treaty on the Functioning of the European Union (TFEU) as an additional legal basis.

(4) The Commission should be in a position to take a rapid decision to commit specific financial resources and to mobilise them as quickly as possible. Administrative procedures should be adjusted accordingly and limited to the minimum necessary. To that end, the European Parliament, the Council and the Commission concluded

the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management[(5)].

(5) The terminology contained in, and procedures laid down under, Regulation (EC) No 2012/2002 should be aligned with the provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(6)].

(6) The definition of a natural disaster, which determines the scope of Regulation (EC) No 2012/2002, should be unambiguous.

(7) Damage caused by other types of disaster that through a cascading effect are the direct consequence of a natural disaster should, for the purposes of Regulation (EC) No 2012/2002, be considered to be part of the direct damage caused by that natural disaster.

(8) In order to codify established practice and to ensure equal treatment of applications financial contributions from the Fund should be awarded in respect of direct damage only.

(9) A major natural disaster within the meaning of Regulation (EC) No 2012/2002 should be further defined as a disaster that has caused direct damage above a threshold expressed in financial terms. Such damage should be expressed in the prices of a reference year, or as a percentage of the gross national income (GNI) of the State concerned.

(10) In order to better take into account the specific nature of natural disasters which, although having serious repercussions for the economic and social development of the regions concerned, do not reach the minimum scale required to benefit from a financial contribution from the Fund, the criteria for regional natural disasters should be determined based on the damage calculable by reference to regional gross domestic product (GDP), whereby the specific structural social and economic situation, compounded by the special features of Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint-Martin, the Azores, Madeira and the Canary Islands, as outermost regions within the meaning of Article 349 TFEU, justifies the establishment for them of a special threshold of 1 % of the GDP as a derogation. Those criteria should be determined in a clear and simple manner in order to reduce the possibility of applications being submitted which do not meet the requirements set out in Regulation (EC) No 2012/2002.

(11) For the purposes of determining direct damage, data with a harmonised format, provided by Eurostat, should be used in order to allow an equitable treatment of applications.

(12) The Fund should contribute to the restoration of infrastructure to working order, to the cleaning up of disaster-stricken areas and to the costs of rescue services and temporary accommodation for the population concerned during the whole implementation period. The meaning of restoration of infrastructure to working order should be defined, and the extent to which the Fund will be able to contribute to the corresponding costs clarified. The time-frame during which it is possible to consider the accommodation of people made homeless by a natural disaster to be temporary should also be defined.

(13) The provisions of Regulation (EC) No 2012/2002 should be aligned with the general Union funding policy in relation to value added tax.

(14) It should also be specified to what extent it is possible for eligible operations to include expenditure for technical assistance.

(15) In order to preclude beneficiary States from making a net profit from an intervention through the Fund, the conditions under which operations financed by the Fund are able to generate revenue should be specified.

(16) Certain types of natural disaster, such as, inter alia, droughts, develop over an extended period of time before their effects are felt. Provisions should be laid down in order to allow the use of the Fund also in such cases.

(17) It is important to ensure that eligible States make the requisite efforts to prevent natural disasters from occurring and to mitigate their effects, including by full implementation of relevant Union legislation on disaster risk prevention and management and the use of available Union funding for relevant investments. Provisions should therefore be laid down to make it possible for a failure, as established by a final judgment of the Court of Justice of the European Union, by a Member State to comply with relevant Union legislation on disaster risk prevention and management after having received a financial contribution from the Fund for an earlier natural disaster, to result in the rejection of the application or a reduction of the amount of the financial contribution in the event of a further application in relation to a natural disaster of the same nature.

(18) It is possible that Member States require financial support in response to a natural disaster more rapidly than is possible through the normal procedure. For this purpose, it is appropriate to provide for the possibility of making an advance payment upon request by the Member State concerned shortly after the application for a financial contribution from the Fund has been submitted to the Commission. The advance should not exceed a certain amount and it should be accounted for when the final amount of the financial contribution is paid out. Unduly paid advances should be repaid by the Member State within a determined short period of time. The payment of an advance should not prejudice the outcome of the final decision on the mobilisation of the Fund.

(19) Administrative procedures for the payment of a financial contribution should be as simple and time-efficient as possible. Detailed provisions on the implementation of the financial contribution from the Fund should therefore be contained, for Member States, in the implementing acts awarding that financial contribution. However, for beneficiary States which are not yet Member States, separate implementation agreements should be maintained for legal reasons.

(20) The Commission should issue guidance in order to assist the Member States on how to effectively access and use the Fund, and how to apply in the simplest way for assistance from the Fund.

(21) Regulation (EU, Euratom) No 966/2012 introduced changes in shared and indirect management, including specific reporting requirements which should be taken into account. Reporting obligations should reflect the short implementation period of the

Fund operations. The procedures for the designation of the bodies responsible for the management and control of Union funds should reflect the nature of the instrument and not delay the payment of the financial contribution from the Fund. It is therefore necessary to derogate from Regulation (EU, Euratom) No 966/2012.

(22) Provisions should be laid down to avoid double financing of operations financed by the Fund with other financial instruments of the Union or international legal instruments relating to the compensation of specific damage.

(23) Declaring expenditure that countries have made from a financial contribution from the Fund should be as simple as possible. A single exchange rate should therefore be used throughout the implementation of the financial contribution for countries that are not members of the euro area.

(24) In order to ensure uniform conditions for the implementation of Regulation (EC) No 2012/2002, implementing powers should be conferred on the Commission with respect to decisions on particular financial contributions or on any advance payments from the Fund to eligible States.

(25) The provisions laid down in Regulation (EC) No 2012/2002 governing the protection of financial interests of the Union should be made more specific so as to clearly identify measures for the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used.

(26) Since the objectives of this Regulation, namely to ensure Union-wide solidarity action to support natural disaster-stricken States, cannot be sufficiently achieved by the Member States on an ad-hoc basis, but can rather, by reason of applying a systematic, regular and equitable method of granting financial support involving all Member States according to their capacity, 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 to achieve those objectives.

(27) Regulation (EC) No 2012/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 2012/2002 is amended as follows:

(1) Article 2 is replaced by the following:

Article 2

1 At the request of a Member State or of a country involved in accession negotiations with the Union, hereinafter referred to as “eligible State”, assistance from the Fund may be mobilised when serious repercussions on living conditions, the natural environment or the economy occur in one or more regions of that eligible State

as a consequence of a major or regional natural disaster having taken place on the territory of the same eligible State or of a neighbouring eligible State. Direct damage caused as the direct consequence of a natural disaster shall be regarded as part of the damage caused by that natural disaster.

2 For the purposes of this Regulation, a "major natural disaster" means any natural disaster resulting, in an eligible State, in direct damage estimated either at over EUR 3 000 000 000 in 2011 prices, or more than 0,6 % of its GNI.

3 For the purposes of this Regulation, a "regional natural disaster" means any natural disaster resulting, in a region at NUTS level 2 of an eligible State, in direct damage in excess of 1,5 % of that region's gross domestic product (GDP).

By way of derogation from the first subparagraph, where the region concerned, in which a natural disaster has occurred, is an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union, "regional natural disaster" means any natural disaster resulting in direct damage in excess of 1 % of that region's GDP.

Where the natural disaster concerns several regions at NUTS level 2, the threshold shall be applied to the average GDP of those regions weighted according to the share of total damage in each region.

4 Assistance from the Fund may also be mobilised for any natural disaster in an eligible State which is also a major natural disaster in a neighbouring eligible State.

5 For the purpose of this Article harmonised statistical data provided by Eurostat shall be used.;

(2) Article 3 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

1. The assistance shall take the form of a financial contribution from the Fund. For each natural disaster a single financial contribution shall be awarded to an eligible State.

2 The aim of the Fund is to complement the efforts of the States concerned and to cover part of their public expenditure in order to help the eligible State to carry out, depending on the type of natural disaster, the following essential emergency and recovery operations:

a restoring the working order of infrastructure and plant in the fields of energy, water and waste water, telecommunications, transport, health and education;

b providing temporary accommodation and funding rescue services to meet the needs of the population concerned;

c securing preventive infrastructure and measures of protection of cultural heritage;

d cleaning up disaster-stricken areas, including natural zones, in line with, where appropriate, eco-system based approaches, as well as immediate restoration of affected natural zones to avoid immediate effects from soil erosion.

For the purposes of point (a), "restoring the working order" means restoring infrastructure and plant to their condition prior to the occurrence of the natural disaster. Where it is not legally possible or economically justified to