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

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

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 Article 78(2), Article 79(2) and (4), Article 82(1), Article 84 and Article 87(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 Union's home affairs policy is to create an area of freedom, security and justice: an area without internal borders where people may enter, move, live and work freely, confident that their rights are fully respected and their security assured, bearing in mind common challenges such as the development of a comprehensive Union immigration policy to enhance the competitiveness and social cohesion of the Union, the creation of a Common European Asylum System, the prevention of threats of serious and organised crime, and the fight against illegal immigration, human trafficking, cybercrime and terrorism.

(2) It is necessary to adopt an integrated approach to questions arising from the pressure of migration and asylum applications and regarding the management of the external borders of the Union, ensuring full respect for international and human rights law, including as regards actions implemented in third countries, showing solidarity amongst all Member States and demonstrating an awareness of the need to respect national responsibilities in the process of ensuring a clear definition of tasks.

(3) Union funding to support the development of the area of freedom, security and justice should bring added value for the Union and constitute a tangible sign of the solidarity

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 514/2014 of the European Parliament and of the Council. (See end of Document for details)*

and responsibility-sharing which are indispensable in responding to the common challenges.

(4) The existence of a common framework should ensure the necessary coherence, simplification and uniform implementation of that funding across the policy areas concerned.

(5) The spending of funds in that area should be coordinated in order to assure complementarity, efficiency and visibility, as well as to achieve budgetary synergies.

(6) A common framework should lay down the principles of assistance and identify the responsibilities of the Member States and the Commission in ensuring the application of those principles, including the prevention and detection of irregularities and fraud.

(7) Such Union funding would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.

(8) Measures in and in relation to third countries supported through the Specific Regulations as defined in this Regulation ('Specific Regulations') should be taken in synergy and coherence with other actions outside the Union supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the country or region in question. Those measures should not be intended to support actions that are directly oriented towards development and they should complement, when appropriate, the financial assistance provided through external aid instruments. The principle of policy coherence for development, as set out in paragraph 35 of the European consensus on Development, should be respected. It is also important to ensure that the implementation of emergency assistance is consistent with, and, where relevant, complementary to the Union humanitarian policy and respects humanitarian principles as set out in the European Consensus on Humanitarian Aid.

(9) External action should be consistent and coherent, as set out in Article 18(4) of the Treaty on European Union (TEU).

(10) Prior to the preparation of multiannual programmes as a means of achieving the objectives of such Union funding, Member States and the Commission should engage in a policy dialogue and thereby establish a coherent strategy for each individual Member State. Following the completion of the policy dialogue, each Member State should submit to the Commission a national programme describing how it aims to achieve the objectives of the relevant Specific Regulation for the period 2014-20. The Commission should examine whether the national programme is consistent with those objectives and with the outcome of the policy dialogue. Moreover, the Commission should examine whether the distribution of Union funding between the objectives complies with the minimum percentage set per objective in the relevant Specific Regulation. It should be possible for Member States to depart from those minimum percentages, in which case they should state the reasons for the deviation in their national programme. In the event that the reasons given by the Member State concerned were not deemed adequate,

the Commission might not approve the national programme. The Commission should regularly inform the European Parliament of the outcome of the policy dialogues, of the full programming process including the preparation of national programmes, covering also compliance with the minimum percentage set per objective in the relevant Specific Regulations as defined in this Regulation, and of the implementation of the national programmes.

(11) The strategy should be subject to a mid-term review, to ensure appropriate funding in the period 2018-20.

(12) Member States should establish, in a manner consistent with the principle of proportionality and the need to minimise administrative burden, a partnership with the authorities and bodies concerned to develop and implement their national programmes throughout the entire multiannual period. Member States should ensure that there is no conflict of interest among the partners at the different stages of the programming cycle. Each Member State should set up a committee to monitor the national programme and assist it in reviewing the implementation and the progress made in achieving the programme objectives. Each Member State should be responsible for establishing the practical arrangements for setting up the monitoring committee.

(13) Eligibility of expenditure under the national programmes should be determined by national law, subject to common principles set out in this Regulation. The starting and closing dates for the eligibility of expenditure should be defined so as to provide for uniform and equitable rules applying to the national programmes.

(14) Technical assistance should enable the Member States to support the implementation of their national programmes and assist beneficiaries in complying with their obligations and Union law. Where appropriate, technical assistance could cover the costs incurred by the competent authorities in third countries.

(15) To ensure an adequate framework for providing rapidly emergency assistance, this Regulation should allow support for actions the expenditure of which was incurred before the application for such assistance was made, but not before 1 January 2014, in accordance with the provision in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(4)], which allows such flexibility in duly substantiated exceptional cases. The support may constitute 100 % of the eligible expenditure in duly justified cases where this is essential for the action to be carried out, particularly where the beneficiary is an international or non-governmental organisation. Actions supported with emergency assistance should arise directly from the emergency situation and should not replace long-term investments by Member States.

(16) The decisions taken relevant to the contribution from the Union budget should be properly documented to maintain an adequate audit trail.

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

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(18) In the context of the protection of the financial interests of the Union, the on-the-spot checks and audits carried out by the Member States, the Commission, the Court of Auditors and the European Anti-Fraud Office established by Commission Decision 1999/352/EC, ECSC, Euratom[(5)] ('OLAF') can be announced as well as unannounced, in accordance with the applicable law.

(19) The new structure of the funding in the field of home affairs aims to simplify the applicable rules and to reduce the administrative burden for the beneficiaries. Nevertheless, the control mechanism should remain efficient, and therefore it is important to recall the applicable rules on the protection of the financial interests of the Union, providing for on-the-spot checks and audits which may be announced as well as unannounced.

(20) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system and the quality of implementation of their national programmes. To this end, it is necessary to establish the general principles and necessary functions which these systems should fulfil.

(21) The obligations on the Member States as regards management and control systems and the prevention, detection and correction of irregularities and infringements of Union law should be specified in order to guarantee the efficient and correct implementation of their national programmes.

(22) In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility, through their management and control systems, for the implementation and control of national programmes. The support provided under the Specific Regulations should be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.

(23) Member States should make full use of the knowledge, expertise and experience gained by public and/or private bodies in implementing earlier funds in the field of home affairs.

(24) Only Responsible Authorities designated by the Member States offer reasonable assurance that the necessary controls have been carried out before granting support from the Union budget to beneficiaries. It should therefore be explicitly laid down that only expenditure effected by designated Responsible Authorities can be reimbursed from the Union budget.

(25) The powers and responsibilities of the Commission to verify the effective functioning of the management and control systems and to require Member State action should be laid down.

(26) Union budget commitments should be effected annually. In order to ensure effective programme management, it is necessary to lay down common rules for the payment of the annual balance and the final balance.

(27) The pre-financing payment at the start of programmes ensures that Member States have the means to provide support to beneficiaries in the implementation of the programme once the programme is approved. Therefore, provisions should be made for initial

pre-financing amounts. Initial pre-financing should be totally cleared at closure of the programme. The Responsible Authorities should ensure that beneficiaries receive the full amount due promptly.

(28) In addition, annual pre-financing should be provided to ensure that Member States have sufficient means to implement their national programmes. Annual pre-financing should be cleared each year with the payment of the annual balance.

(29) The triennial revision of Regulation (EU, Euratom) No 966/2012 introduces changes in the shared management method which have to be taken into account.

(30) With a view to strengthening accountability for expenditure co-financed by the Union budget in any given year, an appropriate framework should be created for the annual clearance of accounts. Under such framework, the Responsible Authority should submit to the Commission, in respect of a national programme, the documents referred to in the provisions on shared management with Member States of Regulation (EU, Euratom) No 966/2012.

(31) To support the assurance underlying the annual clearance of accounts across the Union, common provisions should be laid down on the nature and level of the controls to be carried out by Member States.

(32) In order to ensure the sound financial management of Union resources, it may be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of applicable Union or national law can lead to financial corrections by the Commission. In order to ensure that any financial corrections which the Commission may impose on Member States are related to the protection of the Union's financial interests, they should be confined to cases where the breach of Union or national law directly or indirectly concerns the eligibility, regularity, management or control of actions and the corresponding expenditure. To ensure proportionality, it is important that the Commission considers the nature and the gravity of the breach in deciding the amount of financial correction. In this regard, it is appropriate to set out the criteria for applying financial corrections by the Commission and the procedure that may lead to a decision on the financial correction.

(33) In order to establish the financial relationship between the Responsible Authorities and the Union budget, the Commission should clear the accounts of those authorities annually. The decision on the clearance of accounts should cover the completeness, the accuracy and veracity of the accounts but not the conformity of the expenditure with Union law.

(34) As the Commission is responsible for the proper application of Union law under Article 17 TEU, it should decide whether the expenditure incurred by the Member States complies with Union law. Member States should be given the right to justify their decisions to make payments. In order to give Member States legal and financial assurances as to expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance.