Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 159 and Article 308 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

Having regard to the resolution of the Committee of the Regions[(4)],

Whereas:

(1) In the event of major disasters, the Community should show its solidarity with the population of the regions concerned by providing financial assistance to contribute to a rapid return to normal living conditions in the disaster-stricken regions. The assistance should mainly be mobilised in case of natural disasters.

(2) Existing economic and social cohesion instruments are able to finance risk-prevention measures and the repair of damaged infrastructure. However, provision should also be made for an additional instrument, to be distinguished from existing Community instruments, which enables the Community to act swiftly and efficiently to help, as quickly as possible, in mobilising emergency services to meet people's immediate needs and contribute to the short-term restoration of damaged key infrastructure so that economic activity can resume in the disaster-stricken regions.

(3) The European Union should also show solidarity with the countries currently negotiating their accession. Extending this Regulation to cover those countries entails recourse to Article 308 of the Treaty.

(4) Community aid should be complementary to the efforts of the States concerned and be used to cover a share of the public expenditure committed to dealing with the damage caused by a major disaster.

(5) In line with the principle of subsidiarity, assistance under this instrument should be confined to major disasters with serious repercussions on living conditions, the natural environment or the economy.

(6) A ‘major disaster’ within the meaning of this Regulation should mean any disaster, in at least one of the States concerned, resulting in important damage expressed in

financial terms or as a percentage of the gross national income (GNI). In order to permit interventions in the case of disasters that, while important, do not reach the minimum scale required, assistance may also be granted under exceptional circumstances in case an eligible neighbouring country is affected by the same disaster, or whenever the major part of the population of a specific region is affected by a disaster with serious and lasting repercussions on living conditions.

(7) Community action should not relieve third parties of their responsibility who, under the 'polluter-pays' principle, are liable in the first instance for the damage caused by them, or discourage preventive measures at both Member State and Community level.

(8) This instrument should allow a rapid decision to be taken to commit specific financial resources and mobilise them as quickly as possible. Administrative procedures should be adjusted accordingly and confined to the minimum absolutely necessary. To this end, the European Parliament, the Council and the Commission have concluded on 7 November 2002 an Interinstitutional Agreement on the financing of the European Union Solidarity Fund, supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.

(9) It may be desirable for the beneficiary State, in conformity with its specific constitutional, institutional, legal or financial context, to associate the regional or local authorities with the conclusion and the application of the implementation arrangements, the beneficiary State remaining in all cases responsible for the implementation of the assistance and for the management and control of the operations supported by Community financing.

(10) The detailed rules for applying this instrument should be adapted to the urgency of the situation.

(11) An operation funded by this instrument should not benefit for the same purpose from assistance under Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund[(5)], Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds[(6)], Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)[(7)], Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic[(8)], Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession[(9)], Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period[(10)], Commission Regulation (EC) No 2760/98 of 18 December 1998 concerning the implementation of a programme for cross-border cooperation in the framework of the Phare programme[(11)], Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89[(12)], Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta[(13)], or Council Regulation

(EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks[(14)]; damage repaired under Community or international instruments relating to the compensation of specific damages should not, for the same purpose, benefit from assistance under this instrument.

(12) Maximum transparency is required in implementing the Community's financial assistance as well as proper monitoring of the use of resources.

(13) Prudent financial management is required to ensure that the Community can be in a position to respond if several major disasters occur in the same year.

(14) In exceptional cases and depending on the availability of financial resources under this instrument in the year of the occurrence of the disaster, provision should be made for possible supplementary grants from this instrument under the next year's Fund.

(15) A deadline should be laid down for the use of the financial assistance awarded and provision should be made for the beneficiary States to justify the use made of the assistance they receive. Assistance received which is subsequently recovered from third parties, or which was received in excess of the final valuation of the damages, should be recovered.

(16) In view of the exceptional circumstances, countries affected by disasters from Summer 2002 onwards should qualify for assistance under this instrument.

(17) In order to ensure rapid assistance to the countries affected by the recent floodings, it is very urgent to adopt this instrument; therefore, it is necessary to grant an exception to the six-week period for consideration by national parliaments referred to in Part I, point 3 of the Protocol on the role of national parliaments in the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities,

HAS ADOPTED THIS REGULATION:

Article 1

A European Union Solidarity Fund, hereinafter referred to as ‘the Fund’, is hereby established to enable the Community to respond in a rapid, efficient and flexible manner to emergency situations under the terms of this Regulation.

I[F1] 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, human health, the natural environment or the economy occur in one or more regions of that eligible State as a consequence of:

a a major or regional natural disaster having taken place on the territory of the same eligible State or of a neighbouring eligible State; or

b a major public health emergency having taken place on the territory of the same 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.

2a For the purposes of this Regulation, a ‘major public health emergency’ means any life-threatening or otherwise serious hazard to health of biological origin in an eligible State seriously affecting human health and requiring decisive action to contain further spreading, resulting in a public financial burden inflicted on the eligible State for emergency response measures estimated at over EUR 1 500 000 000 in 2011 prices, or more than 0,3 % 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.**]**

Textual Amendments

F1 Substituted by Regulation (EU) 2020/461 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency.

Article 3

[[F2][F1]1 The assistance shall take the form of a financial contribution from the Fund. For each eligible disaster or emergency, 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 eligible disaster or emergency, 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;

e measures aiming at rapidly providing assistance, including medical, to the population affected by a major public health emergency and to protect the population from the risk of being affected, including prevention, monitoring or control of the spread of diseases, combating severe risks to public health or mitigating their impact on public health.

For the purposes of point (a) of the first subparagraph, '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 restore the condition prior to the occurrence of the natural disaster, or where the beneficiary State decides to relocate or improve the functionality of the infrastructure or plant affected in order to improve its capacity to withstand future natural disasters, the Fund may contribute to the cost of restoration only up to the estimated cost of returning to its status quo ante.

Costs in excess of the level of cost referred to in the second subparagraph shall be financed by the beneficiary State from its own or, where possible, from other Union funds.

For the purposes of point (b) of the first subparagraph, 'temporary accommodation' means accommodation that lasts until the population concerned is able to return to their original homes following their repair or reconstruction.**]**

3 Payments from the Fund are limited to financing measures alleviating non-insurable damage and shall be recovered if the cost of repairing the damage is subsequently met by a third party in accordance with Article 8(4).**]**

[[F3]4 Value added tax (VAT) shall not constitute eligible expenditure of an operation, unless it is non-recoverable under national VAT legislation.

5 Technical assistance for management, monitoring, information and communication, complaint resolution, and control and auditing, shall not be eligible for a financial contribution from the Fund.

Costs relating to the preparation and implementation of the operations referred to in paragraph 2, including costs relating to essential technical expertise, shall be eligible as part of project costs.

6 Where revenue is generated from the operations referred to in paragraph 2 with a financial contribution from the Fund, the total financial contribution from the Fund shall not exceed the total net costs of emergency and recovery operations borne by the beneficiary State. The beneficiary State shall include a statement to that effect in the report on the implementation of the financial contribution from the Fund pursuant to Article 8(3).

7 On 1 October each year, at least one-quarter of the annual amount of the Fund should remain available in order to cover needs arising until the end of the year.**]**

Textual Amendments

F1 Substituted by Regulation (EU) 2020/461 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency.