



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 10 February 2014
(OR. en)**

**Interinstitutional File:
2013/0248 (COD)**

**6137/14
ADD 1**

LIMITE

**REGIO 13
ECOFIN 114
CODEC 312**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	12883/13
No. Cion doc.:	COM(2013) 522 final
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2012/2002 establishing the European Union Solidarity Fund - Adoption of a general approach

Delegations will find attached a compromise text on the European Union Solidarity Fund.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending COUNCIL REGULATION (EC) No 2012/2002 of 11 November 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 subparagraph 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(11),

Having regard to the opinion of the Committee of the Regions(12),

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Council Regulation (EC) No 2012/2002 of 11 November 2002 establishes the European Union Solidarity Fund ('the Fund')¹.

(1a) **It is important for the European Union to have at its disposal a sound and flexible instrument to allow it to show solidarity and send a clear political signal as well as genuine assistance to citizens affected by major natural disasters and having serious repercussions for the economic and social development.**

¹ OJ L 311, 14.11.2002, p. 3.

- (2) **The Union's declared intention to assist candidate countries in the path towards sustainable stability and economic and political development through a clear European perspective should not be set back by the adverse effects of serious natural disasters.** The Union should, **therefore,** continue to show solidarity with **those third** countries [...] **involved in accession negotiations with the Union and with which the intergovernmental accession conference has been opened.** The inclusion of those countries in the scope of this Regulation entails **thus** recourse to Article 212 of the Treaty as an **additional** legal basis.
- (3) The Commission should be in a position to decide rapidly on committing specific financial resources and mobilising them as quickly as possible. Administrative procedures should be adjusted accordingly and confined to the minimum necessary. To this end, the European Parliament, the Council and the Commission have concluded on [dd/mm/yyyy] an Inter-Institutional Agreement on the financing of the Fund, on budgetary discipline and improvement of the budgetary procedure.
- (4) The terminology and procedures 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 of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002².
- (5) The definition of a natural disaster, which determines the scope of Regulation (EC) No 2012/2002, should be unambiguous.
- (6) 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.
- (7) In order to codify the established practice and to ensure equal treatment of applications it should be specified that contributions from the Fund are to be awarded in respect of direct damage only.
- (8) A 'major natural disaster' within the meaning of Regulation (EC) No 2012/2002 should be defined as having caused direct damage above a threshold expressed in financial terms and should be expressed in prices of a reference year, or as a percentage of the gross national income (GNI) of the State concerned.
- (9) In order to better take into account the specific nature of those disasters which, although [...] **having serious repercussions for the economic and social development of the concerned regions,** do not reach the minimum scale required to benefit from a contribution from the Fund, the criteria for regional disasters should be determined based on the damage calculable by reference to regional gross domestic product (GDP). 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.

² OJ L 298, 26.10.2012, p. 1.

- (10) 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.
- (11) The Fund should contribute to the restoration of infrastructure to working order, **or to a state in which it will be able to withstand better natural disasters, including** the cleaning up of disaster-stricken **areas, natural** zones and [...] the costs of the rescue services and [...] temporary accommodation for the population concerned during the whole implementation period. The time-span during which the accommodation of people made homeless by the disaster may be considered temporary should also be defined.
- (12) The provisions of Regulation (EC) No 2012/2002 should be aligned with the general Union funding policy in relation to value added tax.
- (13) It should also be specified that eligible operations should not include expenditure for technical assistance.
- (14) In order to exclude that beneficiary States make a net profit from the intervention of the Fund, the conditions under which operations financed by the Fund may generate revenue should be specified.
- (15) Certain types of natural disaster, such as droughts **etc**, are developing over a longer period of time before their disastrous effects are felt. Provision should be made to allow the use of the Fund also in such cases.
- (16) It is important to ensure that the eligible States make the requisite efforts to prevent 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. Provision should therefore be made that a failure of the Member State, **established by a final ruling of the Court of Justice of the EU**, to comply with relevant Union legislation on disaster risk prevention and management, after having received a contribution from the Fund for an earlier natural disaster, may result in the rejection of the application or a reduction of the amount of contribution in the event of a further application for a disaster of the same nature.
- (17) [...]
- (18) Administrative procedures leading up to the payment of a contribution should be as simple and time-efficient as possible. For Member States, detailed provisions on the implementation of the contribution from the Fund should therefore be contained in the implementing decisions awarding that contribution. However, for beneficiary States which are not yet Member States of the Union, separate implementation agreements should be maintained for legal reasons.

(18a) The Commission should issue a guidance in order to assist the Member States on how to effectively access and use the Fund, and how to apply the simplest way for assistance from the Fund.

- (19) Regulation (EU, Euratom) No 966/2012 has 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 the Union funds should reflect the nature of the instrument and not delay the payment of the contribution from the Fund. It is therefore necessary to derogate from Regulation (EU, Euratom) No 966/2012.
- (20) Provision should be made 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.
- (21) Declaring expenditure that countries have made from a contribution from the Fund should be as simple as possible. A single exchange rate should therefore be used throughout the implementation of the contribution for countries that are not members of the euro area.
- (22) In order to ensure uniform conditions for the implementation of Regulation (EC) No 2012/2002 with respect to [...] **that the Commission could take a decision on the concrete financial contribution from the Fund to an eligible State**, implementing powers should be conferred on the Commission.
- (23) The provisions 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.
- (24) Since the objectives of this Regulation, namely to ensure Union-wide solidarity action to support a disaster stricken State, cannot be sufficiently achieved by the Member States on an ad-hoc basis and can therefore, 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 in order to achieve those objectives.
- (25) Regulation (EC) No 2012/2002 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

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

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 State [...] as a consequence of a major or regional natural disaster having taken place on the territory of the same 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' shall mean any natural disaster resulting, in a Member State or a country involved in accession negotiations with the Union, in direct damage estimated either at over EUR 3 000 000 000 in 2011 prices, or more than 0,6 % of its gross national income (GNI).
3. For the purposes of this Regulation, a 'regional natural disaster' shall mean any natural disaster resulting, in a region of a Member State or a country involved in accession negotiations with the Union at NUTS 2 level, in direct damage in excess of 1,5 % of the region's gross domestic product (GDP). Where the disaster concerns several regions at NUTS 2 level, 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 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.

Article 3

1. The assistance shall take the form of a contribution from the Fund. For each natural disaster a single 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 a part of their public expenditure in order to help the eligible State to carry out the following essential emergency and recovery operations, depending on the type of disaster:
 - (a) restoration to 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 immediate needs of the population concerned;
 - (c) securing of preventive infrastructures and measures of protection of the cultural heritage;
 - (d) cleaning up of disaster-stricken areas, [...] **as well as immediate restoration of affected natural zones to avoid immediate effects from soil erosion.**

For the purposes of point (b), 'temporary accommodation' shall mean accommodation lasting 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(3). **When due to the nature of a damage or a specific change in law it is not possible or economically justified to proceed with restoration limited to the state preceding the disaster, as well as in case of new construction technologies, which could improve functionality and security of destroyed infrastructure, the Fund may contribute to the cost of restoration only up to the estimated cost of returning to its status quo ante.**

Exceeding costs that may be needed to cover improved functionality and security shall be financed by the beneficiary state from national or from other EU funds.

4. Value added tax (VAT) shall not constitute eligible expenditure of an operation, except in the case of VAT which is non-recoverable under national VAT legislation.
5. Technical assistance, including management, monitoring, information and communication, complaint resolution, and control and audit, is not eligible for a contribution from the Fund.
6. **In case revenue is generated from eligible operations with a contribution from the Fund, the total contribution from the Fund shall not exceed the total net** costs of emergency and recovery operations borne by a concerned State. [...] The beneficiary State shall include a statement to that effect in the report on the implementation of the contribution from the Fund pursuant to Article 8(3).
7. On 1 October each year, at least one-quarter of the annual amount should remain available in order to cover needs arising until the end of the year.

Article 4

1. As soon as possible and no later than ten weeks after the first occurrence of damage as a consequence of a natural disaster, a State may submit an application for a contribution from the Fund to the Commission providing all available information on, at least:
 - (a) the total direct damage caused by the disaster and its impact on the population, the economy and the environment concerned;
 - (b) the estimated cost of the operations referred to in Article 3(2);
 - (c) any other sources of Union funding;
 - (d) any other sources of national or international funding, including public and private insurance coverage which might contribute to the costs of repairing the damage;

- (e) **a short description of** the implementation of Union legislation on disaster risk prevention and management related to the nature of the disaster;
- (f) [...].

- 1a. In justified cases the responsible national authorities may submit, after the deadline, additional information in order to complete or update its application.**
 - 1b. The Commission shall prepare guidance on how to effectively access and use the Fund, and how to apply the simplest way for assistance from the Fund. The Guidance shall be drawn up by ...2014 and shall provide detailed information on the procedures for drafting the application, including requirements for the minimum extent of information to be submitted to the Commission, evaluation criteria. The guidance provided by Commission will also include procedures for assessment of compliance with the relevant Union legislation on disaster risk prevention and management that is directly linked to the nature of each category of natural disaster, and a possible model template for the application form. The Guidance shall be made public on the websites of the relevant Directorate Generals of the Commission and the Commission shall ensure its wider dissemination to potential beneficiary States.**
 - 1c.** In the event of a progressively unfolding natural disaster, the ten-week application deadline referred to in paragraph 1 shall run from the date at which the public authorities of the eligible State take official action for the first time against the effects of the disaster **or declared state of emergency.**
2. On the basis of the information referred to in paragraph 1, and any clarifications to be provided by the eligible State, the Commission shall assess whether the conditions for mobilising the Fund are met and shall determine the amount of any possible contribution from the Fund as quickly as possible within the limits of the financial resources available.

If the Commission has [...] **decided on a financial** contribution from the Fund based on an application received after [dd/mm/yyyy] for a disaster [...] **falling under the scope of this Regulation**, it may reject a further application for a **financial** contribution relating to a disaster of the same nature or reduce the amount to be [...] **made available** where the [...] Member State is the subject of infringement proceedings **and the Court of Justice of the EU has established a final ruling that the concerned Member States has** [...] failed to implement Union legislation on disaster risk and management, **which is directly linked to the nature of the disaster suffered**.

The Commission shall treat all applications for a contribution from the Fund in an equitable manner.

3. The Commission shall submit to the budgetary authority the proposals needed to authorise the corresponding appropriations. These proposals shall include all available information referred to in paragraph 1 and all other relevant information in the possession of the Commission, a demonstration that the conditions of Article 2 are met and a justification of the amounts proposed.
4. Once the appropriations are made available by the budgetary authority, the Commission **adopts a decision, by means of** an implementing **act on** awarding the contribution from the Fund and shall pay that contribution immediately and in a single instalment to the beneficiary State. If an advance has been paid pursuant to Article 4a only the balance shall be paid.
5. The eligibility of expenditure shall begin on the date of the first damage referred to in paragraph 1. In the event of a progressively unfolding natural disaster the eligibility of expenditure shall begin on the date referred to in paragraph 1a.

Article 4a

[...]

Article 5

1. The **implementing act** referred to in Article 4(4) shall contain in its annex detailed provisions for the implementation of the contribution from the Fund.

Those provisions shall describe, in particular, the type and location of operations to be financed by the Fund following a proposal by the eligible State.

2. Before paying out a contribution from the Fund to an eligible State that is not a Member State, the Commission shall conclude a delegation agreement with that State laying down detailed provisions for the implementation of the contribution from the Fund referred to in paragraph 1 in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council* and Commission Delegated Regulation (EU) No 1268/2012**, as well as the obligations relating to disaster risk prevention and management.
3. Responsibility for selecting individual operations and implementing the contribution from the Fund shall lie with the beneficiary State, in accordance with this Regulation, in particular Article 3(2) and (3), the decision referred to in Article 4(4) awarding the contribution from the Fund and, where applicable, the delegation agreement referred to in paragraph 2.
4. The contribution from the Fund to a Member State shall be implemented within the framework of shared management in accordance with Regulation (EU, Euratom) No 966/2012. The contribution from the Fund to a country involved in accession negotiations with the Union shall be implemented within the framework of indirect management in accordance with that Regulation.
5. Without prejudice to the Commission's responsibility for implementing the general budget of the Union, beneficiary States shall take responsibility for the management of operations supported by the Fund and the financial control of the operations. The measures they take shall include:

- (a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Union funds are being used efficiently and correctly, in accordance with the principles of sound financial management;
- (b) verifying that the financed actions have been properly carried out;
- (c) ensuring that expenditure funded is based on verifiable supporting documents, and is correct and regular;
- (d) preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. They shall notify any such irregularities to the Commission, and keep the Commission informed of the progress of administrative and legal proceedings.

6. Beneficiary States shall designate bodies responsible for the management and control of the operations supported by the Fund in accordance with Articles 59 and 60 of Regulation (EU, Euratom) No 966/2012. In doing so they shall take into account criteria on internal environment, control activities, information and communication, and monitoring. Member States may designate the bodies already designated under the [Common Provisions Regulation]³.

These designated bodies shall provide the Commission with the information set out in Article 59(5) or Article 60(5) of Regulation (EU, Euratom) No 966/2012 covering the whole of the implementation period when submitting the report and the statement referred to in Article 8(3) of this Regulation.

7. The beneficiary State shall make the financial corrections required where an irregularity is ascertained. The corrections made by the beneficiary State shall consist in cancelling all or part of the contribution from the Fund. The beneficiary State shall recover any amount lost as a result of an irregularity detected.

³

...

8. Without prejudice to the powers of the Court of Auditors or the checks carried out by the beneficiary State in accordance with national laws, regulations and administrative provisions, **the** Commission [...] may carry out on-the-spot checks on the operations financed by the Fund. The Commission shall give notice to the beneficiary State with a view to obtaining all the assistance necessary. Officials or other servants of the Member State concerned may take part in such checks.
9. The beneficiary State shall ensure that all supporting documents regarding expenditure incurred are kept available for the Commission and the Court of Auditors for a period of three years following the **closure** of the assistance from the Fund.

* OJ L 298, 26.10.2012, p. 1.

** OJ L 362, 31.12.2012, p. 1.

Article 6

1. The beneficiary State shall be responsible for coordinating the contribution of the Fund to the operations referred to in Article 3, on the one hand, with assistance from **the European Structural and Investment Funds**, the European Investment Bank (EIB) and other Union financing instruments, on the other.
2. The beneficiary State shall ensure that expenditure reimbursed in accordance with this Regulation shall not be reimbursed through other Union financing instruments in particular through instruments of cohesion, agricultural or fisheries policy.
3. Damage repaired under Union or international instruments relating to the compensation of specific damages shall not, for the same purpose, be eligible for assistance from the Fund.

Article 7

Operations financed by the Fund shall be compatible with the provisions of the Treaty and instruments adopted under it, with Union policies and measures, in particular in the fields of financial management, [...] public procurement, **environmental protection, disaster risk prevention and management, climate change adaptation** and with pre-accession assistance instruments. [...].

Article 8

1. The contribution from the Fund shall be used within one year from the date on which the Commission has disbursed the full amount of assistance. Any part of the contribution remaining unused by that deadline or found to be used for ineligible operations shall be recovered by the Commission from the beneficiary State.
2. Beneficiary States shall seek all possible compensation from third parties.
3. No later than six months after the expiry of the one-year period referred to in paragraph 1, the beneficiary State shall present a report on the implementation of the contribution from the Fund with a statement justifying the expenditure, indicating any other source of funding received for the operations concerned, including insurance settlements and compensation from third parties.

The implementation report shall detail the preventive measures introduced or proposed by the beneficiary State to limit future damage and to avoid, to the extent possible, a recurrence of similar disasters, including the use of Union structural and investment funds for this purpose, and the state of implementation of relevant Union legislation on disaster risk prevention and management. It shall also report on experience gained from the disaster and the measures taken or proposed to ensure resilience in relation to climate change and disasters.

The implementation report shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards, establishing that the statement justifying the expenditure gives a true and fair view and that the contribution from the Fund is legal and regular, in line with Article 59(5) and Article 60(5) of Regulation (EU, Euratom) No 966/2012.

At the end of this procedure referred to in the first subparagraph, the Commission shall **carry out a closure** of the assistance from the Fund.

4. Where the cost of repairing the damage is subsequently met by a third party, the Commission shall require the beneficiary State to reimburse a corresponding amount of the contribution from the Fund.

Article 9

Applications for a contribution from the Fund and the decisions referred to in Article 4(4), as well as the delegation agreement, reports and any other related documents shall express all amounts in euros.

Amounts of expenditure incurred in national currencies shall be converted into euros at the [...] exchange rates published in the C series of the Official Journal of the European Union **the day on which the related implementing act has been adopted by the Commission** [...]. Where no daily euro exchange rate is published in the Official Journal of the European Union the [...] **day on which the related implementing act has been adopted by the Commission**, conversion shall be made at the average of the monthly accounting rates established by the Commission, determined over that period. This single exchange rate shall be used throughout the implementation of the contribution from the Fund and as the basis for the final implementation report and the statement on the implementation and the elements required under Article 59(5) or Article 60(5) of Regulation (EU, Euratom) No 966/2012 of the contribution.

Article 10

3. In exceptional cases and if the remaining financial resources available in the Fund in the year of the occurrence of the disaster are not sufficient to cover the amount of assistance deemed necessary by the budgetary authority, the Commission may propose that the difference be financed through the next year's Fund. The annual budgetary ceiling of the Fund in the year of the occurrence of the disaster and the following year shall under all circumstances be respected.
4. In case of significantly lower valuation of the damage incurred, as shown by new elements, the beneficiary State shall reimburse to the Commission the corresponding amount of the contribution from the Fund.

Article 11

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.
2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all funding beneficiaries, contractors, subcontractors who have received Union funds under this Regulation.
3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁴ and Council Regulation (Euratom, EC) No 2185/96⁵ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a contract concerning Union funding.

⁴ OJ L 136, 31.5.1999, p. 1.

⁵ OJ L 292, 15.11.1996, p. 2.

4. Without prejudice to paragraphs 1, 2 and 3, delegation agreements with third countries, contracts and decisions awarding a contribution from the Fund resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 12

Before 1 July the Commission shall present to the European Parliament and to the Council a report on the activity of the Fund in the previous year. This report shall in particular contain information relating to Articles 3, 4 and 8.

Article 15

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,

*For the European Parliament
The President*

*For the Council
The President*