

**COUNCIL REGULATION (EC) No 2012/2002**  
**of 11 November 2002**  
**establishing the European Union Solidarity Fund**

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Having regard to the resolution of the Committee of the Regions <sup>(4)</sup>,

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.

<sup>(1)</sup> Commission proposal of 20 September 2002 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion delivered on 10 October 2002 (not yet published in the Official Journal).

<sup>(3)</sup> Opinion delivered on 24 October 2002 (not yet published in the Official Journal).

<sup>(4)</sup> Resolution delivered on 10 October 2002 (not yet published in the Official Journal).

- (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 <sup>(1)</sup>, Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds <sup>(2)</sup>, Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) <sup>(3)</sup>, Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic <sup>(4)</sup>, Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession <sup>(5)</sup>, 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 <sup>(6)</sup>, 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 <sup>(7)</sup>, 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 <sup>(8)</sup>, 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 <sup>(9)</sup>, 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 <sup>(10)</sup>; 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.

<sup>(1)</sup> OJ L 130, 25.5.1994, p. 1. Regulation as last amended by Regulation (EC) No 1265/1999 (OJ L 161, 26.6.1999, p. 62).

<sup>(2)</sup> OJ L 161, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 1447/2001 (OJ L 198, 21.7.2001, p. 1).

<sup>(3)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(4)</sup> OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

<sup>(5)</sup> OJ L 161, 26.6.1999, p. 73. Regulation as last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

<sup>(6)</sup> OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

<sup>(7)</sup> OJ L 345, 19.12.1998, p. 49. Regulation as last amended by Regulation (EC) No 1596/2002 (OJ L 240, 7.9.2002, p. 33).

<sup>(8)</sup> OJ L 161, 26.6.1999, p. 68.

<sup>(9)</sup> OJ L 68, 16.3.2000, p. 3. Regulation as last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

<sup>(10)</sup> OJ L 228, 23.9.1995, p. 1. Regulation as last amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council (OJ L 197, 29.7.1999, p. 1).

- (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.

#### *Article 2*

1. At the request of a Member State or country involved in accession negotiations with the European Union, hereinafter referred to as 'beneficiary State', assistance from the Fund may be mainly mobilised when a major natural disaster with serious repercussions on living conditions, the natural environment or the economy in one or more regions or one or more countries occurs on the territory of that State.
2. A 'major disaster' within the meaning of this Regulation means any disaster resulting, in at least one of the States concerned, in damage estimated either at over EUR 3 billion in 2002 prices, or more than 0,6 % of its GNI.

By way of exception, a neighbouring Member State or country involved in accession negotiations with the European Union, which has been affected by the same disaster can also benefit from assistance from the Fund.

However, under exceptional circumstances, even when the quantitative criteria laid down in the first subparagraph are not met, a region could also benefit from assistance from the Fund, where that region has been affected by an extraordinary disaster, mainly a natural one, affecting the major part of its population, with serious and lasting repercussions on living conditions and the economic stability of the region. Total annual assistance under this subparagraph shall be limited to no more than 7,5 % of the annual amount available to the Fund. Particular focus will be on remote or isolated regions, such as the insular and outermost regions as defined in Article 299(2) of the Treaty. The Commission shall examine with the utmost rigour any requests which are submitted to it under this subparagraph.

#### *Article 3*

1. Assistance from the Fund shall take the form of a grant. For each recognised disaster a single grant shall be awarded to a beneficiary State.
2. The aim of the Fund is to complement the efforts of the States concerned and to cover a share of their public expenditure in order to help the beneficiary State to carry out the following essential emergency operations, depending on the type of disaster:
  - (a) immediate 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) immediate securing of preventive infrastructures and measures of immediate protection of the cultural heritage;
  - (d) immediate cleaning up of disaster-stricken areas, including natural zones.
3. Payments from the Fund are in principle limited to finance measures alleviating non insurable damages and shall be recovered if the cost of repairing the damage is subsequently met by a third party in accordance with Article 8.

*Article 4*

1. As soon as possible and no later than ten weeks after the first damage caused by the disaster, a State may submit an application for assistance from the Fund to the Commission providing all available information on, among other factors:

- (a) the total damage caused by the disaster and its impact on the population and the economy concerned;
- (b) the estimated cost of the operations referred to in Article 3;
- (c) any other sources of Community 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.

2. On the basis of this information, and any clarifications to be provided by the State concerned, the Commission shall assess if the conditions for mobilising the Fund are met and shall determine the proposed amount of any possible grant as quickly as possible within the limits of the financial resources available. 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.

The Commission ensures an equitable treatment of requests presented by the States.

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 shall adopt a grant decision and shall pay that grant immediately and in a single instalment to the beneficiary State upon signature of the agreement referred to in Article 5.

5. The eligibility of expenditure shall begin on the date referred to in paragraph 1.

*Article 5*

1. In accordance with the specific constitutional, institutional, legal or financial provisions of the beneficiary State and of the Community, the Commission and the beneficiary State, shall conclude an agreement to implement the grant decision. That agreement shall describe in particular the type and location of operations to be financed by the Fund.

2. The Commission shall ensure that the same commitments as entered into by the Member States under this Regulation are also entered into by countries negotiating their accession to the European Union within the framework of the relevant agreements and instruments.

3. Responsibility for selecting individual operations and implementing the grant under the agreement shall lie with the beneficiary State, in compliance with the terms of this Regulation, the grant decision and the agreement. The beneficiary State shall exercise this responsibility without prejudice to the Commission's responsibility for the implementation of the general budget of the European Union and in accordance with the provisions of the Financial Regulation applicable to shared or decentralised management.

*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 Investment Bank (EIB) and other Community financing instruments, on the other.

2. Operations assisted under this Regulation shall not benefit from assistance from the Funds and instruments governed by Regulations (EC) No 1164/94, (EC) No 1260/1999, (EC) No 1257/1999, (EC) No 1267/1999, (EC) No 1268/1999, (EEC) No 3906/89, (EC) No 2760/98, (EC) No 555/2000 and (EC) No 2236/95, and shall comply with Regulation (EC) No 1266/1999. The beneficiary State shall ensure compliance with this provision.

3. Damage repaired under Community or international instruments relating to the compensation of specific damages shall not, for the same purpose, benefit from 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 Community policies and measures and with pre-accession assistance instruments.

*Article 8*

1. A grant shall be used within one year of the date on which the Commission has disbursed the grant. Any part of a grant remaining unused by that deadline, in compliance with the terms of this Regulation, shall be recovered by the Commission from the beneficiary State.

Beneficiary States shall seek all possible compensation from third parties.

2. No later than six months after the expiry of the one-year period from the date of disbursement of the grant, the beneficiary State shall present a report on the financial execution of the grant 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 report shall detail the preventive measures introduced or proposed by the beneficiary State in order to limit damage and to avoid, to the extent possible, a recurrence of similar disasters.

At the end of this procedure, the Commission shall wind up the assistance from the Fund.

3. 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 grant.

*Article 9*

Applications for assistance and the decisions to grant assistance from the Fund, as well as the financial agreement, reports and any other related documents shall express all amounts in euro.

*Article 10*

1. 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.

2. In case of significantly lower valuation of the damage incurred, as shown by new elements, the Commission shall require the beneficiary State to reimburse a corresponding amount of the grant.

*Article 11*

The financing decisions and all agreements and contracts resulting therefrom shall provide for checks by the Commission, through the Anti-Fraud Office (OLAF), and for on-the-spot checks to be carried out by the Commission and the Court of Auditors, in accordance with the appropriate procedures.

*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 13*

Notwithstanding the deadline provided for in Article 4(1), the Member States and countries involved in accession negotiations with the European Union which have been affected by disasters, as defined in Article 2, from 1 August 2002 onwards may request assistance from the Fund within two months of the date of entry into force of this Regulation.

*Article 14*

The Council shall review this Regulation on the basis of a proposal from the Commission by 31 December 2006 at the latest.

*Article 15*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 November 2002.

*For the Council*  
*The President*  
B. MIKKELSEN

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