

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/369

of 15 March 2016

on the provision of emergency support within the Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Mutual assistance and support in the face of disasters is both a fundamental expression of the universal value of solidarity between people and a moral imperative, as such disasters may lead to a significant number of people being unable to meet their basic needs, with potential severe adverse effects on their health and lives.
- (2) The impact of both man-made and natural disasters within the Union is increasingly severe. This is linked to a number of factors, such as climate change, but also to other contributing external factors and circumstances which are unfolding in the Union's neighbourhood. The migration and refugee situation currently affecting the Union is a notable example of a situation where, despite the efforts undertaken by the Union to address the root causes located in third countries, the economic situation of Member States may be directly affected.
- (3) This situation led the European Council, on 19 February 2016, to call upon the Commission to put in place the capacity to provide humanitarian assistance internally, in order to support countries facing large numbers of refugees and migrants.
- (4) Man-made or natural disasters may be of such a scale and impact that they can give rise to severe economic difficulties in one or several Member States. They can also occur in one or several Member States already facing severe economic difficulties for other reasons, with the result of exacerbating and aggravating even further the overall economic situation of the Member States concerned. In either case, the response capacity of the Member States concerned would be adversely affected, and the assistance and support being provided to people in need would, in turn, be negatively affected.
- (5) While the Union is already in a position to grant support of a macro-financial nature to Member States, and to express European solidarity to disaster-stricken regions through the European Union Solidarity Fund (EUSF) established by Council Regulation (EC) No 2012/2002 ⁽¹⁾, there is currently no appropriate instrument available at Union level to address on a sufficiently predictable and independent basis the humanitarian needs of disaster-stricken people within the Union, such as food assistance, emergency healthcare, shelter, water, sanitation and hygiene, protection and education. Mutual assistance can be offered under the Union Civil Protection Mechanism pursuant to Decision No 1313/2013/EU of the European Parliament and of the Council ⁽²⁾, but the operation of

⁽¹⁾ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3).

⁽²⁾ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

that Mechanism is based on voluntary contributions from Member States. There could also be assistance and support provided through existing Union policy and financing instruments, such as those aimed at establishing an area of freedom, security and justice in the Union. Any such assistance and support would, however, be accessory and ancillary to the pursuit of the principal policy objectives of those instruments and, therefore, be limited in its scope and scale.

- (6) It therefore seems appropriate for the Union to act in a spirit of solidarity to address the basic needs of disaster-stricken people within the Union, and to contribute to reducing the economic impact of those disasters on the Member States concerned.
- (7) Given the similarities in addressing the basic needs of disaster-stricken people within the Union through the provision of emergency support and in providing humanitarian aid to people affected by man-made or natural disasters in third countries, all operations under this Regulation should be conducted in compliance with internationally-agreed humanitarian principles. Those actions constitute measures appropriate to the economic situation of the Member States facing those difficulties and complementing Union action encouraging cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.
- (8) Given the need to act in a spirit of solidarity, the provision of emergency support under this Regulation should be financed by the general budget of the Union, as well as by contributions which may be made by other public or private donors.
- (9) The reimbursement of expenses and award of public procurement contracts and grants under this Regulation should be implemented in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾, taking into account the specific nature of emergency support. It is therefore appropriate to provide that grants and public procurement contracts may be awarded directly or indirectly, and that grants may finance up to 100 % of the eligible costs and be awarded with retroactive effect. The Commission should be able to finance emergency support operations of any organisation which, independent of its legal nature, whether private or public, possesses the requisite experience and uses to that effect direct or indirect management, as appropriate.
- (10) Furthermore, it is appropriate to rely on organisations with which the Commission has concluded framework partnership agreements pursuant to Council Regulation (EC) No 1257/96 ⁽²⁾, in light of the relevance of the experience acquired by those organisations in providing humanitarian aid in close coordination with the Commission. Wherever possible the involvement of local non-governmental organisations should be sought, via partner organisations with framework partnership agreements, in order to maximise synergies and the efficiency of any emergency support provided under this Regulation.
- (11) The financial interests of the Union should be protected by means of proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, unduly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.
- (12) This Regulation should lay down the basis for providing financial support in the event of natural or man-made disasters in respect of which, in a spirit of solidarity, the Union would be better placed than Member States, acting alone and in an uncoordinated manner, to mobilise appropriate levels of financing and use them to implement operations of a potentially life-saving nature in an economic, efficient and effective manner, thereby allowing a more effective action by reason of its scale and complementarity.
- (13) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, 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.

⁽¹⁾ 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 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (OJ L 163, 2.7.1996, p. 1).

- (14) The provision of emergency support under this Regulation should be aptly monitored, relying, where need be, on the most relevant expertise available at Union level. Furthermore, the overall implementation of this Regulation should be evaluated.
- (15) Given the urgency of the support needed, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down the framework within which Union emergency support may be awarded through specific measures appropriate to the economic situation in the event of an ongoing or potential natural or man-made disaster. Such emergency support can only be provided where the exceptional scale and impact of the disaster is such that it gives rise to severe wide-ranging humanitarian consequences in one or more Member States and only in exceptional circumstances where no other instrument available to Member States and to the Union is sufficient.
2. Emergency support provided under this Regulation shall be in support of, and complementary to, the actions of the affected Member State. To this end, close cooperation and consultation with the affected Member State shall be ensured.

Article 2

Activation of the emergency support

1. The decision about the activation of the emergency support under this Regulation in case of an ongoing or potential disaster shall be taken by the Council on the basis of a proposal by the Commission, specifying where appropriate the duration of the activation.
2. The Council shall immediately examine the proposal of the Commission referred to in paragraph 1 and shall decide, in accordance with the urgency of the situation, on the activation of the emergency support.

Article 3

Eligible actions

1. Emergency support under this Regulation shall provide a needs-based emergency response, complementing the response of the affected Member States, aimed at preserving life, preventing and alleviating human suffering, and maintaining human dignity wherever the need arises as a result of a disaster referred to in Article 1.
2. Emergency support, as referred to in paragraph 1, may include any of the humanitarian aid actions which would be eligible for Union financing pursuant to Articles 2, 3 and 4 of Regulation (EC) No 1257/96, and may consequently encompass assistance, relief and, where necessary, protection operations to save and preserve life in disasters or in their immediate aftermath. It may also be used to finance any other expenditure directly related to the implementation of emergency support under this Regulation.
3. Emergency support under this Regulation shall be granted and implemented in compliance with the fundamental humanitarian principles of humanity, neutrality, impartiality and independence.
4. The actions referred to in paragraph 2 shall be carried out by the Commission or by partner organisations selected by the Commission. The Commission may notably select, as partner organisations, non-governmental organisations, specialised services of the Member States or international agencies and organisations having the requisite expertise. In doing so, the Commission shall maintain a close cooperation with the affected Member State.

*Article 4***Types of financial intervention and implementing procedures**

1. The Commission shall implement the Union's financial support in accordance with Regulation (EU, Euratom) No 966/2012. In particular, Union financing for support actions under this Regulation shall be implemented by means of direct or indirect management in accordance with points (a) and (c), respectively, of Article 58(1) of that Regulation.
2. Emergency support under this Regulation shall be financed by the general budget of the Union and by contributions which may be made by other public or private donors as external assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012.
3. Union financing for support actions under this Regulation to be implemented by means of direct management may be awarded directly by the Commission without a call for proposals, in accordance with Article 128(1) of Regulation (EU, Euratom) No 966/2012. To that effect, the Commission may enter into framework partnership agreements or rely on existing framework partnership agreements concluded pursuant to Regulation (EC) No 1257/96.
4. Where the Commission implements emergency support operations through non-governmental organisations, the criteria concerning financial and operational capacity shall be deemed to be satisfied where there is a framework partnership agreement in force between that organisation and the Commission pursuant to Regulation (EC) No 1257/96.

*Article 5***Eligible Costs**

1. Union financing may cover any direct costs necessary for the implementation of the eligible actions set out in Article 3, including the purchase, preparation, collection, transport, storage and distribution of goods and services under those actions.
2. The indirect costs of the partner organisations may also be covered in accordance with Regulation (EU, Euratom) No 966/2012.
3. Union financing may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required for the management of the emergency support to be provided under this Regulation.
4. Union financing for emergency support actions under this Regulation may cover up to 100 % of the eligible costs.
5. Expenditure incurred by a partner organisation before the date of submission of an application for funding may be eligible for Union financing.

*Article 6***Complementarity and consistency of Union action**

Synergies and complementarity shall be sought with other instruments of the Union, in particular with respect to those instruments under which some form of emergency assistance or support may be offered, such as Regulation (EC) No 2012/2002, Decision No 1313/2013/EU, Regulation (EC) No 1257/96, Regulation (EU) No 223/2014 of the European Parliament and of the Council ⁽¹⁾, Regulation (EU) No 513/2014 of the European Parliament and of the Council ⁽²⁾, Regulation (EU) No 514/2014 of the European Parliament and of the Council ⁽³⁾, Regulation (EU) No 515/2014 of the European Parliament and of the Council ⁽⁴⁾ and Regulation (EU) No 516/2014 of the European Parliament and of the Council ⁽⁵⁾.

⁽¹⁾ Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived (OJ L 72, 12.3.2014, p. 1).

⁽²⁾ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93).

⁽³⁾ 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 (OJ L 150, 20.5.2014, p. 112).

⁽⁴⁾ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

⁽⁵⁾ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).

*Article 7***Protection of the financial interests of the Union**

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 grant beneficiaries, contractors and 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 (EU, Euratom) No 883/2013 ⁽¹⁾ of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁾ 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 grant agreement or grant decision or a contract funded under this Regulation.
4. Without prejudice to paragraphs 1, 2 and 3, contracts and grant agreements as well as agreements with international organisations and Member States' specialised services, 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 8***Monitoring and evaluation**

1. Actions receiving financial support under this Regulation shall be monitored regularly. At the latest 12 months after the activation of the emergency support for a specific situation in accordance with Article 2, the Commission shall present a report to the Council and, where appropriate, proposals to terminate it.
2. By 17 March 2019, the Commission shall submit an evaluation of the operation of this Regulation to the Council, together with suggestions for the future of this Regulation and, where appropriate, proposals to amend or terminate it.

*Article 9***Entry into Force and activation**

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.
2. The Council hereby decides to activate the emergency support under this Regulation as of the day of its entry into force for the current influx of refugees and migrants into the Union, for a period of three years.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽²⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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

Done at Brussels, 15 March 2016.

For the Council

The President

A.G. KOENDERS
