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COUNCIL REGULATION (EC) No 2012/2002

of 11 November 2002

establishing the European Union Solidarity Fund

(OJ L 311, 14.11.2002, p. 3)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Regulation (EU) No 661/2014 of the European Parliament and of the Council of 15 May 2014	L 189	143	27.6.2014
►**M2**	Regulation (EU) 2020/461 of the European Parliament and of the Council of 30 March 2020	L 99	9	31.3.2020

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COUNCIL REGULATION (EC) No 2012/2002

of 11 November 2002

establishing the European Union Solidarity Fund

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.

▼M2

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.

▼M2

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.

▼B

Article 3

▼M2

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.

▼M2

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.

▼M1

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).

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.

▼B

Article 4

▼M1

1. As soon as possible and no later than 12 weeks after the first occurrence of damage as a consequence of a natural disaster, the responsible national authorities of an eligible State may submit an application for a financial contribution from the Fund to the Commission providing, as a minimum, all available information on:

(a) the total direct damage caused by the natural 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 natural disaster.

▼M1

1a. In justified cases the responsible national authorities may submit, after the deadline referred to in paragraph 1, additional information in order to complete or update their application.

1b. The Commission shall prepare guidance on how to access and implement the Fund effectively. The guidance shall be drawn up by 30 September 2014 and shall provide detailed information on the procedures for drafting the application, including requirements for the information to be submitted to the Commission. 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 eligible States.

1c. In the event of a progressively unfolding natural disaster, the deadline referred to in paragraph 1 shall run from the date on which the public authorities of the eligible State take official action for the first time against the effects of the natural disaster or from the date they declare a 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 financial contribution from the Fund as quickly as possible and no later than six weeks after receipt of the application, counting from the date of receipt of the complete application and excluding the time needed for translation, within the limits of the financial resources available.

If the Commission decides on a financial contribution from the Fund based on an application received after 28 June 2014 for a natural disaster falling under the scope of this Regulation, it may reject a further application for a financial contribution relating to a natural 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 European Union has delivered a final judgment that the Member State concerned has failed to implement Union legislation on disaster risk prevention and management, which is directly linked to the nature of the natural disaster suffered.

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

3. When the Commission has concluded that the conditions are met for providing a financial contribution from the Fund, the Commission shall without delay submit to the European Parliament and the Council the necessary proposals for mobilisation of the Fund and to authorise the corresponding appropriations. Those proposals shall include:

(a) all available information, as referred to in paragraph 1;

(b) all other relevant information in the possession of the Commission;

(c) a demonstration that the conditions of Article 2 are met; and

(d) a justification of the amounts proposed.

The decision to mobilise the Fund shall be taken jointly by the European Parliament and the Council as soon as possible after the submission of the proposal by the Commission.

▼M1

Both the Commission, on the one hand, and the European Parliament and the Council, on the other hand, shall endeavour to minimise the time taken to mobilise the Fund.

4. Once the appropriations are made available by the European Parliament and the Council, the Commission shall adopt a decision, by means of an implementing act, awarding the financial contribution from the Fund and shall pay that financial 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 period for expenditure shall begin on the date of the first occurrence of damage as referred to in paragraph 1. In the event of a progressively unfolding natural disaster, the eligibility period for expenditure shall begin on the date on which the public authorities of the eligible State take action for the first time or from the date they declare a state of emergency, as referred to in paragraph 1c.

Article 4a

1. When submitting an application for a financial contribution from the Fund to the Commission, a Member State may request the payment of an advance. The Commission shall make a preliminary assessment of whether the application fulfils the conditions laid down in Article 4(1) and verify the availability of budgetary resources. Where those conditions are fulfilled and sufficient resources are available, the Commission may adopt a decision, by means of an implementing act, awarding the advance and pay it out without delay before the decision referred to in Article 4(4) has been taken. The payment of an advance shall be made without prejudice to the final decision on the mobilisation of the Fund.

▼M2

2. The amount of the advance shall not exceed 25 % of the amount of the financial contribution anticipated and shall in no case exceed EUR 100 000 000. Once the definitive amount of the financial contribution has been determined, the Commission shall take into account the sum of the advance prior to the balance of the financial contribution being paid. The Commission shall recover unduly paid advances.

▼M1

3. Any repayment due to be made to the general budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with the Article 78 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([1]). The due date shall be the last day of the second month following the issue of the order.

4. When adopting the draft general budget of the Union for a given financial year, the Commission shall, where necessary in order to ensure the timely availability of budgetary resources, propose to the European Parliament and the Council to mobilise the Fund in an amount up to a maximum of EUR 50 000 000 for the payment of advances and propose to enter the corresponding appropriations into the general budget of the Union.

([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).

▼M1

The budgetary arrangements shall comply with the ceilings referred to in Article 10(1) of Council Regulation (EU, Euratom) No 1311/2013 ([1]).

Article 5

1. An implementing act adopted pursuant to Article 4(4) shall contain in its Annex detailed provisions for the implementation of the financial 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 financial 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 financial contribution from the Fund referred to in paragraph 1 in accordance with Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012 ([2]), as well as the obligations relating to natural disaster risk prevention and management.

3. Responsibility for selecting individual operations and implementing the financial contribution from the Fund shall lie with the beneficiary State, in accordance with this Regulation, in particular Article 3(2) and (3), the implementing act referred to in Article 4(4) and, where applicable, the delegation agreement referred to in paragraph 2 of this Article.

4. The financial 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 financial contribution from the Fund to an eligible State that is not a Member State 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.

([1]) Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

▼M1

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 Regulation (EU) No 1303/2013 of the European Parliament and of the Council ([1]).

Those 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 of cancelling all or part of the financial contribution from the Fund. The beneficiary State shall recover any amount lost as a result of an irregularity detected.

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.

Article 6

1. The beneficiary State shall be responsible for coordinating the financial contribution from 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 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 damage shall not be eligible for assistance from the Fund for the same purpose.

([1]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

▼**M1**

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, natural disaster risk prevention and management, climate change adaptation including, where appropriate, eco-system based approaches, and with pre-accession assistance instruments. Where applicable, operations financed by the Fund shall contribute to the objectives of Union in those fields.

Article 8

1. The financial contribution from the Fund shall be used within eighteen months from the date on which the Commission has disbursed the full amount of the assistance. Any part of the financial 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.

▼**M2**

3. No later than six months after the expiry of the 18-month period referred to in paragraph 1, the beneficiary State shall present a report on the implementation of the financial 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 set out, depending on the nature of the eligible disaster or emergency:

(a) the preventive measures taken or proposed by the beneficiary State to limit future damage and to avoid, to the extent possible, a recurrence of similar natural disasters or public health emergencies, including the use of European Structural and Investment Funds for this purpose;

(b) the state of implementation of relevant Union legislation on disaster risk prevention and management;

(c) the experience gained from the disaster or emergency and the measures taken or proposed to ensure environmental protection and resilience in relation to climate change, natural disasters and public health emergencies; and

(d) any other relevant information on prevention and mitigation measures taken related to the nature of the natural disaster or public health emergency.

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

▼M2

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

▼M1

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 financial contribution from the Fund.

Article 9

Applications for a financial contribution from the Fund and the implementing acts 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* for the day on which the related implementing act has been adopted by the Commission. Where no exchange rate is published in the *Official Journal of the European Union* for 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 financial 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 financial contribution.

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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.

▼M1

2. In the event of a significantly lower valuation of the damage incurred, as shown by new elements, the beneficiary State shall reimburse the corresponding amount of the financial contribution from the Fund to the Commission.

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.

▼M1

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 (EU, Euratom) No 883/2013 of the European Parliament and of the Council [1] 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 contract concerning Union funding.

4. Without prejudice to paragraphs 1, 2 and 3, delegation agreements with third countries, contracts and decisions awarding a financial 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, in accordance with their respective competences.

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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.

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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.

[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's financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).