

Proposal for a Council Regulation establishing the European Union Solidarity Fund

(2002/C 331 E/51)

COM(2002) 514 *final* — 2002/0228(CNS)*(Submitted by the Commission on 18 September 2002)***EXPLANATORY MEMORANDUM****Need for a new emergency instrument**

The recent flooding in central Europe has been on an almost unprecedented scale in recent history. The extent and cost of the damage is very extensive – dozens of people have lost their lives, the socio-economic infrastructure of entire regions has been disrupted and the natural and cultural heritage has been damaged.

Other disasters of dramatic proportions — of a similar or different nature — have occurred in the past; unfortunately they cannot be excluded for the future. While Community instruments are in place to assist in the event of a disaster elsewhere in the world no comparable instruments exist within the Member States themselves.

We are a community of peoples on the path to closer union. At the same time the Union is preparing for enlargement in the very near future. In the event of a major disaster it is only right and natural that the citizens, Member States and countries with which accession negotiations are under way, as well as the Community Institutions, feel a spontaneous urge to show their sympathy for the victims through practical gestures of financial solidarity in particular.

With this proposal for a Council Regulation the Commission therefore proposes to create a new European Union Solidarity Fund to assist affected regions in Member States and other countries involved in accession negotiations in the event of major natural, technological and environmental disasters.

Wide support

The European Parliament too has voiced its concern and has promised to process proposals which require the approval of the Budgetary Authority with maximum urgency. At its plenary sitting on 3 September 2002 in Strasbourg it expressed its full support for the creation of a special Community instrument to intervene in the case of disasters in Member States or candidate countries.

The Council also shares this sense of solidarity with the victims of the flooding and of the urgency of Community action. At the special meeting of Member States' representatives on 29 August 2002 convened by the Danish Presidency to discuss what measures the Union could take they unanimously supported the idea of creating a specific Community instrument to respond to the consequences of major disasters by rapidly mobilising new resources.

The European Union Solidarity Fund

The Solidarity Fund should be essentially different from the Structural Funds and other existing Community instruments. It should be focused on giving immediate financial assistance to help the people, regions and countries concerned return to living conditions that are as normal as possible. Its scope should therefore be limited to the most urgent needs. The longer-term reconstruction of infrastructure and businesses must be left to other instruments.

EU aid should be complementary to the efforts of the countries concerned and be used to cover a share of the public expenditure caused by the disaster. The Fund should provide emergency relief for any area affected by a major disaster, independently of its status under the Structural Funds. The amount of support would be related to the size of the disaster but could also take into account other potential sources of finance.

The principle of subsidiarity also applies in the event of disasters. Action by the European Union appears only necessary and justified in cases of major dimension. This reasoning is reinforced by the scarcity of supplementary budget resources.

Money from the relief fund would be given in response to a request from the affected country as a single grant on the basis of an agreement between the European Commission and the country and — where appropriate — the affected region(s) or localities.

The existence of a major disaster justifying action at EU level and the amount of the aid would be proposed by the Commission to the budgetary authority (this can be done quickly). The implementation of the aid, in particular the selection of individual projects to be assisted, would be carried out under the responsibility of the country and the regions concerned. The Fund would be subject to the normal Community rules on financial aid, including issues of control.

Making funding available

Setting up a new Fund in the EC budget requires two steps: creating an instrument to make the money available and defining new operational budget lines to which the money can be transferred for implementation. The latter requires the adoption of a legal basis.

— A new flexibility instrument

On 11 September 2002 the Commission adopted the proposal for a new flexibility instrument for disasters which would make it possible to address unforeseen and exceptional circumstances and which determines the rules for its mobilisation. The corresponding expenditure shall be entered in the budget over and above the relevant headings in the financial perspectives.

— Creating a legal basis

The Council and the Parliament will need to adopt, on a Commission proposal, a legal act establishing the operational modalities and the criteria for the implementation of the facility. This is the objective of the present proposal for a Council Regulation.

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,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) In the event of major natural, technological or environmental disasters, the Community must show its solidarity with people in the regions concerned by providing

financial assistance to contribute to a rapid return to normal living conditions in the disaster-stricken regions.

(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 instrument 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 regions hit by a major disaster.

(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 countries 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 natural, technological and environmental disasters with serious repercussions on living conditions, the natural environment or the economy.
- (6) A major disaster within the meaning of this Regulation shall 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 GDP. In order to permit interventions in the case of disasters that, while important do not reach the minimum scale required, and under very exceptional circumstances, assistance can also be granted whenever a substantial part of the population of the region or the state concerned is affected by a disaster.
- (7) Community action should not relieve third parties of responsibility or discourage preventive measures.
- (8) This instrument should allow a rapid decision to be taken to commit specific financial resources and mobilise them as quickly as possible.
- (9) It may be desirable, in conformity with the specific constitutional, institutional, legal or financial context of the beneficiary state and of the Community, to associate the regional or local authorities with the formal agreement on 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 ⁽¹⁾, Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ⁽²⁾, Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽³⁾, Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic ⁽⁴⁾, Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession ⁽⁵⁾, 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 ⁽⁶⁾, 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 ⁽⁷⁾ or 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 ⁽⁸⁾.
- (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) Depending on the availability of funds, provision should be made for possible supplementary grants to guarantee appropriate financial assistance from this instrument for disaster-stricken sections of the population.
- (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.
- (16) In view of the exceptional circumstances, countries hit by disasters from summer 2002 onwards should qualify for assistance under this instrument,

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 on the terms of this Regulation.

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

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

⁽³⁾ OJ L 160, 26.6.1999, p. 80.

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

⁽⁵⁾ OJ L 161, 26.6.1999, p. 68.

⁽⁶⁾ OJ L 161, 26.6.1999, p. 8. As last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

⁽⁷⁾ OJ L 345, 19.12.1998, p. 49.

⁽⁸⁾ OJ L 161, 26.6.1999, p. 68.

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 mobilised when a major natural, technological or environmental 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 shall mean any disaster resulting, in at least one of the states concerned, in damage estimated at over EUR 1 billion, in 2002 prices, or more than 0,5 % of its GDP.

Under very exceptional circumstances, can be included any disaster affecting a substantial part of the population of the region or state concerned.

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. Assistance shall also cover neighbouring countries affected by the same disaster. This case could give rise to grants in favour of the different states concerned.

3. The aim of the Fund is to help the beneficiary state to carry out the following essential measures, depending on the type of disaster:

- immediate restoration to working order of infrastructure and plant in the fields of energy, water and waste water, telecommunications, transport, health and education;
- providing temporary accommodation and funding rescue services to meet the immediate needs of the people concerned;
- immediate securing of preventive infrastructures and measures of immediate protection of the cultural heritage;
- cleaning up of disaster-stricken natural zones.

Article 4

1. As soon as possible and no later than two months after the first damage caused by the disaster, a state may submit an application for assistance from the Fund to the Commission taking account of, among other factors:

- (a) the scale of the disaster;
- (b) the estimated cost of the operations referred to in Article 3;

(c) any other sources of Community and national funding, including private funding, 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 determine the amount of any possible grant as quickly as possible within the limits of the financial resources available. However, this grant must leave available 25 % of the annual amount allocated to the Fund up to 1 October each 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 mobilise the corresponding appropriations. Once the appropriations are available, 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.

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

Article 5

In conformity with the specific constitutional, institutional, legal or financial provisions of the beneficiary state and of the Community, the Commission and the beneficiary state, and, where appropriate, the regional or local authorities, shall conclude an agreement to implement the decision to grant financial assistance. That agreement shall describe in particular the type and location of operations to be financed by the Fund.

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.

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 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) Nos 1164/94, 1260/1999, 1257/1999, 1267/1999 and 1268/1999, and Regulations (EEC) No 3906/89 and (EC) No 2760/98, and shall comply with Regulation (EC) No 1266/1999. The beneficiary state shall ensure compliance with this provision.

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

A grant shall be used within two years of the date on which the grant decision is notified. Any part of a grant remaining unused by that deadline, in compliance with the terms of this Regulation, shall be recovered by Commission from the beneficiary state.

No later than six months after the expiry of the two-year period from the date of notification of the grant decision 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 measures 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 damages and to avoid, to the extent possible, a reoccurrence of similar disasters.

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

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

In exceptional circumstances, having regard to the specific nature or intensity of a disaster and the financial resources available, notwithstanding Article 3(1) the Commission may, within one year of the grant decision, provide a supplementary

grant at the request of the beneficiary state. This request is supported by new elements, notably a significantly higher valuation of the damages incurred. The supplementary grant shall be awarded on the same terms as the initial 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

Each year the Commission shall present to the European Parliament and to the Council a report on the assistance granted from the Fund. This report shall contain information on the assistance granted in the previous year and on the assistance granted in preceding financial years for which the individual operations have been closed.

Article 13

Notwithstanding the deadline provided for in Article 4(1) of this Regulation, the Member States and countries negotiating their accession to the European Union which have been hit by disasters 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

This Regulation does not prejudice the application of Community or international instruments relating to the compensation of specific damages.

Article 15

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

Article 16

This Regulation shall enter into force on the day following 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.