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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	COM(2022) 325 final - 10897/22
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1303/2013 and Regulation (EU) 2021/1060 as regards additional flexibility to address the consequences of the military aggression of the Russian Federation FAST (Flexible Assistance for Territories) - CARE - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 29 June 2022, the Commission transmitted to the Council the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 and Regulation (EU) 2021/1060 as regards additional flexibility to address the consequences of the military aggression of the Russian Federation FAST (Flexible Assistance for Territories) - CARE¹.

¹ Doc. 10897/22.

2. The objective of the proposal is to add further flexibility to the implementation of cohesion policy programmes so that quicker and more complete support from the Funds is provided, to alleviate the burden on national budgets and facilitate the implementation of operations addressing both migratory challenges as well as market disruptions of key economic sectors.
3. For this purpose, the proposal addresses both 2014-2020 and 2021-2027 programmes, optimising the use of the remaining 2014-2020 resources, allowing for smoother phasing of delayed projects to the 2021-2027 period and allowing for providing support to the integration of third country nationals also under the 2021-2027 programmes.

II. PRESIDENCY COMPROMISE PROPOSAL

4. On 29 June 2022, the Permanent Representatives Committee held an exchange of views on the proposal for FAST-CARE.
5. The Working Party on Structural Measures and Outermost Regions examined the Commission proposal at its meetings on 6 and 18 July 2022. Delegations gave support to the proposal, including preference for a speedy adoption of the legal act.
6. The Working Party did not object to the Presidency's approach of proceeding to not modify the Commission's proposal, as set out in the Annex to this note.

III. SUBMISSION TO COREPER

7. On that basis, the Permanent Representatives Committee is invited to:
 - confirm the agreement reached concerning the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 as regards additional flexibility to address the consequences of the military aggression of the Russian Federation FAST-CARE, as set out in the Annex to this note;

- authorise the Presidency to send a letter to the Chair of the European Parliament's Committee on Regional Development confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1303/2013 and Regulation (EU) 2021/1060 as regards additional flexibility to address the consequences of the military aggression of the Russian Federation

FAST (Flexible Assistance for Territories) - CARE

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 Article 177 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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

² OJ C , , p. .

³ OJ C , , p. .

- (1) Member States, and the central and eastern regions of the European Union in particular, have been severely affected by the consequences of the military aggression of the Russian Federation against Ukraine, at a time when Member States' economies are still recovering from the impact of the COVID-19 pandemic. At the same time as facing a continuous inflow of persons fleeing Russian aggression, many Member States are also affected by shortages of labour, supply chain difficulties and rising prices and energy costs. On the one hand, this creates challenges for public budgets and, on the other, delays the implementation of investments. This has created an exceptional situation which needs to be addressed with specific, well-targeted measures, in order not to require changes in the Multiannual Financial Framework annual ceilings for commitments and payments as per Annex I to Council Regulation (EU, Euratom) 2020/2093⁴, and to avoid undermining the ongoing green, digital and resilient recovery of the economy.
- (2) In order to alleviate the increasing burden on national budgets, Regulation (EU) 2022/562 of the European Parliament and of the Council⁵ made a number of targeted amendments to Regulations (EU) No 1303/2013⁶ and (EU) No 223/2014 of the European Parliament and of the Council⁷ in order to make it easier for Member States to use their remaining European Regional Development Fund (the 'ERDF'), the European Social Fund (the 'ESF') and the Fund for European Aid to the Most Deprived (the 'FEAD') allocations under the 2014-2020 multiannual financial framework, as well as to use REACT-EU resources, to address the migratory challenges resulting from the military aggression by the Russian Federation as effectively and as rapidly as possible.

⁴ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

⁵ Regulation (EU) 2022/562 of the European Parliament and of the Council of 6 April 2022 amending Regulations (EU) No 1303/2013 and (EU) No 223/2014 as regards Cohesion's Action for Refugees in Europe (CARE) (OJ L 109, 8.4.2022, p. 1).

⁶ 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).

⁷ 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).

- (3) In addition, Regulation (EU) 2022/613 of the European Parliament and of the Council⁸ provided additional possibilities to mobilise resources quickly to offset the immediate budgetary costs borne by Member States and established a unit cost to facilitate the financing of basic needs and support of persons granted temporary protection.
- (4) Additional exceptional arrangements to enable Member States to concentrate on the necessary response to the unprecedented socio-economic situation should nevertheless be provided to Member States, given the extended nature of the Russian invasion, especially with regard to operations addressing the migratory challenges as a result of the military aggression by the Russian Federation.
- (5) Given the additional strain on public budgets caused by the military aggression by the Russian Federation, the flexibility regarding the use of the ERDF and the ESF provided in Article 98(4) of Regulation (EU) No 1303/2013 for such operations should be extended to also cover the Cohesion Fund so that its resources can also be used to support operations falling within the scope of the ERDF or the ESF in accordance with the rules applicable to those Funds. In addition, it is appropriate to extend the light monitoring requirements set out in Article 98(4) of Regulation (EU) No 1303/2013 to operations supported by the ESF addressing migratory challenges, where these operations are programmed in a priority axis only addressing this challenge. Furthermore, the possibility should be introduced that priorities promoting the socio-economic integration of third country nationals, including those dedicated to operations addressing migratory challenges resulting from the Russian aggression, benefit from a co-financing rate of up to 100% in both programming periods, in order to support Member States in addressing displaced peoples both now and in the future. In the same vein, the amount for the unit cost to facilitate the financing of basic needs and the support of refugees should be increased and its application in time extended.

⁸ Regulation (EU) 2022/613 of the European Parliament and of the Council of 12 April 2022 amending Regulations (EU) No 1303/2013 and (EU) No 223/2014 as regards increased pre-financing from REACT-EU resources and the establishment of a unit cost (OJ L 115, 13.4.2022, p. 38).

- (6) In addition, the setting of the start of the eligibility date on 24 February 2022 for operations addressing migratory challenges as a result of the military aggression by the Russian Federation has not proved sufficient to ensure that all relevant operations addressing these challenges could be supported by the Funds. It is therefore appropriate to exceptionally allow for the selection of such operations prior to the approval of a related programme amendment and for the eligibility of expenditure for such operations which are physically completed or fully implemented, also extending these flexibilities to operations supported by the EMFF addressing the consequences on the fishery and aquaculture sector resulting from the Russian aggression. Furthermore, taking into account the limited funding available in the regions most affected, it should be possible to support such operations beyond the limits of the programme area within a given Member State, given that the situation with persons fleeing Russian aggression and moving within and across Member States poses a challenge to the economic, social and territorial cohesion of the Union as a whole. Such operations should therefore be eligible irrespective of where they are implemented within a given Member State as their location is ultimately not a decisive criterion when addressing the immediate needs.
- (7) Moreover, given the high level of burden for addressing migratory challenges as a result of the military aggression by the Russian Federation that has fallen on local authorities and civil society organisations operating in local communities, a minimum level of support of 30% should be set aside for such bodies in the context of the resources being used to support operations within the scope of the ERDF or the ESF in accordance with the first and second subparagraphs of Article 98(4) of Regulation (EU) No 1303/2013.
- (8) With a view to alleviating the administrative burden for Member States to take account of the evolving needs and compliance with the financial allocations in an operational programme, a general measure removing the need for a formal amendment of an operational programme under the 2014-2020 programming period should be provided to allow the transfers between thematic objectives within a priority of the same Fund and category of region.

- (9) Lastly, in order to optimise the use of the 2014-2020 allocations in the context of the closure of programmes under the 2014-2020 programming period, the ceiling of the flexibility between priorities for calculating the final balance of the contribution from the Funds should be raised.
- (10) Certain flexibilities to address the unprecedented situation should also be provided for in the legal framework governing programmes under the 2021-2027 programming period. Again with a view to alleviating the burden on national budgets, pre-financing payments for programmes under the Investment for jobs and growth goal should be increased. Furthermore, given the challenges posed by displacements of people and the integrated responses required by Member States, where a Member State dedicates a priority under one of its 2021-2027 cohesion programmes to supporting operations promoting the socio-economic integration of third country nationals, a co-financing rate of up to 100% for that priority should be possible until 30 June 2024, provided an appropriate level of support is directed to local authorities and civil society organisations operating in local communities and that the total amount programmed under such priorities in a Member State does not exceed 5% of the initial national allocation of that Member State from the ERDF and the ESF+ combined. This is without prejudice to the possibility for Member States to programme additional amounts for such priorities with regular co-financing rates. Also, taking into account disruptions to the end of the 2014-2020 programming period caused by Russia's military aggression, on top of the long-lasting consequences of the pandemic on project implementation and continuing disruptions of value chains, additional flexibility should also be provided to enable the direct granting of support and completion of operations for which implementation had started in accordance with the 2014-2020 legislative framework before the date of this legislative proposal, even where such operations would not fall within the scope of the corresponding Fund concerned under the 2021-2027 programming period, with the exception of cases where the Funds were used under the first or second subparagraphs of Article 98(4) of Regulation (EU) No 1303/2013. To ensure that such operations can be attributed to types of interventions, Annex I to Regulation (EU) 2021/1060 of the European Parliament and of the Council⁹ should be

⁹ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the

adjusted accordingly. Support for such operations should not affect Member States' obligations to comply with thematic concentration requirements and climate contribution targets.

- (11) Since the objective of this Regulation, namely to assist Member States in addressing the challenges created by the exceptionally high number of arrivals of people fleeing the military aggression of the Russian Federation against Ukraine and to support Member States' continued efforts to move towards a resilient recovery of the economy from the COVID-19 pandemic, can, by reason of the scale and effects of the proposed 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 (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (12) Regulation (EU) No 1303/2013 and Regulation (EU) 2021/1060 should therefore be respectively amended accordingly.
- (13) In view of the urgency of providing rapid relief to public budgets with a view to preserving Member States' capacity to support the recovery of economies, it is considered to be appropriate to invoke the exception to the 8-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (14) In view of the need to provide rapid relief to public budgets with a view to preserving Member States' capacity to sustain the economic recovery process as well as to enable the speedy programming of the phasing of operations to the 2021-2027 programming period, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1303/2013

Regulation (EU) No 1303/2013 is amended as follows:

(1) in Article 30, the following paragraphs are added:

“6. By way of derogation from paragraphs 1 and 2, for programmes supported by the ERDF, the ESF or the Cohesion Fund, the Member State may transfer financial allocations between different thematic objectives within the same priority of the same Fund and category of region of the same programme.

Such transfers shall be considered to be not substantial and shall not require a decision of the Commission amending the programme. They shall however comply with all regulatory requirements and shall be approved by the monitoring committee in advance. The Member State shall notify the revised financial tables to the Commission.

7. By way of derogation from paragraphs 1 and 2, the application of a co-financing rate of up to 100% pursuant to Article 120(9) to a priority axis promoting the socio-economic integration of third country nationals that has been established within a programme, including those dedicated to operations addressing migratory challenges as a result of the military aggression by the Russian Federation shall not require a decision of the Commission amending the programme. The amendment shall be approved by the monitoring committee in advance. The Member State shall notify the revised financial tables to the Commission.”;

(2) in Article 65, the following paragraph is inserted:

“10a. Paragraph 6 shall not apply to operations addressing migratory challenges resulting from the military aggression by the Russian Federation.

Paragraph 6 shall also not apply to operations supported by the EMFF addressing the consequences of that aggression on the fisheries and aquaculture sector.

By way of derogation from Article 125(3), point (b), such operations may be selected for support by the ERDF, the ESF, the Cohesion Fund or the EMFF prior to the approval of the amended programme.”;

- (3) in Article 68c, the first subparagraph is replaced by the following:

“For the implementation of operations addressing migratory challenges resulting from the military aggression by the Russian Federation, Member States may include in the expenditure declared in payment applications a unit cost linked to the basic needs and support of persons granted temporary protection or other adequate protection under national law in accordance with Council Implementing Decision (EU) 2022/382¹⁰ and Council Directive 2001/55/EC¹¹. That unit cost shall be EUR 100 per week for each full week or partial week that the person is in the Member State concerned. The unit cost may be used for a maximum of 26 weeks in total, starting from the date of arrival of the person in the Union.”;

- (4) in Article 70(2), the following subparagraph is added:

“Where operations, receiving support from the ERDF, the ESF or the Cohesion Fund addressing migratory challenges resulting from the military aggression by the Russian Federation are implemented outside the programme area but within the Member State, only point (d) of the first subparagraph shall apply.”;

- (5) Article 70(4) is replaced by the following:

“4. Paragraphs 1, 2 and 3 shall not apply to programmes under the European territorial cooperation goal. Paragraphs 2 and 3 shall not apply to operations supported by the ESF, with the exception of the last subparagraph of paragraph 2.”

¹⁰ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

¹¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

(6) the first subparagraph of Article 96(10) is replaced by the following:

“10. Without prejudice to Article 30(5), 30(6) and 30(7), the Commission shall adopt a decision, by means of an implementing act, approving all the elements, including any of its future amendments, of the operational programme falling under this Article, except those falling under points (b)(vi) and (c)(v) and (e) of the first subparagraph of paragraph 2, paragraphs 4 and 5, points (a) and (c) of paragraph 6 and paragraph 7, which remain under the responsibility of the Member States.”;

(7) Article 98(4) is amended as follows:

(a) the following subparagraph is inserted after the first subparagraph:

“In addition, such operations may also be financed by the Cohesion Fund on the basis of rules applicable either to the ERDF or the ESF.”;

(b) the following subparagraph is inserted after the second subparagraph:

“Where a dedicated priority axis makes use of the possibility set out in the first or second subparagraphs, at least 30% of the financial allocation of that priority axis shall be attributed to operations which have beneficiaries that are local authorities and civil society organisations operating in local communities. Member States shall report on the fulfilment of this condition in the final implementation report required under Article 50(1) and Article 111. Where this condition is not fulfilled, reimbursement by the Commission under the priority axis concerned shall be reduced proportionately to ensure that this condition is respected when calculating the final balance to be paid to the programme.”;

(c) the third subparagraph is replaced by the following subparagraph:

“Where data on participants is required to be reported for operations under the priority axis referred to in the third subparagraph, that data shall be based on informed estimates and shall be limited to the total number of supported persons and the number of children under 18 years of age. The same reporting requirements shall also apply to other priority axes supported by the ESF which are only supporting operations addressing migratory challenges as a result of the military aggression by the Russian Federation.”;

(8) in Article 120, the following paragraph is added:

“9. A separate priority axis promoting the socio-economic integration of third country nationals with a co-financing rate of up to 100% may be established within an operational programme. Such a priority axis may be entirely dedicated to operations addressing migratory challenges as a result of the military aggression by the Russian Federation, including the dedicated priority axis referred to in the third subparagraph of Article 98(4).”;

(9) in Article 130(3), the first subparagraph is replaced by the following:

“By way of derogation from paragraph 2, the contribution from the Funds or the EMFF through payments of the final balance for each priority per Fund and per category of regions in the final accounting year shall not exceed, by more than 15 %, the contribution from the Funds or the EMFF for each priority per Fund and per category of regions as laid down in the decision of the Commission approving the operational programme.”;

Article 2

Amendments to Regulation (EU) 2021/1060

Regulation (EU) 2021/1060 is amended as follows:

(1) In Article 90(2), the following subparagraph is added:

“An additional 0,5 % pre-financing shall be paid in 2022 immediately following the entry into force of this Regulation and an additional 0,5 % pre-financing shall be paid in 2023 for programmes supported by the ERDF, ESF+ or the Cohesion Fund under the Investment for jobs and growth goal. Where a programme is adopted after 31 December 2022, the 2022 instalment shall be paid in the year of adoption.”;

(2) In Article 90(5), the first subparagraph is replaced with the following:

“5. The amount paid as pre-financing for the years 2021 and 2022, with the exception of the additional pre-financing referred to in the last subparagraph of paragraph 2, shall be cleared from the Commission accounts each year. All other amounts paid as pre-financing shall be cleared from the Commission accounts no later than with the final accounting year in accordance with Article 100.”;

(3) in Article 112, the following paragraph is added:

“7. Where a separate priority is established within a programme to support operations promoting the socio-economic integration of third country nationals, a co-financing rate of up to 100% shall be applied to expenditure declared in payment applications until the end of the accounting year ending on 30 June 2024. After that date, the co-financing rate set out in the programme in accordance with the maximum co-financing rates set out in paragraphs 3 and 4 shall apply.

The total amount programmed under such priorities in a Member State shall not exceed 5% of the initial national allocation from the ERDF and the ESF+ combined.

The Commission shall review the co-financing rate by 30 June 2024.

At least 30% of the financial allocation of such a separate priority shall be attributed to operations which have beneficiaries that are local authorities and civil society organisations operating in local communities. Member States shall report on the fulfilment of this condition in the final performance report required under Article 43. Where this condition is not fulfilled, reimbursement by the Commission under the priority concerned shall be reduced proportionately to ensure that this condition is respected when calculating the final balance to be paid to the programme.”;

- (4) the following Article 118a is inserted:

“Article 118a

Conditions for operations subject to phased implementation that were selected for support before 29 June 2022 under Regulation (EU) No 1303/2013

1. Notwithstanding Article 118, an operation with a total cost exceeding EUR 1 000 000 that was selected for support and started before 29 June 2022 under Regulation (EU) No 1303/2013 and Fund-specific Regulations (EU) No 1301/2013 of the European Parliament and of the Council¹², Regulation (EU) No 1304/2013 of the European Parliament and of the Council¹³, Regulation (EU) No 1300/2013 of the European Parliament and of the Council¹⁴, Regulation (EU) No 1299/2013 of the European Parliament and of the Council¹⁵ and Regulation (EU) No 2014/508 of the European Parliament and of the Council¹⁶, shall be deemed eligible for support under this Regulation and the corresponding Fund-specific Regulations in the 2021-2027 programming period.

By way of derogation from Article 73(1) and (2), the managing authority may decide to grant support to such an operation under this Regulation directly, provided the following conditions are met:

¹² Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289)

¹³ Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470)

¹⁴ Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006 (OJ L 347, 20.12.2013, p. 281)

¹⁵ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p.259)

¹⁶ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

- a) the operation has two phases identifiable from a financial point of view with separate audit trails;
- b) the operation falls within actions programmed under a relevant specific objective and is attributed to a type of intervention in accordance with Annex I;
- c) expenditure included in a payment application in relation to the first phase is not included under any payment applications in relation to the second phase;
- d) the Member State commits to complete during the programming period and render operational the second and final phase in the final implementation report, or in the context of the European Maritime and Fisheries Fund in the last annual implementation report, submitted in accordance with Article 141 of Regulation (EU) No 1303/2013.

2. This Article shall not apply to operations addressing migratory challenges resulting from the military aggression by the Russian Federation that are supported by making use of the possibility provided under the first and second subparagraphs of Article 98(4) of Regulation (EU) No 1303/2013.”

(5) in Annex I, the following lines are added at the end of Table 1:

“

INTERVENTION FIELD		Coefficient for the calculation of support to climate change objectives	Coefficient for the calculation of support to environmental objectives
Other codes related to operations subject to phased implementation pursuant to Article 118a			
183	Household waste management: landfill	0%	100%
184	Electricity storage and transmission	100%	40%
185	Natural gas: storage, transmission and distribution	0%	0%
186	Airports	0%	0%
187	Productive investment in large enterprises linked to the low-carbon economy	40%	0%

”

Article 3

This Regulation shall enter into force on the 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

For the Council

The President

The President
