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PROPOSAL

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down specific provisions for the 2014-2020 cooperation programmes supported by the European Neighbourhood Instrument and under the European territorial cooperation goal, following programme implementation disruption

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal provides for targeted changes to the 2014-2020 legal framework established for cooperation programmes under the European Neighbourhood Instrument (ENI)[1] in response to, firstly, Russia's unprovoked and unjustified military aggression against Ukraine and the resulting impact on the European Union and several of its eastern regions in particular; and, secondly, the extended impact of the COVID-19 pandemic on the EU as a whole.

Firstly, as a result of the unprovoked and unjustified military aggression by Russia as well as by the involvement of Belarus in that aggression, the implementation of thirteen cross-border and two transnational cooperation programmes between nine Member States and Ukraine and the Republic of Moldova on the one hand, and Russia and Belarus on the other, are considerably disrupted for different reasons. With regard to the programmes with Ukraine, the disruption consists of the impact of the Russian invasion on the implementation of programmes and projects by actors in Ukraine. In addition, the significant flows of displaced persons both inside Ukraine and out of Ukraine into the Republic of Moldova especially has required public authorities and individuals to concentrate on humanitarian and immediate assistance actions, rather than continue with cooperation projects.

With regard to the programmes involving Russia and Belarus, the disruption is due to the necessary suspension of the Financing Agreements between the EU and Russia and Belarus in early March as a result of the Russian invasion of Ukraine. This has meant a suspension of programme and project implementation with authorities and beneficiaries from these two countries. The suspension is consistent with the prohibition on the provision of financial support to Russian public entities that the Council introduced on 8 April 2022[2].

Secondly, the EU, and several of its eastern regions in particular, are continuing to deal with a significant flow of displaced persons from Ukraine. It is therefore logical and necessary to extend the range of flexible measures already introduced for cohesion policy programmes, including for cross-border cooperation programmes between Member States, to the programmes cooperating directly with Ukraine and the Republic of Moldova to enable them to address this extraordinary situation.

Thirdly, the duration of the COVID-19 pandemic has been longer than could have been expected. The direct and indirect impacts of the pandemic persist in all Member States, requiring prolonged public support for the recovery of the most impacted territorial areas and economic sectors. This has led to very high pressure on the budgets of Member States, thus requiring further exceptional measures to be applied in these circumstances.

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1 Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27) and Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (OJ L 244, 19.8.2014, p. 12).

2 Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 111, 8.4.2022, p. 1).

The two packages of measures under the Coronavirus Response Investment Initiative (CRII) and CRII+ approved by Regulations (EU) 2020/460[3] and (EU) 2020/558[4] respectively in spring 2020 introduced a number of significant changes that enabled a more effective response and provided exceptional additional flexibility to respond to the unprecedented situation. These measures were made applicable also to ENI cooperation programmes through targeted amendments to the ENI-CBC Regulation[5].

Consequently, support from the Funds should be mobilised speedily to alleviate the burden on national budgets. It is therefore necessary, as a temporary and exceptional measure and without prejudice to the rules that should apply under regular circumstances, to extend to the five ENI cross-border programmes with the Republic of Moldova and Ukraine for the accounting years starting from 1 July 2021, 1 July 2022 and 1 July 2023 respectively the possibility to increase the co-financing from the EU budget from 90% to 100%, resulting in no further need of national co-financing.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent with the overall legal framework established for the ENI and establishes targeted provisions replacing certain provisions in Commission Implementing Regulation (EU) No 897/2014[6], which cannot be amended anymore since the underlying Regulation (EU) No 232/2014 is no longer in force since 31 December 2020. The proposal also complements the preceding amendments to Implementing Regulation (EU) No 897/2014 under Commission Implementing Regulation (EU) 2020/879[7]. Finally, it introduces provisions which are inspired by some of the provisions under Regulation (EU) 2022/562[8], thus ensuring consistency of approach across cross-border programmes supported by different instruments.

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3 Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No 1301/2013, (EU) No 1303/2013 and (EU) No 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative) (OJ L 99, 31.3.2020, p. 5).

4 Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak (OJ L 130, 24.4.2020, p. 1).

5 Commission Implementing Regulation (EU) 2020/879 of 23 June 2020 amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the implementation of cross-border cooperation programmes financed under the European Neighbourhood Instrument with specific measures in response to the COVID-19 pandemic (OJ L 203, 26.6.2020, p. 59).

6 Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (OJ L 244, 19.8.2014, p. 12).

7 Commission Implementing Regulation (EU) 2020/879 of 23 June 2020 amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the implementation of cross-border cooperation programmes financed under the European Neighbourhood Instrument with specific measures in response to the COVID-19 pandemic (OJ L 203, 26.6.2020, p. 59).

8 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).

The proposal is also consistent with the overall legal framework established for transnational cooperation under Regulation (EU) No 1299/2013[9] and is limited to targeted and exceptional derogations thereof.

- **Consistency with other Union policies**

The proposal is limited to targeted and exceptional adaptations of the existing legal framework created by Implementing Regulation (EU) No 897/2014 and Regulation (EU) No 1299/2013 and maintains consistency with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Articles 178, 209(1) and 212(2) of the Treaty on the Functioning of the European Union.

Articles 209(1) and 212(2) TFEU are the legal basis for ENI, while Article 178 TFEU is the legal basis for European territorial cooperation.

- **Subsidiarity (for non-exclusive competence)**

The proposal aims to facilitate the use of ENI and cohesion policy resources by Member States and regions to support measures to address migratory challenges as a result of the military aggression by Russia, allow for a derogation from the normal co-financing rules currently applicable in order to allow for the necessary flexibility to mobilise existing investment resources to address the direct and indirect effects stemming from the Russian invasion of Ukraine and the unprecedented public health crisis in the context of the COVID-19 pandemic and facilitate legal certainty for other aspects which programme authorities have to face.

- **Proportionality**

The proposal is an exceptional and targeted change not going beyond what is necessary to achieve the objective of facilitating the use of ENI and cohesion policy resources to support measures to address migratory challenges as a result of the military aggression by Russia and the resulting programme implementation disruption.

- **Choice of the instrument**

A Regulation is the appropriate instrument to facilitate the use of ENI and cohesion policy resources to support measures to address migratory challenges as a result of the military aggression by Russia, to extend the possibility of 100% co-financing needed to address these unprecedented circumstances and to give the necessary legal certainty.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

[9] 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).

- **Stakeholder consultations**

The proposal follows high level exchanges with Member States and the programme authorities. A public consultation is not required given that there is no need for an impact assessment.

- **Collection and use of expertise**

N/A

- **Impact assessment**

An impact assessment has been carried out to prepare the proposal for Regulation (EU) No 232/2014. These current targeted changes to respond to critical situations do not require a separate impact assessment.

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

The proposal only concerns ENI-CBC programmes from the 2014-2020 period and does not modify existing budgetary commitments. It will facilitate an acceleration of programme implementation and alleviate the burden on beneficiaries and national budgets in the countries most impacted by the war (Ukraine, the Republic of Moldova and the Member States participating in cross-border cooperation with them). Given that the financial implementation of ENI-CBC programmes is made through pre-financing payments of up to 100% of the committed EU (ENI and ERDF) funds and that most of the pre-financing has been already paid by the Commission to the programmes, the proposed measure will not impact payment appropriations in either 2022 or in 2023, as 2023 is the last year of eligibility of expenditure for projects.

The proposed modification does not require changes in the Multiannual Financial Framework annual ceilings for commitments and payments as per Annex I to Council Regulation (EU, Euratom) 2020/2093, and does not imply changes to the overall payment needs over the 2022-2024 period.

The proposed modification does not entail additional administrative expenditure for the Commission.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the measures will be monitored and reported upon in the framework of the general reporting mechanisms established in Regulations (EU) No 232/2014 and (EU) No 1303/2013.

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

It is proposed to lay down targeted provisions replacing certain provisions of Regulation (EU) No 897/2014 and derogating from certain provisions of Regulation (EU) No 1299/2013 where a newly defined situation of programme implementation disruption is in existence, as follows:

- The different types of programme implementation disruption are defined (Article 2);
- In order to apply a 100% co-financing for ENI-CBC programmes, the option of waiving any need for co-financing (Article 12 of Implementing Regulation (EU) No 897/2014) and a simplified procedure (Article 16 of Implementing Regulation (EU) No 897/2014) are set out in Articles 3 and 4;
- In order to apply retroactive eligibility to the start of the Russian invasion (Article 48 of Implementing Regulation (EU) No 897/2014) for projects addressing migratory challenges in ENI-CBC programmes, such eligibility is fixed as of 24 February 2022 in Article 5;
- In order to speed up the necessary changes to projects already approved (Article 26(3), point (e), of Regulation (EU) No 897/2014) and in the middle of their implementation, including large infrastructure projects (Article 38(4) of Implementing Regulation (EU) No 897/2014), the appropriate actions by the programme managing authorities are set out in Article 6;
- In order to offer more flexibility to the verifications to be carried out by the managing authority (Article 26(5) and (6) of Implementing Regulation (EU) No 897/2014), certain regulatory obligations notably in relation to on-the spot checks are reduced in Article 7;
- The genuine cross-border impact of projects (Articles 39 and 45 of Implementing Regulation (EU) No 897/2014) being a key requirement for these programmes, flexibility is established in Articles 8 and 9 with regard to the remaining project partners in Member States who implemented their part of the joint projects correctly and in good faith;
- In order to also give flexibility to lead beneficiaries with regard to their regulatory obligations towards the programme authorities on behalf of the whole project partnership (Article 46 of Regulation (EU) No 897/2014), the necessary adaptions are set up in Article 10;
- In order to speed up the selection and granting for new projects, the procedure to confirm projects under direct award (Article 41 of Implementing Regulation (EU) No 897/2014) is simplified in Article 11;
- In order to simplify financial transfers and to enable direct transfers without payments passing via lead beneficiaries (Article 63 of Implementing Regulation (EU) No 897/2014), the necessary adaptations are set out in Article 12;
- In order to change the method to convert into euro as chosen at the beginning of programme implementation (Article 67 of Implementing Regulation (EU) No 897/2014) and to adapt it to the unenvisaged fluctuations of exchange rates, an option to be able to choose again the point in time of the conversion is introduced in Article 13;
- Due to programme implementation disruption, the system of the normal recovery chain, off-sets and repayments (Articles 74 to 76 of Implementing Regulation (EU) No 897/2014) may be interrupted or impossible to implement. The necessary adaptations to the regulatory steps to be carried out by managing authorities are established in Article 14;

- Two transnational cooperation programmes covered by Regulation (EU) No 1299/2013 involve cooperation with Ukraine and the Republic of Moldova ("the Danube Transnational Programme"), and Russia and Belarus ("the Interreg Baltic Sea Region Programme") and amendments to the relevant cohesion policy provisions as a consequence of the Russian invasion of Ukraine are required to enable these programmes to function effectively. Most of the adaptations introduced under Articles 3 to 14 can only apply by derogating from the respective provisions of Regulation (EU) No 1299/2013. The necessary adaptations for these two programmes are therefore established in Article 15;

These targeted measures should enter into force so as to take effect as soon as possible (Article 16).

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laying down specific provisions for the 2014-2020 cooperation programmes supported by the European Neighbourhood Instrument and under the European territorial cooperation goal, following programme implementation disruption

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 Articles 178, 209(1) and 212(2) 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 Committee[10],

Having regard to the opinion of the Committee of the Regions[11],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In its conclusions of 24 February 2022, the European Council condemned Russia's unprovoked and unjustified military aggression against Ukraine as well as the involvement of Belarus in that aggression. As a result of the aggression, the Commission has suspended the financing agreements for cooperation programmes between the European Union and Russia or Belarus respectively, and, where relevant, the Member State hosting the concerned programme's managing authority. Since the start of Russia's military aggression against Ukraine, the EU has imposed a series of new sanctions against Russia and Belarus[12].

(2) The Russian aggression has disrupted the implementation of thirteen cross-border cooperation programmes (ENI-CBC programmes) supported by the European Neighbourhood Instrument (ENI) established by Regulation (EU) No 232/2014 of the European Parliament and of the Council[13] between nine Member States hosting a programme's managing authority and Ukraine, the Republic of Moldova, Russia and Belarus.

(3) The fraudulent nature of the August 2020 presidential elections in Belarus and the violent crackdown on peaceful protests already led to the recalibration of the Union's assistance to Belarus following the Council Conclusions on Belarus No 11661/20 of 12 October 2020.

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10 OJ C , , p. .

11 OJ C , , p. .

12 Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 111, 8.4.2022, p. 1).

13 Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

(4) As a result of the Russian military aggression against Ukraine, the Union and its eastern regions in particular, as well as the western parts of Ukraine and the Republic of Moldova are facing a substantial inflow of displaced persons. This poses an additional challenge to the Member States and other countries bordering Ukraine, which could spread further to other Member States, especially at a time when their economies are still recovering from the impact of the COVID-19 pandemic.

(5) Moreover, two transnational cooperation programmes supported by the ENI and the European Regional Development Fund (ERDF), namely the Baltic Sea Region programme with the participation of Russia, and the Danube programme with the participation of Ukraine and the Republic of Moldova, were considerably disrupted by the Russian military aggression against Ukraine or, with regard to the Republic of Moldova, by the flows of displaced persons from Ukraine resulting directly from that aggression.

(6) Since the respective notification of the suspension of the financing agreements for cooperation programmes with Russia and Belarus, any programme and project implementation with these countries is suspended. It is necessary to lay down specifc rules on the continued implementation of the cooperation programmes supported by the ENI and the ERDF, even in the event of termination of the respective financing agreement.

(7) The implementation of cooperation programmes supported by the ENI is governed by Commission Implementing Regulation (EU) No 897/2014[14]. However, Implementing Regulation (EU) No 897/2014 cannot be amended as necessary, because its legal basis, Regulation (EU) No 232/2014 is no longer in force since 31 December 2020. Consequently, it is necessary to lay down specific provisions with regard to the continued implementation of the cooperation programmes concerned in a separate instrument.

(8) The financing agreements for cooperation programmes with Ukraine and the Republic of Moldova are not suspended. However, programme implementation is considerably impacted byRussia's unprovoked and unjustified military aggression against Ukraine and a substantial flow of displaced persons from Ukraine towards the Republic of Moldova. In order to address the challenges for programme partners, programme authorities and project partners, it is necessary to lay down specific rules on the continued implementation of the cooperation programmes concerned.

(9) With a view to alleviating the burden on public budgets arising from the need to respond to Russia's unprovoked and unjustified military aggression against Ukraine and to a substantial flow of displaced persons from Ukraine, the co-financing rule laid down in Implementing Regulation (EU) No 897/2014 should not apply for the Union contribution.

(10) The modification of the co-financing rate should only require a notification of revised financial tables to the Commission and other procedural arrangements, the rules on adjustments and revisions of programmes should be simplified for the programmes directly affected by the military aggression against Ukraine or by a substantial flow of displaced persons from Ukraine. Any potential consequential amendments, including

[14] Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (OJ L 244, 19.8.2014, p. 12).

to the target values of indicators, should be allowed as part of a subsequent programme amendment after the end of the accounting year.

(11) Expenditure for projects addressing the migratory challenges as a result of the Russian military aggression against Ukraine should be eligible from the start date of that aggression, that is to say, 24 February 2022.

(12) Although the management of projects already selected by the joint monitoring committee is the responsibility of the managing authority, under some programmes certain project amendments are to be approved by the joint monitoring committee. In order to speed up the necessary changes, it is therefore necessary to establish that the responsibility for amending the documents setting out the conditions for support to projects affected by a programme implementation disruption in accordance with the national law of the managing authority lies only with the respective managing authority, without prior approval by the joint monitoring committee. Such amendments should, among others, cover the replacement of the lead beneficiary and any changes of the financing plan and of the execution deadlines. With regard to new projects, the managing authority should explicitly be allowed to sign contracts other than contracts for large infrastructure projects beyond 31 December 2022. However, all project activities financed by the programme should end on 31 December 2023 at the latest.

(13) The Russian aggression against Ukraine has caused higher than expected inflation and an unexpected increase in supply and construction prices, which together affect the implementation of large infrastructure projects in the programmes concerned. In order to remedy that situation, the share of the Union contribution allocated to such projects should be allowed to exceed the ceiling set out in Article 38(4) of Implementing Regulation (EU) No 897/2014, namely 30% at the closure of the programme, provided that the excess is only due to an unexpected increase in supply and construction prices.

(14) Verifications carried out by the managing authority consist of administrative and on-the-spot project verifications. Due to programme implementation disruption, it could no longer be possible to carry out on-the-spot project verifications in Ukraine. Therefore, it is necessary to provide for the possibility to carry out only administrative verifications. In addition, where an infrastructure component of a project was destroyed before verifications could be carried out, it should be allowed to declare the related expenditure for clearance of accounts on the basis of a declaration of honour from the beneficiary stating that the project before its destruction corresponded to the content set out in invoices or documents of equivalent probative value.

(15) Pursuant to Article 39(1) of Implementing Regulation (EU) No 897/2014, projects may receive financial contribution if they meet a set of detailed criteria. Due to programme implementation disruption, one or more of those criteria, in particular the requirement that the project has a clear cross-border or transnational cooperation impact, might not be fulfilled at the start of the disruption or at the closure of a given project. Furthermore, the basic condition to involve beneficiaries from at least one of the participating Member States and at least one of the participating partner countries might not be respected anymore. It is therefore necessary to determine whether expenditure can nevertheless be considered as eligible despite the fact that some conditions for financing might no longer be met due to programme implementation disruption.

(16) As a result of programme implementation disruption, many projects will *de facto* not have a partner from a partner country. In order to make it possible for the beneficiaries

in Member States to finalise their activities, it is appropriate to derogate exceptionally from the obligation for all projects to have at least one beneficiary from a partner country and for all activities to have genuine cross-border or transnational impact and benefits.

(17) The obligations of a lead beneficiary cover all activities linked to project implementation. As a result of project implementation disruption, lead beneficiaries could be prevented from carrying out their obligations on the side of a partner country. The lead beneficiary's obligations should therefore be adapted and, where necessary, limited to project implementation on the side of the Member States. Lead beneficiaries should also be allowed to amend the written agreement with the other project partners and to suspend certain activities or the participation of certain partners. Finally, the obligation of lead beneficiaries to transfer payments received from the managing authority to other partners should be waived or at least adapted.

(18) In order for the affected programmes to address the exceptional circumstances, it is necessary to provide that projects addressing the migratory challenges can be selected without a prior call for proposals in exceptional cases and with a due justification.

(19) Following the suspension of the financing agreements with partner countries, payments related to the Russian or Belarusian participation have been suspended. Moreover, in Ukraine the extraordinary measures taken by the National Bank and the security situation resulting from the Russian military aggression against it inhibit the transfer of money abroad. It is therefore appropriate to allow for direct payment of the grants from the managing authority to the project beneficiaries in Member States and in partner countries whose financing agreements are not suspended.

(20) ENI-CBC programmes are required to set out the method of converting expenditure incurred in a currency other than the euro. That method is to apply throughout the programme duration. Due to the financial and economic consequences of the Russian military aggression against Ukraine, there are unexpected fluctuations of exchange rates. It is therefore necessary to provide for the possibility to change that method.

(21) Due to programme implementation disruption, managing authorities could be unable to receive bank transfers from certain partner countries, resulting in the impossibility to recover debts from project beneficiaries located in such countries. In the case of a partner country which has transferred part of its national contribution to the managing authority, those amounts should be used to off-set such debts. In the case of other partner countries, recovery orders regarding irrecoverable debts should be waived or handled by the Commission.

(22) In accordance with Article 26 of Regulation (EU) No 1299/2013 of the European Parliament and of the Council[15], the applicable programme implementation conditions governing the financial management as well as the programming, monitoring, evaluation and control aspects of the participation of third countries, through a contribution of ENI resources to transnational cooperation programmes, are to be established in the relevant cooperation programme and also, where necessary, in the financing agreement between the Commission, the governments of the third countries concerned and the Member State hosting the managing authority of the relevant cooperation programme. Although the applicable programme implementation

[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).

conditions governing such aspects could be adapted by an amendment of the cooperation programme, it is necessary to provide for some derogations from certain provisions of Regulation (EU) No 1299/2013 in order to allow for the application of the provisions established for the ENI-CBC programmes also to the two transnational cooperation programmes referred to in part 2 of the Annex.

(23) Since the objectives of this Regulation, namely to establish specific provisions regarding the implementation of the cooperation programmes affected by the Russian military aggression against Ukraine, cannot be sufficiently achieved by the Member States alone and can therefore, 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. 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.

(24) The funding provided in the context of this Regulation is to comply with the conditions and procedures set out by the restrictive measures adopted pursuant to Article 215 of the Treaty[16].

(25) In view of the urgency to address the migratory challenges resulting from the Russian military aggression against Ukraine and the continued public health crisis stemming from the COVID-19 pandemic, it is considered necessary to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(26) In order to allow Member States to amend their programmes in time to benefit from the application of the option of no co-financing to the Union contribution for the accounting year 2021/2022, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down specific provisions for thirteen cross-border cooperation programmes governed by Regulation (EU) No 232/2014 and two transnational cooperation programmes governed by Regulation (EU) No 1299/2013 listed in the Annex to this Regulation with regard to programme implementation disruption following Russia's unprovoked and unjustified military aggression against Ukraine and the involvement of Belarus in that aggression.

2. Articles 3 to 14 shall apply to the cross-border cooperation programmes governed by Regulation (EU) No 232/2014, which are listed in part 1 of the Annex to this Regulation.

[16] www.sanctionsmap.eu. The sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy, the OJ prevails.

3. Article 15 shall apply to the transnational cooperation programmes governed by Regulation (EU) No 1299/2013, which are listed in part 2 of the Annex to this Regulation.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

   (1) 'programme implementation disruption' means programme implementation problems as a result of either of the following situations or a combination of both:

      (a) the suspension in part or in full or the termination of a financing agreement concluded with a partner country which participates in a cooperation programme listed in the Annex as a consequence of restrictive measures adopted in accordance with Article 215 of the Treaty;

      (b) an unprovoked and unjustified military aggression against a partner country which participates in a cooperation programme listed in the Annex or substantial flows of displaced persons into such a country.

   (2) 'partner country' means any of the countries participating in a cooperation programme listed in the Annex, with the exception of Member States.

2. For the purposes of Articles 3 to 14, the definitions set out in Article 2 of Implementing Regulation (EU) No 897/2014 shall also apply.

Article 3

Co-financing

In the situation referred to in Article 2(1), point (1)(b), no co-financing of the Union contribution from Member States or partner countries shall be required for expenditure incurred and paid and included in the annual accounts for the accounting years starting 1 July 2021, 1 July 2022 and 1 July 2023 respectively.

Article 4

Programming

1. The application of Article 3 shall not require a Commission decision approving a programme amendment. The managing authority shall notify the revised financial tables to the Commission before the submission of the annual accounts for the accounting year 2021/2022 following prior approval by the Joint Monitoring Committee.

2. Adjustments of the programme consisting of cumulative changes that do not exceed 30% of the originally allocated Union contribution to each thematic objective or to technical assistance involving transfer between thematic objectives or from technical assistance to thematic objectives or involving transfer from thematic objectives to technical assistance shall be considered as non-substantial and may therefore be directly made by the managing authority, with the prior approval of the Joint Monitoring Committee. Such adjustments shall not require a Commission decision.

3. The cumulative changes referred to in paragraph 2 shall not require any further justification beyond invoking programme implementation disruption and may, if possible, reflect the expected impact of the changes to the programme.

Article 5

Eligibility of expenditure for projects addressing the migratory challenges

Expenditure for projects addressing the migratory challenges as a result of programme implementation disruption shall be eligible as of 24 February 2022.

Article 6

Projects

1. Following a programme implementation disruption, the managing authority may amend the documents setting out the conditions for support to projects affected by that disruption in accordance with national law of the managing authority and without prior approval of those amendments by the joint monitoring committee.

   Those amendments may also cover the replacement of the lead beneficiary, changes to the financing plan and of the execution deadlines.

2. The managing authority may sign contracts, other than contracts for large infrastructure projects, after 31 December 2022, provided all project activities financed by the programme end on 31 December 2023 at the latest.

3. The share of the Union contribution allocated to large infrastructure projects may exceed 30% at the closure of the programme, provided the excess is only due to an unexpected increase in supply and construction prices following higher than expected inflation.

Article 7

Functioning of the managing authority

1. Verifications carried out by the managing authority may be limited to administrative verifications, where on-the-spot project verifications are not possible. Where it is not possible to carry out any verifications, the related expenditure shall not be declared for clearance of accounts.

2. However, where an infrastructure component of a project was destroyed before verifications could be carried out, the related expenditure may by declared for clearance of accounts on the basis of a declaration of honour from the beneficiary stating that the project before its destruction corresponded to the content set out in invoices or documents of equivalent probative value.

Article 8

Cross-border cooperation impact of projects

1. In the context of the implementation of projects affected by a programme implementation disruption, the cross-border cooperation impact and benefits of projects shall be assessed in three phases:

   (a) a first phase up to the date on which the programme implementation disruption started;

(b) a second phase as of the date referred to in point (a);

(c) a third phase after the programme implementation disruption has ended.

With regard to the first and third phases, referred to in points (a) and (c), respectively, of the first subparagraph, the indicators and related target values used for that assessment shall be those achieved by the beneficiaries in the Member States and in the partner countries, provided that the beneficiaries in the partner countries have been able to provide the relevant information to the managing authority.

With regard to the second phase, referred to in point (b) of the first subparagraph, the indicators and related target values used for that assessment shall be those achieved by the beneficiaries in the Member States and in those partner countries whose financing agreements are not suspended and who are not in a situation under Article 2(1), point (1)(b).

2. The eligibility of expenditure in projects shall be assessed in accordance with paragraph 1, as regards the cross-border cooperation impact and benefits aspect.

3. In the situation referred to in Article 2(1), point (1)(b), projects including an infrastructure component located in a partner country shall not be required to repay the Union contribution where it is not possible to satisfy the obligation not to be subject to substantial changes within five years of the project closure or within the period of time set out in State aid rules.

Article 9

Participation in projects

1. As of the date when a cooperation programme faces programme implementation disruption, on-going projects may continue even where none of the beneficiaries of a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), can participate any longer.

2. As of the date when a cooperation programme faces programme implementation disruption, the Joint Monitoring Committee may select new projects even where no beneficiary of a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), is able to participate at the moment of selection.

3. As of the date when a programme implementation disruption ends, the managing authority may amend the document setting out the conditions for support to projects in order to also cover beneficiaries of a partner country included in the project application without prior approval by the Joint Monitoring Committee.

Article 10

Lead beneficiaries' obligations

1. Following a programme implementation disruption and as long as such a disruption persists, the lead beneficiary in a Member State shall not be required to:

(a) assume responsibility for the non-implementation of the part of the project affected by the disruption;

(b) ensure that the expenditure presented by the beneficiaries affected by the disruption has been incurred for the purpose of implementing the project and

corresponds to activities set out in the contract and agreed between all beneficiaries;

(c) verify that the expenditure presented by the beneficiaries affected by the disruption has been examined by an auditor or by a competent public officer.

2. Following a programme implementation disruption, the lead beneficiary in a Member State shall have the right to amend and adapt unilaterally the partnership agreement with the other beneficiaries.

That right shall also include the possibility to suspend the activities of a beneficiary from a partner country in full or in part, as long as the programme implementation disruption persists.

3. The lead beneficiary in a Member State may propose to the managing authority the necessary changes to be made to the project including the redistribution of project activities among the remaining beneficiaries.

4. Following a programme implementation disruption, the lead beneficiary in a Member State may request the managing authority not to receive the financial contribution for the implementation of project activities in full or in part.

The lead beneficiary in a Member State shall not be required to ensure that beneficiaries in partner countries receive the total amount of the grant as quickly as possible and in full.

5. In the situation referred to in Article 2(1), point (1)(b), the lead beneficiary in a Member State and the managing authority, in agreement with the audit authority, may verify and accept a payment request without a prior verification by an auditor or by a competent public officer of the expenditure declared by a beneficiary located in a partner country.

6. Paragraphs 1 to 4 shall also apply to lead beneficiaries in a partner country which is not in the situation referred to in Article 2(1), point (1)(a).

In addition, and for the duration of the programme implementation disruption, such a lead beneficiary may also request the managing authority to identify another beneficiary as lead beneficiary and to make direct payments to other beneficiaries of the project concerned.

Article 11

Direct award

Following a programme implementation disruption, and for the duration of the disruption, projects addressing migratory challenges as a result of military aggression against a participating country may be selected by the joint monitoring committee without a prior call for proposals in exceptional cases and with a due justification.

Article 12

Payments

Following a programme implementation disruption and without prejudice to Article 6(1), the managing authority may transfer the financial contribution for the implementation of the project activities directly to project beneficiaries other than the lead beneficiary.

Article 13

Use of the euro

The method chosen to convert expenditure incurred in a currency other than the euro into euro as set out in the programme, may be changed retroactively as of the start date of a programme implementation disruption, using the monthly accounting exchange rate of the Commission of one of the following months:

(a) the month during which the expenditure was incurred;

(b) the month during which the expenditure was submitted for examination by an auditor or by a competent public officer;

(c) the month during which the expenditure was reported to the lead beneficiary.

Article 14

Financial responsibilities, recoveries and repayment to the managing authority

1. Following a programme implementation disruption and for the duration of the disruption, the managing authority shall be required to follow all the steps necessary for pursuing the recovery of amounts unduly paid from beneficiaries in partner countries or from lead beneficiaries in Member States or partner countries in accordance with the procedure set out in paragraphs 2 to 5.

2. The managing authority may decide to recover amounts unduly paid directly from a beneficiary in a Member State without prior recovery through the lead beneficiary in a partner country.

3. The managing authority shall prepare and send out recovery letters in order to recover amounts unduly paid.

   However, in the case of a negative response or absence of reaction from beneficiaries in partner countries or from the partner country in which the beneficiary is established, the managing authority shall not be required to pursue an administrative procedure or to attempt a recovery from a respective partner country or to launch a legal redress procedure in the partner country concerned.

   The managing authority shall document its decision not to pursue a first attempt of recovery. That document shall be considered as sufficient proof of due diligence exercised by the managing authority.

4. Where the recovery relates to a claim against a beneficiary established in a partner country in the situation referred to in Article 2(1), point (1)(a), and whose co-financing is transferred to the managing authority, the managing authority may offset the claim to be recovered with the non-used funds previously transferred by the partner country to the managing authority.

5. Where the recovery relates to a claim against a beneficiary established in a partner country in the situation referred to in Article 2(1), point (1)(a), and where the managing authority is unable to offset it in accordance with paragraph 4, the managing authority may request that the Commission takes over the task of recovering the amounts.

   Where the beneficiary concerned is subject to an asset freeze or a prohibition to make funds or economic resources available to it, or for its benefit, either directly or indirectly, pursuant to restrictive measures adopted in accordance with Article 215 of

the Treaty, the managing authority shall be obliged to request that the Commission takes over the task of recovering the amounts. The managing authority shall pass its rights vis-à-vis the beneficiary to the Commission to that end.

The managing authority shall inform the joint monitoring committee about any recovery procedure taken over by the Commission.

Article 15

Derogations from Regulation (EU) No 1299/2013 applicable to transnational programmes

1. By way of derogation from Article 12(1) and (2) of Regulation (EU) No 1299/2013, the monitoring committee or a steering committee set up by the monitoring committee and acting under its responsibility may select new operations even without any beneficiary from a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), provided that transnational impacts and benefits are identified.

   The monitoring or steering committee may also select new projects even where no beneficiary of a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), is able to participate at the moment of the selection.

2. By way of derogation from Article 12(2) and (4) of Regulation (EU) No 1299/2013, on-going operations may continue even where none of the beneficiaries from a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), can participate any longer in the project implementation.

   In the context of the implementation of operations affected by a programme implementation disruption, the transnational cooperation impact and benefits thereof shall be assessed in accordance with Article 8(1) and (3) of this Regulation.

3. By way of derogation from Article 12(5) of Regulation (EU) No 1299/2013, the managing authority may amend the documents setting out the conditions for support of the operations affected by a progamme implementation disruption in accordance with its national law.

   Those amendments may also cover the replacement of the lead beneficiary, changes to the financing plan and to the time limits for execution.

   As of the date when a programme implementation disruption ends, the managing authority may amend the document setting out the conditions for support of the operations in order to also cover beneficiaries of a partner country facing a situation referred to in Article 2(1), point (1)(a) or (b), included in the application document.

4. By way of derogation from Article 13(2) of Regulation (EU) No 1299/2013, Article 10 of this Regulation shall apply to the rights and obligations of the lead beneficiaries.

5. By way of derogation from Article 21(2) of Regulation (EU) No 1299/2013 and without prejudice to paragraph 3 of this Article, the certifying authority may make payments directly to beneficiaries other than the lead beneficiary.

6. By way of derogation from Article 23(4) of Regulation (EU) No 1299/2013, Article 7 of this Regulation shall apply to the management verifications carried out by the managing authority and the controllers.

7. By way of derogation from Article 27(2) and (3) of Regulation (EU) No 1299/2013, Article 14 of this Regulation shall apply as regards the recovery of amounts unduly paid and repayments to the managing authority.

8. By way of derogation from Article 28 of Regulation (EU) No 1299/2013, Article 13 of this Regulation shall apply as regards the method chosen to convert expenditure incurred in a currency other than the euro into euro.

9. The derogations provided for in paragraphs 1 to 8 shall apply as of the date when the transnational programmes concerned face a programme implementation disruption and as long as that disruption persists.

Article 16

Entry into force

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*