



Council of the
European Union

Brussels, 16 March 2022
(OR. en)

7071/22

**Interinstitutional File:
2022/0077(COD)**

**JAI 321
FRONT 109
ASIM 21
MIGR 82
CADREFIN 29
CODEC 268
COMIX 127**

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 7070/22
No. Cion doc.: 6992/22 INIT + COR 1

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 514/2014 laying down general provisions on the Asylum, Migration and Integration Fund amending Regulation (EU) 514/2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and amending Regulation (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund and amending Regulation (EU) 2021/1147 establishing the Asylum, Migration and Integration Fund
– *Analysis of the final compromise text with a view to agreement*

At its meeting on 16 March 2022, the Permanent Representatives Committee agreed the final compromise texts, as set out in the Annex to this note, with a view to reaching agreement with the European Parliament.

2022/0077 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 514/2014 laying down general provisions on the Asylum, Migration and Integration Fund amending Regulation (EU) 514/2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management

and

amending Regulation (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund

and

amending Regulation (EU) 2021/1147 establishing the Asylum, Migration and Integration Fund

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 78(2), Article 79(2) and (4), Article 82(1), Article 84 and Article 87(2),

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The invasion of Ukraine by the Russian Federation on 24 February 2022 led to a mass influx of displaced persons from Ukraine to several Member States. This places renewed pressure on the financial resources of Member States to deal with urgent migration, border management and security needs. Taking into account the nature and dimension of the crisis, these unforeseen needs will persist beyond 2022.
- (2) Since 1 January 2014 the Union's Home Affairs policy for migration, border management and security has been supported by funding from the Asylum, Migration and Integration Fund³ and the Internal Security Fund insofar as it concerns the instrument for financial support for external borders and visa,⁴ as well as the Internal Security Fund insofar as it concerns the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (the "Home Affairs Funds 2014-2020").

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).

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

- (3) It is necessary to extend the implementation period of the Home Affairs Funds 2014-2020 by one year, to allow the Member States to fully use any unspent funds from these programmes, and, if necessary, to swiftly revise the implementation of their programmes as needed to address the unforeseen challenges arising from the invasion of Ukraine.
- (4) It is also necessary to provide for more flexibility in the use of earmarked resources under Regulation (EU) No 516/2014 of the European Parliament and of the Council that currently prevents unspent funds of the 2014-2020 programming period from being used for actions to address pressing needs arising from the invasion of Ukraine.
- (5) Regulation (EU) No 514/2014 of the European Parliament and of the Council⁵ lays down general rules for the implementation of the Home Affairs Funds 2014-2020 with regard to, *inter alia*, the financing of expenditure and the implementation period, that limits the eligibility of Member States' disbursements to 30 June 2023 at the latest, and sets the closure of the implementation period on 31 December 2023.
- (6) As of 1 January 2021, under the Multiannual Financial Framework for 2021-2027, a renewed package of Funds in the area of migration and border management entered into application in the form of the new Asylum, Migration and Integration Fund,⁶ the Instrument for Financial Support for Border Management and Visa Policy⁷ and the Internal Security Fund⁸ (the "Home Affairs Funds 2021-2027").

⁵ OJ L 150, 20.5.2014, p. 112.

⁶ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021. p. 1).

⁷ Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021. p. 48).

⁸ Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund (OJ L 251, 15.7.2021. p. 94).

- (7) Although the Home Affairs Funds 2021-2027 entered into force on 15 July 2021, and became applicable on 1 January 2021, the programmes of the Member States have not [as of the adoption date of this present Regulation,] yet been approved.
- (8) In order to ensure continuity in the implementation of the policy objectives of the Home Affairs Funds 2014-2020 and 2021-2027, as well as to allow for a smooth transition between the programming period for 2014-2020 and that for 2021-2027, thereby minimising the administrative burden for Member States, it is necessary for some overlap to exist between the implementation of the respective funding instruments.
- (9) This necessity is expressly recognised by the legal bases of the Home Affairs Funds 2021-2027 and Regulation (EU) 2021/1060⁹, which allow for retroactive eligibility of expenditure as of 1 January 2021.

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 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, 30.06.2021. p. 159).

- (10) Despite those provisions to help bridge the gap between the funding instruments, the end date of the implementation of the Home Affairs Funds 2014-2020 and the anticipated dates for approval of the programmes under the Home Affairs Funds 2021-2027 risk exposing the Member States to a considerable funding gap. This may result in ensuing liquidity problems due to the additional pressure on their migration and border management activities following the mass influx of displaced persons from Ukraine.
- (11) The risk is exacerbated by the fact that the HOME Affairs Funds 2014-2020 follow a shorter cycle for implementing budgetary commitments (the N+2 rule) that is not aligned to other EU funding instruments in shared management, such as Cohesion Funds, where a longer implementation period (N+3) applies. This N+3 rule¹⁰ will apply to the HOME Affairs Funds 2021-2027 as set out in Regulation (EU) 2021/1060 for the period 2021-2027.

¹⁰ Budgetary commitments relating to the operational programmes are made per annual tranches. The N+3 rule foresees that a commitment made at year N has to be covered by the same amount of pre-financing and interim payment claims before 31 December N+3 (for example, a commitment made in 2014 has to be fully covered by pre-financing and payment claims before 31 December 2017). The amount not covered is de-committed, which means that the Member State loses the funding. The purpose of the rule is to ensure financial discipline in managing the EU funds by obliging the Member States to implement the projects in a dynamic manner and to avoid problems at the very end of the cycle.

- (12) Due, in part, to reasons outside the control of the Member States, such as implementation delays caused by the Coronavirus pandemic in 2020-2021, available data on the state of play of implementation by Member States indicate a high risk of decommitting funds, that could otherwise be used to address newly arisen needs. Meanwhile, extending the deadline for implementing funds by one year would make it possible for Member States to make full use of the budgetary commitments within the 2014-2020 programmes to address the challenges they are now facing due to events in Ukraine.
- (13) Regulation (EU) No 514/2014 recognises that, in the light of new or unforeseen circumstances, at the initiative of the Commission or the Member State concerned, an approved national programme may be re-examined and, if necessary, revised for the rest of the programming period. Pursuant to this, it should be appropriate to consider the war in Ukraine as constituting ‘new or unforeseen circumstances’ to justify a re-examination and operational re-direction of the programme’s implementation, in the light of these new needs and within the specific objectives of the previously adopted programme.
- (14) In order to grant Member States continued access to unspent amounts under the Home Affairs Funds 2014-2020, it is necessary to extend the eligibility period of those funds by one year, and to make the necessary related adjustments to the dates applicable to the implementation, reporting, evaluation and closure of the programmes, as well as the dates related to decommitted amounts.

- (15) To ensure that the extension of the eligibility period is introduced in the clearest way possible, it is necessary to establish one final key date by which expenditure must be both incurred and disbursed.
- (16) Regulation (EU) 2018/2000 of 12 December 2018¹¹ amended Regulation (EU) No 516/2014 to unblock access to resources earmarked for the transfer or applicants and beneficiaries of international protection and to allow their use for certain other actions under the national programme. It is necessary to extend this principle of flexibility to address pressing needs in the light of new or unforeseen circumstances, particularly to address the new asylum and migration management needs of Member States arising from the invasion of Ukraine.
- (17) In order to unblock access to all available funds and avoid their loss through decommitment of unused resources previously earmarked for certain specific purposes under Regulation (EU) No 516/2014, including resources for specific actions and for the Union Resettlement programme, it is necessary to offer Member States flexibility to exceptionally use these resources in the light of new or unforeseen circumstances, such as those arising as a result of the invasion of Ukraine.

¹¹ Regulation (EU) 2018/2000 of the European Parliament and of the Council of 12 December 2018 amending Regulation (EU) No 516/2014 of the European Parliament and of the Council, as regards the recommitment of the remaining amounts committed to support the implementation of Council Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation of those amounts to other actions under the national programmes (OJ L 328, 21.12.2018. p. 78).

- (18) To enhance the scope of available funding sources to help deal with unforeseeable future events, it is appropriate to provide Member States and other public or private donors with the possibility, under the 2021-2027 programming period, to make additional financial contributions to asylum and migration management, in the form of external assigned revenue. This external assigned revenue will constitute a dedicated contribution from Member States and other public or private donors to finance specific items of expenditure under the Asylum, Migration and Integration Funds for 2021-2027, and will allow an added preparedness measure for funding asylum and migration activities in Member States during crises such as those arising from the invasion of Ukraine.
- (19) The support provided under the AMIF should be complementary notably to actions financed under other Union Funds, in particular under cohesion policy, to maximise the impact of available funding
- (20) Regulation (EU) No 514/2014 and Regulation (EU) No 516/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 514/2014 is amended as follows:

- (1) in Article 17, paragraph 3 is replaced by the following:

“3. Expenditure shall be eligible for support under the Specific Regulations if it has been incurred by a beneficiary and fully disbursed by the designated Responsible Authority between 1 January 2014 and 30 June 2024.”
- (2) in Article 40, paragraphs 1 and 2 are replaced by the following:

“1. Member States shall submit the following documents by 31 December 2024:

 - (a) the information required for the last annual accounts, in accordance with Article 44(1);
 - (b) a request for payment of the final balance; and
 - (c) the final implementation report for the national programme as referred to in Article 54(1).

“2. The payments made by the Responsible Authority from 16 October 2023 to 30 June 2024 shall be included in the last annual accounts.”
- (3) in Article 50, paragraph 4 is replaced by the following:

“4. The commitment related to the last two financial years of the period shall be decommitted in accordance with the rules followed for the closure of the programme.”

(4) in Article 54, paragraph 1 is replaced by the following:

“1. By 31 March 2016 and by 31 March of each subsequent year until and including 2023, the Responsible Authority shall submit to the Commission an annual report on the implementation of each national programme in the previous financial year and may, at the appropriate level, publish that information. The report submitted in 2016 shall cover the 2014 and 2015 financial years. The Member State shall submit a final report on the implementation of the national programmes by 31 December 2024.”

(5) Article 57 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

“(b) an ex post evaluation report on the effects of actions under their national programmes by 31 December 2024.”

(b) in paragraph 2, point (b) is replaced by the following:

“(b) an ex post evaluation report on the effects of this Regulation and the Specific Regulations, following the closure of the national programmes, by 30 June 2025.”

Article 2

Regulation (EU) No 516/2014 is amended as follows:

(1) in Article 16, paragraph 3 is replaced by the following:

*“3. The additional amounts referred to in paragraphs 1 and 2 of this Article shall be allocated to the Member States in the individual financing decisions approving or revising their national programmes in the context of the mid-term review according to the procedure laid down in Articles 14 and 15 of Regulation (EU) No 514/2014. Those amounts shall only be used for the implementation of the specific actions listed in Annex II to this Regulation. However where, **in the light of new or unforeseen circumstances, another use under the national programme is necessary the Member State concerned shall consult the Commission prior to such use of those amounts.**”*

(2) in Article 17, paragraph 9 is replaced by the following:

*“9. The additional amounts referred to in paragraphs 1 and 2 of this Article shall be allocated to the Member States every 2 years, for the first time in the individual financing decisions approving their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014, and later in a financing decision to be annexed to the decisions approving their national programme. Those amounts shall not be transferred to other actions under the national programme. However where, **in the light of new or unforeseen circumstances, a transfer is necessary, the Member State concerned shall consult the Commission prior to such transfer of those amounts.**”*

Article 3

Regulation (EU) 2021/1147 is amended as follows:

(1) A new paragraph (5) is added to Article 10 as follows:

“5. Support under this Regulation may also be financed by contributions made by Member States and by other public or private donors as external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046.¹²”

Article 4

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 the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).