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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1303/2013 and Regulation (EU) No 223/2014 as regards Cohesion's Action for Refugees in Europe (CARE) - Outcome of the European Parliament's first reading (Brussels, 23 to 24 March 2022)

INTRODUCTION

On 16 March 2022, the Permanent Representatives Committee confirmed that, should the European Parliament approve the abovementioned Commission's proposal without amendments, the Council would approve the European Parliament's position.

On 23 March 2022, the Parliament approved the request of the Commission to proceed according to the Rule 163 (urgent procedure). The REGI Committee proposed to adopt without amendments the abovementioned proposal for a Regulation.

II. VOTE

The Parliament adopted its first-reading position on 24 March 2022 by taking over the Commission proposal. This position is contained in its legislative resolution.

The Council should therefore be in a position to approve the European Parliament's position as set out in the Annex hereto, thus bringing to a close the first reading for both Institutions.

The legislative act would then be adopted in the wording which corresponds to the European Parliament's position.

P9_TA(2022)0083

Refugees in Europe: CARE ***I

European Parliament legislative resolution of 24 March 2022 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 and Regulation (EU) No 223/2014 as regards Cohesion's Action for Refugees in Europe (CARE) (COM(2022)0109 – C9-0057/2022 – 2022/0075(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2022)0109),

– having regard to Article 294(2), Article 175, third paragraph, and Article 177 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0057/2022),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 23 March 2022[1],

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 16 March 2022 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rules 59 and 163 of its Rules of Procedure,

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] Not yet published in the Official Journal.

P9_TC1-COD(2022)0075

Position of the European Parliament adopted at first reading on 24 March 2022 with a view to the adoption of Regulation (EU) 2022/… of the European Parliament and of the Council amending Regulations (EU) No 1303/2013 and (EU) No 223/2014 as regards Cohesion's Action for Refugees in Europe (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 175, third paragraph, and 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 Committee[2],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[3],

[2] Opinion of 23 March 2022 (not yet published in the Official Journal).
[3] Position of the European Parliament of 24 March 2022.

Whereas:

(1) The recent military aggression by the Russian Federation against Ukraine and the ongoing armed conflict has fundamentally changed the security situation in Europe. As a result of that military aggression, the Union, and its eastern regions in particular, is facing a substantial inflow of persons. This poses an additional challenge at a time when Member States' economies are still recovering from the impact of the COVID-19 pandemic.

(2) Member States are already able to finance a broad range of investments under their cohesion policy programmes to address migration challenges under the European Regional Development Fund (ERDF) and the European Social Fund (ESF), including under the additional resources made available as Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy. Actions can cover investments in the areas of social inclusion, health, education, employment, housing and childcare, including through investments in infrastructure, regeneration of deprived urban areas, actions to reduce spatial and educational isolation of migrants, and business start-ups. Member States may redirect remaining resources within their programmes to address such migration challenges. In addition, the Fund for European Aid to the Most Deprived (FEAD) can be used to provide food and basic material assistance to persons, including third-country nationals, affected by the Russian Federation's military aggression.

(3) While the additional resources made available under REACT-EU already benefit from a number of flexibilities in their implementation arrangements, it is necessary to make the use of ERDF, ESF and FEAD resources from the 2014-2020 multiannual financial framework more flexible. Taking into account the urgency to address the migratory challenges as a result of the military aggression by the Russian Federation against Ukraine, expenditure for operations addressing those challenges should be eligible from the date on which that military aggression started. Furthermore, flexibility as to how the ERDF and the ESF can be used should be increased for such operations so that available funding in programmes can be used quickly, provided that the operation concerned is in line with the operational programme as amended where necessary. That flexibility should be additional to the possibilities for the complementary financing of operations already provided for. Simplified reporting arrangements regarding the data on participants in those operations should also be introduced.

(4) In order to ensure that affected persons may benefit from assistance under the FEAD without delay, it is appropriate to allow Member States to amend certain elements of operational programmes supported by the FEAD without requiring the adoption of a Commission decision.

(5) The support provided under cohesion policy should be complementary, in particular to actions financed under the Asylum, Migration and Integration Fund, to maximise the impact of available funding.

(6) Member States have been affected by the consequences of the COVID-19 pandemic in an unprecedented manner. The overall impact of that pandemic has been to put very high pressure on the budgets of Member States due to the sudden and significant increase in public investments needed in their healthcare systems and other sectors of their economies. It also risked disrupting the support provided to the most deprived. This has created an exceptional situation which needed to be addressed by specific measures.

(7) In order to respond to the impact of the COVID-19 outbreak, Regulations (EU) No 1301/2013[4] and (EU) No 1303/2013[5] of the European Parliament and of the Council were amended by Regulation (EU) 2020/460 of the European Parliament and of the Council[6] to allow more flexibility in the implementation of programmes supported by the ERDF, the ESF and the Cohesion Fund (the 'Funds') and by the European Maritime and Fisheries Fund. However, as the serious negative effects of that crisis on Union economies and societies worsened, both Regulations were amended again, by Regulation (EU) 2020/558 of the European Parliament and of the Council[7]. In addition, in order to respond to the impact of the COVID-19 crisis on the most deprived, Regulation (EU) No 223/2014 of the European Parliament and of the Council[8] was amended by Regulation (EU) 2020/559 of the European Parliament and of the Council[9] to introduce specific measures for the FEAD to address the outbreak of COVID-19. Those amendments have provided exceptional additional flexibility to enable the Member States to concentrate on the necessary response to the unprecedented crisis by enhancing the possibility to mobilise non-utilised support from the Funds and by simplifying procedural requirements linked to programme

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4 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).*

5 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).

6 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).

7 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).

8 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).

9 Regulation (EU) 2020/559 of the European Parliament and of the Council of 23 April 2020 amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the outbreak of COVID-19 (OJ L 130, 24.4.2020, p. 7).

implementation to address the need for a rapid response to that crisis. A subsequent amendment of Regulation (EU) No 1303/2013, introduced by Regulation (EU) 2020/2221 of the European Parliament and of the Council[10], made available substantial additional resources as REACT-EU to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy. As part of the same package, Regulation (EU) No 223/2014 was also amended by Regulation (EU) 2021/177 of the European Parliament and of the Council[11], in order to allow the mobilisation of those additional resources by Member States to the most deprived in the context of the implementation of the FEAD.

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10 Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) No 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU) (OJ L 437, 28.12.2020, p. 30).

11 Regulation (EU) 2021/177 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the crisis associated with the outbreak of COVID-19 (OJ L 53, 16.2.2021, p. 1).

(8) While the flexibilities and additional resources provided for in respect of the 2014-2020 programming period have helped Member States in their crisis response and recovery efforts, the emergence of new coronavirus variants, in particular the Omicron variant, as well as the widespread tightening of restrictions in the last quarter of 2021 continued to have serious negative effects on Member States' economies and societies and hampered a normal implementation of cohesion policy programmes and of programmes supported by the FEAD. The recent military aggression by the Russian Federation and the resulting migratory flows have exacerbated those effects and risk further undermining the recovery of the Union's economy. In line with the possibility provided for in Regulation (EU) 2020/558, it is therefore necessary to provide for an exceptional extension of one of the measures introduced by that Regulation, namely the option of the application of a co-financing rate of 100 % for the accounting year 2020/2021 to the following accounting year.

(9) With a view to alleviating the burden on public budgets that is arising from the need to respond to the crisis situation, accelerating programme implementation and enabling needed investments for the recovery of regions, Member States should therefore be given the exceptional possibility to apply a co-financing rate of 100 % in a programme supported by the ERDF, the ESF, the Cohesion Fund or the FEAD also for the accounting year 2021/2022.

(10) In order to comply with the multiannual financial framework payment ceilings for 2022 and 2023, a ceiling should be established for those years for payments resulting from the application of the 100 % co-financing rate under the ERDF, the Cohesion Fund or the ESF. Payments that cannot be made as a result of the application of those ceilings should be paid by the Commission at the earliest opportunity subject to the availability of funding, either with the acceptance of the accounts or through subsequent payments. Such deferred payments should not affect the acceptance of accounts or bear any other effect.

(11) Taking into account that the application of the 100 % co-financing rate will not substantially affect the content of the operational programmes themselves, it is appropriate to allow its rapid implementation without the need for a Commission decision approving the Member States' amendment to the financial tables of the operational programme. The Member State should nevertheless notify the revised financial tables prior to the submission of the final payment application for the accounting year. Potential consequential amendments, including to the values of indicators, can be made as part of a subsequent programme amendment after the end of the accounting year.

(12) Since the objective of this Regulation, namely to introduce flexibility measures in the field of providing support from the Funds, cannot be sufficiently achieved by the Member States alone but can rather, 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 that objective.

(13) Regulations (EU) No 1303/2013 and (EU) No 223/2014 should therefore be amended accordingly.

(14) In view of the urgency to address the migratory challenges as a result of the recent military aggression by the Russian Federation and the continued public health crisis stemming from the COVID-19 pandemic, it is considered appropriate 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 TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(15) In view of the need to allow Member States to amend their programmes in time to benefit from the application of the 100 % co-financing rate for the accounting year 2021/2022, 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,*

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) No 1303/2013

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

(1) in Article 25a, the following paragraph is inserted:

‘1a. By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), a co-financing rate of 100 % may be applied to expenditure declared in payment applications for the accounting year starting 1 July 2021 and ending 30 June 2022 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

By way of derogation from Article 30(1) and (2) and Article 96(10), the application of the co-financing rate of 100 % shall not require a Commission decision approving a programme amendment. The Member State shall notify the revised financial tables to the Commission following approval by the monitoring committee. The co-financing rate of 100 % shall apply only if the financial tables are notified to the Commission before the submission of the final application for an interim payment for the accounting year starting 1 July 2021 and ending 30 June 2022 in accordance with Article 135(2).

The total additional payments resulting from the application of the 100 % co-financing rate shall not exceed EUR 5 billion in 2022 and EUR 1 billion in 2023.

The Commission shall make interim payments by applying the co-financing rate applicable to the priority axes concerned before the notification referred to in the second subparagraph. By way of derogation from Article 135(5), the Commission shall pay the additional amounts resulting from the application of the 100 % co-financing rate following receipt of all final applications for interim payment for the accounting year 2021/2022, where necessary on a pro-rata basis to respect the ceilings set out in the third subparagraph.

By way of derogation from Article 139(7), remaining amounts resulting from the application of the 100 % co-financing rate which, in order to respect the ceilings set out in the third subparagraph, cannot be paid following the acceptance of the accounts, shall be paid in 2024 or later.';

(2) in Article 65(10), the following subparagraph is added:

'By way of derogation from paragraph 9, expenditure for operations addressing the migratory challenges as a result of the military aggression by the Russian Federation shall be eligible as of 24 February 2022.';

(3) in Article 98, the following paragraph is added:

‘4. Operations addressing the migratory challenges as a result of the military aggression by the Russian Federation may be financed either by the ERDF or the ESF on the basis of the rules applicable to the other Fund.

In such cases, those operations shall be programmed under a dedicated priority axis of that other Fund contributing to its corresponding investment priorities.

Where data on participants is required to be reported for operations under the dedicated priority axis referred to in the second 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.

This paragraph shall not apply to programmes under the European territorial cooperation goal.’.

Article 2

Amendment to Regulation (EU) No 223/2014

Regulation (EU) No 223/2014 is amended as follows:

(1) in Article 9(4), the following subparagraph is added:

‘The first and second subparagraphs shall also apply for the purposes of modifying elements of an operational programme addressing migratory challenges as a result of the military aggression by the Russian Federation.’;

(2) in Article 20, the following paragraph is inserted:

‘1b. By way of derogation from paragraph 1, a co-financing rate of 100 % may be applied to expenditure declared in payment applications for the accounting year starting 1 July 2021 and ending 30 June 2022.

By way of derogation from Article 9(1), (2) and (3), the application of the co-financing rate of 100 % shall not require a Commission decision approving a programme amendment. The Member State shall notify the revised financial tables, referred to in Section 5.1 of the operational programme templates set out in Annex I, to the Commission. The co-financing rate of 100 % shall apply only if the financial tables are notified to the Commission before the submission of the final application for an interim payment for the accounting year starting 1 July 2021 and ending 30 June 2022 in accordance with Article 45(2).’;

(3) in Article 22(4), the following subparagraph is added:

‘By way of derogation from the first subparagraph, expenditure for operations addressing migratory challenges as a result of the military aggression by the Russian Federation shall be eligible from 24 February 2022.’.

Article 3

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 ...,

For the European Parliament	*For the Council*
The President	*The President*