



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 February 2013

5954/13

**Interinstitutional File:
2012/0253 (COD)**

**CODEC 208
JAI 66
FRONT 5
VISA 26
CADREFIN 23
COMIX 52
PE 50**

INFORMATION NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council

Subject: Proposal for a Decision of the European Parliament and of the Council amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the External Borders Fund for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability
– Outcome of the European Parliament's first reading
(Strasbourg, 4 to 7 February 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr Nils TORVALDS (ALDE, FI) presented a report, on behalf of the Committee on Civil Liberties, Justice and Home Affairs, which recommends that the European Parliament adopts its position at first reading taking over the Commission proposal. This had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 6 February 2013, the plenary adopted the report and took over the Commission proposal without any changes. This constitutes the European Parliament position at first reading and reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve it. The legislative act would then be adopted in the wording which corresponds to the European Parliament's position.

The text of the proposal for a Regulation and the European Parliament's legislative resolution are set out in the Annex hereto.

External Borders Fund *I**

European Parliament legislative resolution of 6 February 2013 on the proposal for a decision of the European Parliament and of the Council amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the External Borders Fund for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability (COM(2012)0527 – C7-0301/2012 – 2012/0253(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0527),
 - having regard to Article 294(2) and Article 77(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0301/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 19 December 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0433/2012),
1. Adopts its position at first reading, taking over the Commission proposal;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 6 February 2013 with a view to the adoption of Decision No .../2013/EU of the European Parliament and of the Council amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the External Borders Fund for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability

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 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 6 February 2013.

Whereas:

- (1) Decision No 574/2007/EC of the European Parliament and of the Council¹ establishes the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ and provides for different Union co-financing rates for actions supported by that Fund.
- (2) The unprecedented global financial crisis and economic downturn have seriously damaged economic growth and financial stability, provoking a marked deterioration in financial, economic and social conditions in several Member States. Some Member States are experiencing serious difficulties or are threatened with such difficulties, particularly with respect to their financial and economic stability, which has led or may lead to deterioration in their deficit and debt positions and threaten economic growth, and are heightened by the international economic and financial environment.
- (3) While important actions to counterbalance the negative effects of the crisis have already been taken, the impact of the financial crisis on the real economy, the labour market and society at large is being widely felt. Pressure on national financial resources is increasing and further steps should be taken rapidly to alleviate that pressure through the maximal and optimal use of Union funding.
- (4) Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States’ balances of payments² provides that the Council may grant medium-term financial assistance where a Member State which has not adopted the euro is in difficulties or is seriously threatened with difficulties as regards its balance of payments.
- (5) Romania was granted such financial assistance by Council Decision 2009/459/EC of 6 May 2009 providing Community medium-term financial assistance for Romania³.

¹ OJ L 144, 6.6.2007, p. 22.

² OJ L 53, 23.2.2002, p. 1.

³ OJ L 150, 13.6.2009, p. 8.

- (6) In accordance with the conclusions of the ECOFIN Council of 9-10 May 2010, the Council adopted a comprehensive package of measures, including Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European Financial Stabilisation Mechanism¹, and, on 7 June 2010, a European Financial Stability Facility was established by the euro-area Member States, in order to provide financial support to euro-area Member States in difficulties caused by exceptional circumstances beyond their control, thereby safeguarding the financial stability of the euro area as a whole as well as of its Member States.
- (7) Ireland and Portugal were granted financial assistance by the European Financial Stabilisation Mechanism under Council Implementing Decisions 2011/77/EU² and 2011/344/EU³ respectively. They have also received funds from the European Financial Stability Facility.
- (8) On 8 May 2010, an Intercreditor Agreement and a Loan Facility Agreement for Greece were concluded and entered into force on 11 May 2010 as a first programme of financial assistance for Greece. On 12 March 2012, the finance ministers of the euro-area Member States interrupted that first programme and approved a second programme of financial assistance for Greece. It was decided that the financial vehicle for that second programme would be the European Financial Stability Facility, which would also disburse the remaining amount to be contributed by the euro area under the first programme.
- (9) On 2 February 2012, the finance ministers of the euro-area Member States signed the Treaty establishing the European Stability Mechanism. That Treaty follows European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro⁴. Under that Treaty, the European Stability Mechanism is the primary provider of financial assistance to euro-area Member States from its entry into force on 8 October 2012. Therefore, this Decision should take the European Stability Mechanism into account.

¹ OJ L 118, 12.5.2010, p. 1.

² OJ L 30, 4.2.2011, p. 34.

³ OJ L 159, 17.6.2011, p. 88.

⁴ OJ L 91, 6.4.2011, p. 1.

- (10) In its conclusions of 23 and 24 June 2011 the European Council welcomed the Commission's intention to enhance the synergies between the loan programme for Greece and Union funds and supported efforts to increase Greece's capacity to absorb Union funds in order to stimulate growth and employment by refocusing on improving competitiveness and job creation. Moreover, it welcomed and supported the preparation by the Commission, together with the Member States, of a comprehensive programme of technical assistance to Greece. The amendments to Decision No 574/2007/EC provided for in this Decision contribute to such efforts to enhance synergies.
- (11) In view of the exceptional circumstances, Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund¹ was amended by Regulation (EU) No 1311/2011 of the European Parliament and of the Council² to allow for an increase in the co-financing rate applied under the Structural Funds and the Cohesion Fund for Member States which are facing serious difficulties with respect to their financial stability. A similar approach was adopted towards those Member States in the framework of the European Agricultural Fund for Rural Development under Regulation (EU) No 1312/2011 of the European Parliament and of the Council of 19 December 2011 amending Council Regulation (EC) No 1698/2005 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability³ and in the framework of the European Fisheries Fund under Regulation (EU) No 387/2012 of the European Parliament and of the Council of 19 April 2012 amending Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability⁴. Those Member States should be supported in the framework of the four Funds established as part of the General Programme on 'Solidarity and Management of Migration Flows', namely the External Borders Fund, the European Return Fund, the European Refugee Fund and the European Fund for the Integration of third-country nationals ("the Funds") established for the period 2007-2013.

¹ OJ L 210, 31.7.2006, p. 25.

² OJ L 337, 20.12.2011, p. 5.

³ OJ L 339, 21.12.2011, p. 1.

⁴ OJ L 129, 16.5.2012, p. 7.

- (12) The Funds are key tools for helping Member States to address important challenges in the area of migration, asylum and external borders such as the development of a comprehensive Union immigration policy to enhance the competitiveness and social cohesion of the Union and the creation of a Common European Asylum System.
- (13) To make it easier to manage Union funding in the area of migration, asylum and external borders and to improve the availability of such funding for the Member States to implement their annual programmes under the Funds, it is necessary, on a temporary basis and without prejudice to the 2014-2020 programming period, to arrange for an increase in the Union co-financing rate under the Funds by an amount corresponding to 20 percentage points above the co-financing rates currently applicable, for Member States experiencing serious difficulties with respect to their financial stability. This means that the Funds annual national allocation in accordance with the basic acts will remain unchanged while national co-financing will be reduced accordingly. Ongoing annual programmes will need to be revised to reflect the changes resulting from the application of the increased Union co-financing rate.
- (14) Any Member State seeking to benefit from the increased co-financing rate should provide the Commission with a written statement together with its draft annual programme or draft revised annual programme. In its statement, the Member State concerned should provide a reference to the relevant Council Decision or to any other relevant decision that makes it eligible to benefit from the increased Union co-financing rate.
- (15) The unprecedented crisis affecting international financial markets and the economic downturn have seriously damaged the financial stability of several Member States. As a rapid response is necessary to counter the effects on the economy as a whole, this Decision should enter into force as soon as possible.
- (16) Decision No 574/2007/EC should therefore be amended accordingly.

- (17) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹ which fall within the area referred to in Article 1, points A and B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².
- (18) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*³ which fall within the area referred to in Article 1, points A and B of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁴.
- (19) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁵ which fall within the area referred to in Article 1, points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁶.

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53, 27.2.2008, p. 52.

⁴ OJ L 53, 27.2.2008, p. 1.

⁵ OJ L 160, 18.6.2011, p. 21.

⁶ OJ L 160, 18.6.2011, p. 19.

- (20) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.
- (21) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (22) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*²; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

HAVE ADOPTED THIS DECISION:

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 64, 7.3.2002, p. 20.

Article 1

Amendments to Decision No 574/2007/EC

In Article 16 of Decision No 574/2007/EC, paragraph 4 is replaced by the following:

"4. The Union contribution to supported projects, as regards actions implemented in the Member States under Article 4, shall not exceed 50 % of the total cost of a specific action.

This may be increased to 75 % for projects addressing specific priorities identified in the strategic guidelines referred to in Article 20.

The Union contribution shall be increased to 75 % in the Member States covered by the Cohesion Fund.

The Union contribution may be increased by 20 percentage points in a Member State provided that it meets one of the following conditions at the time of submission of its draft annual programme in accordance with Article 23(3) of this Decision or draft revised annual programme in accordance with Article 23 of Commission Decision 2008/456/EC*:

- (a) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002**;
- (b) financial assistance is made available to it in accordance with Council Regulation (EU) No 407/2010*** or financial assistance is made available to it by other euro-area Member States before ...⁺; or
- (c) financial assistance is made available to it in accordance with the intergovernmental agreement reached establishing the European Financial Stability Facility or the Treaty establishing the European Stability Mechanism.

⁺ OJ: please insert date of entry into force of Regulation (EU) No 407/2010.

The Member State concerned shall submit a written statement to the Commission together with its draft annual programme or draft revised annual programme confirming that it meets one of the conditions referred to in point (a), (b) or (c) of the fourth subparagraph.

A project co-financed at the increased rate may remain so whether or not one of the conditions referred to in point (a), (b) or (c) of the fourth subparagraph is still met in the course of the implementation of the related annual programme.

* OJ L 167, 27.6.2008, p. 1.

** OJ L 53, 23.2.2002, p. 1.

*** OJ L 118, 12.5.2010, p. 1."

Article 2

Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

Addressees

This Decision is addressed to the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President