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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 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 - Outcome of the European Parliament's first reading (Brussels, 23 to 24 March 2022)

I. 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 Rule 163 (urgent procedure). The LIBE 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)0084

More flexible use of funds under the AMIF Regulations in light of the war in Ukraine *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 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 (COM(2022)0112 – C9-0056/2022 – 2022/0077(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0112),
 - having regard to Article 294(2) and Article 78(2), Article 79(2) and (4), Article 82(1), Article 84 and Article 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0056/2022),
 - 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 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.

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 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, (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund and (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) 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 24 March 2022.

Whereas:

- (1) The invasion of Ukraine by the Russian Federation on 24 February 2022 has 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 that, given the nature and dimension of the crisis, 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 Fund, established by Regulation (EU) No 516/2014 of the European Parliament and of the Council², and from the Internal Security Fund, consisting of the instrument for financial support for external borders and visa, established by Regulation (EU) No 515/2014 of the European Parliament and of the Council³, and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, established by Regulation (EU) No 513/2014 of the European Parliament and of the Council⁴ (the 'Home Affairs Funds 2014-2020').

² 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).

³ 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).

⁴ Regulation (EU) No 513/2014 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 police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93).

- (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 amounts from those 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 necessary to provide for more flexibility in the use of earmarked resources under Regulation (EU) No 516/2014 that currently prevents unspent amounts from 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. Those rules limit the eligibility of Member States' disbursements to 30 June 2023 at the latest and set 31 December 2023 as the end of the implementation period.

⁵ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 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 (OJ L 150, 20.5.2014, p. 112).

- (6) On 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, established by Regulation (EU) 2021/1147 of the European Parliament and of the Council⁶, the Instrument for Financial Support for Border Management and Visa Policy, established by Regulation (EU) 2021/1148 of the European Parliament and of the Council⁷, and the Internal Security Fund, established by Regulation (EU) 2021/1149 of the European Parliament and of the Council⁸ (the ‘Home Affairs Funds 2021-2027’).
- (7) Although the Home Affairs Funds 2021-2027 entered into force on 15 July 2021 with retroactive applicability from 1 January 2021, the programmes of all the Member States have not yet been approved.

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).

- (8) In order to ensure continuity in the implementation of the policy objectives of the Home Affairs Funds 2014-2020 and 2021-2027 and to allow for a smooth transition between the programming periods for 2014-2020 and for 2021-2027, thereby minimising the administrative burden for the Member States, it is necessary for some overlap to exist between the implementation of those funding instruments. That necessity is expressly recognised by the Home Affairs Funds 2021-2027 and by Regulation (EU) 2021/1060 of the European Parliament and of the Council ⁹, which allow for the 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, 30.6.2021. p. 159).

- (9) Despite the provisions to help bridge the gap between the Home Affairs Funds 2014-2020 and the Home Affairs Funds 2021-2027, 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. That funding gap might lead to liquidity problems due to the additional pressure on the Member States' migration and border management following the mass influx of displaced persons from Ukraine.
- (10) The risk of a considerable funding gap 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 Union funding instruments in shared management, such as cohesion funds, where a longer implementation period (the N+3 rule) applies. The N+3 rule applies to the Home Affairs Funds 2021-2027 as set out in Regulation (EU) 2021/1060. The N+3 rule means that a commitment made in year N has to be covered by the same amount of pre-financing and interim payment claims before 31 December in year 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 decommitted, meaning that the Member State loses the relevant funding.

- (11) Available information 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. That risk is due, in part, to reasons outside the control of the Member States, such as implementation delays caused by the COVID-19 pandemic in 2020-2021. 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 the war in Ukraine.
- (12) 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. It is appropriate to consider the war in Ukraine as constituting ‘new or unforeseen circumstances’ that justify a re-examination and operational re-direction of a programme, in light of the new needs and within the specific objectives of the programme as previously adopted.

- (13) 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.
- (14) 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.
- (15) Regulation (EU) 2018/2000 of the European Parliament and of the Council¹⁰ amended Regulation (EU) No 516/2014 to unblock access to resources earmarked for the transfer of applicants for international protection or beneficiaries of international protection and to allow their use for certain other actions under the national programme. It is necessary to extend that principle of flexibility to address pressing needs in the light of new or unforeseen circumstances, in particular to address the new asylum and migration management needs of Member States arising from the invasion of Ukraine.

¹⁰ 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).

- (16) 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 from the invasion of Ukraine.
- (17) To enhance the scope of available funding sources to help deal with unforeseeable future events, it is appropriate to allow Member States and other public or private donors, during the 2021-2027 programming period, to make additional financial contributions to asylum and migration management, in the form of external assigned revenue. That external assigned revenue is to 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 Fund for 2021-2027, and will allow an added preparedness measure for funding asylum and migration activities in Member States during crises such as that arising from the invasion of Ukraine.

- (18) The support provided under the Asylum, Migration and Integration Fund for 2014-2020 and the Asylum, Migration and Integration Fund for 2021-2027 is complementary to actions financed under other Union funds, in particular under cohesion policy, to maximise the impact of available funding.
- (19) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the 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 in order to achieve those objectives.
- (20) In view of the urgency of making financial resources available for Member States to deal with migration, border management and security needs caused by the mass influx of displaced persons from Ukraine, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union (TFEU) and to the Treaty establishing the European Atomic Energy Community.

- (21) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (22) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (23) Regulations (EU) No 514/2014, (EU) No 516/2014 and (EU) 2021/1147 should therefore be amended accordingly.
- (24) 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* in order to urgently make financial resources available for Member States to deal with migration, border management and security needs caused by the mass influx of displaced persons from Ukraine,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) Article 17(3) is replaced by the following:

‘3. Expenditure shall be eligible for support under the Specific Regulations if it has been both incurred by a beneficiary and fully disbursed by the designated Responsible Authority between 1 January 2014 and 30 June 2024.’;

(2) Article 40 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘1. Member States shall submit the following documents by 31 December 2024.’;

(b) paragraph 2 is replaced by the following:

‘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) Article 50(4) is replaced by the following:

‘4. The commitments related to the last two years of the period shall be decommitted in accordance with the rules followed for the closure of the programme.’;

(4) Article 54(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 financial years 2014 and 2015. 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) Article 16(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 in accordance with 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 necessary in the light of new or unforeseen circumstances, a Member State may use those amounts for other actions under its national programme, provided that it consults the Commission prior to such use.’;

(2) Article 17(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 two 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 necessary in the light of new or unforeseen circumstances, a Member State may transfer those amounts to other actions under its national programme, provided that it consults the Commission prior to such transfer.’

Article 3

In Article 10 of Regulation (EU) 2021/1147, the following paragraph is added:

- ‘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 the Financial Regulation.’.

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 ...,

For the European Parliament
The President

For the Council
The President
