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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the Brexit Adjustment Reserve**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

The United Kingdom of Great Britain and Northern Ireland ('United Kingdom' or 'UK') left the European Union ('EU') and the European Atomic Energy Community ('Euratom') – hereafter referred together as the 'Union' – on 1 February 2020. The Withdrawal Agreement<sup>1</sup> concluded between the Union and the United Kingdom entered into force on that date, securing the United Kingdom's orderly departure, and providing legal certainty in important areas, including citizens' rights, the financial settlement and avoiding a hard border on the island of Ireland.

According to the Withdrawal Agreement, a transition period was agreed, which is to last until 31 December 2020 and guaranteeing "business as usual" conditions for citizens, consumers, businesses, investors, students and researchers, for instance, in both the EU and the United Kingdom. The EU and the United Kingdom negotiated a new framework of relations, based on the Political Declaration agreed between the EU and the United Kingdom<sup>2</sup>.

Regardless of the type of any future agreement, the fact that the United Kingdom will no longer participate in Union policies as of the end of the transition period will create barriers to trade in goods and services and to cross-border mobility and exchanges that have not existed before. This will happen in both directions, i.e. from the United Kingdom to the Union, as well as from the Union to the United Kingdom.

Based on the decades of close partnership inside the EU, there is an important economic, commercial and social interdependence between the United Kingdom, on the one side, and the EU Member States, on the other. Therefore, despite the preparedness measures put in place both by the Commission and the Member States, at the end of the transition period, many economic sectors and businesses, especially companies with a significant exposure to the United Kingdom, will face difficulties as a consequence of the loss of facilitated access to its market or be otherwise affected by more complex trade and economic relations. This could result in losses of jobs. Against such background, Member States may decide to counter the negative impact by introducing specific support schemes to assist affected regions and businesses in managing change or by introducing measures to help preserve employment levels. One of the sectors that would be most adversely affected is the fisheries sector due to resulting limitation of fishing activities.

Member States' public administrations are also affected as they had to set up additional infrastructure and facilities and recruit additional personnel. For instance, in the field of customs and indirect taxation, some national administrations have made significant investments in infrastructure and human resources, primarily in Member States that are the main entry and exit points for the European Union's trade with the United Kingdom. In the field of sanitary and phytosanitary controls, Member States had to set up new Border Inspection Posts or extend existing ones at entry points of imports from the United Kingdom into the EU. Member States may have to step up control measures at sea and at ports for additional monitoring and inspection. Member States' administrations had to adapt the rules

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<sup>1</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('Withdrawal Agreement') (OJ L 29, 31.1.2020, p. 7).

<sup>2</sup> Revised text of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom as agreed at negotiators' level on 17 October 2019 (OJ C 34, 31.1.2020, p. 1).

for issuing certificates and authorisation of products, establishment requirements, labelling and marking, as well as envisage and update specific awareness raising measures on the consequences that the withdrawal will have for citizens and businesses.

Since the UK referendum in 2016, Member States and the EU have been actively preparing for the withdrawal in both political and economic terms. They have been putting in place preparedness measures to take into account the possible effects of the withdrawal of the United Kingdom from the Union on all stakeholders affected. The Commission has repeatedly called on all relevant actors to take the necessary steps to avoid or reduce the potential impact. Despite the measures already taken or planned, the withdrawal of the United Kingdom from the Union is an unprecedented situation for all Member States that requires specific, targeted and fast action. It is fair to assume that, due to the particularly close economic and trading relationship that has been developed with Member States during the 47 years of the United Kingdom's EU membership, some Member States, regions and sectors will be more impacted by the withdrawal and are expected to experience economic and financial losses not yet possible to quantify. These additional actions are likely to have a significant impact on public spending, especially in the short term and in those Member States and regions particularly affected, thus resulting in an urgent need for additional public funding to offset these consequences, especially in the first years following the withdrawal.

Therefore, the European Council conclusions, agreed at its special meeting of 17-21 July 2020, provide for the establishment of a new special Brexit Adjustment Reserve (the 'Reserve') within the special instruments outside of the EU budget ceilings of the multiannual financial framework 'to counter unforeseen and adverse consequences in Member States and sectors that are worst affected'<sup>3</sup>. The European Council invited the Commission to present a proposal.

The Reserve established under this Regulation will provide support to Member States, regions and sectors, in particular those that are worst affected by the adverse consequences of the withdrawal of the United Kingdom from the Union, mitigating thus its impact on the economic, social and territorial cohesion. The Reserve will provide financial contributions to cover all or part of the additional public expenditure incurred by Member States, especially those relying most heavily on trade and economic relations with the United Kingdom, for measures directly linked to the withdrawal. The Reserve complements other existing tools available under Next Generation EU and the next long-term EU budget.

- **Consistency with existing policy provisions in the policy area and with other EU policies**

The Reserve will be complementary and ensure synergies with other Union programmes and funding instruments. The 2021-2027 multiannual financial framework, NextGenerationEU and accompanying programmes including the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) under the structural and cohesion funds, the post-2020 cohesion policy funds, the Just Transition Fund, the Recovery and Resilience Facility and the InvestEU will focus more on dealing with the effects of the crisis caused by COVID-19 and provide support to Member States' economies to become more resilient, sustainable and better prepared for the future. The Reserve will concentrate its resources specifically and exclusively on the direct effect of the specific and unprecedented event of withdrawal of the United Kingdom from the Union, reducing its impact in terms of territorial cohesion.

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<sup>3</sup> European Council Conclusions, 17, 18, 19, 20 and 21 July 2020, EUCO 10/20, CO EUR 8 CONCL 4.

The proposed instrument also draws inspiration from the long-standing experience of the European Union Solidarity Fund<sup>4</sup>.

There is currently no instrument providing financial support to Member States, specifically and directly linked to the economic and social consequences of the withdrawal of the United Kingdom from the Union.

The proposal is part of the preparation for the end of the transition period between the United Kingdom and the Union. It builds on and complements the work done by the EU institutions and Member States in the context of the preparedness measures taken under the respective Union policies during the negotiations under Article 50 TEU and the Commission's outreach work to help ensure that Member States' national administrations are ready for the end of the transition period. Its architecture takes into account the unprecedented situation for Member States, its uniqueness and the need for them to react quickly and flexibly to the challenges as they arise in their economies.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

This proposal is based on Articles 175 and 322 of the Treaty on the Functioning of the European Union (TFEU).

Article 174 TFEU provides that in order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

The right to act in pursuing this goal is enshrined in the third paragraph of Article 175 TFEU setting out that, if specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee and the Committee of Regions.

In line with the third paragraph of Article 175 TFEU, the proposal provides that the Reserve is aimed at enhancing economic, social and territorial cohesion by providing financial support to the most affected Member States, regions and sectors to deal with the adverse consequences of the withdrawal of the UK from the Union thus ensuring EU solidarity and strengthening resilience.

The proposal is based also on Article 322 TFEU because it contains specific carry-over rules derogating from the principle of annuality set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the 'Financial Regulation')<sup>5</sup>.

### **• Subsidiarity and proportionality**

In accordance with Article 4(2) TFEU, the Union has shared competence with Member States in the area of economic, social and territorial cohesion as well as of certain aspects of social policy. The funding of the proposed activities through the proposed Regulation in line with

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<sup>4</sup> Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3) as amended by Regulation (EU) No 661/2014 of the European Parliament and the Council of 15 May 2014 (OJ L 189, 27.6.2014, p. 143) and by Regulation (EU) No 461/2020 of the European Parliament and the Council of 30 March 2020 (OJ L 99, 31.3.2020, p. 9).

<sup>5</sup> 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 (OJ L 193, 30.7.2018, p. 1).

the principles of shared management respects the principles of European added value and subsidiarity. Funding from the Union budget concentrates on activities whose objectives cannot be sufficiently achieved by the Member States alone, and where the Union intervention can bring additional value compared to action of Member States alone.

In view of the above, the Reserve established by the Regulation should provide support to Member States to counter the adverse consequences of the withdrawal of the United Kingdom from the Union. Its overall objective is thus to enhance cohesion, through measures that allow mitigating the economic, social and territorial impact of the withdrawal on the Member States' economies and to protect employment levels.

Furthermore, the subsidiarity principle is also reflected by the fact that the Reserve will be implemented under shared management. Interventions are not managed directly by the European Commission, but instead implemented in partnership with the Member States. Thus the Union action is limited to what is necessary to achieve the Union objectives as laid down in the Treaties. In line with the principle of subsidiarity, it defines clear eligibility criteria for the Reserve to be mobilised and provides flexibility in its use commensurate to the unique situation.

The proposal complies with the proportionality principle because it does not go beyond the minimum required in order to achieve the stated objective at the European level and which is necessary for that purpose.

- **Choice of the instrument**

It is proposed to create a new instrument as the goals described in the preceding sections cannot be reached to a sufficient degree by individual actions of the Member States. Under cohesion policy, the selected instrument is a Regulation of the European Parliament and of the Council in accordance with the ordinary legislative procedure as set out in Article 175(3) TFEU, ensuring equal treatment of Member States. The proposed instrument draws inspiration from the long-standing experience of the European Union Solidarity Fund and cohesion policy, while adapting to the completely new circumstances and objective of countering the effects of the withdrawal of the United Kingdom from the European Union.

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

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

It is impossible to evaluate ex post the impact or check the fitness of existing legislation because there is neither such legislation nor such precedent.

- **Stakeholder consultations**

Due to the urgency to prepare the proposal so that it can be adopted on time by the co-legislators, a stakeholder consultation could not be carried out. However, in preparation of this proposal, a series of meetings have been held with representatives of a wide range of Member States.

- **Impact assessment**

Due to the urgent nature of the proposal, no impact assessment was carried out. The proposal takes into account recent economic analyses, including the Commission's autumn 2020 economic forecast and the European Central Bank's research.

#### **4. BUDGETARY IMPLICATIONS**

Article 10 of Council Regulation (EU, Euratom) 2020/2093<sup>6</sup> provides that the overall amount of the Reserve shall be EUR 5 000 000 000 in 2018 prices.

The maximum resources for the implementation of the Reserve shall be EUR 5 370 994 000 in current prices, to be financed as a special instrument outside of the EU budget ceilings of the Multiannual Financial Framework. EUR 4 244 832 000 will be allocated and disbursed in 2021 in the form of a pre-financing. The remaining EUR 1 126 162 000 will be allocated and disbursed in 2024 for additional contributions in line with the provisions of the present proposal.

By derogation from the provisions of Article 12(4) of the Financial Regulation, specific provisions on the automatic carry-over of appropriations are proposed due to the specific characteristics of the Reserve. While it is likely that most of the adverse consequences of the withdrawal of the United Kingdom from the Union will occur in the first year(s) after the effective withdrawal, effects on certain regions, sectors or Member States may occur in subsequent years. In order to maximise its impact and to fully operationalise the conclusions of the European Council<sup>7</sup>, which provide for an overall amount available of EUR 5 billion in 2018 prices without time limitation, it is thus necessary to provide for entering the Reserve as a provision in the budget, with an automatic carry-over of unused commitment and payment appropriations until 2025.

In addition, specific provisions on a tailor-made reference period are proposed due to the specific nature of the Reserve and the relatively short implementation period. Given that at the same time, the risks for the Union budget are mitigated by the requirement for a solid management and control system to be set up by Member States, it is justified to derogate from the obligation to submit the documents referred to in paragraphs 5, 6 and 7 of Article 63 of the Financial Regulation in February or March of each year.

#### **5. OTHER ELEMENTS**

- **Visibility and reporting arrangements**

Specific reporting arrangements will be applied to the contribution from the Reserve. All Member States will have to submit an implementation report by 30 September 2023 detailing the actions supported and the expenditure incurred and paid during the eligibility period as well as the values for a set of output indicators. The Member States will also have to ensure visibility and transparency of the interventions and beneficiaries. The Commission shall carry out an evaluation to examine the effectiveness, efficiency, relevance, coherence and EU added value of the Reserve. Following its assessment and decisions on the final allocation, the Commission will present to the European Parliament and the Council a comprehensive report about the activity of the Reserve by 30 June 2027.

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

##### **Scope**

This Regulation establishes the Brexit Adjustment Reserve. It will provide financial contributions to Member States to counter adverse consequences in Member States, regions and sectors, in particular those that are worst affected by the withdrawal of the United

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<sup>6</sup> Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

<sup>7</sup> EUCO 10/20, CO EUR 8, CONCL 4 of 21 July 2020 – paragraphs A26 and 134.

Kingdom from the Union, with the objective of mitigating its impact on the economic, social and territorial cohesion.

### **Eligibility**

The period of eligibility for direct public expenditure will run from 1 July 2020 to 31 December 2022. The Regulation contains a comprehensive yet non-exclusive list of types of eligible expenditure for specifically set up measures, including for regions, areas, businesses, sectors and local communities adversely affected by the withdrawal. The Regulation also defines certain types of expenditure that are not eligible.

### **Financial management**

The Reserve will cover all Member States and will be activated in two rounds of allocations – the first one in 2021 in the form of a substantial pre-financing, and the second in 2024 as a payment of additional contribution from the Reserve. For this purpose, the Commission will take into account the use of the pre-financing and the overall eligible expenditure accepted by the Commission that exceeds both the amount of the pre-financing and 0.06% of the nominal GNI of 2021. The Commission will set out the relevant amounts for the allocation of pre-financing by means of an implementing act which, given the exceptionality, the uncertainty of the level of impact and the need for swift reaction from the Member States, will not include a description of the actions to be financed as stipulated by Article 110(2) of the Financial Regulation.

### **Allocation method for the pre-financing**

The allocation method for the pre-financing will be based on official statistics that are reliable and comparable. These will take into account the importance of trade with the UK and the importance of fisheries in the UK exclusive economic zone. The allocation method for the pre-financing is set up in Annex I to the Regulation in order to ensure full transparency.

### **Submission of applications for financial contribution from the Reserve**

Member States will have to submit applications (a form is provided in Annex II of the Regulation) for a contribution from the Reserve by 30 September 2023, detailing the information on the total public expenditure incurred and paid by the Member State from 1 July 2020 to 31 December 2022. This application will also describe how the pre-financing was used. The specific nature of the instrument and the relatively short implementation period justify the establishment of a tailor-made reference period and the requirement of a single application in 2023. Given that at the same time, the risks for the Union budget are mitigated by the requirement for a solid management and control system to be set up by Member States, it is justified to derogate from the obligation to submit the documents referred to in paragraphs 5, 6 and 7 of Article 63 of the Financial Regulation in February or March of each year.

The application will be accompanied by an implementation report, detailing, among others, the measures taken to counter the adverse consequences of the withdrawal of the United Kingdom from the Union, and how they were implemented, a management declaration and an independent audit opinion covering the reference period for the Reserve.

### **Assessment by the Commission of the applications for financial contribution, clearance of the pre-financing and calculation of the additional amounts**

Once Member States submit the applications for a financial contribution by the single deadline of 30 September 2023, the Commission will assess the applications in a package, guaranteeing equitable treatment of all Member States and ensuring consistency in the

evaluation. The Commission will in particular look into the eligibility and accuracy of the expenditure declared, its link to the end of the transition period and its economic effects, and the measures put in place to avoid double financing as well as the supporting documents (the implementation report, the management declaration and the independent audit report). In assessing the applications for a financial contribution from the Reserve, the Commission will clear the pre-financing paid, and recover the unused amounts. Where the expenditure accepted as eligible exceeds the amount paid in pre-financing and 0.06% of the nominal GNI of 2021, additional amounts from the Reserve may be paid to contribute to the exceeding amounts, within the limits of the financial resources available. The amounts recovered or carried over from the pre-financing may be used for reimbursement of additional expenditure by Member States, provided there is a demand.

### **Management and control**

The budget allocated to the Reserve will be implemented under shared management with Member States, guaranteeing full respect of the principles of sound financial management, transparency and non-discrimination and the absence of conflict of interest. In particular, Member States will have to set up a management and control system and designate bodies responsible for the management of the Reserve and an independent audit body. The Regulation sets out clearly the responsibilities for the Member States and a minimum set of requirements for the bodies responsible for the management, control and audit of the financial contribution under the Reserve. Member States will need to put in place systems that aim to prevent, detect and deal effectively with any irregularities, including fraud.

Member States should notify the Commission of the identity of the bodies designated and of the body to which the pre-financing shall be paid, and confirm that the systems' descriptions have been drawn up, within three months of the entry into force of this Regulation.

For simplification reasons, Member States could make use of existing designated bodies and systems set up for the purpose of the management and control of cohesion policy funding or the European Union Solidarity Fund.

The Commission will take appropriate actions to ensure that the financial interests of the Union are protected, including financial corrections.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**establishing the Brexit Adjustment Reserve**

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 the third paragraph of Article 175 and Article 322(1)(a) 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<sup>8</sup>,

Having regard to the opinion of the Committee of the Regions<sup>9</sup>,

Having regard to the opinion of the European Court of Auditors<sup>10</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') left the European Union and the European Atomic Energy Community ('Euratom') – hereafter referred together as the 'Union', entering a transition period. That time-limited period was agreed as part of the Withdrawal Agreement<sup>11</sup> and is to last until 31 December 2020. During the transition period, the Union and the United Kingdom started formal negotiations on a future relationship.
- (2) Following the end of the transition period, barriers to trade and to cross-border exchanges between the Union and the United Kingdom will be present. Broad and far-reaching consequences for businesses, citizens and public administrations are expected. Those consequences are unavoidable and stakeholders need to make sure that they are ready for them.
- (3) The Union is committed to mitigating the economic impact of the withdrawal of the United Kingdom from the Union and to show solidarity with all Member States, especially the most affected ones in such exceptional circumstances.
- (4) A Brexit Adjustment Reserve (the 'Reserve') should be established to provide support to counter adverse consequences in Member States, regions and sectors, in particular those that are worst affected by the withdrawal of the United Kingdom from the Union, and thus to mitigate the related impact on the economic, social and territorial

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<sup>8</sup> OJ C , , p. .

<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ C , , p. .

<sup>11</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('Withdrawal Agreement') (OJ L 29, 31.1.2020, p. 7).

cohesion. It should cover in whole or in part the additional public expenditure incurred by Member States for measures specifically taken to mitigate those consequences.

- (5) For the purposes of contributing to economic, social and territorial cohesion, it is appropriate that Member States, when designing support measures, focus in particular on the regions, areas and local communities, including those dependent on fishing activities in the United Kingdom waters, that are likely to be most negatively impacted by the withdrawal of the United Kingdom. Member States may have to take specific measures notably to support businesses and economic sectors adversely affected by the withdrawal. It is therefore appropriate to provide a non-exhaustive list of the type of measures that are most likely to achieve this objective.
- (6) At the same time, it is important to clearly specify any exclusions from support provided by the Reserve. The Reserve should exclude from support the value added tax as it constitutes a Member State revenue, which offsets the related cost for the Member State budget. In order to concentrate the use of limited resources in the most efficient way, technical assistance used by the bodies responsible for the implementation of the Reserve should not be eligible for support from the Reserve. In line with the general approach for cohesion policy, expenditure linked to relocations or contrary to any applicable Union or national law should not be supported.
- (7) In order to take into account the immediate impact of the adverse consequences of the withdrawal of the United Kingdom from the Union on the Member States and their economies and the need to adopt mitigating measures, as appropriate, prior to the expiry of the transition period, the eligibility period for implementing such measures should start as from 1 July 2020 and be concentrated over a limited period of 30 months.
- (8) It is necessary to specify that the budget allocated to the Reserve should be implemented by the Commission under shared management with Member States within the meaning of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>12</sup> (the ‘Financial Regulation’). It is therefore appropriate to determine the principles and specific obligations that the Member States should respect, in particular the principles of sound financial management, transparency and non-discrimination and the absence of conflict of interest.
- (9) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union (TFEU) apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the general regime of conditionality for the protection of the Union budget.
- (10) For the purpose of sound financial management, specific rules should be laid down for budget commitments, payments, carry-overs and the recovery of the Reserve. While respecting the principle that the Union budget is set annually, this Regulation should provide for possibilities to carry-over unused funds beyond those set out in the Financial Regulation, thus maximising the Reserve’s capacity to address adverse consequences of the withdrawal of the United Kingdom from the Union on the Member States and their economies.

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<sup>12</sup> 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 (OJ L 193, 30.7.2018, p. 1).

- (11) In order to enable Member States to deploy the additional resources and to ensure sufficient financial means to swiftly implement measures under the Reserve, a substantial amount thereof should be disbursed in 2021 as pre-financing. The distribution method should take into account the importance of trade with the United Kingdom and the importance of fisheries in the United Kingdom exclusive economic zone, based on reliable and official statistics. Given the unique nature of the event that the withdrawal of the United Kingdom from the Union constitutes and the uncertainty that has surrounded key aspects of the relationship between the United Kingdom and the Union after the expiry of the transition period, it is difficult to anticipate the appropriate measures Member States will have to take rapidly to counter the effects of the withdrawal. It is therefore necessary to grant Member States flexibility and in particular to allow the Commission to adopt the financing decision providing the pre-financing without the obligation pursuant to Article 110(2) of the Financial Regulation to provide a description of the concrete actions to be financed.
- (12) Prior to the payment of the pre-financing, Member States should notify the Commission of the identity of the bodies designated and of the body to which the pre-financing shall be paid, and confirm that the systems' descriptions have been drawn up, within three months of the entry into force of this Regulation.
- (13) To ensure equal treatment of all Member States, there should be one single deadline applicable to all Member States for the submission of applications for a financial contribution from the Reserve. The specific nature of the instrument and the relatively short implementation period justify the establishment of a tailor-made reference period and would make disproportionate the requirement for Member States to provide the documents required in paragraphs 5, 6 and 7 of Article 63 of the Financial Regulation, on an annual basis. Given that at the same time, the risks for the Union budget are mitigated by the requirement for a solid management and control system to be set up by Member States, it is justified to derogate from the obligation to submit the required documents in February or March of each year. In order to enable the Commission to check the correctness of the use of the financial contribution of the Reserve, Member States should also be required to submit, as part of the application, implementation reports providing more detail on the actions financed, a management declaration as well as an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards.
- (14) Pursuant to paragraphs 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016<sup>13</sup>, there is a need to evaluate the Reserve on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burden, in particular on Member States. These requirements, where appropriate, should include measurable indicators, as a basis for the evaluation of the Reserve.
- (15) To ensure equal treatment of all Member States and consistency in the evaluation of the applications, the Commission should assess the applications in a package. It should look in particular into the eligibility and the accuracy of the expenditure declared, the direct link of the expenditure with measures taken to address the consequences of the withdrawal and the measures put in place by the Member State concerned to avoid double funding. Upon assessment of the applications for a financial contribution from the Reserve, the Commission should clear the pre-financing paid, and recover the

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<sup>13</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

unused amount. In order to concentrate the support on Member States most affected by the withdrawal, where the expenditure in the Member State concerned, accepted as eligible by the Commission, exceeds the amount paid as pre-financing and 0.06% of the nominal Gross National Income (GNI) for 2021 of the Member State concerned, it should be possible to allow for a further allocation from the Reserve to that Member State within the limits of the financial resources available. Given the extent of the expected economic shock, the possibility to use the amounts recovered from the pre-financing for the reimbursement of additional expenditure by Member States should be provided for.

- (16) In order to ensure the proper functioning of shared management, Member States should establish a management and control system, designate and notify the Commission of the bodies responsible for the management of the Reserve as well as a separate independent audit body. For simplification reasons, Member States may make use of existing bodies designated and systems set up for the purpose of the management and control of cohesion policy funding or the European Union Solidarity Fund. It is necessary to specify the responsibilities of the Member States and lay down the specific requirements for the bodies designated.
- (17) In accordance with the Financial Regulation, Council Regulation (EC, Euratom) No 2988/95<sup>14</sup>, Council Regulation (Euratom, EC) No 2185/96<sup>15</sup> and Council Regulation (EU) 2017/1939<sup>16</sup>, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>17</sup> and Regulation (Euratom, EC) No 2185/96, the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>18</sup>. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

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<sup>14</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>15</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>16</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

<sup>17</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>18</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (18) Member States should raise awareness on the Union contribution from the Reserve and inform the public accordingly as transparency, communication and visibility activities are essential in making Union action visible on the ground. Those activities should be based on accurate and updated information.
- (19) In order to enhance transparency on the use of the Union contribution, the Commission should provide a final report to the European Parliament and the Council on the implementation of the Reserve.
- (20) In order to ensure uniform conditions for setting out the financial resources available to each Member State, implementing powers should be conferred on the Commission.
- (21) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>19</sup> and delivered an opinion on [...<sup>20</sup>].
- (22) The objectives of this Regulation are to maintain economic, social and territorial cohesion and to provide a solidarity tool for Member States when dealing with the effects of the withdrawal of the United Kingdom from the Union which affects the Union as a whole though with different severity among regions and sectors. These objectives cannot be sufficiently achieved by the Member States alone but can rather, by reason of the scale and effects of the action, be better achieved at Union level. Thus, 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 in order to achieve that objective.
- (23) In order to allow for the prompt application of the measures provided for, this Regulation should enter into force as a matter of urgency,

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General provisions**

#### *Article 1*

#### **Subject matter**

1. This Regulation establishes the Brexit Adjustment Reserve (the ‘Reserve’).
2. It lays down the objectives of the Reserve, its resources, the forms of Union funding and rules for the implementation of the Reserve, including for the eligibility of expenditure, for management and control, and the financial management.

#### *Article 2*

#### **Definitions**

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

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<sup>19</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>20</sup> OJ C....

- (1) ‘reference period’ means the reference period referred to in Article 63(5), point (a), of the Financial Regulation, which shall be from 1 July 2020 to 31 December 2022;
- (2) ‘applicable law’ means Union law and the national law relating to its application;
- (3) ‘irregularity’ means any breach of Union law, or of national law relating to its application, resulting from an act or omission by any public or private entity involved in the implementation of the Reserve, including Member State authorities, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (4) ‘total error rate’ means total errors identified in the sample divided by the audit population;
- (5) ‘residual error rate’ means the total error rate less the financial corrections applied by the Member State which intend to reduce the risks identified by the independent audit body in its audits of financed measures, divided by the expenditure to be covered by the financial contribution from the Reserve;
- (6) ‘Relocation’ means a transfer of the same or similar activity or part thereof within the meaning of Article 2(61a) of Commission Regulation (EU) No 651/2014<sup>21</sup>.

### *Article 3* **Objectives**

The Reserve shall provide support to counter the adverse consequences of the withdrawal of the United Kingdom from the Union in Member States, regions and sectors, in particular those that are worst affected by that withdrawal, and to mitigate the related impact on the economic, social and territorial cohesion.

### *Article 4* **Geographical coverage and resources for the Reserve**

1. All Member States shall be eligible for support from the Reserve.
2. The maximum resources for the Reserve shall be EUR 5 370 994 000 in current prices.
3. The resources referred to in paragraph 2 shall be allocated as follows:
  - (a) a pre-financing amount of EUR 4 244 832 000 shall be made available in 2021 in accordance with Article 8;
  - (b) additional amounts of EUR 1 126 162 000 shall be made available in 2024 in accordance with Article 11.

The amounts referred to in point (a) of the first subparagraph of this paragraph shall be considered pre-financing within the meaning of Article 115(2), point (b)(i), of the Financial Regulation.

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<sup>21</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

## **Chapter II**

### **Eligibility**

#### *Article 5*

#### **Eligibility**

1. The financial contribution from the Reserve shall only support the public expenditure directly linked to measures specifically taken by Member States to contribute to the objectives referred to in Article 3, and may cover, in particular the following:
  - (a) measures to assist businesses and local communities adversely affected by the withdrawal;
  - (b) measures to support the most affected economic sectors;
  - (c) measures to support businesses and local communities dependent on fishing activities in the United Kingdom waters;
  - (d) measures to support employment, including through short-time work schemes, re-skilling and training in affected sectors;
  - (e) measures to ensure the functioning of border, customs, sanitary and phytosanitary, security and fisheries controls, as well as the collection of indirect taxation including additional personnel and infrastructure;
  - (f) measures to facilitate regimes for certification and authorisation of products, to assist in meeting establishment requirements, to facilitate labelling and marking, for example for safety, health and environmental standards, as well as to assist in mutual recognition;
  - (g) measures for communication, information and awareness-raising of citizens and businesses about changes stemming from the withdrawal to their rights and obligations.
2. Expenditure shall be eligible if it is incurred and paid during the reference period for measures carried out in the Member State concerned or for the benefit of the Member State concerned.
3. When designing support measures, Member States shall take into account the varied impact of the withdrawal of the United Kingdom from the Union on different regions and local communities and focus support from the Reserve on those most affected, as appropriate.
4. The measures referred to in paragraph 1 shall comply with applicable law.
5. Measures eligible under paragraph 1 may receive support from other Union programmes and instruments provided that such support does not cover the same cost.
6. The Member State shall repay the contribution from the Reserve to an action comprising investment in infrastructure or productive investment, if within five years of the final payment to the recipients of the financial contribution or within the period of time set out in State aid rules, where applicable, that action is subject to any of the following:
  - (a) a cessation or transfer of a productive activity outside the Member State in which it received support;

- (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

The Member State may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by small and medium-sized enterprises.

This paragraph shall not apply to any action that undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.

#### *Article 6*

### **Exclusion from support**

The Reserve shall not support:

- (a) value added tax;
- (b) technical assistance for the management, monitoring, information and communication, complaint resolution, and control and auditing of the Reserve;
- (c) expenditure supporting relocation as defined in Article 2(6);
- (d) expenditure supporting relocation in accordance with Article 14(16) of Commission Regulation (EU) No 651/2014, where a contribution from the Reserve constitutes State aid.

## **Chapter III**

### **Financial management**

#### *Article 7*

### **Implementation and forms of Union funding**

1. The financial contribution from the Reserve to a Member State shall be implemented within the framework of shared management in accordance with Article 63 of the Financial Regulation.
2. Member States shall use the contribution from the Reserve to implement the measures referred to in Article 5 to provide non-repayable forms of support. The Union contribution shall take the form of reimbursement of eligible costs actually incurred and paid by Member States in implementing the measures.
3. Commitments and payments under this Regulation shall be made subject to the availability of funding.
4. By derogation from paragraphs 5, 6 and 7 of Article 63 of the Financial Regulation, the documents referred to in those provisions shall be submitted once, pursuant to Article 10 of this Regulation.
5. By derogation from Article 12 of the Financial Regulation, unused commitment and payment appropriations under this Regulation shall be automatically carried over and may be used until 31 December 2025. The appropriations carried over shall be consumed first in the following financial year.

*Article 8*  
**Pre-financing**

1. The allocation criteria for pre-financing to be paid by the Commission to Member States are set out in Annex I.
2. Subject to receipt of the information required under Article 13(1), point (d), of this Regulation the Commission shall, by means of an implementing act, set out the breakdown of the resources referred to in Article 4(3)(a) of this Regulation per Member State. That implementing act shall constitute a financing decision within the meaning of Article 110(1) of the Financial Regulation and the legal commitment within the meaning of that Regulation. By way of derogation from Article 110(2) of the Financial Regulation, that financing decision shall not include a description of the actions to be financed.
3. The Commission shall pay the pre-financing within 60 days of the date of the adoption of the implementing act referred to in paragraph 2. It shall be cleared in accordance with Article 11.
4. Amounts allocated but not paid as pre-financing shall be carried over and shall be used for additional payments pursuant to Article 11(3).

*Article 9*  
**Submission of applications for a financial contribution from the Reserve**

1. The Member States shall submit an application to the Commission for a financial contribution from the Reserve by 30 September 2023. The Commission shall assess this application and establish whether additional amounts are due to Member States or any amounts should be recovered from the Member States in accordance with Article 11.
2. Where a Member State does not submit an application for a financial contribution from the Reserve by 30 September 2023, the Commission shall recover the total amount paid as pre-financing to that Member State.

*Article 10*  
**Content of the application for a financial contribution**

1. The application shall be based on the template set out in Annex II. The application shall include information on the total public expenditure incurred and paid by Member States and the values of output indicators for the measures supported. It shall be accompanied by the documents referred to in paragraphs 5, 6 and 7 of Article 63 of the Financial Regulation and by an implementation report.
2. The implementation report for the Reserve shall include:
  - (a) a description of the impact of the withdrawal of the United Kingdom from the Union in economic and social terms including an identification of the regions, areas and sectors most affected;
  - (b) a description of the measures taken to counter the adverse consequences of the withdrawal of the United Kingdom from the Union, of the extent to which those measures alleviated the regional and sectoral impact referred to in point (a), and how they were implemented;

- (c) a justification of the eligibility of the expenditure incurred and paid and its direct link to the withdrawal of the United Kingdom from the Union;
  - (d) a description of the measures taken to avoid double funding and to ensure complementarity with other Union instruments and national funding;
  - (e) a description of the contribution of the measures to climate change mitigation and adaptation.
3. The summary referred to in Article 63(5), point (b), of the Financial Regulation shall set out the total error rate and residual error rate for the expenditure entered in the application submitted to the Commission, as a result of the implemented corrective actions.

#### *Article 11*

### **Clearance of the pre-financing and calculation of the additional amounts due to Member States**

1. The Commission shall assess the application referred to in Article 10 and shall satisfy itself that the application is complete, accurate and true. When calculating the financial contribution due to the Member State from the Reserve, the Commission shall exclude from Union financing expenditure for measures which were implemented or for which disbursements have been made in breach of applicable law.
2. Based on the assessment, the Commission shall, by means of an implementing act, establish the following:
  - (a) the total amount of eligible public expenditure (the 'accepted amount');
  - (b) whether additional amounts are due to the Member State, in line with paragraph 3, or whether amounts need to be recovered pursuant to paragraph 5.
3. Where the accepted amount exceeds both the amount of pre-financing and 0.06% of the nominal GNI of 2021 of the Member State concerned, an additional amount shall be due to that Member State from the allocation referred to in Article 4(3), point (b), and any amounts carried over pursuant to Article 8(4).

In such a case, the Commission shall pay the amount exceeding the pre-financing paid to the Member State concerned or 0.06% of the nominal GNI of 2021, whichever is higher.

Where the sum of the additional amounts for all Member States calculated pursuant to the first subparagraph of this paragraph exceeds the resources available according to Article 4(3), point (b), the contributions from the Reserve shall be reduced proportionately.

4. With regard to the additional amounts due pursuant to paragraph 3 of this Article, the implementing act referred to in paragraph 2 of this Article shall constitute a financing decision within the meaning of Article 110(1) of the Financial Regulation and the legal commitment within the meaning of that Regulation.
5. The Commission shall clear the respective pre-financing and pay any additional amount due within 60 days of adoption of the implementing act referred to in paragraph 2.
6. Where the accepted amount is lower than the pre-financing for the Member State concerned, the difference shall be recovered in accordance with the Financial

Regulation, and in particular its Part I, Chapter 6, Sections 3, 4 and 5. The recovered amounts shall be treated as internal assigned revenue in accordance with Article 21(3), point (b), of the Financial Regulation and, where the third subparagraph of paragraph 3 of this Article has been applied, shall be used to increase proportionately the contributions paid to Member States eligible for additional amounts under paragraph 3 of this Article up to a maximum of 100 %. In case payments to Member States pursuant to paragraph 3 of this Article have been made at a rate of 100 %, the amounts recovered shall be returned to the general budget of the Union.

7. The Commission shall, by means of an implementing act, set out the additional amounts due pursuant to the second sentence of paragraph 6 of this Article. That implementing act shall constitute a financing decision within the meaning of Article 110(1) of the Financial Regulation and the legal commitment within the meaning of that Regulation. The Commission shall pay any additional amount due within 60 days of adoption of that act.
8. Prior to the adoption of the implementing acts referred to in paragraphs 2 and 7, the Commission shall inform the Member State of its assessment and invite the Member State to submit its observations within two months.

#### *Article 12*

#### **Use of the euro**

Any amounts declared in the application for a financial contribution to the Commission by Member States shall be denominated in euro. Member States which have not adopted the euro as their currency shall convert the amounts in the application for financial contribution into euro using the monthly accounting exchange rate of the Commission in the month prior to the submission of the application.

## **Chapter IV**

### **Management and control systems**

#### *Article 13*

#### **Management and control**

1. When executing tasks relating to the implementation of the Reserve, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the financial interests of the Union, namely by:
  - (a) designating a body responsible for the management of the financial contribution from the Reserve and an independent audit body in accordance with Article 63(3) of the Financial Regulation, and supervising such bodies;
  - (b) setting up management and control systems for the Reserve in accordance with the principles of sound financial management and ensuring that those systems function effectively;
  - (c) drawing up a description of the management and control system in accordance with the template set out in Annex III, keeping the description up to date and making it available to the Commission on request;
  - (d) notifying the Commission of the identity of the bodies designated and of the body to which the pre-financing shall be paid, and confirming that the systems'

descriptions have been drawn up, within three months of the entry into force of this Regulation;

- (e) ensuring that expenditure supported under other Union programmes and instruments is not included for support from the Reserve;
- (f) preventing, detecting and correcting irregularities and fraud, and avoiding conflict of interest including through the use of a single data mining tool provided by the Commission;
- (g) cooperating with the Commission, OLAF, the Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, with the EPPO.

The use of and access to the data processed by the data mining tool referred to in point (f) shall be limited to the bodies referred to in point (a), the Commission, OLAF, the Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, with the EPPO.

The Member States and the Commission shall be allowed to process personal data only where necessary for the purpose of carrying out their respective obligations under this Regulation, and process personal data in accordance with Regulation (EU) 2016/679<sup>22</sup> or Regulation (EU) 2018/1725, whichever is applicable.

2. For the purposes of points (a) and (b) of paragraph 1, the Member States may make use of bodies and management and control systems already in place for the implementation of cohesion policy funding or the European Union Solidarity Fund.
3. The body responsible for managing the financial contribution from the Reserve shall:
  - (a) ensure the functioning of an effective and efficient internal control system;
  - (b) establish criteria and procedures for the selection of measures to be financed and determine the conditions for a financial contribution from the Reserve;
  - (c) verify that the measures financed from the Reserve are implemented in accordance with applicable law and the conditions for a financial contribution from the Reserve, and that the expenditure is based on verifiable supporting documents;
  - (d) establish effective measures to avoid double funding of the same costs by the Reserve and other sources of Union funding;
  - (e) ensure ex post publication in accordance with paragraphs 2 to 6 of Article 38 of the Financial Regulation;
  - (f) use an accounting system to record and store in an electronic form data on the expenditure incurred to be covered by the financial contribution from the Reserve that provides accurate, complete and reliable information in a timely manner;
  - (g) keep available all supporting documents regarding expenditure to be covered by the financial contribution from the Reserve for a period of five years following the deadline for submission of the application for a financial

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<sup>22</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

contribution, and transpose this obligation in agreements with other entities involved in the implementation of the Reserve;

- (h) for the purposes of point (f) of paragraph 1, collect information in an electronic standardised format to allow for the identification of recipients of a financial contribution from the Reserve and their beneficial owners in accordance with Annex III.

4. The independent audit body shall audit the system and carry out audits of financed measures in order to provide independent assurance to the Commission regarding the effective functioning of the management and control system and the legality and regularity of the expenditure included in the accounts submitted to the Commission.

The audit work shall be carried out in accordance with internationally accepted audit standards.

The audits of the financed measures shall cover expenditure on the basis of a sample. That sample shall be representative and based on statistical sampling methods.

Where the population consists of less than 300 sampling units, a non-statistical sampling method may be used based on the professional judgment of the independent audit body. In such cases, the size of the sample shall be sufficient to enable the independent audit body to draw up a valid audit opinion. The non-statistical sampling method shall cover a minimum of 10% of the sampling units in the population of the accounting year, selected randomly.

5. The Commission may carry out on-the-spot audits at the premises of all entities involved in the implementation of the Reserve with regard to the measures financed by the Reserve and shall have access to the supporting documents regarding the expenditure to be covered by the financial contribution from the Reserve.

#### *Article 14*

#### **Financial corrections**

1. The financial corrections made by the Member State in accordance with Article 13(1), point (f), shall consist of cancelling all or part of the financial contribution from the Fund. The Member State shall recover any amount lost as a result of an irregularity detected.
2. The Commission shall take appropriate action to ensure that the financial interests of the Union are protected through the exclusion of irregular amounts submitted to the Commission in the application referred to in Article 10 of this Regulation from Union financing and through the recovery of the amounts unduly paid in accordance with Article 101 of the Financial Regulation if irregularities are subsequently identified.
3. The Commission shall base its financial corrections on individual cases of identified irregularity and shall take account of whether an irregularity is systemic. Where it is not possible to quantify precisely the amount of irregular expenditure, or where the Commission concludes that the system is not working effectively to safeguard the legality and regularity of the expenditure, the Commission shall apply a flat rate or extrapolated financial correction. The Commission shall respect the principle of proportionality by taking account of the nature and gravity of the irregularity and its financial implications for the budget of the Union.

4. Prior to the recovery of amounts unduly paid or the application of financial corrections, the Commission shall inform the Member State of its assessment and invite the Member State to submit its observations within two months.

## **Chapter IV**

### **Final provisions**

#### *Article 15*

#### **Information and communication**

Member States shall be responsible for informing and publicising to Union citizens the role, the results and impact of the Union contribution from the Reserve through information and communication actions.

#### *Article 16*

#### **Evaluation and reporting**

1. By 30 June 2026, the Commission shall carry out an evaluation to examine the effectiveness, efficiency, relevance, coherence and EU added value of the Reserve. The Commission may make use of all relevant information already available in accordance with Article 128 of the Financial Regulation.
2. By 30 June 2027, the Commission shall submit to the European Parliament and to the Council a report on the implementation of the Reserve.

#### *Article 17*

#### **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*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council establishing the Brexit Adjustment Reserve

#### 1.2. Policy area(s) concerned (*Programme cluster*)

16 Expenditure outside the annual ceilings set out in the Multiannual Financial Framework (Article 16 02 03 Brexit Adjustment Reserve (BAR))  
30 Reserves (Article 30 04 03 Brexit Adjustment Reserve (BAR))

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>23</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Grounds for the proposal/initiative

##### 1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

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

It shall apply from the first day after the transition period ended, according to the withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) TEU.

The Reserve will cover all Member States and will be activated as follows.

In 2021, the Commission will pay the first allocation in the form of a substantial pre-financing to all Member States. The pre-financing allocation method will be based on official statistics that are comparable and reliable. It will be set out in Annex I of the proposed Regulation.

Between 1 July 2020 and 31 December 2022, when necessary, Member States will take and implement measures directly linked to mitigating the adverse effects of the withdrawal of the United Kingdom from the Union.

By 30 September 2023, Member States will submit their applications for a financial contribution from the Reserve. The application will be accompanied by an implementation report, a management declaration and an independent audit opinion covering the reference period for the Reserve.

In 2024, the Commission will clear the pre-financing and, where applicable, will pay the additional amounts from the Reserve.

By 30 June 2027, the Commission will present an implementation report of the Reserve to the European Parliament and the Council.

<sup>23</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

- 1.4.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

The reason for setting up the Brexit Adjustment Reserve is to strengthen economic, social and territorial cohesion and show tangible solidarity with Member States, regions and sectors most affected by the withdrawal of the United Kingdom from the Union.

Action at Union level is necessary in order to mitigate the adverse effects of the withdrawal of the United Kingdom from the Union. This goal cannot be achieved to a sufficient degree by the Member States acting alone, while the Union's intervention can bring an additional value by establishing a Reserve targeted at supporting Member States financially to mitigate the economic and societal impact caused by the withdrawal.

- 1.4.3. *Lessons learned from similar experiences in the past*

Other instruments at Union level support cohesion and solidarity. Union funds, notably those covered by Regulation (EU) No 1303/2013 of the European Parliament and of the Council (Common Provisions Regulation), finance investment projects supporting the economic, social and territorial cohesion and growth. The Just Transition Fund aims to mitigate the adverse effects of the climate transition by supporting the most affected territories and workers concerned. InvestEU provides financing to private investment projects under different policy windows. The EU Solidarity Fund has proven to be a very effective instrument in providing assistance to Member States following natural disasters. Its scope was also recently widened to cover major health emergencies. A proposal for its modification to cover also the effects of the withdrawal of the United Kingdom from the Union without an agreement was put forward by the Commission in autumn 2019 but became obsolete as an agreement was finally signed.

There is currently no instrument providing financial support to Member States, specifically and directly linked to the economic and social consequences of the withdrawal of the United Kingdom from the Union. Its architecture takes into account the unprecedented situation for Member States, its uniqueness and the need for them to react quickly and flexibly to the challenges as they arise in the economies.

- 1.4.4. *Compatibility and possible synergy with other appropriate instruments*

The Reserve will be complementary and ensure synergies with other Union programmes and funding instruments. The 2021-2027 multiannual financial framework and accompanying programmes, including the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) under the structural and cohesion funds, the post-2020 cohesion policy funds, the Just Transition Fund, the Recovery and Resilience Facility and the InvestEU, will focus more on dealing with the effects of the crisis caused by COVID-19 and provide support to Member States' economies to become more resilient, sustainable and better prepared for the future. The Reserve will concentrate its resources specifically and exclusively on the direct effect of the specific and unprecedented event of withdrawal of the United Kingdom from the Union, reducing its impact in terms of territorial cohesion.

The proposed instrument also draws inspiration from the long-standing experience of cohesion policy funding and the European Union Solidarity Fund (Regulation (EC) No 2012/2002 of 11 November 2002, as amended), while setting up a new specific instrument for countering the adverse effects of the withdrawal of the United Kingdom from the European Union.

Decisions to provide financial support to a Member State will take into account the measures financed by the Union programmes and instruments, and the need to avoid double funding.

## 1.5. Duration and financial impact

### limited duration

- in effect from 01/01/2021 to 31/12/2025
- Financial impact in 2021 and 2024 for commitment appropriations and in 2021 and 2024 for payment appropriations.

### unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.6. Management mode(s) planned<sup>24</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

#### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

<sup>24</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

All Member States will have to submit an application for financial contribution from the Reserve, which will detail and justify the public expenditure stemming from and linked to the withdrawal of the United Kingdom from the Union, in accordance with the eligibility set out below. The Regulation will set out a single deadline for submission; the Commission proposes 30 September 2023 as the last day to submit such applications.

In addition, Member States will present, as part of the application, an implementation report, a management declaration and an independent audit opinion covering the reference period for the Reserve. The implementation report will detail for example the measures taken and expenditure incurred from 1 July 2020 to 31 December 2022 and the measures taken to avoid double funding and to ensure complementarity with other EU and national instruments and funding.

By 30 June 2027, the Commission will present to the European Parliament and to the Council a report on the activity of the Reserve.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

##### **Management and control**

The budget allocated to the Reserve will be implemented under shared management between the Member States and the Commission, guaranteeing full respect of the principles of sound financial management, transparency and non-discrimination and the absence of conflict of interest. In particular, Member States will have to set up a management and control system and designate bodies responsible for the management of the Reserve and an independent audit body. The Regulation sets out clearly the responsibilities for the Member States and a minimum set of requirements for the bodies responsible for the management, control and audit of the financial contribution under the Reserve. Member States will put in place systems that aim to prevent, detect and deal effectively with any irregularities and fraud.

Member States should notify the Commission of the identity of the bodies designated and of the body to which the pre-financing shall be paid, and confirm that the systems descriptions have been drawn up, within three months of the entry into force of this Regulation.

For simplification reasons, Member States could make use of existing bodies designated and systems set up for the purpose of the management and control of cohesion policy funding or the European Union Solidarity Fund.

The Commission will take appropriate actions to ensure that the financial interests of the Union are protected.

##### **Financial management**

The funding implementation mechanism and payment modalities will be as follows. The Reserve will cover all Member States and will be activated in two allocations –

the first one in 2021 in the form of a substantial pre-financing, and the second in 2024 as a payment of additional amounts from Reserve. The allocation method for the pre-financing will be set up in Annex I to the Regulation in order to ensure full transparency.

By 30 September 2023, all Member States will present an application for financial contribution from the Reserve (as set out in Annex II of this Regulation), detailing and justifying the total public expenditure incurred and paid by the Member State from 1 July 2020 to 31 December 2022. The application will be accompanied by an implementation report, detailing, among others, the measures taken to counter the adverse consequences of the withdrawal of the United Kingdom from the Union, and how they were implemented, a management declaration and an independent audit opinion covering the reference period for the Reserve.

The Commission will assess the applications in a package, guaranteeing equal treatment of all Member States and ensuring consistency in the evaluation. In assessing the applications for a financial contribution from the Reserve, the Commission will clear the pre-financing paid, and recover the unused amount for the purpose of this Regulation. Where the expenditure exceeds the amount paid in pre-financing and 0.06% of the nominal GNI of 2021, additional allocations from the Reserve may be paid to contribute to the exceeding amounts, within the limits of the financial resources available. The amounts recovered from the pre-financing and carried over may be used for reimbursement of additional expenditure by Member States, provided there is a demand.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The risks are as follows. It is important to ensure that:

- the total public expenditure declared by the Member States is linked to measures taken to counter adverse consequences of the withdrawal of the United Kingdom from the Union;
- the total public expenditure declared by the Member States is limited to the reference period from 1 July 2020 to 31 December 2022;
- double funding is avoided.

Measures will be put into place to mitigate these risks throughout the implementation and disbursement of the Reserve:

- the setting-up in the legislative act of a transparent method of allocation and payment;
- a thorough assessment process by the Commission before the payment of the additional amounts from the Reserve;
- the recovery of the pre-financing or part of it in case the accepted amount by the Commission of the eligible expenditure declared by a Member State is lower than the pre-financing or in case irregularities are found;
- the use of a management and control system specific to shared management in accordance with Article 63 of Regulation (EU, Euratom) 2018/1046 such as those used under cohesion policy or under the EU Solidarity Fund. Member States will apply financial corrections on irregular expenditure.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The Commission has considered these critical elements carefully with a view to finding the right balance between accountability, simplification and performance.

In this context, the Commission proposes that the management and control system of the Reserve is governed by the rules applicable to shared management funds, e.g. Common Provisions Regulation and the EU Solidarity Fund. The Regulation sets out clearly the responsibilities for the Member States and a minimum set of requirements for the bodies responsible for the management, control and audit of the financial contribution under the Reserve. Member States will put in place systems that aim to prevent, detect and deal effectively with any irregularities, fraud and conflict of interests.

In order to avoid extra financial and administrative burdens on the Member States, the proposed provisions strike the right balance between assurance and simplified rules and promote the roll-over of existing systems.

**2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

In accordance with the shared management rules, Member States will have to set up a management and control system and designate bodies responsible for the management of the Reserve and an independent audit body. Member States will notify the Commission of the identity of the bodies designated and of the body to which the pre-financing will be paid, and confirm that the systems' descriptions have been drawn up within three months of the entry into force of this Regulation.

Member States authorities will have to maintain effective and proportionate anti-fraud measures and procedures, specifically taking into account identified risks of fraud. Member States authorities will be able to make use of the currently existing systems for irregularities and fraud prevention set up under the shared management rules governing cohesion policy funds and the EU Solidarity Fund.

The Commission and other EU institutions (European Court of Auditors, OLAF) will carry out their usual controls and audits.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
			Diff./Non-diff. <sup>25</sup>	from EFTA countries <sup>26</sup>	from candidate countries <sup>27</sup>	from third countries
Title 16: Expenditure outside the annual ceilings set out in the Multiannual Financial Framework	16 02 03 Brexit Adjustment Reserve (BAR)	Diff.	NO	NO	NO	NO
Title 30: Reserves	30 04 03 Brexit Adjustment Reserve (BAR)	Diff.	NO	NO	NO	NO

<sup>25</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>26</sup> EFTA: European Free Trade Association.

<sup>27</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR in current prices

<b>Heading of multiannual financial framework</b>	<...>	16 02 03 Brexit Adjustment Reserve (BAR)/30 04 03 Brexit Adjustment Reserve (BAR)
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			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations	Commitments	(1)	4 244 832 000			1 126 162 000					<b>5 370 994 000</b>
	Payments	(2)	4 244 832 000			1 126 162 000					<b>5 370 994 000</b>
Appropriations of an administrative nature financed from the envelope of the programme <sup>28</sup>	Commitments = Payments	(3)									
<b>TOTAL appropriations for the envelope of the programme</b>	Commitments	=1+3	4 244 832 000			1 126 162 000					<b>5 370 994 000</b>
	Payments	=2+3	4 244 832 000			1 126 162 000					<b>5 370 994 000</b>

<b>Heading of multiannual financial framework</b>	7	‘Administrative expenditure’
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) , which is uploaded to DECIDE for interservice consultation purposes.

<sup>28</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	TOTAL
Human resources		0.300	0.150	0.750	0.750	0.300	0.150	<b>0.150</b>	<b>2.550</b>
Other administrative expenditure									
<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0.300	0.150	0.750	0.750	0.300	0.150	<b>0.150</b>	<b>2.550</b>

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	TOTAL
<b>TOTAL appropriations across HEADINGS of the multiannual financial framework</b>	Commitments	4 245.132	0.150	0.750	1 126. 912	0.300	0.150	<b>0.150</b>	<b>5 373.544</b>
	Payments	4 245.132	0.150	0.750	1 126. 912	0.300	0.150	<b>0.150</b>	<b>5 373.544</b>

### 3.2.2. Summary of estimated impact on appropriations of an administrative nature

- The proposal/initiative does not require the use of additional appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
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HEADING 7 of the multiannual financial framework								
Human resources	0.300	0.150	0.750	0.750	0.300	0.150	<b>0.150</b>	<b>2.550</b>
Other administrative expenditure								
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>0.300</b>	<b>0.150</b>	<b>0.750</b>	<b>0.750</b>	<b>0.300</b>	<b>0.150</b>	<b>0.150</b>	<b>2.550</b>

Outside HEADING 7 <sup>29</sup> of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>0.300</b>	<b>0.150</b>	<b>0.750</b>	<b>0.750</b>	<b>0.300</b>	<b>0.150</b>	<b>0.150</b>	<b>2.550</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>29</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

### 3.2.2.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of additional human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

Years		2021	2022	2023	2024	2025	2026	2027
Headquarters and Commission's Representation Offices		2 AD	1 AD	4 AD; 1 AST	4 AD; 1 AST	2 AD	1 AD	1 AD
Delegations								
Research								
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters							
	- in Delegations							
Financed from the envelope of the programme <sup>30</sup>	- at Headquarters							
	- in Delegations							
Research								
Other (specify)								
<b>TOTAL</b>		2 AD	1 AD	4 AD; 1 AST	4 AD; 1 AST	2 AD	1 AD	1 AD

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

<sup>30</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.3. Third-party contributions

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	TOTAL
Specify the co-financing body							
TOTAL appropriations co-financed							

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative <sup>31</sup>					
	2021	2022	2023	2024	2025	2026
Article .....						

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>31</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20% for collection costs.