BREXIT ADJUSTMENT RESERVE (BAR) Eligibility of expenditure

1. Context

In view of the approaching final withdrawal of the UK from the EU, the European Council of July 2020 suggested to set up a **Brexit Adjustment Reserve (BAR)**. The European Commission presented its proposal for the BAR the day after the negotiations on the withdrawal agreement between the EU and the UK were completed, i.e. on 25 December 2020. The BAR regulation came into force in October 2021 with a retroactive eligibility period as from 1 January 2020.

The BAR aims to mitigate the impact of Brexit but is different in many dimensions from cohesion funding reflecting the **unprecedented nature of the event** (a MS leaving the EU) and the **unforeseeable consequences for the different Members States** (as exposure of MS and their regions, economic sectors and actors differ). The BAR reflects EU solidarity and its functioning was inspired by the EUSF. The BAR is based on Article 175 and aims to mitigate damage to cohesion but is a regulation on its own and not subject to CPR. In view of the circumstances, the BAR regulation is in many aspects not as specific and prescriptive as for other cohesion funding (ERDF, CR, JTF).

Notably the BAR is:

- an extraordinary instrument (above the EU budget);
- a temporary, ad-hoc instrument (short implementation period);
- a targeted instrument (mitigate solely the impact of Brexit on Member States).

The intervention logic of the BAR paid particular attention to allow Member States:

- to provide swift support (=> high pre-financing);
- to allow Member States to react **flexibly** to the specific situations within Member States with **least administrative burden** (=> no ex-ante programming or planning of measures, reporting on output limited to indicators in Annex II).

However, the BAR does not derogate from other EU law notably state aid.

Apart from the fishery sector where the impact was felt imminently, it has become clear over the last months that the **impact of Brexit has been rather incremental** than of a cliff-edge nature. This is due to a number of reasons, notably the repeated postponement of announced measures by the UK and the COVID-19 pandemy. This has made it more difficult for Member States to define measures for areas with a clear and noticeable impact. This and other reasons (such as negotiations on RRPs and cohesion programmes as well as challenges to comply with the state aid framework) have delayed the implementation of BAR.

Regulation (EU) 2023/435 of 27 February 2023 allowed for transfers from BAR to the REPowerEU chapter of the Recovery and Resilience Facility (RRF). This possibility enabled MS with implementation delays to secure the funds in a related instrument. The legal framework came into force in February 2023 and 23 out of 27 MS submitted a reasoned request to transfer from the BAR to REPowerEU of which 10 MS transferred the full amounts. The total amount of transfer requests reached almost EUR 2,1bn (this corresponds to 38% of the total provisional allocation of some EUR 5.4bn).

2. Elements for the assessment of the eligibility of expenditure under BAR

Anecdotal evidence from bilateral discussions with Member States suggests that Member States have been considering to set up measures in the following **categories**:

- fisheries sector and coastal communities;
- private and public businesses, in particular SMEs (including advisory support), export sectors and trade promotion (some also considered the tourism sector);
- customs and border controls/ports (installations and construction/rental of buildings to accommodate the additional related inspection services (customs/veterinary/phytosanitary);
- job creation and protection, re-skilling and training.

Art.5 (2) of the BAR Regulation stipulates that:

"Expenditure shall be eligible for a financial contribution from the Reserve if it is incurred and paid by public authorities in the Member States, at national, regional or local levels, including payments to public or private entities, during the reference period for measures carried out in, or for the benefit of, the Member State concerned"

The BAR regulation delineates two concrete points in time:

- (i) the expenditure needs to be incurred and paid by public authorities by **31 December 2023**:
- (ii) Member State needs to report **by 30 September 2024** (see Art 10) about the measures carried out.

For spending to be eligible, Article 5(2) of the BAR provides that the expenditure must be 'incurred and paid by public authorities'. It does not specify the level but even refers to national, regional or local level to illustrate that the legislator did not want to prescribe Member States the level of payment. This wording also reflects the different constitutional and governance set-up and structures in Member States as well as respects their decisions how to implement BAR in their territory. REGIO confirmed this understanding many times to Member States.

The notion of 'measures carried out' is not defined in the regulation, i.e. it could mean expenditure for the parts of the works for which expenditure has been incurred and paid by 31 December 2023 (regardless of the stage of completion of the overall investment). The regulation does not require that the measures are carried out by 31 December 2023 and this interpretation has been consistently communicated to Member States.

The legal text only specifies that the expenditure shall be incurred and paid for the <u>measures</u>, in other words the purpose and the scope of the measure has to be specified beforehand to qualify as expenditure. For instance, if the coordinating body in a given country transfers the money to carry out a certain project (e.g. to refurbish and upgrade infrastructure), then the transfer from the coordinating body to the beneficiary qualifies as expenditure.

In construction works it is often the case that the companies carrying out the construction require advances for preparatory works, to buy material, machines, to pay staff etc. to be able to carry out the works. Such advances would be eligible if incurred and paid by 31 December 2023.

In the overall works it is important for the authorities to establish a clear audit trail which expenditures are covered by BAR and which by other national or EU funds.

Notwithstanding the different payment levels, the measure has to be carried out by 30 September 2024 when it is reported to the Commission in line with Article 11 and Annex II. The Member States should organise internally so that the controls and audits foreseen by the Regulation are carried out to allow for the submission of the application including the audit opinion by 30 September 2024.