

## **Brexit Adjustment Reserve “DIRECT LINK” – generic examples**

### **1. Context**

Member States have been asking during the negotiations in the Council and the inter-institutional negotiations for the Commission to assist Member States in order to help them identify measures to counter the adverse consequences of the withdrawal of the United Kingdom from the Union, including on how to assess the direct link of the expenditure with the withdrawal. This request from the Member States, supported by the European Parliament, was translated in the format of a recital in the draft Brexit Adjustment Regulation.

This request was reiterated in the seminar on the Brexit Adjustment Reserve, which took place on 12 July 2021. Numerous Member States enquired to share further examples on how to assess the direct link of the expenditure with the withdrawal of the UK.

The Commission has been and continues to be actively involved in a dialogue with Member States in order to support them with the preparation of their potential measures. However, the Commission will not provide a written ex-ante confirmation that the requirement of a link to BREXIT is fulfilled before the Member State selects the measures to be supported under the BAR.

The next two sections put forward the elements for assessing the measures and their direct link to Brexit and a number of examples of potential measures to be funded from the Reserve. It outlines an approach Member States could use to determine the direct link of measures with the withdrawal of United Kingdom from the Union.

This paper is not an interpretation of law but forms part of support to Member States provided by the Commission through bilateral meetings, written replies, information website and seminars. Its focus is on the conditions established by the Brexit Adjustment Reserve regulation. This notwithstanding, measures designed by Member States shall also comply with other EU law, notably applicable State aid rules.

### **2. Elements for the assessment of the direct link**

The overarching logic behind the BAR instrument is to provide support to the economies of Member States to master the transition from UK being an EU MS to UK being a third country. In that regard the Reserve should support regions and sectors, in particular those that are worst affected by the withdrawal, and thus mitigate the related negative impact on economic, social and territorial cohesion. It aims to be a simple, short-termed and targeted support for MS following the UK's withdrawal from the Union.

In order for measures adopted by Member States and for the expenditure related to them to be eligible for the Reserve, Member States shall:

- describe the **adverse consequences of Brexit**; national authorities will have explain the negative impact stemming from Brexit in economic, social, territorial and, where appropriate, environmental terms, including an identification of the sectors, regions, areas and, where relevant, local communities most adversely affected by the withdrawal (e.g. loss of market share, employment, trade volumes, turn-over,

additional costs or non-tariff barriers etc.). Thus, consequences that are not adverse should not be taken into account and should be excluded;

- **justify the direct link** between the adverse consequences of Brexit and the measures carried out; 'direct link' means to demonstrate that those measures adopted by a Member State are designed to counterbalance (part of) the increase of costs or the losses due to Brexit in a particular sector or region which it considers being adversely affected by the withdrawal. From this perspective, Brexit as a triggering point is a necessary but not sufficient condition for access to support from the Reserve. In cases where the measure or infrastructure project goes beyond what is strictly needed for countering the negative effects of the UK's withdrawal, only the part of the measure that is necessary to counter the negative effects of the UK's withdrawal would be eligible. When the eligible expenditure cannot be established clearly, a pro-rata eligibility system can be used. In case of measures to support businesses, individuals or specific infrastructure projects, Member States will have to design their measures in such a way that the criteria established for the selection of recipients focus on the elements allowing for an ascertainment of the negative consequences.

**Example IT system for border customs:**

*In case of a measure taken to enhance the borders customs IT system that has been negatively affected by the new technical requirements for trade with UK (new documents, certificates etc.), this measure should in principle be eligible under the BAR. Two situations can be distinguished:*

- *If the enhancement of the IT system was done as a result of Brexit (e.g. because the existing system could not comply with the new requirements) and is limited to the improvements to respond to Brexit impact, it could be funded entirely through the contribution from the Reserve (full eligibility).*
- *If the enhancement of the IT system was done as a result of Brexit (e.g. because the existing system could not comply with the new requirements in terms of quality or capacity) but the body uses this opportunity to carry out additional improvements of the system, only the pro-rata part of costs, i.e. the share of expenditure related to Brexit out of the total expenditure, could be supported through the BAR (pro-rata eligibility).*

**Example X-ray scanner for border controls:**

*In case of a measure taken to respond to the increased need to control goods coming from the UK by the purchase of X-ray machine for customs checks, but also used to check goods coming from other states:*

- *If the Member States can prove that the need to use X-ray machines was increased due to Brexit and thus another machine is needed (i.e. number of x-ray controls increased by X% since Brexit) the cost would be eligible. The importance of an adequate audit trail of the justification is reminded (i.e. statistics of the number of controls before Brexit, statistics of the number of controls after Brexit or at least (if no meaningful statistics on this yet available) past statistics of goods entering the country from UK and that would thus need control in future). The machine could then be used for border control together with the existing ones independently from the origin of the goods.*

Once those issues will have been ascertained, national authorities will be in a position to easily prove the adequacy of the policy rationale behind a measure to counter those adverse consequences of the withdrawal of the United Kingdom from the Union.

### **3. Examples of potential measures**

Article 5 of the BAR regulation provides a non-exhaustive list of measures. Based on actual proposals by Member States you find below examples for the different categories of measures which would be eligible provided all other requirements of the regulation are fulfilled:

- (a) measures to support job creation and protection, re-skilling and training:
  - *training of employees of companies undergoing restructuring because of Brexit;*
- (b) measures to support private and public businesses, in particular SMEs, local communities and organisations:
  - *advisory support for the internationalisation of enterprises (SMEs) to enable new business opportunities, to replace those lost because of Brexit;*
  - *compensation measures for the benefit of vessel owners and fishers that are able to document income loss related to the quota share reductions induced by the Trade and Cooperation Agreement, to lack of access to UK waters or other third country waters or to negative impacts on trade patterns and logistics (non-tariff barriers) as a direct result of Brexit (temporary exception applicable to fishery sector only);*
- (c) 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 their training, and infrastructure:
  - *construction of port infrastructure: Installations and construction of buildings to accommodate the additional Brexit related customs and veterinary and phytosanitary inspection services or extension of port facilities to accommodate new sea connections to avoid landways which are complicated by Brexit;*
  - *support to public authorities to address the increasing administrative burden (customs procedures, etc.) and additional costs due to UK's change of status (third country). It would be important then for the authorities to determine how to address this effect for the benefit of companies to facilitate the adjustment to the new normal (e.g. introduction of new facilities to process faster, digitalisation of trade processes and documentation etc.*
- (d) measures to support the most adversely affected economic sectors:
  - *Creation of a sector expert to assist the Member States' companies in gaining access to the British market, as well as helping companies navigating the new regulatory landscape after Brexit;*
  - *Support to companies operating in a particular economic sector to make up for the losses incurred as a result of Brexit – funding for advisory support to companies in gaining access to other international markets than the UK;*