



# The Brexit Adjustment Reserve

## Post inter-institutional negotiations

N.B. references to articles use the version prior to lawyer linguists

*12 July 2021*

# The Brexit Adjustment Reserve – main features

- All Member States are eligible
- Large (80%) pre-financing disbursed in 3 instalments by the end of 2021 and by April 2022 and April 2023
- Definitive level of support dependent on specific public expenditure spent on measures to counter the adverse consequences of Brexit
- Eligibility period with retroactivity from 1 January 2020 to 31 December 2023
- Management and control proportionate to the special nature of the Reserve: no ex-ante description of measures yet robust management and control requirements



# Chapter I

# General provisions

# Former Article 3 and related recitals- Objectives and horizontal principles

- Support to counter the adverse consequences of the withdrawal of the United Kingdom from the Union- particularly most affected
- Mitigate the related negative impact on the economic, social and territorial cohesion
- The objectives of the Reserve shall be pursued in line with the objective of promoting sustainable development as set out in Article 11 TFEU, taking into account the UN Sustainable Development Goals, the Paris Climate Agreement and the "do no significant harm" principle + Recitals 4a bis and 5a

# Former Article 3 and related recitals- Objectives and horizontal principles

- **Differentiated approach to horizontal principles**

- Firstly, the regulation introduces these aspirations but is not specific on reporting obligations for the Member States on the promotion of sustainable development, the UN Sustainable Development Goals, the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the 'Paris Agreement'), the 'do no significant harm' principle, the European Green Deal, the Digital agenda, as well as and the principles set out in the European Pillar of Social Rights
- Secondly, the Commission should assess the climate contribution based on the information available in the final report on the implementation of the Reserve under point (e) of Art 10(2) – so only for the measures declared by the Member State as contributing to climate change mitigation and adaptation – not for all measures in general!
- Thirdly, on the principle of partnership, Member States shall report by providing in the application form a short description of the Multi-Level-Dialogue, when carried out only!

# Alignment with the Common Fisheries Policy objectives

- **BAR support must not:**
  - lead to increased fishing capacity or other harmful fisheries subsidies, e.g. renewal of fishing vessels
  - go against the CFP objectives as set out in Article 2 of the CFP Regulation (EU) No 1380/2013

## Article 4

# Geographical coverage and resources for the Reserve

- All Member States eligible for support from the Reserve.
- The maximum resources for the Reserve - EUR 5 470 435 000 in current prices
- Resources to be allocated as follows:
  - a pre-financing amount EUR **4 321 749 000** in *current* prices - paid in three instalments of EUR **1 697 933 000** in 2021, EUR **1 298 919 000** in 2022 and EUR **1 324 897 000** in 2023
  - a remaining provisionally allocated amount of EUR **1 148 686 000** in *current* prices - paid in 2025

## Related Annex I – Allocation key for the whole resources

- The factor linked to **fish caught in the UK EEZ** is used to allocate **EUR 656,452,200**
- The factor linked to **trade** is used to allocate **EUR 4,540,461,050**
- The factor linked to **maritime border regions with the UK** is used to allocate **EUR 273,521,750**

## Article 4 - Earmarking for the fisheries sector

- For those Member States whose provisional allocation from the resources of the Reserve includes an amount exceeding EUR 10 million determined on the basis of the factor linked to fish caught in the waters that belong to the UK EEZ
- At least 50% of this last amount or 7% of their provisionally allocated amount, whichever is lower, has to be spent on measures to support local and regional coastal communities, including the fisheries sector, in particular the small scale coastal fisheries sector dependent on fishing activities.
- If the earmarking threshold is not completely met, 50% of the earmarked amount which is unused shall be deducted in the calculation of the total accepted amount (see Art 4(4) new, 3<sup>rd</sup> para)
- Such situation would however not exclude a Member State whose accepted eligible expenditure is above the provisional allocation to benefit from the proportionate re-distribution of unused funds (as explained in Art 11(6)).

# Earmarking – MS flexibility

- The amount earmarked for fisheries would be spent on ‘measures to support local and regional coastal communities, including the fisheries sector, in particular the small-scale coastal fisheries sector, dependent on fishing activities’ article 4(4 new)
- The use of ‘including’ and ‘in particular’ does not exclude other sectors or forms of fisheries and related activities
- The term ‘communities’ was chosen to ensure the policy outcome, i.e. that these areas and communities hard hit by Brexit in different shapes and forms obtain support, but not to be interpreted in a restrictive way
- Hence, fishers and businesses are part of the understanding of ‘local and regional coastal communities dependent on fishing activities’

# Earmarking – MS flexibility

- A MS can comply with the requirement of the earmarking by adopting sufficient general support measures for the fisheries sector and corresponding expenditure to achieve the required earmarked sum as long as these measures demonstrate the support to regional and local coastal communities
- Art.4(4new) does not require MS to design dedicated aid measures or investment programmes directed at local and regional coastal communities, including the fisheries sector, but only that a MS ensures the policy outcome, i.e. that the earmarked amounts benefit these communities (including the fisheries sector)



# Chapter II

# Eligibility

# Article 5 - Eligibility

- **Flexibility related to eligible measures**
  - Art 5: non-exhaustive and illustrative list of eligible categories of measures
  - The regulation does not impose any preconditions or specifications in relation to the target groups for the different measures (self-employed / SME / large companies)
  - Possibility to focus only on one or few sectors, provided appropriate justification
  - Exclusion from support - the Reserve does not support VAT and expenditure supporting relocation – the only exclusions!

# Article 5 - Eligibility

- **Conditions/Criteria**
  - **Measures specifically taken** to contribute to counter the adverse consequences of Brexit
  - Take into account the varied impact on different regions and local communities and focus support on those most affected – encourage **multi-level dialogue** where relevant, and in accordance with the MS' institutional, legal and financial framework
  - Take into account the objectives of the **Common Fisheries Policy** for measures in the field of fisheries
  - Comply with **applicable law**, including state aid rules
  - Procedures are in place to **avoid double funding** – **complementarity allowed and encouraged** – eligible measures may receive support from other Union programmes and instruments provided that such support does not cover the same costs – when using in complementarity other sources of funding than the contribution from the Reserve, the rules of these funds and programmes apply

# Article 5 - Eligibility

- **Direct link to Brexit**

- The authorities need to plausibly demonstrate the policy rationale how the chosen measure is meant to address the impact of BREXIT on the sector or region (e.g. loss of market share, employment, trade volumes, turn-over; additional costs or non-tariff barriers etc.)
- The authorities need to provide the arguments how and why the cause of the (additional) costs or losses is BREXIT - only the part of costs or losses linked to BREXIT is eligible for support under the BAR
- Temporary type of support – limited in time to adapt to the new situation and not to support (medium-/long-term) structural reforms and improvements
- Within each measure, case by case justification for the audit trail (i.e. documentation on the measure specific compliance check with eligibility criteria) depending on type of support – e.g. specific to enterprises

# Article 5 - Eligibility

- **Examples of potential measures (provided all eligibility criteria are fulfilled)**
  - Training of employees of companies undergoing restructuring because of Brexit
  - Support for the internationalisation of enterprises (SMEs) to enable new business opportunities, to replace those lost because of Brexit
  - Financial support for customs and veterinary and phytosanitary inspection services related to Brexit
  - Ports: Installations and construction of buildings to accommodate the additional Brexit related customs and veterinary and phytosanitary inspection services

# Article 5 - Eligibility

- **Examples of potential measures (provided all eligibility criteria are fulfilled)**
  - Economic compensation for companies that are able to document a decrease in revenue as a direct result of Brexit in terms of lost export market opportunities
  - 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 – direct support or/and creation of advisory support to companies in gaining access to other international markets than the UK

# Article 5 - Eligibility

- **Examples of potential measures (provided all eligibility criteria are fulfilled)**
  - Increasing administrative burden (customs procedures, etc.) and additional costs due to UK's change of status (third country) would be a direct link to justify a measure. 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.)
  - Setting up measures at national, regional or local level to provide support to a series of companies, communities, individual actors that are hit by Brexit – the recipient in this case would be the selected entity (i.e. state agency) that would deliver the support to the beneficial owners

# Article 5 – Eligibility and retrospectivity

- Expenditure 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 level, including payments to public or private entities,
  - during the reference period for measures carried out in the Member State concerned or for the benefit of the Member State concerned
  - Possible to cover measures carried over before the reference period but incurred and paid during the reference period by authorities in the Member States, at national, regional or local level if compliant with the general conditions for support under BAR
  - All expenditure must be incurred and paid by public authorities for measures carried out before submitting the application for a financial contribution from the Reserve to the Commission by 31 December 2023

# Article 5 – Durability

- **Durability – within 5 years of the final payment to the recipients of the financial contribution from the Reserve with two exceptions: 1: within the period of time set out in State aid rules, where applicable and (2) within 3 years for the maintenance of investments or jobs created by SMEs**
  - Member States shall repay the contribution from the Reserve to an action comprising investment in infrastructure or productive investment, if within 5 years of the final payment to the recipients of the financial contribution from the Reserve 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 of a productive activity or a transfer of a productive activity outside the Member State in which it received financial contribution from the Reserve;
    - (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.
  - Member States may reduce the time limit set out in the first subparagraph to 3 years in cases that concern the maintenance of investments or jobs created by SMEs.

# Eligibility - State aid

- Brexit is not considered an exceptional occurrence – an event which is several years in the making and in that sense foreseeable, would in principle not qualify to be considered as “exceptional occurrence”
- State aid rules apply to the measures supported under the Reserve - Article 107(1) TFEU sets the general principle according to which State aid is prohibited
- But, article 107(2) and (3) provide for certain exceptions, i.e. State aid may be granted despite the general prohibition in paragraph 1 if one of the specific conditions in paragraphs 2 or 3 are met
- As concerns BREXIT and the consequences resulting therefrom, the exceptions from paragraph 1 would be based on paragraph 3 point (c), i.e. the measures should help to develop the sector

# Eligibility - State aid

- The legal basis for direct economic compensation to be provided for the most affected economic sectors and undertakings having suffered a significant loss due to Brexit is Article 107(3)(c) - Under that legal basis operating aid can only be authorised for a short period of time and in view of helping the sector to adapt to the new situation
- Commission services have developed, in the non-paper on the fisheries sector, aid categories that are aiming at helping the sector to adapt to the new situation
- The Commission is and will continue to remain in contact with the Member States to collect information regarding the planned actions and is constructively looking into possibilities to cater for the needs of the exceptional circumstances that may affect a sector because of Brexit



# Chapter III

# Financial management

# Former Article 8 - Pre-financing

- After notification from Member States, Commission implementing decision/financial decision on breakdown of resources per Member State (para 2)
- Flexibility: Financial decision - in 2021 no description of the actions to be financed by Member States (exception to Article 110(2) of the Financial Regulation) (para 2)
- Deadline payment pre-financing: within 30 days of the date of the adoption of the implementing decision (para 3)
- Amounts allocated but not paid as pre-financing shall be carried over and shall be used for additional payments pursuant to (former) article 11(6) (para 4)

## Former Articles 9 and 10

# Application Form and related documents

- One single deadline applicable to all Member States for the submission of applications for a financial contribution from the Reserve - by 30 September 2024
- As part of the application for a financial contribution from the Reserve: implementation reports, the elements of accounts, a summary of the final audit reports and of controls carried out, a management declaration as well as an opinion of an independent audit body drawn up in accordance with internationally accepted audit standards (e.g. INTOSAI, IFAC or IIA)
- For assessing the direct link to Brexit, the Commission will assess the measures included in the application against the relevant elements contained in the implementation reports, notably the ones referred to under points a), b), c) and d) of the 2nd paragraph of Article 10
- Paragraph 1 - 'The application shall include information on the total expenditure incurred and paid by public authorities in Member States at national, regional or local levels, including the territorial distribution of the expenditure at NUTS level 2 regions, where relevant' - the information on the territorial expenditure at NUTS level 2 regions is only required where the Member State decided to select and carry out measures at NUTS level 2 regions

# Former Article 10

## Content of the application for a financial contribution

- Content of Implementation report (para 2)
- (a) description of the negative impact of the withdrawal of the United Kingdom from the Union 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;
- (b) a description of the measures carried out 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 arrangements put in place 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 – only a description for measures, if relevant, that contribute to climate change mitigation and adaptation (no requested methodology or specific requirements)



# Chapter IV

## Management and control systems

# Former Article 13

## Management and control

- **Main features of the Management and control :**
  - Similar to the CPR and
  - Proportionate to the special nature of the Reserve:
    - No ex ante description of measures
    - Yet notification by Member States before payment pre-financing + confirmation that systems description has been drawn up
    - And robust management and control requirements – clear responsibilities
  - Flexible: Possibility to use the bodies and management and control systems already in place for the implementation of cohesion policy funding or the European Union Solidarity Fund (para 2)

# Former Article 13

## Management and control

- **Responsibilities of the MS – Designation**

- Designating a body responsible or, when required by the Member State constitutional framework, bodies for the management of the financial contribution from the Reserve and an independent audit body, and supervising such bodies

N.B. The audit body should be functionally independent from the body responsible for the management of the Reserve

- COM does not set any specific conditions for selecting the designated bodies – this is the responsibility of the MS
- Possibility to use the bodies and management and control systems already in place for the implementation of cohesion policy funding or the European Union Solidarity Fund
- Specific requirements for the systems' descriptions - Annex III - Template for the description of the management and control system for the Reserve

# Former Article 13

## Management and control

- **Responsibilities of the MS – Notification**

- Notifying the Commission of the identity of the body or 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 two months of the entry into force of this Regulation
- If delay with the notification by the MS beyond the 2 months deadline – the consequence will be a delayed payment of the first instalment of the pre-financing
- MS that will notify the COM within the 2 months deadline would not be penalised because of delays of certain MS – COM will initiate the procedure for the payment of the first instalment of the pre-financing without waiting for all MS to notify

## Former Article 13 Management and control

- **Responsibilities of the MS - Body vs Bodies**
  - The designated body (bodies) is the interface with the Commission – for instance responsible for the content and final submission of applications for the final contribution from the Reserve
  - In case the Member State entrusts the accounting function, for receiving the payment of the pre-financing from the Commission, to a body other than the designated body/bodies
  - The only obligation is to notify this choice to the Commission within two months of the entry into force of the Brexit Adjustment Regulation

# Former Article 13

## Management and control

- **Responsibilities of the MS - Body vs Bodies**
  - The designated body (bodies) can delegate tasks to other ‘intermediate’ bodies
  - No need to notify the Commission about the ‘intermediate bodies’ – the information needs to be inserted in the management and control systems’ descriptions to be drawn up by MS (in accordance with the template set out in Annex III), keep the description up to date and make it available to the Commission on request
  - In case of changes to the system throughout the implementation period (i.e. the change of the initially designated body for the implementation of the contribution from the Reserve) – changes to the management and control system description + inform COM

# Former Article 13

## Management and control

- **Responsibilities of the body/bodies responsible for the management of the contribution from the Reserve**
  - ensure the functioning of an effective and efficient internal control system;
  - establish criteria and procedures for the selection of measures to be financed and determine the conditions for a financial contribution from the Reserve;
  - 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; – including invoice-level control of expenditure to be covered by the financial contribution from the Reserve
  - establish effective measures to avoid double funding of the same costs by the Reserve and other sources of Union funding;

# Former Article 13

## Management and control

- **Responsibilities of the body/bodies responsible for the management of the contribution from the Reserve**
  - ensure ex post publication in accordance with Article 38(2) to (6) of the Financial Regulation;
  - use an accounting system to record and store electronically 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;
  - keep available all supporting documents regarding expenditure to be covered by the financial contribution from the Reserve for a period of 5 years following the deadline for submission of the application for a financial contribution from the Reserve, and include that obligation in agreements with other entities involved in the implementation of the Reserve;
  - for the purposes of paragraph 1, point (f), 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 - Each Member State can use its own IT system - the draft regulation lists the minimum required data fields in Annex III

# Former Article 13

## Control and Audits

- **National audits**

- The audits of the financed measures cover expenditure on the basis of a representative sample, based on statistical sampling methods - there will be one sample based on the reference period. However, this does not prevent the national audit authority to split the work over the years by having sampling periods
- There are no obligations imposed by the regulation on how the national audit authority should organise its work and what type of audits, including the system audits, should be put in place and by when - the related audit strategy of the independent audit body does not have to be notified to the Commission
- It is however recommended that the national independent audit body defines its audit strategy and plans its audit work for the purposes of the Reserve well in advance and performs its audits also during the reference period, especially for the newly set up management and control systems, as to:
  - Timely detect any significant deficiencies and necessary corrective measures that could be accordingly be promptly remedied during the reference period
  - Provide independent assurance to the Commission regarding the effective functioning of that system and the legality and regularity of the expenditure included in the accounts submitted to the Commission

# Former Article 13

## Control and Audits

- **Commission audit and control**

- Possibility for the Commission to carry out on-the-spot audits at the premises of all entities involved in the implementation of the Reserve (para 5)
- if risks are identified by the Commission as regards newly set-up management and control systems – the Commission will carry out an assessment to ensure that the system functions effectively in ensuring the protection of the financial interests of the Union
- The Commission will inform the Member State of its provisional conclusions and give the Member State the possibility to present within two months its observations

# Former Article 14

## Financial corrections

- Financial corrections made by the Member States (para 1)
- Financial correction by the Commission through (para 2):
  - the exclusion of irregular amounts submitted to the Commission in the application
  - the recovery of the amounts unduly paid in accordance in case of irregularities
- Possibility for the Commission to audit the systems
- Respect of the proportionality principle (para 3)



# Chapter V

## Final provisions

# Former Article 15 - Information and communication

- Member States and their regional and local authorities, where appropriate - responsible for informing and publicising to Union citizens, including those potentially benefiting from the Reserve, on the role, the results and impact of the Union contribution from the Reserve
- In this context, responsible also for raising awareness about the changes resulting from the withdrawal of the United Kingdom
- Flexibility on the type of information and communication actions – no prescriptions in the regulation

# Former Article 16 - Evaluation and reporting

- By June 2024, the Commission shall inform the European Parliament and the Council on the state of play of the implementation process of this Regulation, based on available information
- By 30 June 2027, the Commission shall carry out an evaluation to examine the effectiveness, efficiency, relevance, coherence and Union added value of the Reserve
- By 30 June 2028, the Commission shall submit to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions a report on the implementation of the Reserve
- MS do not have to provide any additional information for all these COM reports – COM will prepare the reports on the basis of available information as provided by the MS



# Chapter VI

## Other information

# The use of the simplified costs options

- Former recital 16b – ‘In order to reduce administrative burden, Member States may reimburse those who benefit from a contribution from the Reserve through simplified cost options such as flat rates, lump sums or unit costs as a reliable proxy to real costs’
- This is a possibility for the MS – the MS does not have to inform the COM about their choice to use SCOs and the specific selected costs and related methodologies – entirely an internal MS choice and approach

# Budgetary Procedure information

- Following the adoption of the legal basis (expected for October) and adoption of Draft Amending Budget 1/2021, commitment and payment appropriations for the 1st pre-financing instalment will be entered in the 2021 budget as provision. DAB 1/2021 with pre-financing amounts adjusted to the final compromise reached in June will be adopted in September/October together with the BAR Regulation
- Commitment and payment appropriations will be subsequently transferred from the Reserve to the operational budget line (budgetary authority transfer)
- Following the adoption of the implementing act on the pre-financing (Art. 9), the budgetary commitments per Member State will be done and payments will follow.
- Payments to be completed before the end of 2021 if notifications by MS within the deadline (notifications have to arrive rather quickly after the adoption of the regulation as to ensure payment by the Commission of the first instalment of the pre-financing still in 2021)

# Budgetary Procedure information

- Commitment and payment appropriations for the 2nd and 3rd instalments will be entered in the budget as provisions in the context of the respective annual budget procedures (i.e. Amending Letter 1/2022 and Draft Budget 2023). Budgetary transfers from the reserve to the operational line will be done in the beginning of 2022 and 2023 and budgetary commitments per Member State and payments will be completed before the end of April in 2022 and 2023 respectively
- Commitment and payment appropriations for the remaining provisionally allocated amount will be entered in the budget as provision in the context of the annual draft budget procedure for 2025. Budgetary transfer from the Reserve to the operational line will be done in the beginning of 2025. Following the adoption of the implementing act (Art. 12), budgetary commitments per Member State and payments will follow in 2025

# Adoption Calendar

Important: payment of 1st instalment of pre-financing still in 2021 requires rapid notification by Member States

	July LL revision	
REGI	13 July	To examine the trilogue deal ( <i>unanimously supported</i> )
Plenary	14 September	Vote on first reading agreement
COREPER	22 September	To adopt the EP position
COMPET Council	28 September	To adopt the EP position (A item)
Announcement Plenary	4 October	
Signature	6 October	
Urgent Publication OJ	8 or 11 October	

# Thank you for your attention!

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