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WORKING PAPER

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From:	Presidency
To:	Working Party on Structural Measures
Subject:	Brexit Adjustment Reserve (BAR): First Presidency compromise proposal

In view of the Structural Measures Working Party on 5 February, delegations will find attached a compromise text prepared by the Presidency on the BAR Regulation.

Changes to the Commission proposal (doc. 14360/20 + ADD 1) are indicated in bold underlined for additions and strikethrough for deletions.

1st Presidency compromise proposal

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 Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Having regard to the opinion of the European Court of Auditors³,
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 Agreement⁴ 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 cohesion.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ 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).

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 ~~January~~ **July** 2020 and be concentrated over a limited period of ~~36~~ **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 Council⁵ (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.

⁵ 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, **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.
- (14) Pursuant to paragraphs 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016⁶, 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

⁶ 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.

(16a) To enhance the protection of the Union's budget, the Commission should make available an integrated and interoperable information and monitoring system including a single data-mining and risk-scoring tool to access and analyse the relevant data, and the Commission should encourage its use with a view to a generalised application by Member States.

- (17) In accordance with the Financial Regulation, Council Regulation (EC, Euratom) No 2988/95⁷, Council Regulation (Euratom, EC) No 2185/96⁸ and Council Regulation (EU) 2017/1939⁹, 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 Council¹⁰ 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 Council¹¹. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate

⁷ 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).

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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).

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.

- (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 Council¹² and delivered an opinion on [...¹³].
- (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:

¹² 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).

¹³ OJ C... .

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:

- (1) ‘reference period’ means the reference period referred to in Article 63(5), point (a), of the Financial Regulation, which shall be from 1 **January** ~~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 **contribution from the Reserve Funds**, 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 651/2014¹⁴.

¹⁴ 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).

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.]

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;
 - (h) measures aimed at the re-integration of EU nationals who left the United Kingdom, as a result of the withdrawal;**
 - (i) technical assistance for the management, monitoring, information and communication, complaint resolution, and control and auditing of the Reserve, limited to 2.5% of each Member State allocation.**
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, **where relevant**.
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 6.
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.¹
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, **Title IV**, 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~~ **average of the monthly accounting rates established by the Commission, determined over the reference period.**

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;~~ **these actions comprise the collection of information on the beneficial owners of the recipients of funding in accordance with Annex XYZ [of the Common Provisions Regulation for the years 2021-2027]. The rules related to the collection and processing of such data shall comply with applicable data protection rules.**
 - (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) 2016/679¹⁵ or Regulation (EU) 2018/1725, whichever is applicable.

¹⁵ 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).

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 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~~ **reference period**, 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~~ **Reserve**. 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

[ANNEX II]

I Allocation method for the pre-financing of the Brexit Adjustment Reserve

The pre-financing of the Brexit Adjustment Reserve shall be distributed between the Member States according to the following methodology:

1. Each Member State's share from pre-financing of the Brexit Adjustment Reserve is determined as the sum of a factor linked to the fish caught in the waters that belong to the UK Exclusive Economic Zone (EEZ) and a factor linked to trade with the UK.
2. The factor linked to fish caught in the UK EEZ is used to allocate EUR 600 million. The factor linked to trade is used to allocate EUR 3 400 million. Both amounts are expressed in 2018 prices.
3. The factor linked to fisheries is determined on the basis of the following criterion and by applying the following steps:
 - a) share of each Member State of the total value of the fish caught in the UK EEZ;
 - b) these shares are increased for Member States with fisheries that have an above average dependency on the fish caught in the UK EEZ and decreased for the ones that have a below average dependency as following:
 - (i) for each Member State, the value of fish caught in UK EEZ as a percentage of the total value of fish caught by that Member State is expressed as an index of the EU average (index of dependency);
 - (ii) the initial share of the value of fish caught in the UK EEZ is adjusted by multiplying it with the Member State's index of dependency;
 - (iii) these adjusted shares are rescaled to ensure that the sum of all Member States' shares equals 100%.
4. The factor linked to trade is obtained by applying the following steps:
 - a) each Member State's trade with the UK is expressed as share of the EU trade with the UK (trade is the sum of the imports and the exports of good and services);
 - b) to assess the relative importance of these trade flows for each Member State, the sum of trade flows with the UK are expressed as a percentage of the Member State's GDP and subsequently expressed as an index of the EU average (index of dependency);
 - c) the initial share of trade with the UK is adjusted by multiplying it with the Member State's index of dependency;
 - d) these adjusted shares are rescaled to ensure that the sum of all Member States' shares equals 100%;
 - e) the shares so obtained are adjusted by dividing them with the Member State's GNI per capita (in purchasing power parities) expressed as a percentage of the average GNI per capita of the EU (average expressed as 100%);
 - f) the resulting shares are rescaled to ensure the sum of shares equals 100%, whereby it is ensured that no Member State can have a share higher than 25% of the EU total. The resources deducted due to this capping are redistributed to the other Member States, proportionally to their non-capped shares;
 - g) if this calculation leads to an allocation exceeding 0.35% of a Member State's GNI (measured in Euro), that Member State's allocation is capped at the level of 0.35% of its

GNI. The resources deducted due to this capping are redistributed to the other Member States, proportionally to their non-capped shares;

- h) if the calculation referred to in point g) results in an aid intensity of more than EUR 190/inhabitant, that Member State's allocation is capped at the level corresponding to an aid intensity of EUR 190/inhabitant. The resources deducted due to this capping are distributed to the Member States not capped under points g) or h), proportionally to their shares as calculated in point g).

5. For the purposes of calculating the distribution of the pre-financing of the Brexit Adjustment Reserve:

- a) for the value of the fish caught in UK EEZ the reference period shall be 2015-2018;
- b) for the value of the fish caught in the UK EEZ as a share of total value of fish caught by a Member State, the reference period shall be 2015-2018;
- c) for trade the reference period shall be 2017-2019;
- d) for GNI the reference period shall be 2017-2019;
- e) for GNI/capita (in purchasing power parities) the reference period shall be 2016-2018;
- f) for GDP and for total population of the Member States the reference period shall be 2017-2019.¹

ANNEX II

Template for an application for financial contribution, including elements related to the accounts

1.	Member State		
2.	Date of application		
3.	Date of first expenditure	<i>Date incurred</i>	<i>Date paid</i>
4.	Date of last expenditure	<i>Date incurred</i>	<i>Date paid</i>
5.	Amount of pre-financing received (in EUR)		
6.	Body responsible for managing the contribution from the Reserve Responsible person and function Contact details		
7.	Independent audit body Responsible person and function Contact details		
8.	Short description of the areas and sectors affected and the response measures put in place		
9.	Total public expenditure incurred and paid before deductions		
10.	Amounts deducted by the Member State and the reasons for deduction		
11.	In particular, out of the amounts deducted (10), the amounts corrected as a result of audits of the measures financed		

12.	Total expenditure submitted for contribution from the Reserve (EUR) (12= 9 – 10)			
13.	In national currency (where applicable)	<p><i>For Member States not using the Euro: please convert all amounts into Euro at the official rate in the month prior to the month of submission the application average of the monthly accounting rates established by the Commission, determined over the reference period published at:</i></p> <p>https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_refere_nce_exchange_rates/html/index.en.html</p> <p>https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en</p>		
14.	Exchange rate applied			
15.	Breakdown of expenditure submitted for contribution from the Reserve <i>(please provide a list of the individual actions financed under each measure and the related expenditure for each action)</i> <i>Each expenditure item should be entered only once.</i>	EUR	National currency (if applicable)	Output indicators (please provide a number)
15.1.	Measures to assist businesses adversely and local communities affected by the withdrawal			Enterprises (supported) Enterprises supported (advised) Population benefiting
15.2.	Measures to support the most affected economic sectors			Enterprises (supported)

				Enterprises supported (advised)
15.3.	Measures to support businesses and local communities dependent on fishing activities in the United Kingdom waters			Enterprises (supported) Enterprises supported (advised) Population benefiting
15.4.	Measures to support employment through short-time work schemes, re-skilling and training in affected sectors			Participants
15.5.	Measures to ensure the functioning of border, and security controls, including additional personnel and infrastructure			Additional Personnel (in FTE) Physical infrastructure adapted (m ²)
15.6.	Measures to ensure the functioning of customs and collection of indirect taxation, including additional personnel and infrastructure			Additional Personnel (in FTE) Physical infrastructure adapted (m ²)
15.7.	Measures to ensure the functioning of sanitary and phytosanitary and fisheries controls, including additional personnel and infrastructure			Additional Personnel (in FTE) Physical infrastructure adapted (m ²)

15.8.	Measures to facilitate certificates and authorisation of products, establishment requirements, labelling and marking, for example for safety, health, environmental standards, and mutual recognition			Enterprises (supported) Enterprises supported (advised)
15.9.	Measures for communication, information and awareness-raising of citizens and businesses about changes stemming from the withdrawal to their rights and obligations			Enterprises supported (advised) Population covered
15.10.	Other (please specify)			
16.	Any complementary EU funding received or requested for expenditure not included in this application Short description / amount (e.g. use of Cohesion Policy funding/ REACT-EU/JTF/RRF/other – please specify)			
17.	Please indicate the legal entity and the full bank account number and holder in case of a further payment			
		<input type="checkbox"/> Account used previously to receive EU payments <input type="checkbox"/> New account		

Template for the management declaration to accompany the application

I/We, the undersigned [name(s), first name(s), title(s) or function(s)], Head of the body responsible for the management of the financial contribution from the Reserve, based on the implementation of the Reserve during the reference period, based on my/our own judgment and on all information available to me/us at the date of the application submitted to the Commission, including the results from verifications carried out and from audits in relation to the expenditure included in the application submitted to the Commission in respect of the reference period, and taking into account my/our obligations under this Regulation, hereby declare that:

- (a) the information in the application is properly presented, complete and accurate in accordance with Article 63 of the Financial Regulation,
- (b) the expenditure entered in the application complies with applicable law and was used for its intended purpose,

I/We confirm that irregularities identified in the final audit and control reports in relation to the reference period have been appropriately treated in the application. Furthermore, I/we confirm the reliability of data relating to the implementation of the Reserve. I/we also confirm that effective and proportionate anti-fraud measures are in place and that these take account of the risks identified in that respect.

Finally, I/we confirm that I/we am/are not aware of any undisclosed matter related to the implementation of the Reserve which could be damaging to the reputation of the Reserve.

Template for the audit opinion to accompany the application

To the European Commission, Directorate-General for Regional and Urban Policy

1. INTRODUCTION

I, the undersigned, representing [the name of the independent audit body], have audited

- (i) the elements related to the accounts in the application for the reference period,
- (ii) the legality and regularity of the expenditure for which reimbursement has been requested from the Commission, and
- (iii) the functioning of the management and control system, and verified the management declaration, in order to issue an audit opinion.

2. RESPONSIBILITIES OF THE BODY RESPONSIBLE FOR THE MANAGEMENT OF THE FINANCIAL CONTRIBUTION FROM THE RESERVE

[name of the body] is identified as the body responsible to ensure proper functioning of the management and control system in regard to the functions and tasks provided for in Article 13.

In addition, [the name of body] is responsible to ensure and declare the completeness, accuracy and veracity of the application.

Moreover, it is the responsibility of the managing authority to confirm that the expenditure entered in the application s is legal and regular and complies with applicable law.

3. RESPONSIBILITIES OF THE INDEPENDENT AUDIT BODY

As established by Article 63 of the Financial Regulation, my responsibility is to express an independent opinion on the completeness, veracity and accuracy of the elements related to the accounts in the application, on the legality and regularity of the expenditure for which reimbursement has been requested from the Commission, and on the proper functioning of the management and control system put in place.

My responsibility is also to include in the opinion a statement as to whether the audit work puts in doubt the assertions made in the management declaration.

The audits in respect of the Reserve were carried out in accordance with internationally accepted audit standards. These standards require that the audit authority complies with ethical requirements, plans and performs the audit work in order to obtain reasonable assurance for the purpose of the audit opinion.

An audit involves performing procedures to obtain sufficient and appropriate evidence to support the opinion set out below. The procedures performed depend on the auditor's professional judgement, including assessing the risk of material non-compliance, whether due to fraud or error. The audit procedures performed are those I believe are appropriate in the circumstances and are compliant with the requirements of the Financial Regulation.

I believe that the audit evidence gathered is sufficient and appropriate to provide the basis for my opinion [[in case there is any scope limitation:], except where mentioned in Point 4 'Scope limitation'].

The summary of the findings from the audits in respect of the Reserve are reported in the attached report in accordance with point (b) of Article 63(5) of the Financial Regulation.

4. SCOPE LIMITATION

Either

There were no limitations on the audit scope.

Or

The audit scope was limited by the following factors:

(a) ...

(b) ...

(c)

[Indicate any limitation on the audit scope, for example any lack of supporting documentation, cases under legal proceedings, and estimate under 'Qualified opinion' below, the amounts of expenditure and contribution from the Reserve affected and the impact of the scope limitation on the audit opinion. Further explanations in this regard shall be provided in the report, as appropriate.]

5. OPINION

Either (Unqualified opinion)

In my opinion, and based on the audit work performed:

- (i) the elements related to the accounts in the application give a true and fair view;
- (ii) expenditure included in the application is legal and regular,
- (iii) the management and control system functioned properly.

The audit work carried out does not put in doubt the assertions made in the management declaration.

Or (Qualified opinion)

In my opinion, and based on the audit work performed,

1) The elements related to the accounts in the application

- the elements related to the accounts in the application give a true and fair view [where the qualification applies to the application, the following text is added:] except in the following material aspects:.....

2) Legality and regularity of the expenditure included in the application

- the expenditure included in the application is legal and regular [where the qualification applies to the application, the following text is added:] except for the following aspects:
....

The impact of the qualification is limited [or significant] and corresponds to (amount in EUR of the total amount of expenditure)

3) The management and control system in place as at the date of this audit opinion

- the management and control system put in place functioned properly [where the qualification applies to the management and control system, the following text is added:] except for the following aspects:

The impact of the qualification is limited [or significant] and corresponds to (amount in EUR of the total amount of expenditure)

The audit work carried out does not put/puts [delete as appropriate] in doubt the assertions made in the management declaration.

[Where the audit work carried out puts in doubt the assertions made in the management declaration, the audit authority shall disclose in this paragraph the aspects leading to this conclusion.]

Or (Adverse opinion)

In my opinion, and based on the audit work performed:

- (i) the elements related to the accounts in the application give/do not give [delete as appropriate] a true and fair view; and/or
- (ii) the expenditure in the application for which reimbursement has been requested from the Commission is/is not [delete as appropriate] legal and regular; and/or
- (iii) the management and control system put in place functioned/did not function [delete as appropriate] properly.

This adverse opinion is based on the following aspects:

- in relation to material matters related to the application: [please specify]
and/or [delete as appropriate]
- in relation to material matters related to the legality and regularity of the expenditure in the application for which reimbursement has been requested from the Commission: [please specify] and/or [delete as appropriate]
- in relation to material matters related to the functioning of the management and control system: [please specify]

The audit work carried out puts in doubt the assertions made in the management declaration for the following aspects:

[The audit authority may also include emphasis of matter, not affecting its opinion, as established by internationally accepted auditing standards. A disclaimer of opinion can be given in exceptional cases.]

Date: Signature:

ANNEX III

Template for the description of the management and control system

1. GENERAL

1.1. Information submitted by:

- Member State:
- Name and e-mail of main contact point (body responsible for the description):

1.2. The information provided describes the situation on: (dd/mm/yyyy)

1.3. System structure (general information and flowchart showing the organisational relationship between the bodies involved in the management and control system)

- a) Body responsible for managing the Reserve (name, address and contact point in the body):
- b) The independent audit body (name, address and contact points in the body):
- c) Indicate how respect of the principle of separation of functions between the bodies is ensured.

2. BODY RESPONSIBLE FOR MANAGING THE RESERVE

2.1. Body and its main functions

- a) The status of the body managing the Reserve (national or regional body) and the body of which it is part.
- b) Framework to ensure that an appropriate risk management exercise is conducted when necessary, and in particular in the event of major modifications to the management and control system.

2.2. Description of the organisation and the procedures related to the functions and tasks of the body managing the Reserve

- a) Description of the functions, and tasks carried out by the body managing the Reserve.
- b) Description of how the work is organised and what procedures will be applied in particular in carrying out verifications (administrative and on-the-spot) and to ensure an adequate audit trail regarding all documents related to expenditure.
- c) Indication of planned resources to be allocated in relation to the different functions of the body managing the Reserve (including information on any planned outsourcing and its scope, where appropriate).

3. INDEPENDENT AUDIT BODY

Status and description of the organisation and the procedures related to the functions of the independent audit body

- a) The status of the independent body (national or regional body) and the body of which it is part, where relevant.
- b) Description of the functions and tasks carried out by the independent audit body

- c) Description of how the work is organised (workflows, processes, internal divisions), what procedures apply and when, how these are supervised, indication of planned resources to be allocated in relation to the different audit tasks.

4. ELECTRONIC SYSTEM

Description of the electronic system or systems including a flowchart (central or common network system or decentralised system with links between the systems) for:

- a) Recording and storing, in electronic form data on each measure financed from the Reserve, including:
- the name of the recipient and amount of the financial contribution from the Reserve;
 - the name of the contractor and sub-contractor, where the recipient is a contracting authority in accordance with the Union or national provision on public procurement, and value of the contract;
 - the first name, last name and date of birth of beneficial owner, as defined by Article 3(6) of Directive (EU) 2015/849 of the European Parliament and of the Council¹⁶, of the recipient, contractor or sub-contractor referred to in the first and second indent of this point;
 - where appropriate, data on individual participants.
- b) Ensuring that accounting records for each measure financed from the Reserve are recorded and stored, and that those records support the data required for drawing up the application for contribution.
- c) Maintaining accounting records of expenditure incurred and paid.
- d) Indicating whether the systems are functioning effectively and can reliably record the data as at the date set out in point 1.2.
- e) Describing the procedures to ensure the electronic systems' security, integrity and confidentiality.

¹⁶ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141 5.6.2015, p. 73).