



House of Commons  
European Scrutiny Committee

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**Eleventh Report of  
Session 2021–22**

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Documents considered by the Committee on 3 November 2021

*Report, together with formal minutes*

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## Notes

### Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

### Abbreviations used in the headnotes and footnotes

AFSJ Area of Freedom Security and Justice

CFSP Common Foreign and Security Policy

CSDP Common Security and Defence Policy

ECA European Court of Auditors

ECB European Central Bank

EEAS European External Action Service

EM Explanatory Memorandum (submitted by the Government to the Committee) \*

EP European Parliament

EU European Union

JHA Justice and Home Affairs

OJ Official Journal of the European Communities

QMV Qualified majority voting

SEM Supplementary Explanatory Memorandum

TEU Treaty on European Union

TFEU Treaty on the Functioning of the European Union

### Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

### Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": [www.parliament.uk/escom](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

\*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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# Contents

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## **Documents to be reported to the House as legally and/or politically important**

1	HMT EU financial support for regions and sectors affected by the UK's withdrawal: the Brexit Adjustment Reserve (update)	3
---	--	---

## **Documents not considered to be legally and/or politically important**

2	List of documents	12
---	-------------------	----

	<b>Annex</b>	<b>13</b>
--	--------------	-----------

	<b>Formal Minutes</b>	<b>14</b>
--	-----------------------	-----------

	<b>Standing Order and membership</b>	<b>15</b>
--	--------------------------------------	-----------

# 1 EU financial support for regions and sectors affected by the UK's withdrawal: the Brexit Adjustment Reserve (update)<sup>1</sup>

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## This EU document is politically important because:

- it creates a €5.4bn (£4.6bn) support fund for EU Member States to help their regions, industries and public authorities adjust to the new, post-Brexit trading relationship with the UK. Ireland and the EU fisheries sector in the North Sea are singled out for particular assistance; and
- the Government has now confirmed it is engaging with the European Commission to discuss the potential negative impact of the Reserve on the competitive position of UK businesses in the context of the 'subsidy control' provisions of the UK/EU Trade and Cooperation Agreement. However, the outcome of that process is unclear.

## Action

- Write to the Rt Hon. Lord Frost CMG reiterating the Committee's interest in receiving more information about the Government's engagement with the EU about the potential implications of its Brexit Adjustment Reserve for the UK.
- Draw the Minister's letter on the Brexit Adjustment Reserve to the attention of the Business, Energy and Industrial Strategy Committee, the Environment, Food and Rural Affairs Committee, the International Trade Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Treasury Committee and the Welsh Affairs Committee.

## Overview

1.1 The UK left the EU's Single Market and Customs Union at the end of the post-Brexit transitional period on 31 December 2020. From that point, the new UK-EU trading relationship has been governed by the [Trade and Cooperation Agreement](#) (TCA). While this Agreement retains tariff-free trade in goods between Great Britain<sup>2</sup> and the EU, many

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1 [Proposal for a REGULATION establishing the Brexit Adjustment Reserve](#); Council and COM number:—, COM(20) 854; Legal base: Articles 175 TFEU and 322(1)(a) TFEU; ordinary legislative procedure; QMV; Department: HM Treasury; ESC number: 41771.

2 Special arrangements apply in and to Northern Ireland with respect to trade in goods with the EU under the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

non-tariff barriers related to regulatory,<sup>3</sup> customs<sup>4</sup> and tax formalities<sup>5</sup> now apply to trade in goods and services between the UK and the EU that were absent until the end of 2020. Similarly, the Agreement [gradually reduces](#) the EU’s quotas to fish in British waters, as the UK is no longer bound by the Common Fisheries Policy. These changes appear to have contributed to a [decrease in UK-EU trade](#) since the start of the year, with the Office for National Statistics (ONS) [reporting](#) that trade in goods with EU countries in the first quarter of 2021 was down 23.1 per cent compared to the same period in 2018. Similarly, UK exports of services to the EU in early 2021 have [declined](#) by 14.7 per cent compared to 2019, while EU imports of services into the UK fell by 38.8 per cent.<sup>6</sup>

1.2 In June 2020, in anticipation of the likely impact of the UK’s withdrawal on UK-EU trade, EU leaders [called for](#) the establishment of a “[Brexit Adjustment Reserve](#)” (‘the Reserve’ or ‘BAR’). As we noted in our [Reports of 20 January 2021](#) and [7 July 2021](#), this is a €5.4 billion<sup>7</sup> (£4.6 billion) funding programme, financed from the EU budget, to allow individual EU Member States to support their sectors and regions that are facing particular difficulties following Brexit.<sup>8</sup> In doing so, the Reserve reduces the cost to national budgets of any such support measures. These could include, for example, financial support for private businesses<sup>9</sup> (in particular those “dependent on fishing activities in the United Kingdom waters”),<sup>10</sup> or boosting the capacity of EU public authorities that carry out “border, customs, sanitary and phytosanitary, security and fisheries controls”

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3 See for example guidance by the Department for Environment, Food and Rural Affairs, “[Export or move food, drink and agricultural products](#)” (January 2021). UK services providers like musicians, architects and lawyers have also broadly speaking lost their ability to offer their services freely throughout the EU, and must now meet the applicable rules and regulation in each individual EU Member State, including work permits.

4 British exports of goods to the EU now require customs declarations and other formalities. Making use of the tariff-free provisions of the UK/EU trade deal also requires companies to demonstrate compliance with the relevant rules of origin.

5 For example, in relation to import Value Added Tax: BBC News, “[EU firms refuse UK deliveries over Brexit tax changes](#)” (4 January 2021). See also our [Report of 30 January 2019](#) and our analysis of changes to EU VAT rules for online shopping and how these might affect UK-EU trade in a post-Brexit context.

6 The ONS notes that the 2018 and 2019 reference periods were chosen for trade in goods and services respectively because they were the final years in which stable trading patterns were observed prior to Brexit-related stockpiling and the Covid-19 pandemic. UK trade in goods with non-EU countries in the first quarter was down only 0.8% compared to the same period in 2018.

7 The Reserve’s budget is set at €5 billion in 2018 prices. Using a 2% annual deflator, this amounts to approximately €5.3 billion in current prices.

8 The BAR financial support will be additional to EU funding Member States are due to receive from ‘routine’ European programmes like the Cohesion and Regional Development Funds in the coming years, as well as coming on top of their share of the special €750 billion [EU Coronavirus Recovery Instrument](#). These could also be used for Brexit-related initiatives, provided they are in line with the objectives and requirements of these programmes.

9 The Reserve itself will not be directly open to funding requests from businesses: all funds will be distributed to the national governments of individual EU countries, which then decide to what extent they want to pass it on in the form of financial support for the private sector.

10 Due to the new limitations on EU fishing activity in British waters following the UK’s withdrawal from the Common Fisheries Policy.

on goods coming from or going to the UK.<sup>11</sup> The legislation establishing the Reserve does not allocate specific amounts to be spent on the different types of eligible measures listed above.<sup>12</sup>

1.3 The [legislation formally establishing the BAR](#) was approved by the European Parliament and by the EU Member States in the Council of Ministers in September 2021, after several months of negotiations on its scope.<sup>13</sup> Approximately 80 per cent of the Reserve’s budget—amounting to €4.2 billion (£3.6 billion)<sup>14</sup>—will be distributed between the EU Member States in three annual instalments from 2021 to 2023, with the remainder held in reserve for the time being. The European Commission will [make the first payments](#)—totalling €1.7 billion (£1.4 billion)—to the Member States by the end of this year. The Commission will then assess retrospectively in 2024 whether the money has been spent on eligible measures. Depending on the outcome of that process, it can either claw back funds from EU countries where Member States have not fully spent their share on eligible (‘Brexit-related’) measures, or provide additional funding from the money held in reserve for countries where expenditure on such eligible measures *exceeds* the initial share.<sup>15</sup> As shown in the full breakdown [published by the Commission \(as below\)](#), the countries nearest to the UK will receive the lion’s share of the Reserve based on a formula linked to trade flows, fisheries and geographic proximity. Ireland is [set to be the largest beneficiary](#), in line for more than €1 billion (£860 million). Other significant recipients will be France, Belgium and the Netherlands.<sup>16</sup>

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11 The BAR can also be used to finance support for organisations that facilitate placing of EU goods on the UK market and vice versa (such as certification and authorisation of products, conformity assessments, labelling and marking), as well as communication campaigns aimed at both EU citizens and businesses to inform them “about changes stemming from” Brexit and support for EU citizens, and others with a right to reside in the EU, who have left the United Kingdom as a result of Brexit and the end of free movement of people between the EU and the UK.

12 However, EU countries with the fishery sectors most affected by Brexit are required to spend a certain proportion of their share on ‘coastal communities’. See Article 4(4) of the Regulation.

13 The European Commission tabled a formal proposal to establish the Reserve in December 2020. On 17 June 2021, the European Parliament and Council announced they had reached agreement on the Reserve.

14 The Reserve’s budget is set at €5 billion in 2018 prices. Using a 2% annual deflator, this amounts to approximately €5.4 billion in current prices.

15 More specifically, based on the EU Member States’ formal reports in 2024, the European Commission will calculate an “accepted amount” of funding from the Reserve to which each Member State is entitled. Where this amount is less than what a country had already received, it will have to repay the difference. Conversely, where the amount exceeds the amount received from 2021 to 2023, that Member State can receive additional financial support from the remaining surplus of the Reserve.

16 Each country’s initial national allocation is determined using a formula based on its overall volumes of trade with the UK, the population of its “maritime border regions” with the UK, and the level of dependence of its fishing communities on access to British waters. The factor linked to the maritime border regions is obtained by calculating the share of each Member State in the total population of maritime border regions with the UK, which have, or are near to, a coastline which is located no more than 150 kilometres from the UK coastline. The precise formula for apportioning the available funds between the 27 EU Member States is one of the few areas where significant changes have been made to the Reserve compared to the original Commission proposal. Notably, the factor relating to the population of UK-adjacent maritime regions was absent from the original text.

## ANNEX

**Provisional amounts allocated to each Member State from the resources of the Brexit Adjustment Reserve and the minimum amount of support to local and regional coastal communities, in current prices (EUR)**

Member State	Amount relating to the factors referred to in Annex I to Regulation (EU) 2021/1755			Total provisional allocation	Minimum amount to be spent in accordance with Article 4(4) for local and regional coastal communities
	Trade in goods and services with the UK	Fish caught in the UK Exclusive Economic Zone	Maritime border regions with the UK		
BE - Belgium	316 706 222	57 189 523	12 678 212	386 573 957	27 060 177
BG - Bulgaria	15 372 864			15 372 864	
CZ - Czechia	54 918 029			54 918 029	
DK - Denmark	117 758 311	157 240 967		274 999 278	19 249 949
DE - Germany	601 249 670	45 350 387		646 600 057	22 675 194
EE - Estonia	6 615 616			6 615 616	
IE - Ireland	981 398 620	111 246 161	72 557 344	1 165 202 125	55 623 080
EL - Greece	38 631 153			38 631 153	
ES - Spain	268 490 849	3 956 201		272 447 050	
FR - France	451 211 542	132 283 310	152 056 411	735 551 263	51 488 588
HR - Croatia	7 190 532			7 190 532	
IT - Italy	146 769 412			146 769 412	
CY - Cyprus	52 056 350			52 056 350	
LV - Latvia	10 946 343			10 946 343	
LT - Lithuania	12 154 122	30 451		12 184 573	
LU - Luxembourg	128 475 124			128 475 124	
HU - Hungary	57 157 852			57 157 852	
MT - Malta	44 322 261			44 322 261	
NL - Netherlands	710 099 858	139 984 996	36 229 783	886 314 637	62 042 025
AT - Austria	27 711 512			27 711 512	
PL - Poland	172 161 964	1 471 297		173 633 261	
PT - Portugal	81 358 331	28		81 358 359	
RO - Romania	43 162 623			43 162 623	
SI - Slovenia	5 257 380			5 257 380	
SK - Slovakia	36 307 747			36 307 747	
FI - Finland	23 242 037			23 242 037	
SE - Sweden	129 734 726	7 698 879		137 433 605	
<b>EU27 total</b>	<b>4 540 461 050</b>	<b>656 452 200</b>	<b>273 521 750</b>	<b>5 470 435 000</b>	<b>238 139 013</b>

1.4 Support measures financed from the Reserve are [subject to EU State aid rules](#),<sup>17</sup> which limit how the money can be spent (for example restricting the use of the funds to prop up businesses that are [unlikely to be viable](#)). There do not appear to be comprehensive spending plans available detailing how individual EU countries intend to spend the money, not least because the design of the Reserve does not require them to provide detailed, up-front plans to the EU before the money is released. However, the European Commission has already approved plans by France, Germany and Ireland to use part of their share of the BAR to financially support fishermen and coastal communities affected by Brexit, cumulatively amounting to €115 million in support for those sectors to date for those three countries alone.<sup>18</sup> The Reserve can be used to pay for any relevant Brexit-related spending since January 2020 retroactively,<sup>19</sup> and individual Member States are free to spend *more* than their share of the Reserve to address any Brexit-related policies at their own expense.<sup>20</sup> As such, the full amount of public expenditure on preparations for, and adjustments to, the new realities of the EU's post-Brexit relationship on the EU side is likely to be higher than the €5.4 billion budget of the Reserve.<sup>21</sup>

## Implications of the Brexit Adjustment Reserve for the UK

1.5 The UK, naturally, will not be able to tap into the Brexit Adjustment Reserve nor contribute to it, as it is no longer an EU Member State.<sup>22</sup> Instead, the Government has opted for several sectoral Brexit-related support schemes rather than an overarching fund, for example for [small businesses](#), [fisheries](#) and [ports](#).<sup>23</sup>

1.6 Nonetheless, as we have noted in our previous Reports, this EU funding programme may have implications for the UK. Some of the possible impacts of the Reserve are tangentially positive in that regard, for example if it is used to finance measures that help businesses and public authorities adjust to the new customs and regulatory formalities that

17 While the Regulation establishing the BAR does not explicitly state that EU State aid rules apply to measures implemented by Member States with support from the Reserve, Article 5(4) states that such measures "... referred to in paragraph 1 shall comply with applicable law", which is in turn defined as "Union law", including therefore EU State aid rules. The European Commission has also explicitly [said](#) that "EU State aid rules fully apply to BAR-financed support measures". This means that in certain cases, where [existing exemptions](#) are not applicable, governments will need advance permission from the Commission before subsidies can be granted. More generally, the [broader set of EU rules](#) that govern how Member States can subsidise their industries apply, for example in relation to transparency and recovery of unlawful subsidies.

18 The schemes of support of these countries to their fisheries industries have been approved by the European Commission under EU State aid rules. See State aid cases [SA.64035](#) (Ireland, €10 million), [SA.63536](#) (Germany, €5 million) and [SA.62426](#), [SA.62427](#) & [SA.62421](#) (France, €100 million).

19 It follows that the BAR is not a legal authorisation or precondition for EU governments to spend money on Brexit-related support for specific sectors, companies or communities. They would have been free to pursue such policies even if the Reserve had not been established, as the BAR functions only to provide EU financial support to reduce their cost to national budgets. It could act as an incentive for EU countries to spend more on such measures than they would otherwise have done.

20 Provided they are, where relevant, compliant with EU State aid restrictions on subsidies to individual businesses.

21 For example, because any money spent on preparing for Brexit before 1 January 2020 is not eligible for support from the Reserve. Many Member States began their preparations well before that date, given the UK was originally due to withdraw from the EU in March 2019.

22 Although the UK still makes payments to the EU under the financial settlement set out in the Withdrawal Agreement, this is in relation to EU spending commitments made on or before 31 December 2020. Similarly, although the UK has negotiated access to certain specific EU research funding programmes—which must still be formally approved by means of a Protocol to the TCA—that arrangement does not include the Brexit Adjustment Reserve.

23 Of particular note is the £23 million "[Seafood Disruption Support Scheme](#)". In December 2020 the Government [announced](#) this would be supplemented by a further £100 million fund to "help modernise fishing fleets [and] the fish processing industry", of which the first £24 million was [launched](#) in September 2021.

have arisen in trade between the UK and the EU. However, EU countries could also use their share of the €5.4 billion funding pot to grant subsidies to companies in the private sector that compete with British businesses (either in the UK, the EU or elsewhere),<sup>24</sup> potentially tilting the ‘level playing field’ between them in the EU’s favour (particularly where British businesses do not have access to similar levels of financial support from the Government).<sup>25</sup> We concluded that Northern Ireland may be particularly exposed in this regard, given its close economic links to Ireland which is set to receive more than €1 billion from the Reserve, or approximately one-fifth of the BAR’s entire budget.

1.7 In an [Explanatory Memorandum](#) on the Brexit Adjustment Reserve submitted by the Chief Secretary to the Treasury (Rt Hon. Steve Barclay MP) on 9 February 2021, the Minister referred to the potential impact of subsidies from the Reserve for EU businesses on their UK competitors in the coming years, noting obliquely that the TCA allows the Government to “challenge EU subsidies which significantly harm the UK”. This refers to the UK Government having certain (limited) options under the UK/EU Trade and Cooperation Agreement to challenge any subsidies to businesses financed from the BAR.<sup>26</sup> Of particular relevance here is that the TCA allows the Government, as a last resort, to impose “remedial measures” where it considers that an EU subsidy “causes, or there is a serious risk that it will cause, a significant negative effect” on trade and investment between the UK and the EU, in a bid to neutralise the alleged unfair competitive advantage the subsidy confers directly or indirectly on businesses on the other side.

1.8 However, the TCA contains significant limitations on the Government’s options to initiate a formal challenge to EU subsidies, should it wish to do so. First, some types of subsidies are outside the scope of the Agreement’s subsidy control provisions altogether, such as those for a particular company below the ‘*de minimis*’ threshold of approximately £333,000 over three years<sup>27</sup> or any “subsidies related to trade in fish and fish products”.<sup>28</sup> This latter exemption is especially relevant because the EU fisheries industry is singled out as a particular beneficiary of support from the BAR, as shown by the support schemes already announced by the French, Irish and German Governments. Second, even insofar as subsidies funded from the Reserve are in scope of the TCA, the Government cannot use

24 As noted, it is not clear at this stage how individual EU countries will spend their share of the Reserve but it seems likely a large proportion, if not the majority, of the funds will be used to support the private sector.

25 When we first considered the Brexit Adjustment Reserve—in our [Report of 20 January 2021](#)—we concluded that the Reserve could help EU-based companies compete more efficiently with their UK competitors in different markets; become more attractive to investors if their operations are seen to be underpinned by taxpayer support; or even help them diversify their supply chains or customer base away from the UK instead.

26 As part of a wider ‘level playing field’ arrangement, the TCA sets out a number of principles that certain subsidies within the scope of the Agreement, whether granted in the UK or the EU, must adhere to. Subsidies are subject to various high-level legal principles, such as the need for them to be “proportional and limited”. Certain subsidies may be prohibited altogether, while others may be permitted but subject to specific conditions. For the UK, these provisions are relevant only to the extent to which EU State Aid law does not already apply directly under [Article 10 of the Northern Ireland Protocol](#). The Government [set out its plans](#) for the UK’s new post-Brexit subsidy control regime on 30 June 2021.

27 The *de minimis* threshold in the TCA is 325,000 Special Drawing Rights, which is currently approximately £333,000 or €385,000. In this context, it is not the size of the Brexit Adjustment Reserve as a whole that matters, or the payment of funds by the Commission to the Member States, but the size of any subsidies subsequently provided to individual undertakings using this money.

28 The TCA also contains certain other exemptions that are less likely to be relevant to the Reserve, namely for subsidies “of a social character that are targeted at final consumers” and for subsidies “related to the audio-visual sector”.

the Agreement to *prevent or reverse*<sup>29</sup> a decision by the EU or its Member States to provide specific support to companies.<sup>30</sup> It can only impose “remedial measures” in an attempt to nullify any unfair competition<sup>31</sup> that could, in turn, trigger retaliatory measures by the EU.<sup>32</sup> Irrespective of any action taken by the UK Government under the TCA, individual companies, including UK-based ones, may also be in a position to legally challenge specific subsidies funded from the BAR before the courts of the relevant EU Member State.<sup>33</sup>

1.9 When we [last considered the Reserve](#), we therefore concluded that—to protect the UK’s right to take remedial measures in relation to subsidies funded by the BAR in the future where necessary—the Government would need to “carefully monitor the planned and actual use of the Reserve by individual EU countries” but that it was “not clear what resources are being deployed within Government to do so”.<sup>34</sup> The Committee also [wrote to the Chief Secretary to the Treasury on 7 July 2021](#) to clarify whether the Government had any concerns that the Reserve could be used to provide subsidies with a “material effect on trade or investment” between the UK and the EU, how it intended to assess whether there was a need for the UK to raise any issues of concern with the EU under the subsidy control provisions of the TCA, and whether the Government believes its support for UK businesses to address any changes or disruptions in the aftermath of the UK’s withdrawal from the EU need to be adapted in light of the EU’s support programme for their businesses and regions.

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29 Domestic courts in the UK or EU could order repayment, or “recovery”, of the subsidy if it is found to be unlawful under the terms of the TCA. However, recovery is not required where the subsidy was granted on the basis of an Act of Parliament or an act “of the European Parliament and of the Council”. The Regulation establishing the Brexit Adjustment Reserve would be an example of the latter, meaning the TCA does not require EU Member States to allow for recovery of subsidies funded from the Reserve, even if it had a “negative impact on trade and investment” between the UK and EU.

30 In particular, arbitration tribunals established under the Agreement in the context of a dispute resolution procedure over a subsidy are explicitly prohibited from assessing the compliance of an individual subsidy against the provisions of the TCA. Instead, the TCA largely relies on “vertical remedies”: this is where interested parties, such as competitors of the beneficiary of a subsidy or trade bodies representing such companies collectively, can challenge subsidies before the courts of the UK or the EU Member States.

31 Such remedial measures could include, for example, tariffs on EU imports that the UK believes benefitted from a distortive subsidy.

32 If the UK imposed remedial measures under the TCA in response to a subsidy on the EU side, the EU would be entitled to ask an independent arbitration tribunal to assess these measures, in particular whether they are “appropriate” and “proportionate” based on the evidence that the EU’s subsidy causes, or is likely to cause, “a significant negative effect on trade or investment”. If the tribunal ruled the UK’s counter-measures were inconsistent with the terms of the Agreement, the EU could ask for a further tribunal ruling setting out an equivalent suspension of its obligations vis-à-vis the UK under the trade agreement, for example to impose retaliatory tariffs on UK goods. If the tribunal decided that the UK’s remedial measures were in compliance with the TCA, the EU could not seek a suspension of its obligations.

33 This is the case where businesses consider any such subsidies breach EU State aid law and/or the subsidy control provisions of the TCA: the Agreement provides for “vertical remedies”: this is where interested parties, such as competitors of the beneficiary of a subsidy or trade bodies representing such companies collectively, can challenge subsidies before the courts of the UK or the EU Member States.

34 Indeed, the Brexit Adjustment Reserve is only one example of a subsidy scheme on the EU side that may trigger the UK’s rights under the level playing field provisions of the TCA. It serves as a useful demonstration of the fact that effective enforcement of the subsidy control provisions of the TCA is asymmetrical: while the European Commission and the 27 Member States only need to monitor for UK subsidies to assess whether to initiate any consultations and, potentially, remedial measures under the TCA, the UK Government needs to monitor the provision of subsidies by public authorities in 27 countries and by the EU itself.

1.10 On 20 September 2021, Lord Frost—Minister of State in the Cabinet Office responsible for UK-EU relations—replied to our questions. This confirmed that the Government shared the Committee’s concerns that Brexit Adjustment Reserve “could have implications for the UK” and would “still need to meet the EU’s TCA subsidy control obligations” as described above.

1.11 In that context, the Minister noted the Government “are writing to the [European] Commission to request further details on how the BAR will be administered and for clarity on what assessment has been made by the Commission of its potential impact on UK/EU trade in line with the TCA”. He added: “Subject to any outcome of that correspondence, we expect to raise this issue at the relevant Specialised Committee”, one of the joint UK-EU bodies established by the Agreement to oversee its implementation. It emerged subsequently that the Government was indeed raising the matter of the Reserve with the EU at the [inaugural meeting](#) of the Trade Specialised Committee on the ‘Level Playing Field’ on 12 October 2021. In light of Lord Frost’s earlier letter to us, this suggests that the European Commission’s reply to the Government’s questions left sufficient concerns for the UK to raise the matter formally at that meeting. However, we have received no further information about any specific concerns raised or the outcome of the Specialised Committee meeting (for which minutes have not yet been published as of 3 November 2021).

1.12 As regards the Government’s counterpart of the Brexit Adjustment Reserve to support UK businesses in adapting to the new trading relationship with the EU, Lord Frost said the Government “continues to support UK firms where a specific need has been identified”, for example through the Seafood Disruption Support Scheme (SDSS) and the SME Brexit Support Fund, and that “funding for future years will be reviewed as part of the upcoming Spending Review”.

## Conclusions

1.13 We welcome the Government’s engagement with the EU on the economic implications of the EU’s new Brexit Adjustment Reserve, given that the Reserve could have a negative impact on the competitiveness of UK businesses if used for subsidies that boost the position of specific EU sectors like the fisheries industry, or parts of the EU with close connections to the UK, like Ireland. As was the case when we last reported to the House on this matter, it remains unclear what amount of the Brexit Adjustment Reserve is likely to be spent on subsidies for the EU private sector, and in turn what proportion of such subsidies could raise concerns for the UK under the level playing field provisions of the TCA. However, the amounts of money involved are significant and the concentration of this financial support in the EU countries with the closest trade links with the UK means an impact on the competitiveness of UK businesses with competitors in those countries cannot be ruled out.

1.14 We note that the Government raised the matter of the Brexit Adjustment Reserve both in writing with the European Commission, and again more formally at the first meeting of the UK-EU Trade Specialised Committee on the ‘Level Playing Field’ on 12 October. We have therefore written back to Lord Frost to request further information about the specific issues raised by the UK in relation to the Reserve, the EU’s reply, and what—if any—concerns remain about the potential distortive impact on competition

between the UK and the EU. A copy of that letter is included with this Report chapter. In anticipation of the Minister’s reply, we draw these developments to the attention of the Business, Energy and Industrial Strategy Committee, the Treasury Committee, the Environment, Food and Rural Affairs Committee, and Welsh, Scottish and Northern Ireland Affairs Committees.

### ***Letter from the Chair to the Rt Hon. Lord Frost CMG***

Thank you for your letter of 20 September 2021 on the EU’s Brexit Adjustment Reserve, which will be used by the remaining 27 Member States primarily to help their businesses adjust to the new regulatory and customs barriers to trade between the UK and the EU following Brexit.<sup>35</sup>

We have taken note of your shared concern that the Reserve could have negative implications for UK businesses where it is used to subsidise their EU competitors, particularly—but not exclusively—in the fisheries sector. In that light, we welcome confirmation of your correspondence with the European Commission to request further details on its assessment of the Reserve’s potential impact on UK/EU trade under the subsidy control provisions of the Trade and Cooperation Agreement. We note that, since you wrote to us, the Government also raised the matter of the Reserve more formally at the first meeting of the UK-EU Trade Specialised Committee on Level Playing Field on 12 October. Since your letter referred to the possibility of raising this issue in that forum “subject to any outcome of that [earlier] correspondence”, this suggests that the Commission’s reply to your letter did not fully assuage concerns within Government about the Reserve’s “potential impact on UK/ EU trade in line with the TCA”.

In light of the above, we would welcome further information from you about the outcome of your engagement with the EU on the potential impact of the Brexit Adjustment Reserve to date, the substance of the discussions at the Specialised Committee on 12 October, and the specific nature of any concerns the Government still has about the competitive impact of that EU funding programme for the UK.

We look forward to receiving your reply by the end of November.

## 2 Documents not considered to be legally and/or politically important

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### Department for Environment, Food and Rural Affairs

(41905) Commission Delegated Regulation (EU) .../... of 12.7.2021 amending  
10741/21 Annex II to Regulation (EU) 2018/848 of the European Parliament and  
of the Council as amending Annex II to Regulation (EU) 2018/848 of the  
+ ADD 1 European Parliament and of the Council as regards the requirements for  
record-keeping for operators in organic production.  
C(21) 5001

# Annex

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## *Documents drawn to the attention of select committees:*

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

**Business, Energy and Industrial Strategy Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

**Environment, Food and Rural Affairs Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

**International Trade Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

**Northern Ireland Affairs Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

**Treasury Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

**Welsh Affairs Committee:** EU financial support for regions and sectors affected by the UK’s withdrawal: the Brexit Adjustment Reserve (update) [Proposed Regulation] SNC

# Formal Minutes

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## Wednesday 3 November 2021

### Members present:

Anne Marie Morris, in the Chair

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Marco Longhi

Craig Mackinlay

### Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 2 agreed to.

*Resolved*, That the Report be the Eleventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

### Adjournment

Adjourned till Wednesday 17 November 2021 at 1.45 pm

## Standing Order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

**Current membership**

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Greg Smith MP](#) (*Conservative, Buckingham*)