



Brussels, 27.1.2021  
COM(2020) 835 final/2

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Proposal for a

## **COUNCIL DECISION**

**pursuant to Article 218(9) TFEU on the position to be taken on behalf of the European Union in the Joint Committee established by Article 164 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy as regards agricultural subsidies**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

The Commission proposes that the Council approves the position to be adopted on the Union's behalf in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') on a Joint Committee decision concerning the exemption of agricultural subsidies, including measures supporting fisheries and aquaculture products, from the application of Union State aid rules, made applicable to and in the United Kingdom in respect of Northern Ireland in accordance with Article 10 (1) of the Protocol on Ireland and Northern Ireland to the Withdrawal Agreement (the Protocol), foreseen in Article 10 (2) of the Protocol. According to Article 10 (2), read in conjunction with Annex 6, of the Protocol this decision should determine at least (i) the maximum overall annual level of support as well as (ii) the minimum percentage of WTO (Green Box) compatibility of the foreseen in Article 10 of the Protocol on Ireland/Northern Ireland (the Protocol).

### **2. CONTEXT OF THE PROPOSAL**

Article 10 of the Protocol subjects any measures of the United Kingdom supporting the production of and trade in agricultural products in Northern Ireland to the application of the Union's State aid rules listed in Annex 5 to the Protocol if those measures affect that trade between Northern Ireland and the Union. At the same time, it provides for an exemption from the application of Union law up to a determined maximum overall annual level of support, provided that a determined minimum percentage of that exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture.

The Joint Committee shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage, taking into account the most recent information available, in accordance with Annex 6 to the Protocol.

When determining the initial maximum exempted overall annual level of support for the agricultural sector, the Protocol provides for a consideration of, inter alia, the design of the United Kingdom's future agricultural support scheme as well as the annual average of the total amount of expenditure incurred in Northern Ireland under the Common Agricultural Policy under the current Multiannual Financial Framework (MFF) 2014-2020.

When determining the initial minimum percentage applicable to the maximum exempted overall annual level of support for the agricultural sector, the Protocol provides for a consideration of, inter alia, the design of the United Kingdom's agricultural support scheme as well as the percentage to which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

### 3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

#### **Determination of the maximum overall annual level of support and minimum percentage compliant with the provisions of Annex 2 to the WTO Agreement on Agriculture.**

The maximum overall annual level of support is determined on the basis of allocations for expenditure for both Pillars I and II under the Common Agricultural Policy (CAP).

For Pillar I (European agricultural guarantee fund - EAGF), the relevant level of expenditure has been calculated on the basis of two main elements: the UK's allocations of expenditure for Direct Payments as well as the expenditure related to market support measures, on the basis of annual declarations of clearance of accounts for financial years 2014-19. The latter includes expenditure incurred under the Common Market Organisation (CMO) by the UK's paying agency for NI. In absence of accounts data already cleared for the financial year 2020, the average yearly amount has been calculated considering the period 2014-2019, hence dividing the overall total amount by a number of 6 years.

For Pillar II (European agricultural fund for Rural Development - EARD), the amount considered is based on the 7-year average allocation in the approved rural development programme (including additional national financing and additional financing outside the scope of Article 42 of the Treaty on the Functioning of the European Union).

In a year with a severe and unforeseen crisis, the maximum overall annual level of support should increase.

The maximum level of exempted support for fisheries is also informed by the average spending under the Multiannual Financial Framework (2014 – 2020) It is set out as a maximum level of support over a five-year period, with an annual cap.

In order to ensure that the quantitative exemption of a certain level of support from the application of the Union's State Aid rules does not qualitatively undermine the substantive requirements for support in the fisheries sector laid down in Union law, the Joint Decision reflects the eligibility criteria as regards the kind of operations supported **as provided for** in Union law by excluding certain operations to be financed from the exempted amount.

The **minimum** percentage of exempted support that must be compliant with the provisions of Annex 2 to the WTO Agreement on Agriculture is based on the average rate of the EU's compliant support. The rate has been calculated on the basis of the EU's domestic support notifications to the WTO for EU budget years 2014 to 2018, the latest years within the current MFF for which notifications are available (5 year average).

### 4. LEGAL BASIS

#### 4.1. Procedural legal basis

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The decision which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on the Parties in accordance with Article 166 of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

#### **4.2. Substantive legal basis**

The decision on ‘agricultural subsidies’ lays down conditions for implementing the Withdrawal Agreement, which was concluded on the basis of Article 50. As the Northern Ireland Protocol is a trade agreement between the EU and the UK in respect of Northern Ireland, the legal basis is also Article 207 TFEU.

Therefore, the substantive legal bases of the proposed decision are Article 50 TEU and Article 207 TFEU.

#### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 50 TEU and Article 207 TFEU, in conjunction with Article 218(9) TFEU.

### **5. PUBLICATION OF THE ENVISAGED ACT**

As the decision of the Joint Committee implements certain provisions of the Withdrawal Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135<sup>1</sup> of 30 January 2020 and entered into force on 1 February 2020.
- (2) Article 166 of the Withdrawal Agreement empowers the Joint Committee to adopt decisions in respect of all matters for which the Agreement so provides. The Protocol on Ireland and Northern Ireland to the Withdrawal Agreement ('the Protocol') forms an integral part of that Agreement.
- (3) Article 10 (1) of the Protocol on Ireland/Northern Ireland subjects measures taken by the United Kingdom supporting the production of and trade in agricultural products, including support for fisheries and aquaculture products, in Northern Ireland to the Union's State aid rules listed in Annex 5 to the Protocol where those measures affect that trade between Northern Ireland and the Union. At the same time Article 10(2), provides for an exemption from the application of Union law up to a determined maximum overall annual level of support, provided that a determined minimum percentage of the exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture.
- (4) The maximum overall annual level of support and the minimum percentage should be determined taking into account the considerations set out in Annex 6 to the Protocol.
- (5) For the purposes of calculating the maximum overall annual level of support for agricultural products other than fisheries and aquaculture products, account has been taken of the average expenditure incurred and foreseen in Northern Ireland under the Common Agricultural Policy (CAP) under the current MFF 2014-2020.
- (6) For the purposes of setting the minimum percentage, account has been taken of the average rate of EU support which is compliant with the Provisions of Annex 2 to the WTO Agreement on Agriculture, as per the EU's total support notifications to the

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<sup>1</sup> OJ L 29, 31.1.2020, p.1.

WTO of the past five years, the period for which notifications have been made to the WTO within the current MFFF.

- (7) The maximum overall annual level of support should therefore be set at EUR 429 million for subsidies in the agricultural sector.
- (8) For fisheries and aquaculture products, the maximum level of support, informed by the average spending under the European Multiannual Financial Framework (2014 – 202019), should be set at EUR 19,5 million over a period of five years, with a cap of EUR 4,5 million in any given year.
- (9) In order to avoid the exempted support from being used to finance operations which are otherwise ineligible for support in the fisheries sector, the Joint Committee Decision should reflect the ineligibility of certain operations as provided for in Union law.
- (10) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Joint Committee, established by Article 164 of the Withdrawal Agreement, on a decision to be taken in accordance with Article 10 of the Protocol shall be based on the draft decision of the Joint Committee attached to this Decision.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*