Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the position to be taken on behalf of the European Union within 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 as regards agricultural subsidies

COUNCIL DECISION (EU) 2020/…

of …

on the position to be taken on behalf of the European Union within 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 as regards agricultural subsidies

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 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 means of Council Decision (EU) 2020/135[1] on 30 January 2020 and entered into force on 1 February 2020.

(2) Article 166 of the Withdrawal Agreement empowers the Joint Committee established by Article 164 of the Withdrawal Agreement ('the Joint Committee') to adopt decisions in respect of all matters for which the Withdrawal Agreement so provides. The Protocol on Ireland/Northern Ireland ('the Protocol') forms an integral part of the Withdrawal Agreement.

(3) Article 10(1) of the Protocol 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) of the Protocol 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.

[1] Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion 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 Community (OJ L 29, 31.1.2020, p. 1).

(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 purpose 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) as part of the current multiannual financial framework ('MFF 2014–2020').

(6) For the purpose of setting the minimum percentage, account has been taken of the average rate of Union support which is compliant with the provisions of Annex 2 to the WTO Agreement on Agriculture, as per the Union's total support notifications to the WTO during the past five years, which is the period during which notifications have been made to the WTO within the MFF 2014–2020.

(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 MFF 2014–2020, 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 situations in which the exempted support is 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 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 within the Joint Committee established by Article 164 of the Withdrawal Agreement as regards agricultural subsidies shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

The Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Council
The President

DRAFT

DECISION No …/2020
OF 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

of …

determining the initial maximum exempted overall annual level of support
and the initial minimum percentage referred to in Article 10(2)
of the Protocol on Ireland/Northern Ireland
to 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 JOINT COMMITTEE

Having regard to the Protocol on Ireland/Northern Ireland to 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, and in particular Article 10(2) thereof and Annex 6 thereto,

HAS DECIDED AS FOLLOWS:

Article 1

Overall annual level of support for agricultural products other than fisheries and aquaculture products

1. The initial maximum exempted overall annual level of support referred to in Article 10(2) of the Protocol on Ireland/Northern Ireland for agricultural products other than fisheries and aquaculture products shall be GBP 382,2 million[1].

2. The United Kingdom may increase the maximum exempted overall annual level of support referred to in paragraph 1, up to an additional amount of GBP 25,03 million in a given year by the part of the amount of the maximum exempted overall annual level of support that has not been spent in the preceding calendar year.

3. The maximum exempted overall annual level of support referred to in paragraph 1 shall be increased by an amount of GBP 6,8 million for a given year:

   (a) where during that year the European Union has taken measures, covering the Republic of Ireland, under Part II, Title I, Chapter I or Articles 219, 220 or 221 of Regulation (EU) No 1308/2013[2]; or

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1 For the purpose of all calculations and amounts, set out in GBP in this Decision, in EUR, the 2019 Direct Payments exchange rate (€1 = £0.89092) is to be used.

2 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347 of 20.12.2013, p. 671).

(b) on account of:

(i) an animal disease,

(ii) an event or circumstance significantly disturbing or threatening to disturb the market, where that situation, or the effects of that situation on the market, is likely to continue or deteriorate;

(iii) a situation of serious market disturbance directly attributable to a loss in consumer confidence due to public, animal or plant health and disease risks; or

(iv) a natural disaster, which affects the territory of Northern Ireland and does not equally affect the whole island of Ireland.

Point (b) only applies where the United Kingdom has informed the European Union at least 10 days prior to making use of the increased overall annual level of support.

Article 2

Overall annual level of support for fisheries and aquaculture products

1. The initial maximum exempted overall level of support referred to in Article 10(2) of the Protocol on Ireland/Northern Ireland for fisheries and aquaculture products shall be GBP 16,93 million during the first five years after the entry into force of this Decision as well as during any subsequent period of five years. However, the exempted overall annual level of support for these products must not exceed GBP 4,01 million in any given year.

2. The following operations shall not be eligible for funding from the amounts referred to in paragraph 1:

   (a) operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;

   (b) the construction of new fishing vessels or the importation of fishing vessels;

   (c) the permanent cessation of fishing activities;

(d) the temporary cessation of fishing activities, unless related to any of the following:

(i) emergency measures introduced by the authorities of the United Kingdom, or the United Kingdom in respect of Northern Ireland, for a maximum period of six months, to alleviate a serious threat to marine biological resources or the marine ecosystem;

(ii) the non-renewal of an international fisheries agreement or protocols thereto;

(iii) a fisheries management plan published under legislation in the United Kingdom, or the United Kingdom in respect of Northern Ireland, that sets out policies designed to restore one or more stocks of fish to sustainable levels, or maintain such stocks at sustainable levels;

(iv) emergency measures introduced by the authorities of the United Kingdom, or the United Kingdom in respect of Northern Ireland, in response to a public health or other emergency that has a serious impact on the fishing or aquaculture sectors;

(e) exploratory fishing;

(f) the transfer of ownership of a business; and

(g) direct restocking, unless provided for in measures by the authorities of the United Kingdom, or the United Kingdom in respect of Northern Ireland, to conserve fish stocks or the marine ecosystem, or in the case of experimental restocking.

The exceptions provided for in point (d) are subject to the condition that the fishing activities carried out by the fishing vessel or by the fisher concerned are effectively suspended and that the funding is granted for a maximum duration of six months per vessel.

Article 3

Minimum percentage

The initial minimum percentage referred to in Article 10(2) of the Protocol shall be 83 % and shall apply to the amounts of the exempted overall annual level of support referred to in Article 1.

Article 4

Review

The Joint Committee shall regularly review this Decision and its implementation.

Article 5

Entry into force

This Decision shall enter into force on 1 January 2021.

Done at …,

For the Joint Committee

The Co-chairs