

12 January 2017 (final)

Preliminary assessment of the implications of the UK withdrawal from the EU (Brexit)  
on the Common Agricultural Policy (CAP)

The following analysis is based on the assumption that the UK will leave the EU, i.e. cease to be a Member State to become a third country (“Brexit is Brexit”). As far as agriculture is concerned, this would mean that:

- (1) the UK will cease to participate in the CAP;
- (2) the UK will no longer be part of the EU Customs Union and the EU Common Commercial Policy; and
- (3) the UK will no longer be part of the EU Internal Market.

This is not the expression of a desirable political outcome but **a fair assumption** which is technically indispensable in order to carry out any analysis of Brexit in the policy area of agriculture. Besides, this assumption seems to be supported by statements from various British politicians indicating that they wish to put into place a different agricultural policy for British farmers and that they intend to conclude a series of ambitious free-trade agreements with third countries around the world. Should a different (unlikely) scenario materialise, with arrangements being made for the UK to continue to participate somehow to the CAP and/or to continue to be somehow part of the Customs Union, the Common Commercial Policy and the Internal Market, this would have to be by exception to this presumed scenario.

It should also be noted that the three above-mentioned elements are closely interlinked.

- (1) It is hardly conceivable that the UK could continue to be part of the EU Internal Market if it is no longer part of the EU Customs Union and the EU Common Commercial Policy (outside an EEA type of arrangement - which has been abundantly commented upon elsewhere);
- (2) It is hardly conceivable that the UK could continue to be part of the CAP if it is no longer part of the EU Internal Market (and there has been no serious expression of such a desire in the UK in recent months).

In this latter respect, it should be reminded that the TFEU itself establishes a close link between the Internal Market and the CAP by stating in **Article 38(4)** that “The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy”.

This being stated, the implications of Brexit on agricultural policy appear to be of three different natures affecting (1) the financing of the CAP (budgetary implications); (2) the implementation of the various CAP mechanisms; and (3) trade in agricultural and agri-food products.

*It should be noted that this document is mainly focused on the implications of Brexit **for the EU-27** and does not pay too much attention to the implications of Brexit for the UK itself, however far reaching these implications might be.*

#### 1. Budgetary implications of Brexit

The fact that the UK would cease to be a Member State of the EU and cease to participate in the CAP means that it would cease also to contribute to the financing of this policy.

This, in itself, has important consequences for the future of the CAP since the UK is clearly **a net contributor to the EU overall budget** (even account being taken of the rebate) and **a net contributor to the budget of the CAP**.

It is obvious therefore that the Brexit will lead to **a significant gap in the financing of the CAP** once the UK contributions, on the one hand, and the expenditures related to British agriculture, on the other hand, have been removed. A recent paper published on the subject (Matthews) evaluates this gap to **somewhere between 1.2 billion and 3.1 billion euros** if the EU wants to maintain current spending levels for the remaining 27 Member States.

This gap will most probably require **an adjustment to the current MFF** if the actual withdrawal of the UK is not made to coincide with the entry into force of the next one (for the period 2021-2027), and the latter to factor in the implications of Brexit. **This, however, is not for the AGRI Committee but for the BUDG Committee to assess and handle.**

From an AGRI Committee perspective, what matters fundamentally is **the budgetary envelopes that will remain available to finance the CAP** in its current form (that resulting from the reform adopted in 2013) and/or to finance the future CAP (as it may result from the next reform).

This, in turn, will depend on **three important factors**:

- (1) the willingness (or not) of the remaining Member States to increase their contributions to the EU Budget to compensate wholly or partially the UK withdrawal;
- (2) the willingness (or not) of the budgetary authorities to keep devoting the same share (around 39%) of the EU budget to the CAP (account being taken of a clear political will to finance new policies or to reinforce other existing ones);
- (3) **the shape of the new CAP (post 2020) that will emerge from the next reform process** (to be kick-started in 2017 with a public consultation and the adoption of a Commission communication), with mechanisms (direct payments, market measures, rural development) which may increase or decrease the need for financing from the EU Budget.

Needless to say, these three factors are closely interlinked and highly sensitive from a political perspective. There is nothing more, therefore, that can be said at this stage and at this level on this aspect of the Brexit issue.

Unrelated to the MFF but of a financial nature also is the issue of the capital and activities of the European Investment Bank (where all 28 Member States are shareholders). In this respect, the UK withdrawal might reduce the resources of the EIB and thus reduce the funding via loans available to EU-27 farmers for investment/innovation (including through the EFSI programme).

## 2. Implications of Brexit on the implementation of the CAP mechanisms

Provided that sufficient financing remains available, **there is no reason why all the CAP mechanisms in their current form should not be allowed to continue to be implemented with respect to the 27 remaining Member States.**

The four basic Regulations of the CAP, all published on 17/12/2013, are the following:

- Regulation 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the CAP (the “Direct Payments Regulation”);
- Regulation 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (the “Rural Development Regulation”);
- Regulation 1308/2013 establishing a common organisation of the markets in agricultural products (the “CMO Regulation”);
- Regulation 1306/2013 on the financing, management and monitoring of the CAP (EAGF and EAFRD) (the “Horizontal Regulation”).

As far as **the Direct Payments Regulation** is concerned, it appears that the mechanisms provided therein, in the form of detailed conditions for access to payments, should continue to apply to the remaining 27 Member States of the EU without any difficulties resulting from the withdrawal of the UK. Adaptations to the Regulation would however be necessary to remove references to the UK in Annexes II (National ceilings referred to in Article 6), III (Net ceilings referred to in Article 7), IV (Limits for the thresholds referred to in Article 10(2)) and VIII (Average size of agricultural holding referred to in Article 41(4)). Since direct payments are of an annual character, **there should normally be no excessive complications in simply discontinuing the availability of EU payments in the UK from one year to the other.**

Things appear slightly more complicated with respect to **the Rural Development Regulation** because of the multiannual character and co-financing of national and regional rural development programmes. **Adaptations to the Regulation would be necessary with respect to Article 58, which indicates the total amount of Union support for rural development under the MFF for the period 2014-2020** if (as one might safely assume) the budgetary authorities are **not** prepared to maintain the same level of EU financing for a policy henceforth applicable to 27 Member States only. By the same token, adaptations would be required to Annex I (Breakdown of Union support for rural development - 2014 to 2020) to remove the remaining amounts allocated to the UK, with or without re-allocating these amounts to the remaining 27 Member States. **Annual EU payments to the UK under the Rural Development Regulation should logically be discontinued as of the date of withdrawal. If, at this point in time, approved multi-annual national or regional rural development programmes are still being implemented, the UK would probably face the choice of either allowing them to continue with a national financing increased to 100% or anticipating their termination.**

As far as **the CMO Regulation** is concerned, one has to make a distinction between the legal and the economic consequences of Brexit.

**From a legal point of view**, the Regulation and all the various mechanisms it contains should simply **cease to be applicable to the UK as of the date of withdrawal and continue to apply with respect to the remaining 27 Member States**. The Regulation does not appear to contain any specific references to the UK, except in Annex XII concerning the national and regional sugar quotas which are due to be abolished in 2017 anyway. Just like for direct payments and rural development, it is assumed that EU payments under the CMO will no longer be available in the UK as of the date of withdrawal.

**From an economic point of view**, however, the implications of Brexit on the CMO could be more extensive since what is at a stake here are market mechanisms which, by definition, are based on an economic assessment of the situation on the EU market. In this respect, the withdrawal of an important agricultural country such as the UK from the EU market **is bound to have an impact on prices and quantities**, as observed e.g. by the Milk Market Observatory. It may influence the setting of public intervention prices and could even lead to a reconsideration of reference thresholds as defined in Article 7 of the CMO Regulation. Needless to say, **this impact of Brexit on the EU market will vary from one sector to the other depending of the relative weight of UK production in the sector in question** (with significant effects, for example, in **the sheep and goats sector** for which the UK currently accounts for 33% of total EU production) and its magnitude will also very much depend on the arrangements to be found between the EU-27 and the UK concerning trade in agricultural products (i.e. the extent to which the British market will be actually segregated from the EU market).

A specific aspect of the CMO which deserves being mentioned here is **the EU policy concerning EU quality schemes**. Under this policy, as contained in Section 2 of the CMO Regulation and in Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs, legal protection, from misuse or falsification, is provided to a number of **geographical indications and designations of origin (“GIs”)** with reference to specific regions or places of production in the EU. As things currently stand, the UK has 59 such registered names (out of a total of 1150 at EU level), including e.g. Lakeland Herdwick Meat, West Country Farmhouse Cheddar Cheese, West Wales Coracle Caught Sewin, and (economically important) Scotch Whisky. The question of what will happen to EU GIs after the withdrawal of the UK is a difficult one. If no arrangements to another effect are made, **the protection afforded by the above-mentioned legislation would normally cease to apply in the UK**, which means that over a thousand European registered names could be exposed to violation in this neighbouring country of the EU-27 (while, paradoxically, the 59 UK names would remain protected in the EU if the Commission Decisions granting this protection are not repealed).

In the hypothesis where the UK, as a third country, would enter into a new relationship with the EU-27 based on a Free Trade Agreement, **it would be important therefore to include a mutual recognition of GIs in such an agreement on the model e.g. of the recent CETA Agreement with Canada**. Should such an agreement not be ready for entry into force or provisional application on the date of withdrawal, transitional arrangements should probably be made to avoid a legal vacuum.

Quality policy under the CMO also includes **promotion policy**, which is the subject of Regulation 1144/2014 on information provision and promotion measures concerning

agricultural products implemented in the internal market and in third countries. Under this legislation, the Commission selects projects on the basis of an annual work programme approved by Member States. If approved, such projects benefit from an EU financial contribution of 70% or 80%, the remaining expenditure being borne by the proposing organisations. Promotion projects may relate either to activities in the EU Member States or in third countries. They usually have a duration of one or two years. With the prospect of Brexit looming, the Commission when selecting projects and the Member States when approving annual work programmes may wish to take this new development into consideration, i.e. make sure that projects concerning the UK are treated, as of the date of withdrawal, as projects concerning the market of a third country.

### 3. Implications of Brexit on trade in agricultural and agri-food products.

This third part of our analysis is certainly the most difficult one technically and the most sensitive politically.

The fundamental question raised is what will happen, after the withdrawal of the UK from the EU, to:

- (1) trade relations between the EU-27, on the one hand, and the UK, on the other hand;
- (2) trade relations between the EU-27, on the one hand, and (other) third countries, on the other hand;
- (3) trade relations between the UK, on the one hand, and (other) third countries, on the other hand?

These questions are decisively important for agricultural policy **to the extent that they relate to trade in agricultural and agri-food products**. However, they are questions of trade policy and not of agricultural policy *stricto sensu*. Therefore, since it is assumed that the UK would, as a result of Brexit, become a third country and no longer be part of the EU Customs Union and the EU Common Commercial Policy, **they should logically be left to the INTA Committee to analyse**.

What we can say at this stage on this issue is the following:

Attention should be paid to **the new status of the UK in the WTO** following its withdrawal from the EU Customs Union since the UK, although being a full Member of this organisation in its own right, has no commitments of its own and therefore no basis for engaging into free trade negotiations (within the meaning of GATT Article XXIV) with the EU-27 and other countries. It may, however, be assumed that the UK would remain bound by general WTO disciplines including, in particular, the Agreement on Agriculture.

If the UK left the EU Customs Union, it would need to adopt a Customs Tariff and, more generally, an import regime, logically by **transposing into national law the EU Common Customs tariff and import regime** to make them its own.

If no arrangements were made to establish free trade relations between the EU-27, on the one hand, and the UK, on the other hand, this would leave the latter as the only country in the neighbourhood of the EU with no preferential status, **with EU import duties and restrictions fully applicable to UK products and vice versa**. It should be reminded that the **average** tariff

protection under the Common Customs Tariff for agricultural products is **14.4%**, which is far from insignificant.

The total bilateral trade in goods (agricultural and non-agricultural) between the EU-27 and the UK is enormous, amounting to 610.5 billion euros annually (1.7 billion euros daily). In 2014, agricultural and agri-food trade exports from the EU-27 to the UK amounted to 40.3 billion euros and imports from the UK into the EU-27 to 16.1 billion euros, resulting in **a trade surplus of 24.2 billion euros in favour of the EU-27.**

Even if a comprehensive free trade agreement was concluded between the EU-27 and the UK for application after the withdrawal of the latter, the free movement of goods between the two **would necessarily involve the application of rules of origin and the customs management (documentation/controls) of the border**, including the Irish land border (which currently does not exist in any physical sense in terms of border installations).

Problems resulting from tariff and customs barriers to trade between the EU-27 and the UK may soon be compounded by **the emergence of significant non-tariff barriers to trade following the non-participation of the UK in the disciplines of the internal market.** Even if the UK would take over, in its national legislation, the full EU acquis in terms of e.g. sanitary and phytosanitary standards, food safety, etc., this would not prevent divergences from appearing if no mechanisms “EEA style” are introduced to ensure that the UK is committed to sticking to this acquis and taking over whichever new legislation the EU-27 may subsequently adopt, and that free movement of goods is maintained on this basis. If, for example, the UK was tempted, after its withdrawal from the EU, to take a different approach to GMOs or chlorinated chickens (as we have read might be the case), this would considerably complicate its trade with the EU-27. Provisions for mutual recognition (wherever possible) and regulatory cooperation in a “CETA style” Free Trade Agreement might of course mitigate this risk, but only to a limited extent.

The UK withdrawal from the EU also raises the question of **the status of the numerous trade agreements concluded by the EU with third countries over the years.** While it might be reasonably assumed that these agreements would continue to apply, without discontinuity, between the EU-27 and the third countries concerned, **the departure of the UK might somehow disrupt the economic balance on the basis of which these agreements were concluded.** For example, the third countries concerned might legitimately complain about a unilateral reduction by the EU of the size of the market to which they have been given access. But, for example also, the EU might legitimately complain about having to accept the same quantities of goods subject to **tariff rate quotas (TRQs)** even though the size of its market has been reduced. Whether such issues might necessitate some kind of renegotiation of/adjustment to the agreements in question would need to be assessed under **the 1969 Convention on the Law of Treaties.**

Finally, **the UK withdrawal from the EU would also leave the former without any preferential trade relations with all the preferential partners of the EU as long as no new bilateral agreements between the UK and the countries concerned have been concluded.** Although this is more a problem for the UK than for the EU-27, it would be interesting to know how the British authorities intend to deal with this issue to avoid a major disruption of their trade with the rest of the world. One may wonder, in particular, whether the UK will have the sheer capacity to handle so many urgent trade negotiations in parallel with a national administration which has lost the experience and know-how of such negotiations since the mid-1970s.

Before concluding this preliminary analysis of the implications of Brexit in the field of agriculture, one should also raise **the question of the future national agricultural policy to be developed and applied by the UK**. Since the UK will become a third country and a trade competitor of the EU-27, the shape of its national agricultural policy will unavoidably become a trade issue for the latter. In other words, it will be in the interest of the EU-27 to keep a close eye on the elaboration of this new British agricultural policy to make sure that it remains fully compatible with the WTO Agreement on Agriculture and does not, through its subsidies or market support mechanisms, create unfair competition for EU agricultural producers. If need be, the EU-27 should be prepared to protect its essential agricultural interests for example by activating the WTO Dispute Settlement Mechanism.

\*\*\*