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10 January 2022

Dear Michael,

RE: EU EXIT ISSUES – TEO DEPARTMENT OFFICIALS' ORAL EVIDENCE SESSION

Thank you for your letter of 26 November 2021 in which the Committee asked for further information on a number of issues. A response to each issue raised is provided below:

REPLACEMENT EU FUNDING

Information on the replacement EU funding and the Shared Prosperity Fund and Community Renewal Fund which has been provided by the Department of Finance is attached at Appendix A.

Whilst DoF is the lead department and responsible for coordinating this work, all NICS departments have the opportunity to provide input through the Post Transition Period Interdepartmental Steering Group.

Office of the Internal Market (OIM)
The Department for the Economy has confirmed that the Office of Internal Market has no role in relation to State aid and there is no arbitrator for businesses in relation to disputes relating to State aid. Northern Ireland businesses with concerns about State aid that has been provided to a competitor may complain directly to the European Commission using the EC's complaint form. https://ec.europa.eu/competition-policy/state-aid/complaints_en

Businesses may also ask United Kingdom Government to raise concerns. Article 370 of the European Union / United Kingdom Trade and Cooperation Agreement details the procedure for consultations between the Parties on subsidies that have or could have a negative effect on trade or investment between the Parties. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982648/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf

The main repercussion for Northern Ireland businesses due to subsidy changes in Great Britain is that, from 1 January 2021, two subsidy control regimes now apply in the United Kingdom.

As detailed in UK Government guidance, subsidies to all businesses must comply with the United Kingdom's international obligations on subsidy control, unless these subsidies are to businesses within the scope of the NI Protocol, in which case the subsidies must continue to comply with the European Union's State aid rules. https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities

Areas of Agreement

Through the ongoing negotiations between the UK Government and EU Commission, agreement has been reached in several areas which sit within the responsibility of Department of Agriculture, Environment and Rural Affairs (DAERA). DAERA has provided the overview of these areas which are attached at Appendix B.

Yours sincerely,

[redacted]

DAVID McCREEDY
Departmental Assembly Liaison Officer

Appendix A

REPLACEMENT EU FUNDING (provided by the Department of Finance)

Shared Prosperity Fund

There remains a lack information on upcoming Shared Prosperity Fund.

The Spending Review announcement only provided detail of the UK financial allocations over the 3 years (Figure 1).

Figure 1: Shared Prosperity Fund

£ billion	Plans 2022-23	Plans 2023-24	Plans 2024-25
Total DEL	**0.4**	**0.7**	**1.5**
of which: Resource DEL	0.4	0.6	1.3
of which: Capital DEL	0.0	0.1	0.2

£0.56bn of this allocation has been top sliced by UKG for their “Multiply” programme aimed at improving adult numeracy. This programme will cut across the competence of our Department for the Economy and may be poorly integrated with our other activities.

The SPF will also ramp up over three years, not reaching the level that the UK Government consider to be full replacement for EU Structural Funds until the third year of the SR period. This means that even if the Executive were to be allocated an appropriate share there would still be a loss over that ramping up period.

Beyond this there was little new information released. However DoF anticipate that the UK Government’s “Levelling Up White Paper” will be published before the end of the year and will provide more detail.

While some of the lost funding will come back via direct Whitehall funding to projects that spending will be detached from Department of Finance’s own plans and priorities and is at risk of providing poor value for money.

There were no compliance checks carried out by the Executive for the Community Renewal Fund. That Fund was centrally managed and delivered through Whitehall. While Executive departments did undertake some basic checking on the strategic fit of bids provided by Whitehall, in order to ensure that we did not block funding for projects here, the overall process of application and approval was deeply flawed. In particular a number of bids were successful, including the largest single successful bid, despite Whitehall having allowed them to have bypassed this stage.

The UK Government have implied that SPF will follow a similar direction to the Community Renewal Fund and that UK ministers will have the final decision making power. Neither Ministers nor Executive Departments were engaged in any substantive manner on the Community Renewal Fund and the flaws in the resulting fund are clear. Officials are seeking to ensure that these mistakes are not repeated for the Shared Prosperity Fund but that is reliant on a change of approach from UKG.

Community Renewal Fund detail

Successful bids were announced on 3 November 2021. Bidders here have secured 6% of the funding available, totalling £12.36m. This compares favourably with the Scottish allocation of 9% but very poorly compared to the 23% secured by Wales.

Despite reservations departments agreed to take steps to ensure that they acted as no impediment to funding flowing to projects here. One of these steps was to provide Whitehall with comment on the strategic fit of proposed projects based on summaries provided by NIO and DLUHC which fed into their assessment process.

It has since come to light that a number of these summaries were omitted from those sent to Department of Finance for comment. Of these, three bids were successful totalling approximately 20% of the total funding allocated here. Department of Finance are concerned that all bids do not appear to have followed the same process.

There is a high risk of duplication and double funding for projects, officials are working across departments via the Future Policy & Finance Workstream to understand the implications and interactions with our own funding programmes.

The level of funding, does not come close to replacing the approx. £70m we would have been expecting to get this year from EU Structural Funds. This fund was developed in isolation by the UK Government with no input from NIE and will be delivered directly from Whitehall using Part 6 of the Internal Market Act.

Detail on the Deficit Resulting from the loss of EU Structural Funds

On average, we received approximately £70m per annum from European Social Fund, European Regional Development Fund, Interreg B &C and the LEADER element of the Rural Development Programme.

The Executive used these funds to deliver programmes which aligned to our strategic priorities.

Shared Prosperity Fund (SPF) was promised as a replacement with a promise that these would at least be replaced in each nation.

The Community Renewal Fund (CRF) was a pilot for SPF and will provide £12.6m to bidders here. However, this is being delivered centrally by Whitehall, bypassing the Executive and therefore cannot be considered a replacement for the spending power we have lost.

The table at Annex 1 provides comparison detail on EU Funds and their proposed replacements following EU Exit.

Annex 1

Fund Name	Annual Average	Past Funding	Annual Average Gain / Loss £	Programme Objectives	Impact on Executive Budget - Value £
Shared Prosperity Fund	Unknown - Direct Delivery	**ESF**	25,562,400.00	Supporting people to enter and to stay in the labour market	-£68,718,496.00
		ERDF	38,096,500.00	Strengthen economic and social cohesion by correcting imbalances between its regions. Focussed on funding Innovation and Research; the digital Agenda; Support for SMEs; and the Low carbon economy.	
		LEADER element of RDP	2,989,042.00	Development of rural communities	
		Interreg B&C	2,070,554.00		
UK Farm Funding	£ 315,600,000.00	**CAP EAFRD RDP (exc LEADER) (European Agricultural Fund for Rural Development)**	37,400,000		- £14,800,00
		CAP EAGF (European Agricultural Guarantee Fund)	293,000,00	Funding for farmers and land owners and other interventions aligned with the Common Agricultural Policy	

Fisheries	£ 3,100,000.00	**EMFF**	2,953,877	Help for fishers and fishing communities to fish in a sustainable way; diversify costal economies and improve quality of life along Europe's coasts	£146,123.00
HORIZON PLUS	11,960,000.00	**Horizon 2020**	11,673,500	Funding for research and innovation	Unknown
Turing	£ 1,600,000.00	**Erasmus**	7,157,472	Cross-border academic exchanges	-£5,557,472.00
Global Screen Fund	£ -	**Creative Europe**	N/K	Support for the creative industries	Unknown
No Future Replacement	£ -	**CEF**	3,289,029	Setting rules for effective operation of cross-border infrastructure. Also on a competitive basis building and maintaining infrastructure.	-£8,644,653.00
		Health	59,646	Cross-border co-operation in health	
		Disease Eradication (TB)	5,100,000	This funding contributes to the costs of Tuberculosis testing which plays a major role in the NI TB Eradication Programme.	
		COSME	195,978	Support for small and medium enterprises	

Appendix B

Areas of Agreement

New Legal Framework to Allow Re-Exports to the EU and NI of EU-Origin Animal Products that are moved to GB for storage

A new Export Health Certificate (EHC) for the re-export of EU or Northern Ireland (NI) products of animal origin (POAO) has been published and is now available to use.

This EHC (8461) can be used for the re-export of EU or NI POAO from GB to the EU or onward movement to NI provided that it is packaged and undergoes no further processing or repackaging, it remains in an approved or registered premises while the POAO is in GB, it is not tampered with and it is loaded under the supervision of an official veterinarian (OV).

Some of the EU EHCs prohibit the re-export of EU products to the EU. This includes meat products like chorizo produced in Spain or Parma ham produced in Italy, dairy products such as French cheese, fishery products, eggs and egg products. However, the new re-export EHC will now allow POAO to return, after storage in GB, to the EU or onward movement to NI. This new EHC will not allow re-export of POAO that undergoes further processing or repacking in GB.

Facilitating the return to NI of livestock brought from GB to attend trade/ exhibition fairs, so that the animals concerned will not have to wait for a minimum residency period in GB

Under EU law, livestock could not re-enter the EU after moving to a third country unless a six month residency period in the third country had been completed. Following EU exit, NI livestock could not re-enter NI after temporarily attending exhibitions, shows and sales in GB unless the six month residency requirement was met, given that GB is now a third country and that, under the NI Protocol, NI is still required to apply EU law in this area.

Following extensive technical discussions between the EU and NI / UKG officials, the EU has agreed an amendment to Regulation 2020/692 which provides a derogation that enables animals to return direct from events, exhibitions, displays or shows in GB, for a period not exceeding 15 days, without needing to fulfil the six month residency period.

The proposed solutions are subject to certain conditions being met, however, once implemented, these changes will largely resolve the current issues. The required legislative amendments are subject to a three month scrutiny period, after which it is expected they will be formally adopted by the EU.

In order to mitigate the negative impacts currently being experienced, the UK CVO has informally agreed with the Commission that these measures can be introduced before the legislation is formally adopted. The solution in relation to the temporary movement of livestock from NI to GB to attend exhibitions, shows and sales is currently in the final stages of being implemented.

Solution regarding the risk control of scrapie, to facilitate the movement of sheep and goats between GB and NI

Under EU law, breeding sheep from a third country have to be from a Scrapie-monitored flock or proven to have a scrapie resistant genotype before entering the EU. Following EU exit, this requirement prevented GB breeding sheep that did not meet these requirements from entering NI, given that GB is now a third country and that, under the NI Protocol, NI is still required to apply EU law in this area.

Following extensive technical discussions between the EU and NI / UKG officials, the EU has agreed an amendment to EU Regulation 999/2001 which will enable the intra-UK movement of breeding sheep and goats that were restricted under these requirements.

The proposed solutions are subject to certain conditions being met, however, once implemented, these changes will largely resolve the current issues. The required legislative amendments are subject to a three month scrutiny period, after which it is expected they will be formally adopted by the EU.

Similar to residency requirements for livestock, in order to mitigate the negative impacts currently being experienced by flock keepers, the UK CVO has informally agreed with the Commission that these measures can be introduced before the legislation is formally adopted and the solution for the movement of breeding sheep from GB to NI has already been implemented.

Amendment of EU import requirements on animal by-products obtained from animals slaughtered in GB to simplify certification requirements and reduce the residency period for animals brought into GB from NI, the EU or any other third country before they can be slaughtered

EU have amended Commission Regulation (EU) No 142/2011 to amend 3 export health certificates (EHCs) for exports of animal-by-products from third countries to the EU to add flexibility to the previous requirements. These amendments to the regulation provided easements for 3 EHCs.

The amended EHC for the export of animal by-products for the manufacture of pet food, for purposes outside the feed chain or for trade samples, simplifies certification requirements and reduces residency requirements for animals brought into GB from NI, the EU or any other third country before they can be slaughtered.

The amended EHC for rendered fats exported to be used for certain purposes outside the feed chain no longer requires the addition of a marker to rendered fats originating from Category 3 ABPs, as there is no risk.

This regulation falls under the NI Protocol and will therefore apply to movements of commodities involved from GB to Northern Ireland.

Amendment of EU import requirements on animal by-products to authorise Ireland and NI to export category 1 meat-and-bone meal to GB for combustion

EU Regulation stipulates that Category 1 meat-and-bone meal (MBM) is to be disposed of by incineration, co-incineration or landfill or may be used as a fuel for combustion to prevent the re-entry into and contamination of the food chain. This process takes place in GB. EU legislation prohibits the exports of Cat 1 MBM to third countries (including GB) for disposal. However;

DAERA officials, alongside Department of Agriculture, Food and Marine (DAFM) officials requested that during a transitional period, traditional trade flows of MBM Category 1 materials intended for disposal in the UK were authorised and communicated their plans to have established their own combustion capacities for MBM of Category 1 materials by the end of 2023.

After assessing the request, the Commission, given the particular geographical location of the member state, considered it necessary to establish rules in Chapter V of annex XIV to Regulation (EU) No 142/2011 on the basis which Ireland may authorise the export to the UK of MBM Category 1 materials, complying with the requirements for the placing on the markets for the purpose of combustion until 31 December 2023.

Checks are in place at BCPs in NI and ROI as required by the new regulation.

Amendment of EU import requirements on racing pigeons to avoid a 30-day quarantine for pigeons brought into the EU or NI from GB

Under the EU Animal Health Law (AHL), racing pigeons fall under the category of ‘captive birds’. The requirements then for racing pigeons travelling from NI to GB for racing, shows or exhibitions would be examination by official veterinarians in GB, EHCs and pre-notifications on TRACES NT.

In addition, the AHL (Part 11, Title 3, Chapter 2 of Delegated Regulation 2020/692) also required them to meet a number of extremely onerous conditions, including a minimum of 21 days residency on the approved premises in GB, with additional requirements for testing and quarantine on return to NI.

The AHL requirements (without a derogation) limited the possibility for the entry into the EU of racing pigeons from a third country, where they would be immediately released to fly back to that country. However, following technical discussions with the EU the EU has agreed to amend Delegated Regulation (EU) 2020/692, providing a derogation from the AHL requirements for racing pigeons coming into the EU from third countries as they do not pose the same animal health risks as other captive birds.

Committee for the Executive Office

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26 November 2021

Dear David,

TEO DEPARTMENT OFFICIALS - ORAL EVIDENCE SESSION

At its meeting on 10 November 2021, the Committee for the Executive Office received an oral briefing from departmental officials in relation to EU Exit matters.

Officials stated during the briefing that they would provide the Committee with the following information.

- **FUNDING**

Officials updated Members in relation to the levelling up funding from the UK Government and informed the Committee how the allocation for funding is decided by Whitehall directly rather than the devolved administrations.

Officials stated the Department of Finance is calculating the deficit from the loss of EU structural funds compared with the replacement funding through UK Government schemes. Officials stated they would send this to the Committee when available.

Officials also stated they would provide more information with regard to the Community Renewal Fund and the Shared Prosperity fund, in particular if the Northern Ireland Executive is carrying out democratic checks and information on how the inter-departmental steering group works on these issues.

- **OFFICE OF INTERNAL MARKET (OIM)**

Following the oral evidence session with the officials, Members then asked questions in relation to the Office of Internal Market (OIM), in particular who is the final arbitrator for Northern Ireland businesses in relation to disputes relating to state aid.

Members also asked if the Executive Office has made any representation to appropriate departments on the issue of managing diversion. Members also wanted to know what repercussions there were for Northern Ireland businesses due to subsidy changes in Great Britain and how the Executive Office measures this.

- **AREAS OF AGREEMENT**

Following the oral evidence session with officials, Members then asked questions in relation to areas of agreement between the UK Government and the European Commission. Officials stated they would provide a detailed breakdown on the areas of agreement to date between the UK Government and EU Commission.

I would appreciate a response by **10 December 2021.**

Yours sincerely

[redacted]

Michael Potter Clerk, Committee for the Executive Office

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