

CAP Reform Winter Update – December 2012

Delays all round

In September we reported on the Cypriot Presidency's plans to present a "partial general approach" (i.e. compromise) on key elements of the reform package in November 2012. These best-laid plans were shelved when it became clear that there would be no early agreement on the CAP budget within the wider multi-annual financial framework (i.e. long-term financial plan) negotiations.

Instead, the Presidency presented a progress report at December's Agriculture Council. The report, we were assured, marked "significant progress" even though it was just an assessment of where the Council's "centre of gravity lies" on key issues. More useful were the **draft legal texts** issued by the Presidency and which contain tabled amendments that have drawn broad support from member states.

Meanwhile the European Parliament's Agriculture Committee has done a heroic job in whittling down suggested MEP amendments to the original proposals from 7,500 into a workable number that can be voted on, first by the committee in January, and then by the whole of the Parliament, probably in March. All revised dates are provisional at this stage.

So, ahead of the Christmas break, there was talk of progress. But not enough progress to prevent the Commission announcing, indirectly, that the **start of the new regime would be delayed by one year**, to 1 January 2015.

With the 27 member states needing more time "to find consensus" on the 2014-2020 financial plan – on which the CAP budget depends – we are not envisaging concrete details on the shape of the new CAP to emerge before the end of March 2013 at the earliest.

The incoming Irish presidency has said that it hopes to get enough agreement among the 27 farm ministers by the end of March for negotiations with the Parliament to begin, preparing the ground for consensus all round by the end of June. If, as hoped, heads of state manage to settle their differences on the long-term financial plan in January or February, that might be achievable. It would mean that the general shape of the new regime would be known by mid-2013.

Direction of travel

The likely final package is looking ever-more local, particularly when it comes to how member states apportion funding and apply greening. That is, after all, the easiest way for 27 member states to reach agreement. Greening remains a contentious issue.

In addition, there are elements which fall to be decided not by farm ministers but by the European Council as part of the long-term budget negotiations. These tend to touch on *how much* rather than *how*, and include:-

- whether and how direct payments to larger farms should be capped (this may end up being decided on at member state/regional level);
- how payments should converge as between member states;
- the principle of greening and what percentage of direct payments it should represent (30% is still on the cards);
- flexibility for moving funds between the pillars (latest talk is of 15% between P1 and P2, with no national co-financing requirement).

Looking at the **draft legal texts** produced by the Council, and the compromise amendments agreed by the Parliament's Agriculture Committee, the following features look likely to find their way into the final **direct payments** package:-

- the possibility for existing payment entitlements to carry through to the new scheme in England;
- if entitlements are not carried through, more flexibility regarding the 'qualifying' years needed for an allocation of new basic payment scheme entitlements;
- the ability for qualifying farmers to transfer land and the right to receive entitlements to more than one farmer ahead of the first application date of the new scheme;
- on the **active farmer** question, the non-mandatory introduction of a negative list (what is not an active farmer) rather than a complex and administratively burdensome calculation based on percentages of direct payments in relation to total business turnover;
- inclusion of exceptional circumstances/force majeure provisions in relation to the national reserve;
- progressive capping of direct payments above a certain threshold (€150,000?).

Having said that, there is plenty of ground still to cover, and the Council has stressed repeatedly that *nothing is agreed until everything is agreed*. That leaves plenty of scope for last-minute surprises.

Dilemma for farm businesses

Owners and managers of farm businesses need to proceed cautiously, particularly where restructuring and purchases or expansion are planned. Although, as we have mentioned, there seems to be a head of steam behind the idea of entitlements in England being carried through to the new basic payment scheme, it is not a done deal until:-

(a) it is included in the final regulation, and

(b) a decision to take up that option is announced by Defra.

So, even if we have the general shape of the new scheme in the form of an agreed regulation in June 2013, the finer details will still be unclear. Some will be left to implementing regulations which rarely arrive until some months after the main regulation is adopted. And some decisions will be left with member states to take, usually by 1 August in the year before the new scheme starts.

It is certainly crunch time when it comes to those setting up **new businesses**. Should they be set up ahead of May 2013, ready to make a first claim as a new 'farmer' under the Single Payment Scheme? There are arguments both ways. There may be pressing reasons, quite apart from the single payment scheme, for a new business to be set up and make its first claim. Succession planning, death and divorce may overshadow concerns about the shape of the new scheme. In that case, farmers may just have to 'take a view' following advice. On the other hand, if there are no pressing reasons for change, it may be wiser to wait for agreement to be reached.

Anyone planning to expand, re-structure or set up a farming business should make sure they take advice on the possible implications. In the first instance, speak to your usual contact or any of the following members of the Roythornes Agriculture Team:-



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