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**'Brexit means Brexit'**

**Towards a new relationship with the UK**

## Conclusions and recommendations

### Conclusions

The questions that the government put to the AIV on 6 October 2016 concerned the key elements of both the new relationship between the EU and the UK and the new bilateral relationship between the Netherlands and the UK. The AIV believes that the key elements of the new bilateral relationship will depend to a significant extent on what form the new EU-UK relationship takes. Accordingly, the latter relationship forms the starting point for this advisory report and is discussed in more depth and detail.

In the new relationship between the EU and the UK, future trade relations will be crucial to both parties. The AIV is of the opinion that the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) offers the best point of departure in this respect. The AIV believes it would be politically feasible to raise future cooperation in accordance with this model to a higher level by adding elements of the association agreements that the EU has concluded with neighbouring countries. A CETA-plus model along these lines would not only make free trade in goods possible, but would also open the way to agreements on the liberalisation of service sectors. In order to permit an orderly transition to the period following a definitive agreement, the most obvious course of action, in the AIV's view, would be to continue the existing customs union for, say, three years. As regards dispute settlement, an option would be an arbitration system based on the WTO Dispute Settlement System or similar systems in existing free trade agreements.

With regard to financial services, the AIV believes that the prime concern is to minimise disruption to the financial system within the EU and to mitigate as far as possible the negative effects of Brexit on the financial services system. Decisions on third-country regime (TCR) equivalence could be a fall-back position here, although such decisions are not applicable to all financial services and may be withdrawn by the Commission. The advantage is that this approach can in principle be applied to all third countries and hence does not infringe the most favoured nation principle. The scope of equivalence could also be extended, thus rendering this option still more attractive.

In terms of external security, the EU should continue to involve the UK wherever possible in the preparation and implementation of the CFSP and the CSDP. This would undoubtedly be in the

interests not only of the UK but also of the EU. Given the intergovernmental nature of cooperation in this field, the AIV believes that exploring avenues for future cooperation should be easier than shaping future trade relations, where the EU institutions will also be involved. The nature of future cooperation on external security will of course partly depend on whether the UK aims to remain involved in the CFSP/CSDP. The advisory report outlines four possible models in this regard. In the AIV's view, it is essential to keep the UK involved in some way in the decisions of the EU Foreign Affairs Council.

In the field of internal security (Justice and Home Affairs cooperation), continued cooperation would likewise be in the interests of the UK, the EU and the Netherlands. Indeed, it is the UK's express aim to continue this relationship. However, it is not yet clear what form cooperation in this field could take in the future. In this connection, it will be crucial to reach agreement on a form of judicial review, but the British intention to end the jurisdiction of the Court of Justice of the EU (CJEU) in the UK after Brexit is expected to present a serious obstacle to agreement on this point.

Even if the relationship between the EU27 and the UK takes the form of a free trade agreement, the free movement of workers will still be an important matter. In exchange for the best possible access to the single market – which the British hope to achieve – the EU27 will want EU workers to be afforded preferential access to the UK labour market. In view of the substantial economic interests at stake for the UK and various EU member states in ensuring free movement as far as possible, the AIV believes that both the UK and the EU27 should aim to afford each other's citizens preferential access over citizens of third countries.

As regards Brexit's budgetary impact on the EU and specifically on the Netherlands, it is useful to distinguish between the 'divorce bill', the current multiannual financial framework (MFF) period (2014-2020) and the following MFF. Clearly, the Netherlands faces the possibility of a substantial negative financial impact at all three levels. The obvious course is therefore for the Netherlands to adopt a firm stance from the beginning of the negotiations, preferably with other countries (such as Germany, Sweden and Austria) which, as net contributors, are liable to face the most serious negative impact.

When it comes to the CJEU, the hard line taken by the UK, namely that it will not accept the Court's jurisdiction after Brexit, will create serious problems. The Court's position in the probable transitional period is of special concern here. It is uncertain whether the British idea of a special joint court will also be acceptable to the EU. The exact form of the tailor-made solution

advocated by the UK is not yet clear. It might be difficult for Prime Minister Theresa May to sell the option of a special chamber of the CJEU which would be the sole body competent to rule on the interpretation and application of the transitional arrangements in accordance with rules and procedures agreed for this purpose.

What is clear is that the Netherlands will lose an important partner when the UK leaves the EU. Aiming to strengthen existing coalitions, such as the Benelux and the partnership in North-West Europe, is desirable but not sufficient. The position of Germany, which should as far as possible form part of the bloc to which the Netherlands belongs, is particularly crucial here. The AIV is aware that Germany has many interests and potential partners, both to the east and in the Franco-German axis. Close cooperation with Germany will thus not always be possible. This is one reason why the AIV argues that the Netherlands should also actively seek partners for ad hoc coalitions on specific dossiers in big EU countries such as France and Spain, but also in smaller countries such as the Baltic states, preferably as part of a bloc of North-West European countries.

## **Recommendations**

1. The AIV believes that the process of shaping the new relationship between the EU and the UK should centre on the long-term importance of continuing close European cooperation against the background of the economic and geopolitical shifts that are currently under way and the enormous external challenges now facing the EU countries. Cooperation between the EU27 and the UK will remain vital in order to guarantee security, freedom and welfare in Europe, and to help to provide stability and prospects for people in Europe's neighbouring countries.
2. The AIV considers it vital for the EU27 to maintain a united front during the article 50 negotiations. This means that the Netherlands should not appear receptive to any British proposals evidently intended to play EU member states off against one another.
3. As regards the withdrawal agreement, the AIV thinks it is essential for the government of the Netherlands to concentrate its efforts on the position of EU citizens in the UK and UK citizens in the EU, and on the size of the exit bill.

4. On the subject of future relations, the AIV is of the opinion that the EU should aim for a comprehensive free trade agreement with the UK, similar to the agreement with Canada (CETA), if possible supplemented by elements of more far-reaching economic integration like those enshrined in the association agreement with Ukraine.
5. Since it is unlikely that agreement can be reached on a comprehensive free trade agreement within two years, notwithstanding the position taken by the UK, the AIV believes that a short transition period would be both probable and desirable, to allow an orderly transition between the UK's actual exit from the EU and the conclusion of a free trade agreement of this kind. The AIV therefore argues that the customs union should remain in place for three years, if possible with continued mutual recognition of norms and standards.
6. As regards financial services, the AIV believes that an equivalence system would be the most probable and realistic solution to the loss of passporting rights. The Netherlands should also strive for solid arrangements during the transition period, to minimise the damage to business.
7. The UK's withdrawal also represents a significant loss to the EU's external security, especially for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). The AIV therefore believes it essential for the government to push for EU-UK cooperation to continue, albeit in another way, and to work actively towards this goal, for example by involving the UK in some way in the decisions of the EU's Foreign Affairs Council.
8. Given the great importance that should be attached to keeping the UK closely involved in certain forms of European military cooperation, whether multilateral or bilateral, the AIV would argue that the government should continue the existing bilateral ties with the UK. Military cooperation with the UK should be assessed on its own merits and should not suffer from possible friction between the EU and the UK concerning trade policy.
9. When it comes to internal security, in other words Justice and Home Affairs cooperation, the AIV also believes that continuing the existing cooperation is essential

to the internal security of both the UK and the EU, particularly the Netherlands. However, the position of the CJEU is a complicating factor here, for which a practical solution has yet to present itself.

10. In the AIV's view, the EU member states would do well not to link initiatives aimed at improving the functioning and the fairness of the free movement of workers within the EU to the Brexit negotiations. Arguments by the Netherlands and other mainly Western European member states in the context of the revision of the Posting of Workers Directive, to ensure the same pay for the same work in the same place, would then possibly still stand a chance of being accepted by the member states in Central and Eastern Europe. This cause is unlikely to be helped by combining it with the divergent British wish to limit the number of migrants from the EU.
11. If the UK is to participate in the single market for goods during a transitional period, it will be necessary to ensure the continued adoption and equivalent practical application of the single market acquis. If the UK does not recognise the jurisdiction of the CJEU during this period, the AIV believes it will be necessary to set up an appropriate system for oversight and dispute settlement.
12. Brexit may have a major impact on the Netherlands in financial terms, too. During the forthcoming negotiations on the new MFF, the AIV takes the view that the Netherlands, together with other net contributors, should seek ways of reducing the EU budget over the coming years, so as to ensure that the Dutch contribution remains the same and in any event does not increase.
13. The UK has been a natural coalition partner for the Netherlands on several dossiers (the single market, trade and defence cooperation, for example). After Brexit, the Netherlands will have to focus more closely than before on other possible coalition partners. The AIV thinks the Netherlands should aim for close cooperation and coordination with Germany, the most influential member state in the EU, but that will not be enough. Other possible coalition partners include the countries of North-West Europe, particularly Sweden, Denmark and Ireland, but also (in the framework of enhanced Benelux cooperation) Belgium and Luxembourg. Ad hoc coalitions would

also be advisable, for example with bigger EU countries like France and Spain, but also with the Central and Eastern European countries, for instance in the field of security.