



EUROPEAN COMMISSION

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Vice-President  
Co-Chair of the EU-UK Joint Committee  
Co-Chair of the EU-UK Partnership Council

Brussels, 15.3.2021

Dear Lord Frost, *Dear David,*

I refer to last week's measures of the UK Government to delay unilaterally the application in full of Union law made applicable by the Protocol on Ireland/Northern Ireland concerning the movement of goods and pet travel from Great Britain to Northern Ireland.

It should be recalled that the Protocol, as an integral part of the Withdrawal Agreement, is in force since 1 February 2020 and has full effects under international law. Both the EU and the UK are bound to comply with its obligations and cannot unilaterally change or disapply them.

The purpose of the transition period set out in the Withdrawal Agreement was to allow authorities, citizens and businesses to prepare for the situation in which the Protocol will apply, whilst Union law will no longer be applicable to the entirety of the UK.

It was in a spirit of good faith that the EU engaged throughout last year within the Joint Committee to find pragmatic solutions to help operators in Northern Ireland adapt to the new situation. In these discussions, the Union sought to bring all those concerned onto a clear trajectory to full compliance with the Protocol in the first months of 2021.

Lord Frost of Allenton CMG  
Minister of State in the Cabinet Office

The Union took note of the UK's unilateral declaration concerning certification required for food imports into Northern Ireland made at the Joint Committee meeting of 17 December 2020. The Union also took note of the UK commitment to take "all necessary measures to ensure compliance with the Protocol and relevant Union law as of 1 April 2021" and its acceptance that the solution in its unilateral declaration was "not renewable".

More than two months after we agreed these arrangements in the framework of the Joint Committee, there has been insufficient progress towards compliance on the ground, and the UK has decided unilaterally to depart from the rules of the Protocol and the commonly agreed solutions for its implementation. These measures were presented in the statements which Mr. Brandon Lewis, the Secretary of State for Northern Ireland, made to the UK Parliament on 3 March 2021 announcing that the UK Government would extend certain "grace periods" and make provision for further flexibilities not provided for in Union law.

Later that day, the UK informed its traders that they could continue to move products of animal origin, composite products, food and feed of non-animal origin and plants and plant products from Great Britain to Northern Ireland without the need for official certification (such as export health certificates, phytosanitary certificates, fisheries catch certificates or marketing standards certification) until "at least 1 October 2021".

In addition, last week's updated guidance on sending of parcels to and from Northern Ireland and on travelling with pets from Great Britain to Northern Ireland amounts to a unilateral disapplication by the UK of the Protocol and of Union law made applicable by it as regards these two issues. These aspects have not been the subject of an understanding between the EU and the UK. In the case of organic products, the UK government announcement risks jeopardising the implementation of EU requirements for these products by the UK control bodies. It is a significant regression from current practice that has been correct until now.

The UK has resorted to this unilateral action without any discussion or consultation with the EU side in the bodies established by the Agreement. It has therefore acted in

breach of the mutual trust and spirit of cooperation that we managed to rebuild in the last months of 2020, after the uncertainty created by the UK Internal Market Bill. The recent measures once again set the UK on a path of a deliberate breach of its international law obligations and the duty of good faith that should prevail in the application of international agreements pursuant to Article 26 of the Vienna Convention on the Law of Treaties.

The UK's unilateral action is a violation of Article 5(3) and (4) of the Protocol on Ireland/Northern Ireland, read in conjunction with relevant Union law listed in Annex 2 thereto and amounts in itself to a violation of the duty of good faith provided for in Article 5 of the Withdrawal Agreement. The EU is responding in two ways.

First, as regards the substantive breaches of the Protocol, under its Article 12(4), the EU institutions and in particular the European Commission and the Court of Justice of the European Union have retained their supervisory and enforcement powers as per the EU Treaties in relation to specific provisions of the Protocol, including Article 5 thereof. Today the Commission is initiating infringement proceedings in this respect by sending a letter of formal notice to your Government pursuant to Article 12(4) of the Protocol in conjunction with Article 258 of the Treaty on the Functioning of the European Union. It addresses the breaches of the Protocol by UK authorities and asks for swift remedial actions to ensure compliance with the provisions of Union law made applicable by the Protocol.

Second, the UK's unilateral measures also violate the duty of good faith under Article 5 of the Withdrawal Agreement. According to this Article, both Parties must take all appropriate measures to ensure the fulfilment of the obligations arising from the Withdrawal Agreement. Conversely they must refrain from any measure which could frustrate the attainment of its objectives, including the results prescribed by Articles 5(3) and (4) of the Protocol, read in conjunction with Article 4 of the Withdrawal Agreement. The UK should therefore have refrained from taking any measures that would delay compliance on the ground or undermine the effectiveness of the rights and obligations arising from the Protocol.

By its actions so far, not only has the UK not put in place all measures necessary for the implementation of the Protocol, but it has unilaterally decided, without any discussion or consultation with the Union in the bodies established by the Withdrawal Agreement, to “postpone” the application of Union rules made applicable by the Protocol and, in some cases, deviate from the practical arrangements discussed in the framework of the Joint Committee for the implementation of the Protocol. By informing stakeholders that they are not expected to comply “at least until October 2021”, or in some cases other dates as provided for in the relevant UK guidance documents, the UK authorities have authorised individuals to disregard Union law, even though it is directly applicable to them by virtue of Article 5(3) and (4) of the Protocol read in conjunction with Article 4 of the Withdrawal Agreement.

Instead of providing for the implementation of the Protocol, the measures of the UK Government therefore jeopardise the attainment of the objectives pursued by the Withdrawal Agreement.

I call on the UK government to rectify and refrain from putting into practice the statements and guidance published on 3 and 4 March 2021 and to provide the Union a credible roadmap, with clear deliverables and milestones for the implementation of the relevant rules and requirements of the Protocol for which implementation is deficient or delayed. I expect these actions to be implemented before the end of the month in order to restore trust. Such a roadmap would enable us to engage in bilateral discussions in the framework of the EU-UK Joint Committee in order to find mutually agreed solutions to these implementation issues. I want to reaffirm our commitment to using the bodies established by the Withdrawal Agreement to make sure that it is properly implemented.


Let me assure you that the Union is fully committed to making the Protocol work for all, as it considers the Protocol to be the only viable way to protect the Good Friday (Belfast) Agreement and to preserve peace and stability, while avoiding a hard border on the island of Ireland. Compliance by the UK with the Protocol and Union law made applicable by it is crucial for safeguarding the integrity of the internal market. My team and I stand ready to engage with you in addressing any obstacles that stand in the

way of compliance and to find solutions, which are in line with the Protocol and which deliver on the abovementioned objectives.

For the future, I expect both sides to endeavour to agree on matters pertaining to the implementation of this Agreement and to make every attempt through cooperation and consultations to arrive at mutually satisfactory resolution of any matter as provided for in Article 167 of the Withdrawal Agreement.

Should the UK government fail to enter into consultations in the Joint Committee in good faith, with the aim of reaching a mutually agreed solution by the end of this month, I intend to provide written notice to the Joint Committee to commence consultations under Article 169 of the Withdrawal Agreement, as a first step in the dispute settlement process set out in Title III of Part Six of the Withdrawal Agreement. However, I do hope that through the collaborative, pragmatic and constructive spirit that has prevailed in our work so far on implementing the Withdrawal Agreement, we can solve this issue in the Joint Committee without recourse to arbitration.

Yours sincerely,



Maroš ŠEFČOVIČ