



Maroš ŠEFČOVIČ

Vice-President of the European Commission

Co-Chair of the EU-UK Joint Committee

Brussels, 10 February 2021

Dear Michael,

I would first like to thank you for the constructive videoconference you kindly organised at my request on 3 February. It was very useful to have a frank exchange and to hear the views of the First Minister and Deputy First Minister of Northern Ireland on the implementation of the Protocol on Ireland and Northern Ireland since its inception at the beginning of January.

On that occasion, I confirmed again that the Protocol on Ireland and Northern Ireland remains unaffected by the European Union's measures to ensure transparency of vaccine exports. These measures will never entail a hard border on the island of Ireland.

Looking ahead, I welcome our shared commitment to work together for the full implementation of the Protocol. I stand ready to continue this work with you and your team, building on the strong EU's track-record supporting the peace process and the people of Northern Ireland throughout the last decades. It is ever more necessary to translate this commitment into constructive and swift action, as was the case already back in December.

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The United Kingdom's withdrawal from the Union, its single market and its customs union presents unique and significant challenges for the island of Ireland. The Protocol is the solution agreed by the UK and the EU to these challenges: it is the only way to protect the Good Friday (Belfast) Agreement, preserving peace and stability and avoiding a hard border on the island of Ireland. It is designed to ensure clarity and predictability for people and businesses, while minimising the disruption inevitably caused by the withdrawal of the United Kingdom from the European Union. It is a balanced outcome after years of difficult negotiations and is now our mutually agreed legal obligation.

I therefore agree that our shared objective is to work tirelessly in order to make the Protocol work. It requires full and faithful implementation by both Parties. The Union's commitments to the objectives of the Protocol on Ireland/Northern Ireland, as a cornerstone of both the Withdrawal Agreement and the relationship between the European Union and the United Kingdom, is unwavering.

It is in that spirit that the Union spared no efforts last year to find, together with the United Kingdom, pragmatic solutions that could help economic operators adapt to the new situation, while respecting the Protocol and applicable Union law. I am glad that we managed to agree on these temporary flexibilities in the framework of the Joint Committee, despite the uncertainty caused by the UK Internal Market Bill, which led to the opening of an infringement procedure.

While it was clear that the start of the implementation of the Protocol would be challenging, I am also very pleased about the excellent cooperation between our teams on the ground in Northern Ireland from day one.

It is our common responsibility to diffuse tensions and to ensure the safety of all staff on the ground so that they can work in safe and good conditions.

The decisions adopted and arrangements agreed in the Joint Committee some six weeks ago have been widely welcomed as a solution that works for both sides. They urgently need to be fully and faithfully implemented. This is a prerequisite to assess whether any other facilitation, as requested, are necessary and justified.

In this context, I would like to draw your attention to a number of current shortcomings preventing the Protocol and our practical arrangements from delivering on the ground:

The Border Control Posts (BCPs) or Entry Posts are not yet fully operational. Official controls at the BCPs are currently not performed in compliance with the Withdrawal Agreement Protocol and European Union rules: very few identity checks; a very limited number of physical checks other than on live animals, live fish and plants; all non-compliant consignments are accepted, even if destined for Ireland. Furthermore, packaging is not labelled and the consignments not monitored at destination as foreseen by UK's declarations of 17 December 2020. In addition, a number of consignments are entering Northern Ireland without being declared or without valid certificates, contrary to these declarations.

I am also concerned that the United Kingdom has not yet fulfilled its obligation under the Joint Committee Decision of 17 December 2020 to provide Union representatives with the required real-time access to all its IT systems referred to in that Decision. In particular, access to key customs IT systems, such as the "import clearance system" (CDS), has not yet been provided. We are thus currently not receiving the information as to how mutually agreed flexibilities concerning e.g. the "trusted trader scheme" or simplified health certificates are being used in practice.

Moreover, the United Kingdom Government has issued official guidance suggesting that traders moving goods from Northern Ireland to Great Britain outside standard procedures do not have to submit "equivalent information" to customs authorities, contrary to the commitment taken by the United Kingdom in its unilateral declaration on flexibilities for export procedures of 17 December 2020.

I am convinced that all of these are "teething problems", for which we should be able to find swift solutions and I am ready to address them, together with the points raised in your letter of 3 February 2021, at our next Joint Committee meeting.

In this respect, I would already note the following:

On Union legislation on tariff rate quotas – such as in the case of steel imports from Great Britain into Northern Ireland – I am pleased to inform you that the Commission is indeed examining possible amendments in order to make it possible for the United Kingdom to have such imports counted against the EU tariff rate quota accorded by the European Union to the United Kingdom. This solution would be similar to what the United Kingdom has proposed, albeit restricted to goods originating in the UK and brought from Great Britain into Northern Ireland. For goods coming from the rest of the world and brought into Northern Ireland via Ireland (after having been released into free circulation in Ireland), the Commission has recently clarified in a Notice that such imports have indeed to be counted against the applicable tariff rate quotas.

As regards additional flexibilities concerning the application of Union law applicable in Northern Ireland with regard to meat products, export health certificates and parcel and express services, I would like to recall that blanket derogations from provisions of Union law made applicable in respect of Northern Ireland cannot be agreed beyond what the Protocol foresees already. Regarding the issue of certificates and meat products in particular, I would recall that the commitment by United Kingdom authorities and operators to a path towards full compliance with Union law, including as regards the necessary adjustments of supply chains, is clearly set out in the declarations of 17 December 2020. It is with this in mind that we should work together to find pragmatic solutions.

Finally, as regards the issues of pet travel between Great Britain and Northern Ireland and of movements of seed potatoes and other plants and plant products, any flexibility would entail the United Kingdom committing to align with the relevant EU rules.

Let me conclude by reiterating my determination to continue to work with you in a spirit of collaboration, responsibility and pragmatism to reach mutually beneficial solutions. As stated by President Ursula von der Leyen, the Commission has been exploring all flexibilities available under the applicable rules of Union law and within the framework of the Protocol, in order to facilitate its implementation, whilst fully protecting the integrity of the Union's Single Market and Customs Union.

To this end, I very much look forward to meeting you in London tomorrow. This should help us prepare the next Joint Committee meeting to take place, as agreed, before the end of February. As discussed, I am also very keen to hear the views of key stakeholders on the ground who are adapting to the new reality, following the UK's withdrawal from the Union.

Yours sincerely,

Maroš ŠEFČOVIČ