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Technical Note: Implementation of the Protocol on Ireland / Northern Ireland

The Protocol on Ireland / Northern Ireland, which forms an integral part of the Withdrawal Agreement concluded by the European Union and the United Kingdom, will become fully applicable at the end of the transition period. Unless that period is extended in accordance with Article 132 of the Withdrawal Agreement, the Protocol will thus become fully applicable on 1 January 2021.

At the first meeting of the EU-UK Joint Committee, held by teleconference on 30 March 2020, the United Kingdom reiterated its commitment to upholding its obligations under the Protocol on Ireland / Northern Ireland.

The Commission recalled that the Protocol on Ireland / Northern Ireland cannot be renegotiated, including in the Joint Committee, and that a new partnership between the EU and the UK can only be built on the foundation of the faithful and effective implementation of the Withdrawal Agreement.

The Commission also underlined that the United Kingdom's commitment to implement the Protocol must now be put into action, and that there is an urgent need to present a detailed timetable and proceed with the necessary measures. The Commission finally emphasised its availability to working with the United Kingdom at all levels. Several Directorates-General of the Commission have already reached out to their United Kingdom counterparts over the past months to request technical discussions and to offer any assistance that may be required.

The time to implement the Protocol is short, and practical implementation measures must start immediately so that the Protocol can be operational by 1 January 2021.

Required implementation measures

In this light, the Commission recalls that in order to be in a position to comply with all obligations the United Kingdom has accepted pursuant to the Protocol on Ireland / Northern Ireland, and which become applicable as of the end of the transition period, the following measures must be taken as soon as possible:

a) Article 2(1): Rights of Individuals

The United Kingdom has committed to implement its commitments in Article 2(1) by means of "dedicated mechanisms". These must be in place before the end of the transition period.

The United Kingdom should therefore provide details on the "dedicated mechanisms" it intends to create, and a detailed timeline showing how those mechanisms will be fully operational by the end of the transition period.

b) *Article 5(3) and (4): Customs, movement of goods*

The United Kingdom has committed to implement the provisions of Union law referred to in Articles 5(3) and (4) in respect of Northern Ireland¹, subject to certain exemptions² and adaptations³, by the end of the transition period.

The United Kingdom should therefore provide details, and detailed timelines, on the following measures, which are required to be **operational by the end of the transition period**. Across all the measures, the Commission urges the United Kingdom to enter into technical implementation discussions with the relevant Commission services immediately.

i) *Customs*

The United Kingdom has committed to apply the Union Customs Code formalities and, subject to Articles 5(1) and 5(2), the EU customs tariff in respect of all goods entering Northern Ireland from either a third country or Great Britain.

The United Kingdom has also committed to apply the relevant Union Customs Code formalities in respect of all goods leaving Northern Ireland to either a third country or Great Britain.

ii) *Sanitary and phytosanitary requirements*

From the end of the transition period, the United Kingdom has committed to apply in Northern Ireland the provisions of Union law listed in Annex 2 to the Protocol relating to sanitary and phytosanitary (SPS) requirements. This implies that:

- domestic production in Northern Ireland must comply with EU SPS requirements; and
- animals, plants, and their products entering Northern Ireland from either a third country or Great Britain must comply with EU SPS requirements and be subject to official controls as prescribed by Union law.

In order to prepare in particular for the application of official controls on animals, plants, and their products entering Northern Ireland from Great Britain, the United Kingdom should clarify whether it intends to designate additional posts for the performance of official controls in Northern Ireland (e.g., Larne port), given that importation of goods subject to official controls is only possible through such posts.⁴ If only the currently existing posts are maintained, as of the end of the transition period

¹ See Article 13(1) of the Protocol in combination with Article 7 of the Withdrawal Agreement.

² See Articles 5(1), 5(2) and 6(1) of the Protocol.

³ See Article 7 of the Withdrawal Agreement, as well as Articles 7(3), 13(5) and 13(6) of the Protocol.

⁴ Taking into account the timelines under relevant Union law (In particular, Article 59 of Regulation (EU) 2017/625), in order to be operational by 1 January 2021, the designation of any new BCP would need to be notified to the Commission by 30 June at the very latest.

there will be no entry point solution in Northern Ireland for live animals and for products of animal origin if they are unpacked or if they are preserved at ambient or chilled temperature, implying a significant risk of disruption of the trade flows entering Northern Ireland.

iii) Product legislations and other regulatory requirements

The United Kingdom has committed to apply in Northern Ireland the provisions of Union law listed in Annex 2 to the Protocol relating to product legislation and other regulatory requirements. This implies that:

- goods placed on the market in Northern Ireland must comply with EU product legislation / other regulatory requirements; and
- goods entering Northern Ireland from either a third country or Great Britain must comply with EU product legislation / other regulatory requirements and must be subject to risk-based checks and controls as prescribed by Union law.

In addition, the United Kingdom must identify the market surveillance authorities as referred to in Article 17 of Regulation (EC) No 765/2008 in respect of Northern Ireland.

iv) Other prohibitions and restrictions

The United Kingdom has committed to apply in Northern Ireland the provisions of Union law listed in Annex 2 to the Protocol relating to other prohibitions and restrictions. This implies that:

- all goods entering Northern Ireland from either a third country or Great Britain are subject to prohibitions and restrictions applicable to imports under relevant Union law; and
- all goods leaving Northern Ireland to either a third country or Great Britain are subject to prohibitions and restrictions applicable to exports under relevant Union law, without prejudice to Article 6(1) of the Protocol.

v) Fisheries

The United Kingdom has committed to apply in Northern Ireland the provisions of Union law listed in Annex 2 to the Protocol relating to fisheries. These provisions include, notably, the IUU Regulation.⁵

Under the Protocol, Union customs legislation does not apply to and in the territorial waters of the United Kingdom, which are hence not treated as if they were part of the customs territory of the Union. UK fishing vessels are, for the purpose of the Protocol, considered third country fishing vessels also in Northern Ireland.

⁵ Council Regulation (EC) No 1005/2008, included in section 46 of Annex 2 to the Protocol.

Accordingly, pursuant to the Protocol, as of the end of the transition period:

- all landings in Northern Ireland of fish by UK or third country fishing vessels must be subject to EU customs rules, where applicable, including EU customs tariffs unless exempted in accordance with Article 5(3), and SPS rules applicable in the EU to landings by third country vessels; and
- all landings in Northern Ireland of fish by UK or third country fishing vessels must be subject to the IUU Regulation, including as regards designated ports and prior notification requirements.

c) *Article 8: Value Added Tax (VAT) and excise*

As of the end of the transition period, the United Kingdom has committed to apply the provisions of Union law relating to VAT and excise listed in Annex 3 to the Protocol concerning goods as if Northern Ireland were a Member State, subject to certain exemptions and adaptations. This implies, in particular, that:

- EU VAT and excise rules applicable to imports into and exports out of the EU must be applied on goods entering Northern Ireland from either a third country or Great-Britain, and on goods leaving Northern Ireland to either a third country or Great Britain;
- in respect of Northern Ireland, a supply of goods, to which the EU VAT and excise rules apply pursuant to the Protocol, must be distinguished for VAT-purposes from a supply of services, to which the United Kingdom's VAT rules apply;
- for the proper application of VAT and excise rules to intra-EU trade in goods between Northern Ireland and the Member States, the following will be required:
 - (1) a specific VAT identification number assigned to taxable persons and non-taxable legal persons who carry out in Northern Ireland the transactions in goods provided for in Article 214 of Directive 2006/112/EC. This 'specific' VAT number shall be used in particular for the exchange of the necessary information through VIES;
 - (2) specific excise numbers (SEED numbers) assigned to economic operators who hold, store or move goods subject to excise duty in Northern Ireland as provided for in Article 19 of Regulation (EU) No 389/2012. The 'specific' excise numbers shall be submitted to the Central SEED service and used to identify economic operators for the exchange of the necessary movement information through EMCS;
- the "VAT e-commerce package" (One-Stop-Shop (OSS) for intra-EU distant sales of goods and Import One-Stop-Shop (IOSS)) must be implemented in respect of Northern Ireland.

The United Kingdom should provide details, and detailed timelines, on the implementation of Article 8, and the above-mentioned measures in particular. The Commission urges the United Kingdom to enter into technical implementation discussions with the relevant Commission services immediately.

d) Article 9: Single electricity market

As of the end of the transition period, the United Kingdom has committed to apply the provisions of Union law relating to the single electricity market on the island of Ireland listed in Annex 4 to the Protocol concerning goods as if Northern Ireland were a Member State, subject to certain exemptions and adaptations. This implies that:

- internal energy market rules must apply in Northern Ireland insofar as they concern the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity; and
- EU rules concerning industrial emissions and greenhouse gas emissions must apply in respect of the generation of electricity in Northern Ireland.

The United Kingdom should provide details, and detailed timelines, on the implementation of Article 9, and the above-mentioned measures in particular. The Commission urges the United Kingdom to enter into technical implementation discussions with the relevant Commission services immediately.

d) Article 10: State aid

As of the end of the transition period, the United Kingdom has committed to apply the provisions of Union law relating to State aid listed in Annex 5 to the Protocol in respect of measures which affect that trade between Northern Ireland and the Union which is subject to the Protocol.

This implies that in respect of all measures taken by the United Kingdom which affect either trade in goods between Northern Ireland and the EU, or trade in electricity between Northern Ireland and the EU, the United Kingdom has committed to comply with:

- applicable notification and stand-still obligations in respect of relevant new aid;
- any reporting obligations in respect of relevant aid measures; and
- any decision adopted by the Commission addressed to the United Kingdom.

The Commission invites the United Kingdom to enter into technical implementation discussions with the relevant Commission services.

Preparation of stakeholders

Businesses will need time to prepare for the changes to the customs, regulatory and VAT / excise regimes that the full application of the Protocol as of 1 January 2021 necessarily implies.

For businesses in Northern Ireland, this will include:

- the introduction of customs procedures and formalities for goods entering Northern Ireland from Great Britain, and for goods leaving Northern Ireland for Great Britain;
- the introduction of regulatory checks and controls, including SPS controls, for goods entering Northern Ireland from Great Britain;
- the introduction of prohibitions and restrictions in respect of goods entering Northern Ireland from Great Britain, and for goods leaving Northern Ireland for Great Britain;
- the new regulatory environment in Northern Ireland, in particular as regards technical regulations, assessments, registrations, certificates, approvals and authorisations;
- the new regulatory requirements for UK fishing vessels landing fish in Northern Ireland;
- the application of VAT and excise rules concerning imports and exports to goods entering Northern Ireland from Great Britain and goods leaving Northern Ireland to Great Britain; and
- the implementation of a dual VAT regime in Northern Ireland, with one set of rules applicable to a supply of goods, and a different set of rules applicable to a supply of services.

To avoid disruptions of business activity, the United Kingdom should urgently engage with the business community in Northern Ireland, as businesses must be able to prepare for the new requirements well in advance. The Commission services are available to provide any assistance that may be required.

Next steps

The Commission expects the United Kingdom to provide the requested details, and detailed timelines, on the implementation measures it intends to take as a matter of urgency.

The Commission also expects the United Kingdom to enter into technical implementation discussions with the relevant Commission services immediately.

The Commission will continuously report to the European Parliament and the Member States on the progress of the implementation of the Protocol. As laid down in the negotiating directives adopted by the Council in respect of the future relationship between the EU and the United Kingdom, the negotiations of the envisaged partnership are premised on the effective implementation of the Withdrawal Agreement and of its three Protocols.