

## PROTOCOL ON IRELAND AND NORTHERN IRELAND

### NON-PAPER

#### SANITARY AND PHYTOSANITARY (SPS) ISSUES

##### 1) Issue

1. The implementation of the Protocol on Ireland / Northern Ireland (“the Protocol”) in the area of SPS (feed, food, plants, animals) is unsatisfactory. European Union (EU)’s SPS law is not correctly applied or not applied at all as regards goods moving from Great Britain to Northern Ireland as a result of the United Kingdom (UK)’s unilateral decisions (grace periods) and the lack of proper infrastructure and staff to perform border controls in Northern Ireland.
2. The UK Government and stakeholders point to the Protocol imposing disproportionately high administrative burdens on Great Britain-Northern Ireland movements of SPS goods, allegedly leading in particular to delays in and shortages of certain food supplies in supermarkets and Northern Ireland consumers being deprived of access to “national identity goods” from Great Britain.
3. This non-paper provides elements for a durable solution to the implementation of the Protocol in the SPS area, in the form of a genuine simplification of processes and procedures for a significant range of goods destined solely for sale to end consumers in retail shops in Northern Ireland (“retail goods”), within the existing framework and in the interest of all communities in Northern Ireland. This would be the basis for further discussions with the UK.

##### 2) Framework

4. The Treaty on the Functioning of the European Union (TFEU) requires the control of external borders to protect the internal market in agricultural products as well as the health of citizens, animals and plants and provides that a high level of protection in human health, animal health and plant health must be ensured in the definition and implementation of all Union policies and activities (Articles 26(2), 28(1), 39(1), 114(3), 168 and 207 TFEU).
5. Pursuant to Article 5(4) of the Protocol, the provisions of Union law listed in Annex 2 to the Protocol apply to and in the UK in respect of Northern Ireland from 1 January 2021 (i.e. as from the end of the transition period, cf. Article 185 of the Withdrawal Agreement). Accordingly, SPS goods placed on the Northern Ireland market have to comply with the relevant EU SPS requirements.
6. Northern Ireland is part of the EU’s SPS area and treated as if the UK were a Member State as regards the territory of Northern Ireland. Northern Ireland and Ireland are treated as a single SPS region for the purposes of managing the consequences of any health outbreaks, including on a global level. Conversely, as from the end of the transition period, Great Britain is no longer part of the EU’s SPS area. This means that SPS goods shipped from Great Britain to Northern Ireland are subject to the regime (health conditions/requirements, certification and controls) applicable to imports from any third country, including any mandatory checks, and must fully comply with the relevant EU SPS requirements.
7. The rules and procedures laid down in the Protocol are necessary to protect the Single Market in agricultural products as well as the health of consumers, animals and plants, in line with the TFEU.

### 3) Possible solution

#### Durable solution for Great Britain - Northern Ireland movements of SPS retail goods

8. This would be a bespoke solution for Great Britain – Northern Ireland movements of SPS goods to deliver simplified access (simplified certification + reduction of physical checks) in respect of Great Britain – Northern Ireland movements of a significant range of retail goods, which is the current main concern of the UK Government and stakeholders. This should focus on addressing identified real supply problems for retail goods within scope due to the implementation of the Protocol but would neither abolish certification nor all SPS checks.
9. The proposed solution would deliver significant trade facilitations, while ensuring that animals, plants or products circulating in the EU SPS area would not create risks for public, animal or plant health and safeguarding the integrity of the SPS status of the island of Ireland.
10. Any EU's move towards a bespoke solution is subject to a number of pre-conditions, such as the UK delivering on access to IT systems in the customs area and completion of the construction and staffing of permanent Border Control Posts, in accordance with the findings and recommendations of the Commission's recent audit report on the functioning of Border Control Posts in Northern Ireland.
11. Addressing these issues of principle and, importantly, also the scope of any bespoke solution must be based on a thorough risk assessment and an analysis of changes that have already happened or are being implemented in supply chains (based on evidence from the UK and stakeholders and EU's own statistical data - for instance, there is clear evidence that supermarkets have already managed to restructure their supply chain to an extent), and any evidence of or possibilities for further supply chains adaptation.

#### Criteria for the proposed solution for Great Britain – Northern Ireland movements of SPS retail goods

12. The following criteria would inform this approach:

##### **1/ Simplified certification and reduced checks, with conditions. No full abolition of certification or checks.**

- **Simplified certification for retail goods:** e.g. simplified official certificate globally stating that all goods of different type, class or description transported by the same lorry meet the requirements of EU legislation, with detailed documentation for each product available electronically for inspection.
  - However, when the consignment includes products which are subject to prohibitions/restrictions for import into the EU (to be specifically defined in a list by the EU), such as certain meat and meat products or certain plants or plant products, those products should be accompanied by an individual official certificate, for which a specific model would be provided.
- **Reduced checks:** while documentary checks should remain compulsory and can be performed remotely through electronic means, the frequency of identity and physical checks to be performed at the points of entry in Border Control Posts in Northern Ireland, as provided for in EU legislation, could be reduced. The level of checks would not be managed at the level of individual traders / consignments / products but as part of an overall system defining the risk management principles and related decisions, as provided for in EU SPS legislation.

2/ **The following conditions would apply:**

- If, despite the further adjustment of supply chains, the bespoke solution would also include some meat and meat products subject to prohibitions and restrictions, **basic production requirements** in Great Britain would need to remain aligned with those in the EU. Given the risk that diseases spread, the need for alignment with those production requirements might need to be considered for other areas as well.
- **Products packed for end consumers and labelled as such:** labelling requirements at the level of the individual end-consumer packaging, with a mention such as “*products for sale only in the United Kingdom*”, should effectively prevent any further movement of the goods concerned into the EU Internal Market.
- **Goods not for further circulation into the EU Internal Market:** the above facilitations would only be available in respect of products destined solely for sale to end consumers in retail shops located in Northern Ireland (i.e. movements of SPS goods to other operators of the food chain such as farmers or other food processors in Northern Ireland would be excluded).
- **Origin of the primary products:** the above facilitations should only be applicable to end products produced from primary products originating in UK in accordance with the EU-UK Trade and Cooperation Agreement or coming from the EU. As the UK is no longer aligned on EU import conditions, products introduced from third countries must not end up in the EU’s SPS area.
- **Reinforced monitoring of supply chains:**
  - Facilitations available to authorised traders / establishments only; channelling procedure (with special monitoring from the point of entry to the point of destination);
  - Double listing of those establishments in Great Britain (points of departure) and in Northern Ireland (points of destination) which would be authorised to participate in the scheme, with operational means of verification (access to IT databases from Northern Ireland) and a withdrawal procedure in case of non-compliance.

3/ **Structural safeguards to ensure that the above-mentioned conditions are respected in practice:**

- **Solution** subject to a **review clause**.
- **Rapid reaction mechanism** to any identified problems in relation to individual products or traders.
- **Unilateral measures by the EU** in case of failure by UK competent authorities or the trader concerned to react to or remedy an identified problem: e.g. suspension or revocation of the facilitation for the products / traders concerned.
- Union representatives in Northern Ireland and relevant **market surveillance** authorities would have to play an active monitoring role.
- **Compliance verification mechanism** by the Commission, e.g. through audits, on-site inspections of traders and establishments, etc., relying as much as possible on the existing presence of Union representatives in Northern Ireland.

**Other flexibilities / solutions already identified by the EU in an effort to facilitate the full implementation of the Protocol**

13. These flexibilities / solutions concern in particular Great Britain – Northern Ireland movements of live animals, assistance dogs, high-risk plants, animals returning to Northern Ireland after participating to trade and exhibition fairs in Great Britain, control of scrapie conditions for sheep and goats moving from Great Britain to Northern Ireland and developing an interface between the EU and UK's respective SPS databases. Please see the annex for the details.

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## ANNEX

### **Flexibilities / solutions identified by the EU in an effort to facilitate the full implementation of the Protocol on Ireland / Northern Ireland**

#### **Solutions already found to facilitate Great Britain – Northern Ireland movements of live animals requiring EU action**

The Commission has identified a number of flexibilities, which address the specific issues raised in this area by the UK in previous technical discussions and various non-papers. These flexibilities can be implemented within existing EU law to facilitate the movement of live animals from Great Britain to Northern Ireland, as follows:

- **Tagging of live animals moving from Great Britain to Northern Ireland:** Commission Implementing Regulation (EU) 2021/1064 of 28 June 2021 enables Northern Ireland animals to be identified in accordance with EU rules and therefore removes the need for re-tagging when animals move multiple times between Great Britain and Northern Ireland during their life.
- New legal framework to allow re-exports to the EU and Northern Ireland of **EU-origin animal products** that are **moved to Great Britain for storage:** Commission Implementing Regulation (EU) 2021/1469 of 10 September 2021.
- **Facilitating the return to Northern Ireland of livestock from trade / exhibition fairs in Great Britain,** so that the animals concerned will not have to wait for a minimum residency period in Great Britain (Commission delegated and implementing acts are under preparation).
- Work is also ongoing on a solution regarding the **risk control of scrapie,** to facilitate the **movement of sheep and goats** between Great Britain and Northern Ireland (Commission Regulation under preparation).
- Amendment of EU import requirements on **animal by-products obtained from animals slaughtered in Great Britain:** this simplifies certification requirements and reduces the residency period for animals brought into Great Britain from Northern Ireland, the EU or any other third country before they can be slaughtered: the amendment of Regulation (EU) No 142/2011 is expected to be adopted in October 2021. Meanwhile, it was agreed with the UK and Member States that they can start implementing the new measure through bilateral arrangements.
- Amendment of EU import requirements on **animal by-products** to authorise Ireland and Northern Ireland to **export category 1 meat-and-bone meal to Great Britain for combustion:** Commission Delegated Regulation (EU) 2021/899 of 3 June 2021 amending Regulation (EU) No 142/2011.
- Amendment of EU import requirements on **racine pigeons** to avoid a 30-day quarantine for pigeons brought into the EU or Northern Ireland from Great Britain: the amendment of Commission Delegated Regulation (EU) 2020/692 will be adopted in October 2021. Meanwhile, it was agreed with the Member States that they can use the transition period offered through the new Animal Health Law to continue accepting entries without quarantine.

No further action appears necessary on the EU side. To be noted that the approach for movements of live animals set out in UK Command Paper of 21 July 2021 foresees systematic checks also on Great Britain – Northern Ireland movements, albeit based on UK law rather than EU law. The principle that live animals should be systematically checked, also in the context of Great Britain – Northern Ireland movements, is therefore uncontroversial.

**Other solutions already found, not requiring any particular further step on the EU side**

Other solutions have already been found, which do not require any specific measure at EU level for their implementation, as follows:

- Developing an interface between the EU and UK's respective SPS databases: the interface on the EU side is ready, the UK is now in the process of developing its own interface. There are regular contacts between the respective IT teams to ensure that the interface will be ready as soon as possible. This will enable e-certification and a swift handling of entry/exit data for SPS goods that will speed up documentary checks, especially on goods moving from Great Britain to Northern Ireland and help identify discrepancies on entry/exit data.
- Assistance dogs: the issue can be solved through the application of a derogation clause built into Regulation No. 576/2013 on the non-commercial movement of pet animals (Article 32). That provision provides the necessary flexibilities as regards the temporary introduction of assistance dogs coming into Northern Ireland from Great Britain. On that basis, Northern Ireland SPS authorities can therefore develop the operational details. Further discussions can take place at expert level on practical implementation aspects as necessary.
- High-risk plants: the EU side has facilitated contacts between the UK and European Food Safety Agency (EFSA) to assist in the preparation by the UK of complete dossiers concerning high-risk plants intended for export from the UK (Great Britain) to the EU. The completeness of the file is the main relevant factor affecting the timing of EFSA's risk assessment. All requested explanations/clarifications were provided to the UK representatives. Following EFSA's positive assessment, the exports of the plants concerned from the UK (Great Britain) to the EU will be authorised. The first dossier from the UK was submitted to EFSA in September 2021.