



Lord Frost CMG
Minister of State
Cabinet Office
70 Whitehall
London
SW1A 2AS

11 March 2021

Dear David

The Government's 3 March unilateral announcement of temporary operational steps in relation to the Protocol on Ireland/Northern Ireland

I am writing to you in relation to the Government's unilateral announcement on 3 March 2021 of "temporary operational steps" in relation to the Protocol on Ireland/Northern Ireland. This letter should be read in conjunction with a separate letter also sent to you today on the overall operation of the Protocol since 1 January.

The Government's unilateral announcement on 3 March speaks of "temporary operational steps to avoid disruptive cliff edges ... as part of the pragmatic and proportionate implementation" of the Protocol, in recognition that "appropriate time must be provided for businesses to implement new requirements, and support the effective flow of goods between Great Britain and Northern Ireland". The measures announced include:

- Extending the "Scheme for Temporary Agri-Food Movement to Northern Ireland" (also referred to as the 'grace period' for supermarkets and their suppliers) from their scheduled expiry on 1 April until 1 October 2021;
- Phased introduction of certification requirements alongside the rollout of the Digital Assistance Scheme "as part of the operational plan the UK committed to at the UK-EU Joint Committee on 24 February";
- Further guidance subsequently set out on parcel movements from Great Britain to Northern Ireland after the expiry of the current temporary arrangements on 1 April;
- Further guidance subsequently issued "to help address practical problems on soil attached to the movement of plants, seeds, bulbs, vegetables and agricultural machinery"; and
- A statement that flexibilities in relevant regulations mean that "no charging regime is required for agri-food goods."

We note the Commission's subsequent statement expressing "the EU's strong concerns over the UK's unilateral action, as this amounts to a violation of the relevant substantive provisions of the Protocol on Ireland/Northern Ireland and the good faith obligation under the Withdrawal Agreement. This is the second time that the UK Government is set to breach international law." The statement describes this as "a clear departure from the constructive approach that has prevailed up until now, thereby undermining both the work of the Joint Committee and the mutual trust necessary for solution-oriented cooperation. It

is equally disappointing that the UK Government has resorted to such unilateral action without informing the EU's co-chair of the Joint Committee." It has been reported that Vice-President Šefčovič told you on the evening of 3 March that the EU would respond to these developments in accordance with the legal means established by the Withdrawal Agreement and the Trade and Cooperation Agreement, and subsequently that the EU will launch an infringement procedure against the UK, and will also to lodge a complaint through the Joint Committee under Article 169 of the Withdrawal Agreement that the UK is in breach of its obligations under Article 167.

On the other hand, we note the Secretary of State for Northern Ireland's statement, in his 5 March *Telegraph* article, and echoed in your own article of 7 March, that these measures "largely continue measures already in place ... are lawful and consistent with a progressive and good faith implementation of the Protocol ... do not change the legal obligations set out in the Protocol. ... [and] are consistent with the common trade practice adopted by countries internationally—including many EU Member States." We also note his statement that it had become clear through engagement with Northern Ireland business and civic society that "decisions needed to be taken now to avoid significant immediate-term disruption to everyday life in Northern Ireland".

Our own engagement with the Northern Ireland business community has made clear their serious concern in particular about the potentially damaging impact of a cliff-edge effect at the end of the grace periods. We therefore support the Government's efforts to "address the direct and often disproportionate impact that aspects of the Protocol are having on the citizens of Northern Ireland", to "provide more time for businesses ... to adapt to and implement the new requirements in the Protocol", and to avoid "disruption to the everyday life of people in Northern Ireland in the coming weeks."

While we would therefore have strongly supported such measures being brought forward, subject to their compatibility with the TCA, following agreement with the EU in the Withdrawal Agreement Joint Committee, we are concerned at the potentially destabilising effect of the Government's decision to announce them unilaterally. This perpetuates a pattern of actions in relation to the Protocol by both sides in recent months, including the Commission's abortive invocation of Article 16 in relation to COVID vaccine supply, that have significantly undermined mutual trust and confidence. These actions by both parties mean that the Protocol remains a source of intense political controversy and instability, not only between the UK and the EU, but also between the UK and Ireland, and within Northern Ireland itself.

In view of this, we would be grateful for your response to the following questions:

- Notwithstanding the economic and political case for the measures proposed, why did the Government announce them as a set of unilateral actions on 3 March, rather than seeking to reach mutual agreement with the Commission in the Withdrawal Agreement Joint Committee?
- What is your response to Vice-President Šefčovič's description of the Government's action as a violation of the substantive provisions of the Protocol, the good faith obligation under the Withdrawal Agreement, and a potential breach of international law? Has the Commission given notice of the actions it intends to take in response?
- Can you elaborate on the Government's counter-argument that these measures are lawful, consistent with the Government's obligation to exercise good faith, do not

change the legal obligations set out under the Protocol, and are consistent with the common trade practice adopted by countries internationally?

- What steps can be taken to rebuild trust and confidence between the UK and the EU, in order to provide a basis for mutual agreement of these and other future measures necessary to minimise the negative impact of the Protocol on the communities and businesses of Northern Ireland?

We would be grateful for a response to this letter by 10 April 2021.

I have copied this letter to Northern Ireland Assembly colleagues Dr Steve Aiken MLA, Chairperson, Committee for Finance; Dr Caoimhe Archibald MLA, Chairperson, Committee for the Economy; Declan McAleer MLA, Chairperson, Committee for Agriculture, Environment and Rural Affairs; Colin McGrath MLA, Chairperson, Committee for the Executive Office; and Michelle McIlveen MLA, Chairperson, Committee for Infrastructure.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Kinnoull', with a horizontal line underneath.

Lord Kinnoull DL
Chair of the European Union Committee