



Questions and Answers: Commission launches four new infringement procedures against the UK

Brussels, 22 July 2022

Introduction

Why did you launch today's infringements?

In a spirit of constructive cooperation, the Commission refrained from launching new infringement procedures for over a year to create the space to look for joint solutions with the UK. However, the UK's unwillingness to engage in meaningful discussion since last February and the continued passage of the Northern Ireland Protocol Bill through the UK Parliament go directly against this spirit.

Therefore, the Commission has today launched four new infringement procedures against the United Kingdom for not complying with significant parts of the Protocol on Ireland / Northern Ireland. They come in addition to [the infringement procedures of 15 June 2022](#).

The Commission stands ready to launch any new infringement procedures that serve to protect the EU Single Market from the numerous risks that the UK's violation of the Protocol poses in terms of the health and safety of EU citizens.

What remedies do you have?

The aim remains the implementation of the Protocol. That is the only way to ensure legal certainty and predictability for people and businesses in Northern Ireland.

Today's letters request the UK to take swift remedial actions to secure compliance with the terms of the Protocol. The UK has two months to reply to the letters.

In addition, if the UK government does not reply within the deadline to the Reasoned Opinion sent on 15 June 2022, or does not take the measures required, the Commission will consider taking the UK to the Court of Justice of the European Union. Under Article 12(4) of the Protocol, the Court of Justice has full powers provided for under the Treaties, including the possibility to impose a lump sum or penalty payment.

Other remedies are possible, including in relation to the Trade and Cooperation Agreement.

The UK has said it has been actively trying to make the Protocol work. What is your assessment?

The UK has invested little time in explaining the Protocol to people and businesses in Northern Ireland, and did not prepare them adequately for the changes Brexit caused.

The UK has yet to deliver on all its fundamental obligations under the Protocol – such as:

- building the necessary infrastructure for performing sanitary and phyto-sanitary (SPS) controls (Border Control Posts); or
- providing the EU with effective real-time access to UK customs databases to enable the EU to protect its Single Market, for example by asking the UK authorities to carry out additional controls when justified.

The UK does not even comply with the terms it set out in its own unilateral declarations from December 2020, such as the one regarding the movement of agri-food products.

In February 2022, the EU proposed an ambitious calendar of discussions to find meaningful and lasting practical solutions. However, to date, the UK has not responded. At the same time, the UK has not fully explored the potential of the facilitations the Commission presented in October 2021.

The Commission stands ready to work with the UK. Only joint solutions will work. Unilateral action by the UK makes the work on possible solutions more difficult and undermines long-term legal certainty and predictability for the people and businesses in Northern Ireland.

Infringements in detail

A. Failing to comply with the requirements of the Union Customs Code regarding the movement of goods from Northern Ireland to Great Britain

What is the issue?

Under the Protocol, the UK is required to:

1. Ensure that Northern Ireland businesses complete export declarations when moving goods from Northern Ireland to the rest of the UK.
2. Collect and provide relevant export declaration data to the Commission.
3. Control goods subject to prohibitions and restrictions stemming from any EU international obligations that apply to the movement of goods from Northern Ireland to the Great Britain.

All this is important to ensure that the EU can comply with its international obligations in relation to prohibitions and restrictions on the exports of goods to third countries.

To date, the UK has not implemented these requirements. Moreover, the UK authorities are not respecting the conditions set out in their own unilateral declaration made in the Joint Committee at its meeting of 17 December 2020, as they are not collecting, for goods moving from Northern Ireland to Great Britain, equivalent data to pre-departure and/or export declarations by other means and by using appropriate electronic data-processing techniques. Nor do they provide information to EU representatives on these movements in accordance with Joint Committee Decision No 6/2020 as mentioned in that declaration, making any supervision by EU representatives on those goods impossible.

What is the risk to the Single Market?

By not implementing these requirements, the UK is increasing the risk of products subject to export licenses or trade defence measures being smuggled via Northern Ireland. It is also increasing the risk of circumvention of the EU's international obligations in relation to prohibitions and restrictions on the exports of goods to third countries, for example as regards dual-use goods. Furthermore, it creates possibilities for carousel trafficking for VAT and excise of goods being declared for export but actually not exiting the customs territory.

B. Failing to implement EU rules on VAT for e-commerce, namely the Import One-Stop Shop (IOSS).

What is the issue?

In place since 1 July 2021, the IOSS is a special scheme, [which allows suppliers and electronic interfaces selling imported goods not exceeding EUR 150 to buyers in the EU to declare and pay VAT to tax authorities](#) of one single Member State, instead of having to register in every Member State, in which the VAT is due. The IOSS allows the traders concerned to register easily for VAT in the EU and ensures that the correct amount of VAT makes its way to the Member State, in which it is due.

The UK has not taken the necessary IT measures to implement the system correctly. This means that:

1. Suppliers established in Northern Ireland cannot use the IOSS in Northern Ireland to declare their supplies covered by the scheme but must appoint an intermediary established in an EU Member State to use the IOSS. Otherwise, they must register in each Member State into which they sell goods in order to declare and pay the VAT due.
2. The UK in respect of Northern Ireland is not able to check the validity of the IOSS VAT identification numbers in an automated way.
3. The UK in respect of Northern Ireland is not able to upload data in the 'Surveillance' electronic system, and thus the IOSS monthly listing is lacking data from Northern Ireland.

Hence, no reliable data is available regarding how the VAT due on e-commerce transactions concerning suppliers from Northern Ireland is collected and the amount of collected VAT.

What is the risk to the Single Market?

By failing to implement these rules, the UK is posing a fiscal risk to the EU in relation to the VAT to be paid on e-commerce transactions.

C. Failing to implement general EU rules on excise duties.

What is the issue?

Harmonised general rules within the Single Market – which apply in Northern Ireland by virtue of the Protocol, and which already contain significant flexibility – regarding excise duties allow for the frictionless movement of goods between all Member States. Updated EU rules to improve how the excise duty system works will become applicable from 13 February 2023. Member States and the UK in respect of Northern Ireland were required to transpose this Directive by 31 December 2021. To date, the United Kingdom has not notified its transposition measures to the Commission in respect of Northern Ireland. Given that one of the main aims of the Protocol is to avoid a hard border on the island of Ireland, non-implementation of the rules poses a significant problem.

What is the risk to the Single Market?

Non-transposition or implementation of the new rules pose a fiscal risk for the EU (i.e. excise duties not levied or levied at a lower rate than in the EU) in relation to the excise duties to be paid on movements of goods subject to excise duties to/from Northern Ireland.

D. *Failing to implement EU rules on excise duties on alcohol and alcoholic beverages.*

What is the issue?

Harmonised excise duty rules within the Single Market for alcohol and alcoholic beverages – which apply in Northern Ireland by virtue of the Protocol and which already contain significant flexibility – allow for the frictionless movement of those goods between all Member States. [Updated EU legislation](#), which facilitates access for small and artisan producers to lower excise duty rates for their products, amongst other provisions, should have been transposed by Member States and the UK in respect of Northern Ireland by 31 December 2021. To date, the UK has failed to notify the Commission of its proper transposition and implementation.

What is the risk to the Single Market?

This poses a fiscal risk for the EU (i.e., excise duties not levied or levied at a lower rate than in the EU) in relation to the excise duties to be paid on movements of alcohol and alcoholic beverages to/from Northern Ireland. Any divergence from EU harmonised excise duties would also distort competition in the supply of those goods within the Single Market.

Further background

Why won't you renegotiate the Protocol?

Renegotiating the Protocol – agreed and ratified by both the EU and the UK – would lead to significant uncertainty for people and businesses in Northern Ireland. The Protocol represents the one and only solution the EU and the UK could jointly find to protect the hard-earned gains of the peace process in Northern Ireland.

Moreover, the Protocol embodies trust. It marks the first time that the EU has entrusted the control of its economic border to an outside partner. Thanks to this, we prevented a hard border on the island of Ireland and ensured that Northern Ireland maintains its access to the EU's Single Market for goods.

No workable alternative solution has been found to this delicate, long-negotiated balance. For these reasons, the European Union cannot and will not renegotiate the Protocol and is united in this position.

With a series of proposed solutions, the EU has repeatedly shown that practical difficulties to implement the Protocol can be addressed within the framework of the Protocol. For example, a solution was found – and now is implemented – to ensure that the same medicines continue to be available in Northern Ireland at the same time as in the rest of the UK.

The position papers on customs and sanitary and phytosanitary (SPS) rules published on 15 June, which provide additional details compared to the non-papers published in October 2021, further highlight the potential of solutions within the Protocol.

The UK set out its position in its Command Paper last year. Why won't you engage with that?

The Commission has engaged with the UK on its Command Paper and has explained in full its opinion. The Commission's October 2021 papers address the same issues as those addressed in certain elements of the Command Paper.

However, a large proportion of the Command Paper would require the complete renegotiation of the Protocol, which the EU does not agree with for the reasons set out above.

In addition, some issues proposed in the Command Paper are not at all related to the movement of goods between Great Britain and Northern Ireland, for instance when the UK seeks to remove any role for the EU institutions, in particular, the Court of Justice of the EU. This competence of the Court of Justice applies in a limited way in matters related to those EU Single Market rules on goods which apply to and in the UK in respect of Northern Ireland. In this role, the Court of Justice will protect the rights of Northern Irish businesses in any disputes that may flow from the interpretation and application of EU law under the Protocol. The UK wants to simultaneously increase flexibility – and therefore increase the risks posed to the EU's Single Market – while weakening the applicable governance structures.

Significantly, the UK has presented a dual regulatory regime as a solution to address the consequences of regulatory divergence between the EU and the UK. It would mean that the same product is subject to two different sets of rules and requirements depending on whether traders would declare that it stays in Northern Ireland or enters the EU.

Such a solution would lead to constant uncertainty for operators on the ground, while at the same time:

- The administrative burden for businesses operating complex production and supply chains would be extremely heavy and it would create confusion for consumers, local producers, importers and other businesses regarding the applicable rules.
- It would be very difficult to ensure monitoring and controls of goods, and properly protect consumers.
- It would pose a significant risk to the EU Single Market, particularly in the area of agri-food (e.g. spreading of infectious diseases across the island of Ireland), and other highly regulated goods such as chemicals, where safety and a clear understanding of the rules is key.

Why wouldn't the UK's proposed Trusted Trader scheme work, as outlined in the Command Paper?

The UK has proposed a Trusted Trader scheme, which would mean that for goods remaining in Northern Ireland, UK traders would not be subject to any customs processes or regulatory compliance checks, while goods destined for Ireland and the rest of the EU Single Market would be fully policed. This system – which would be entirely based on traders' self-compliance – would create significant risks for the EU Single Market and would be open to all kinds of fraud.

The Protocol already provides for a type of Trusted Trader scheme (see Joint Committee Decision No 4/2020 on the determination of goods not at risk) and the Commission has long suggested that this should be explored further.

The only way to distinguish goods that remain in Northern Ireland from those that move to the EU is to have some form of customs processes. This will enable the EU to have access to the data that is necessary to perform risk-based controls. As part of the solutions put forward in the non-papers published in October 2021, the Commission already proposed to cut in half all customs-related requirements. This is a significant reduction in paperwork.

There have already been cases in 2021 where goods were shipped to Northern Ireland, but the ultimate destination was in all likelihood the EU continental market (e.g. counterfeited products with a continental two-pin plug), or where the goods end up on the EU market (cigarettes for the black market). Therefore, the risks for the EU Single Market are not theoretical.

Is the UK sharing the required data with you now?

While the UK has implemented certain improvements, it does not yet provide the EU with real-time access to the relevant UK databases that will enable us to carry out appropriate risk analyses, as required by the Protocol and Joint Committee Decision No 6/2020. This hampers the EU's ability to protect the integrity of the Single Market, including the health and safety of its citizens. It also significantly damages trust and confidence in the ongoing discussions between the EU and the UK procedures.

Are checks and controls on goods entering Northern Ireland actually required?

The introduction of some checks and controls on goods moving to Northern Ireland from Great Britain is the direct consequence of the UK government's own choices. During the Brexit negotiations, the UK could have mitigated the consequences of Brexit for the island of Ireland, but chose not to.

Checks and controls are also necessary to protect the integrity of the EU's Single Market, including human, animal and plant health.

While there are limited checks and controls on goods moving between Great Britain and Northern

Ireland, this means that there is no need for a border of any kind between Ireland and Northern Ireland. This protects and promotes the all-island economy and ensures that Northern Ireland has full access to the EU Single Market for goods.

It should also be recalled that Brexit has had an impact on trade flows between Great Britain and the European Union. Given its access to the EU Single Market for goods, Northern Ireland is in a very different situation.

The UK says that the application of the Protocol would worsen the status quo. Is this true?

First, the current trading arrangements are not the benchmark, as the UK side is currently breaking its international legal commitments by having introduced unilateral grace periods that disapply specific parts of the Protocol in the customs and SPS areas.

Second, Brexit – and the type of Brexit the UK government has chosen – has real consequences. The EU nevertheless wants to minimise those consequences for the people and businesses in Northern Ireland.

Third, the claim that the Commission's proposed solutions are more onerous than the current situation is wrong:

- Crucially, the Commission's package provides **permanent solutions**, thereby ensuring the legal certainty and predictability that business and stakeholders need, and **far-reaching structural facilitations** for moving goods from Great Britain to Northern Ireland;
- In the area of **customs**, they go further than the current situation, for instance for trusted traders moving goods not at risk, as the Commission proposes to:
 - expand the scope of beneficiaries of the 'UK Trader Scheme' for Trusted Traders to businesses established in Great Britain (and not only in Northern Ireland), and to additional manufacturing sectors, including when the goods are returned to Great Britain after processing;
 - significantly simplify the customs paperwork and reduce data requirements for customs declarations ('super reduced data set', from more than 80 data elements down to less than 30, including the simplification of the commodity code (CN-code) to be provided to describe the goods from 10 to 8 digits).
- Likewise, in the **sanitary and phyto-sanitary area**, the EU's proposed solutions:
 - expand the scope for food suppliers from supermarkets to all retailers, including for example the hospitality sector, schools, canteens – and any other place which sells food for final consumption;
 - expand the product scope, by including items that are usually prohibited for import into the EU, such as chilled meat products. Food products of animal-origin from third countries can of course be supplied to Northern Ireland, including through Great Britain, provided that they comply with applicable EU sanitary requirements;
 - provide for significantly reduced rates for identity and physical checks (more than 80 % compared to the applicable mandatory checks for animal-origin products under EU sanitary and phyto-sanitary legislation);
 - official certification by the UK competent authorities will be required – this is also the case under the December 2020 UK unilateral grace periods.

The UK government says that the Good Friday (Belfast) Agreement is threatened by EU action. What do you say to that?

The EU has proven time and again its commitment to the Good Friday (Belfast) Agreement to preserve the hard-earned gains of the peace process. For example, the EU continues to support the PEACE+ programme of approximately €1 billion, together with the Irish and British governments.

Moreover, the Protocol respects the constitutional position of Northern Ireland within the UK. This is made clear in the preamble to the Protocol, recalling *that "the United Kingdom's withdrawal from the Union presents a significant and unique challenge to the island of Ireland"*, and reaffirms that *"the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there."*

Article 1 of the Protocol makes explicit that the Protocol is *"without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland and the principle of consent"*. It contains *"arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions."*

The Protocol is therefore the solution found with the UK government to protect the 1998 Good Friday (Belfast) Agreement in all its dimensions and avoid a hard border on the island of Ireland, while protecting the integrity of the EU Single Market.

How will you protect the integrity of the EU Single Market?

An integral part of our idea to substantially reduce checks and controls between Great Britain and Northern Ireland is also aimed at protecting the integrity of the EU's Single Market.

As a pre-condition for any new arrangement building on the EU's proposals, the UK should deliver on its existing commitment to complete permanent Border Control Posts, label goods for sale only in the UK, and reinforce monitoring of supply chains.

As further assurances, our package includes a rapid reaction mechanism for any identified problem with individual products or traders, and unilateral EU measures if the UK authorities or the trader concerned fail to react to an identified problem.

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