

## PROTOCOL ON IRELAND / NORTHERN IRELAND

### POSITION PAPER ON POSSIBLE SOLUTIONS

#### CUSTOMS

#### I. Context

1. On 13 October 2021, the European Commission (“the Commission”) put forward a series of non-papers<sup>1</sup> setting out far-reaching arrangements to facilitate the movement of goods between Great Britain and Northern Ireland. In this way, it responded to the practical problems raised by people and businesses in Northern Ireland stemming from the choices made by the United Kingdom when it left the European Union (“EU”), and consequently the application of the Protocol on Ireland /Northern Ireland (“the Protocol”) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“Withdrawal Agreement”)<sup>2</sup>.
2. On customs, these arrangements would provide for a durable solution in the form of a genuine simplification of customs processes and procedures. In particular, the Commission suggested to widen the scope of beneficiaries who are exempt from customs duties when moving goods to Northern Ireland that are “not at risk” of entering the EU market and to implement unique, far-reaching facilitations in terms of customs formalities and processes. These facilitations should be accompanied by adequate pre-conditions, assurances and structural safeguards to protect the integrity of the EU’s Internal Market. On 21 February 2022, the Commission published a factsheet<sup>3</sup> further illustrating the suggested flexibilities.
3. This position paper follows extensive discussions with the UK Government and with stakeholders in Northern Ireland since the publication of the non-paper in October 2021. It sets out the key elements of the solutions aimed at giving effect to the arrangements outlined in the non-paper.
4. The solutions set out in this position paper are without prejudice to the powers conferred by the Treaties on the Union Institutions and to ongoing infringement procedures.

#### II. Implementation of the suggested solutions

5. The suggested solutions could be implemented within the framework of the Protocol through:
  - **targeted amendments to Joint Committee Decision No 4/2020**<sup>4</sup> to extend, in particular, the scope of the ‘UK Trader Scheme’ for Trusted Traders (beneficiaries, business sectors) and to include the necessary pre-conditions for any further facilitations;
  - in addition and provided that such amendments to the Joint Committee Decision No 4/2020 were adopted, the Commission could, by way of **targeted amendments of relevant Union legal acts**, provide for simplified customs processes for trusted traders,

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<sup>1</sup> [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland\\_en#october-2021-package](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en#october-2021-package)

<sup>2</sup> OJ L 29, 31.1.2020, p. 7.

<sup>3</sup> [https://ec.europa.eu/info/publications/protocol-ireland-northern-ireland-customs\\_en](https://ec.europa.eu/info/publications/protocol-ireland-northern-ireland-customs_en)

<sup>4</sup> Decision No 4/2020 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 December 2020 on the determination of goods not at risk (OJ L 443, 30.12.2020, p. 6).

for the substantial reduction of customs declaration requirements based on the use of a super-reduced data set and for the implementation of such super-reduced data set.

6. The Union legal acts operationalising the suggested solutions would apply to and in the UK in respect of Northern Ireland pursuant to Articles 5(3) and (4) and 13(3) of the Protocol, read in conjunction with Article 6(3) of the Withdrawal Agreement.
7. The amendments to Joint Committee Decision No 4/2020 would be adopted by the Joint Committee pursuant to Article 164 of the Withdrawal Agreement.

### **II.1 Extended scope of the 'UK Trader Scheme' for Trusted Traders**

8. The suggested facilitation would consist in expanding the existing benefits of the UK Trader scheme to **businesses established in Great Britain** (and not only in Northern Ireland) and to **more manufacturing sectors in Northern Ireland**, in particular covering SMEs, and in addition include the **possibility to move back the processed products from goods covered by the scheme to Great Britain after processing in Northern Ireland**.
9. The Commission stands ready to continue discussions with the UK Government on all of the facilitations envisaged in the non-paper of October 2021, including the turnover threshold referred to in Article 2(a) of Joint Committee Decision No 4/2020 and the definition of the further business sectors or activities that could benefit from the expanded scope of the UK Trader Scheme, in particular taking into account evidence from those sectors that are adversely affected by the Protocol. As a consequence, many more businesses operating in Northern Ireland would benefit from simplified customs processes.
10. This facilitation could be implemented by:
  - Amending Joint Committee Decision No 4/2020, as follows:
    - A higher turnover threshold than the current GBP 500,000 could be considered for the purposes of defining the list of goods that are considered not to be subject to commercial processing, based on additional data justifying the need for a higher amount for the threshold.
    - As regards the situations where processing in Northern Ireland is considered to be non-commercial, the Commission is open to exploring the listing of specific additional business sectors or activities that could benefit from the facilitation, where all the goods processed in Northern Ireland are for sale to or final use by end-consumers in Northern Ireland or moved back after processing to Great Britain for final use by end consumers there.
    - The scope of beneficiaries of the 'UK Trader Scheme' would be extended to businesses that are established in Great Britain and fulfil the following criteria:
      - their customs-related operations are carried out in the United Kingdom;
      - they have an indirect customs representative in Northern Ireland;
      - their customs, commercial and transport records and information are available or accessible to the competent authorities of the United Kingdom and the Union representatives for verifying compliance with the conditions and undertakings established in this decision; and
      - they are active in any of the business sectors referred to above.

Such businesses would undertake to bring goods into Northern Ireland under this scheme solely for:

- the sale to end-consumers in Northern Ireland, from one or several physical outlets in Northern Ireland from which physical direct sales are made to end-consumers;
- final use by end-consumers in Northern Ireland;
- for sale to, or final use by, processors in Northern Ireland for non-commercial processing as defined and where the processors sell the processed goods to end-consumers in Northern Ireland from one or several physical outlets in Northern Ireland from which physical direct sales are made to end-consumers.

## ***II.2 Super reduced data set and simplified custom forms***

11. The suggested facilitations would reduce substantially the customs requirements for Trusted Traders moving “goods not at risk” in terms of data requirements and custom forms. It would:
- reduce the requirements for customs data **from more than 80 to 21 key data elements**, including the simplification of the commodity code (CN-code) **from 10 to 8 digits**;
  - allow the use of:
    - a single simplified form with the super reduced data set per load without the need for supplementary declarations; or
    - a single simplified monthly form with transaction-based customs information based on the trusted traders’ internal records.
12. These facilitations could be implemented by:
- providing that a person that is authorised in accordance with Articles 5 to 7 of the Joint Committee Decision No 4/2020 to bring goods into Northern Ireland that are considered to be not at risk of subsequently being moved into the Union may declare them for release for free circulation on the basis of a specific dataset (see Annex) to be introduced in Union law. However, this facilitation would not be available in relation to goods subject to trade defence measures as defined in Union law or subject to quotas;
  - providing that for the specific situation in Northern Ireland, an authorisation to lodge a customs declaration in the form of an entry in the declarant’s records shall be granted where the applicant:
    - (a) is authorised in accordance with the relevant provisions of Joint Committee Decision No 4/2020 to bring goods into Northern Ireland that are considered to be not at risk of subsequently being moved into the Union; and
    - (b) ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties.
  - providing the data elements that will be required for the super reduced data set for the specific situation in Northern Ireland.

### **II.3 Pre-conditions, assurances and structural safeguards to protect the integrity of the EU's Internal Market**

13. The implementation of the suggested solutions would be subject to a number of pre-conditions, such as the United Kingdom delivering full and real time access to Union representatives to the UK IT customs systems, a number of assurances such as ensuring an active role for the Union representatives in the monitoring of the application of the UK Trader Scheme and structural safeguards such as review and termination clauses in case of non-compliance.

14. ***The pre-conditions and assurances could be implemented by:***

- Providing that the amendments to Joint Committee Decision No 4/2020 should enter into force only following a declaration by the Union within the Joint Committee to the effect that all of the following conditions are satisfied:
  - a) the United Kingdom applies the Union prohibitions and restrictions on export of goods from Northern Ireland to Great Britain under the conditions of the Protocol;
  - b) the United Kingdom applies its unilateral declaration on ‘unfettered access’, for goods exiting Northern Ireland to Great Britain;
  - c) the United Kingdom has revoked the unilateral derogations for parcels and ensures a correct implementation of the Union customs legislation in Northern Ireland;
  - d) the United Kingdom has fully implemented the Joint Committee Decision No 6/2020 of 17 December 2020, in particular Article 5 of that Decision; and
  - e) the United Kingdom has corrected the erroneously issued XI EORI (Economic Operators Registration and Identification number) registrations.
- Providing explicitly in that Joint Committee Decision No 4/2020 that:
  - the Union representatives may request that the competent customs authority of the United Kingdom verifies a specific authorisation. The competent customs authority of the United Kingdom will give appropriate follow up to such request and will inform about the action undertaken within 30 days;
  - the Union representatives may also request information on the place of establishment of the authorised holders.

15. ***The structural safeguards could be implemented by*** providing in Joint Committee Decision No 4/2020 that:

- the Joint Committee is to review the application of the Decision each year by December at the latest;
- if either Party considers there is significant diversion of trade, or fraud or other illegal activities or that any of the pre-conditions referred to in paragraph 13 are no longer satisfied, that Party shall notify the other Party thereof within the Joint Committee, and the Parties shall use their best endeavours to find a mutually satisfactory resolution of the matter. If the Parties do not find a mutually satisfactory resolution within 30 days of the notification, the provisions of the Decision providing for special rules for the beneficiaries of the UK Trader Scheme are to cease to apply;
- if the Party having made the notification referred to in the previous paragraph considers that the situation having given rise to that notification has been remedied, that Party is to notify the other Party thereof within the Joint

Committee. In that case, the provisions referred to in the previous paragraph are to apply again.

- Providing in relevant Union legal acts that the operation of the facilitations referred to under section II.2 is to be suspended if and for as long the provisions of Joint Committee Decision No 4/2020 providing for special rules for the beneficiaries of the UK Trader Scheme cease to apply.

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**ANNEX**

**Draft list of the 21 key data elements for the super reduced data set**

	<b>D.E. No</b>	<b>Data element/class name</b>	<b>Data sub-element/sub-class name</b>	<b>Simplified declaration XI</b>
<b>1</b>	11 03 000 000	<b>Goods item number</b>		X
<b>2</b>	12 01 000 000	<b>Previous document</b>		X
	12 01 001 000		Reference number	X
	12 01 002 000		Type	X
<b>3</b>	12 03 000 000	<b>Supporting document</b>		X
	12 03 001 000		Reference number	X
	12 03 002 000		Type	X
<b>4</b>	12 04 000 000	<b>Additional reference</b>		X
	12 04 001 000		Reference number	X
	12 04 002 000		Type	X
<b>5</b>	12 05 000 000	<b>Transport document</b>		X
	12 05 001 000		Reference number	X
	12 05 002 000		Type	X
<b>6</b>	12 09 000 000	<b>Local Reference Number</b>		X
<b>7</b>	12 12 000 000	<b>Authorisation</b>		X
	12 12 001 000		Reference number	X
	12 12 002 000		Type	X
	12 12 080 000		Holder of the autorisation	X
<b>8</b>	13 01 000 000	<b>Exporter</b>		X
	13 01 016 000		Name	X
	13 01 018 000		Address	X
<b>9</b>	13 04 000 000	<b>Importer</b>		X
	13 04 016 000		Name	X
	13 04 017 000		Identification number	X

	<b>D.E. No</b>	<b>Data element/class name</b>	<b>Data sub-element/sub-class name</b>	<b>Simplified declaration XI</b>
	13 04 018 000		Address	X
<b>10</b>	13 05 000 000	<b>Declarant</b>		X
	13 05 016 000		Name	X
	13 05 017 000		Identification number	X
	13 05 018 000		Address	X
	13 05 074 000		Contact person	X
<b>11</b>	13 06 000 000	<b>Representative</b>		X
	13 06 017 000		Identification number	X
	13 06 030 000		Status	X
	13 06 074 000		Contact person	optional
<b>12</b>	14 08 000 000	<b>Item amount invoiced</b>		X
<b>13</b>	16 03 000 000	<b>Country of destination</b>		X
<b>14</b>	16 04 000 000	<b>Region of destination</b>		X
<b>15</b>	16 08 000 000	<b>Country of origin</b>		X
<b>16</b>	16 15 000 000	<b>Location of goods</b>		X
	16 15 045 000		Type of location	X
	16 15 046 000		Qualifier of identification	X
	16 15 036 000		UN/LOCODE	X
	16 15 047 000		Customs office	X
	16 15 048 000		GNSS	X
	16 15 051 000		Economic operator	X
	16 15 052 000		Authorisation number	X
	16 15 053 000		Additional identifier	X
	16 15 018 000		Address	X
<b>17</b>	18 02 000 000	<b>Supplementary units</b>		X
<b>18</b>	18 04 000 000	<b>Gross mass</b>		X

	<b>D.E. No</b>	<b>Data element/class name</b>	<b>Data sub-element/sub-class name</b>	<b>Simplified declaration XI</b>
<b>19</b>	18 05 000 000	<b>Description of goods</b>		X
<b>20</b>	18 06 000 000	<b>Packaging</b>		X
	18 06 004 000		Number of packages	X
<b>21</b>	18 09 000 000	<b>Commodity code</b>		X
	18 09 056 000		Harmonized System sub-heading code	X
	18 09 057 000		Combined nomenclature code	X