

Stormont Castle
BELFAST
BT4 3TT



Michael Potter
Committee for TEO
Room 412
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3SR

26 February 2021

Dear Michael

TEO COMMITTEE – FEBRUARY 2021 UPDATE ON EU EXIT MATTERS

The TEO Committee has requested monthly written briefings that provide a general update on Brexit issues, between the monthly oral briefings by Junior Ministers. The attached paper provides an update covering the period up to 10 February 2021. The Junior Ministers provided a further oral update on 24 February.

Yours sincerely

[signed]



Departmental Assembly Liaison Officer

COMMITTEE FOR THE EXECUTIVE OFFICE UPDATE ON EU EXIT MATTERS

This paper provides an update to the TEO Committee on EU Exit matters as they stand at 10 February 2021. The position, particularly in relation to operational matters, is fluid and has the potential to change over a short space of time. The Committee will be kept updated through the regular oral briefing process.

1. OPERATIONAL READINESS

The First Minister and the deputy First Minister met with the Chancellor of the Duchy of Lancaster and European Commission Vice President Maroš Šefčovič on 3 February to discuss the challenges that have arisen following the end of the Transition period and to seek action to improve the situation.

At the meeting, it was agreed that the UK and EU would undertake further meetings to discuss what can be done to address these challenges. A further meeting between the Chancellor of Duchy of Lancaster and the European Commission Vice President is scheduled to take place on 11 February.

Concurrent with these discussions, work has continued to identify, assess and seek to resolve immediate operational issues associated with the end of the transition period. The Executive is also giving consideration to wider issues that are not currently causing impacts but which could have an impact in the medium to longer term.

As advised by, Junior Ministers on 27 January the movement of goods through NI Ports has been relatively smooth, which remains the case. They also highlighted that the challenges being experienced at Dublin port and around the wider movement of goods between GB and NI, which were largely due to the lack of preparedness of GB companies for the additional paperwork and processes required as a result of the Protocol and the impact of EU Exit on groupage.

On business preparedness an intensive programme of engagement is continuing, including targeted communications from HMRC, DEFRA, DfT and the Border and Protocol Delivery Group (BPDG) in the Cabinet Office. Engagement also continues with the UK Government at a Ministerial and official level on this. Officials are also in regular contact with the Trader Support Service (TSS) and Irish Government counterparts to resolve reported issues and agree actions to assist and encourage trader readiness.

On 29 January, DAERA published guidance on groupage; following DERFA engagement with DAERA and industry. It is understood that this guidance will be reviewed and updated as required after a number of planned trials by retailers and hauliers have taken place.

2. UK-EU TRADE & COOPERATION AGREEMENT

Throughout engagement on the Future Relationship negotiations the Executive's position, that every effort should be made to conclude an agreement with the EU, to simplify the operation of the Protocol and support our trade in all directions, has been emphasised.

The successful conclusion of the future relationship negotiations and the resultant Trade and Cooperation Agreement (TCA) is welcomed.

The Executive's position has consistently been, that any such agreement should reflect the social, economic and environmental interests of our businesses and citizens, and should include:

- An agreed approach to SPS that would minimise the risk of friction on the movement of our agri-food goods from GB to NI;
- Ambitious arrangements on Rules of Origin to sustain the highly integrated supply chains that our businesses operate, within, and between these islands;

- Successful outcomes on Data, Transport and MRPQ to support our services economy.

The text of the TCA, the accompanying association agreements and declarations are extensive, and their contents complex. Policy officials and legal advisors from all departments continue to scrutinise the technical detail of the Agreements, to understand how far the Agreements have delivered on stated priorities, and the resultant challenges and the opportunities that they provide.

A key element of this process for the Executive is to understand the interactions between the implementation of the Agreement and that of the Protocol. As the implementation of both sets of arrangements is an evolving process, the impact of these interactions will require ongoing assessment.

Current assessment of how far the conclusion of the Agreement has delivered the Executives agreed priorities is outlined below:

SPS

The agreement means that the UK and the EU will maintain fully independent SPS rules to protect human, animal and plant life and health and this is less helpful than hoped for.

While the agreement aims to keep the frequency of SPS checks to a minimum the operation of the Protocol would have benefited from an equivalence mechanism or a reduced level of checks similar to the EU–New Zealand veterinary agreement where only 1% of goods are subject to physical SPS checks.

Rules of Origin

The Agreement did not achieve the Executive's ask for rules of origin provisions which include diagonal cumulation. This could result in our products being frozen out of supply chains into the Republic of Ireland where final products are exported under EU FTAs. The dairy sector is at greatest risk, however it is understood that solutions to potentially address this are being considered.

More time is needed to consider the product specific rules of origin in this agreement, which are very significant, including the impact they may have on imports from GB, including goods “at risk” under the Protocol.

Transport

The agreement appears to meet the Executive’s key asks in relation to road transport for haulage and public transport, with continued market access and cabotage for both sectors.

Hauliers will be able to operate on the Island of Ireland without additional licenses or permits including ECMT permits and Irish Lorries will continue to use Britain as a landbridge to Europe.

Hauliers can continue to cross the Irish sea via Dublin to Holyhead sailings. However given the lateness of agreement on the future relationship the preparedness of hauliers to engage with both UK and Irish customs and transit systems remains a concern.

Cabotage arrangements for regular public transport services appear extensive and broader than those previously provided for in the Commission’s proposed contingency arrangements.

MRPQ

The agreement sets up a framework for the mutual recognition of professional qualifications through a Partnership Council.

The Withdrawal Agreement guaranteed the mutual recognition for UK citizens already living in the EU before the end of the transition period, and vice versa. However, no new qualifications will be recognised from the end of the transition period, and further work and analysis is required to ensure that any resultant disruption to our services economy is minimised.

Data

The discussions on data adequacy did not form part of the future relationship negotiations, and the EU did not adopt a data adequacy decision before the end of the Transition Period.

The EU has agreed to a temporary four to six month bridging mechanism to allow data to continue to be transferred from the EU to the UK from 1 January, as long as the UK makes no major changes to its law. This will prevent disruption, and the need for businesses to rely on alternatives such as standard contractual clauses from 1 January.

Data Adequacy is important for the transfer of personal data within both the public and private sectors, and a permanent solution is dependent on the EU's adoption of a data adequacy decision.

Services

The Agreement on services is complex, incorporating a most favoured nation clause and a large number of exceptions which vary sector by sector, so further analysis is required to fully understand its impact on levels of market access. However, it is clear that access for our Services to the EU market will be reduced compared to the status quo.

Agreement in this area is important as Services, particularly tradeable services, are central to our economy, contributing 75% of GVA and accounting for 80% of employment. £6.5bn of services are sold outside the region and the Republic of Ireland is our most important export market, at £1.1bn per annum.

To ensure that any potential disruption is minimised, it is important that our businesses and organisations consider how the rules on exporting services to the EU will change, ensure they have appropriate mechanisms in place for transferring personal data from the EU and undertake any necessary steps to ensure professional qualifications will continue to be recognised by Member States.

3. JOINT MINISTERIAL COMMITTEE (EUROPEAN NEGOTIATIONS)

The Committee was provided with an update on the Joint Ministerial Committee (EN) in a letter dated 26 January. The contents of that letter remain extant.

4. JOINT COMMITTEE AND SPECIALISED COMMITTEE

Meetings of the Joint and Specialised Committees are expected to take place in February and the Committee will be updated in relation to these as they take place.

5. JOINT CONSULTATIVE WORKING GROUP

The JCWG met for the first time on Friday 29 January 2021. The only item on the agenda was to adopt the rules of procedure. Only representatives of the European Commission and the UK Government were in attendance, however, Cabinet Office has advised that it remains committed to involving Northern Ireland Executive officials in the workings of the JCWG, including attendance at meetings.

A date has not been set for the next meeting of the JCWG. It is expected to meet on a monthly basis, as agreed in the rules of procedure. TEO will continue to keep the Committee updated on the JCWG and any Executive actions.

6. LEGISLATION

EU Exit legislation

- The latest monitoring returns from 1 February indicate the potential need for 11 Westminster Bills (6 of which, including the UK Internal Market Bill, have now been enacted).
- 52 Statutory Rules (SR) were to be brought before the Assembly in the lead up to the end of the Transition Period
- 29 further SRs have been identified as required in the post Transition Period.
- 77 Statutory Instruments (SI) that cut across devolved matters were laid at Westminster before the end of the Transition period
- 25 SIs have been identified as required post Transition Period.
- None of this legislation sits with TEO.

EU legislation under the Protocol

Under the Protocol on Ireland/Northern Ireland a limited number of EU rules continue to apply in Northern Ireland, mainly relating to trade in goods. Since 1 January 2021 the rest of the UK may at some point in the future diverge from these rules, although doing so may impact on the Trade and Cooperation Agreement.

The Protocol sets out 325 pieces of EU legislation that are applicable in Northern Ireland, approximately half of which fall within, or partially within, the devolved powers in Northern Ireland,. The policy responsibility for those devolved and partially devolved falls across all of the Departments (with the exception of DE) with those most concerned being DAERA, DoH and DfE. The Protocol sets out the arrangements for updating and replacing legislation contained in the Protocol including the conditions for adding additional rules to the Protocol when the EU adopts new legislation that falls within the scope of the Protocol but does not replace or update existing measures. In these cases the Joint Committee on the Withdrawal Agreement would have to agree to the addition of new rules.

The development of a system to support the tracking and monitoring of legislation contained in the Protocol is underway and a cross-departmental steering group has been established

7. REPATRIATED POWERS - COMMON FRAMEWORKS

Following the completion of the review and assessment process that was completed in November 2020, the Common Frameworks were approved by the respective Departmental Ministers and are currently under consideration for JMC (EN) provisional confirmation by the First Minister and deputy First Minister.

Four frameworks did not complete the process: Mutual recognition of Professional Qualifications, Services, Organic farming and Company law. Development of these Common Frameworks is ongoing in the expectation that they will receive provisional confirmation as early as possible in 2021.

8. INTERNAL MARKET

The Minister for the Economy has policy responsibility for the Internal Market Act and will take the lead in this matter. TEO officials will continue to engage with Economy, UKG and the other Devolved Administrations on cross-cutting issues.

9. RIGHTS AND DEDICATED MECHANISM

The Committee were provided with detailed update by officials on this matter at their meeting on 10 February.