

European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

10 March 2021

Rt Hon. Jesse Norman MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Northern Ireland Protocol: implementation powers of the European Commission under the EU VAT Directive

Thank you for your Explanatory Memorandum of 13 January 2021 on the European Commission’s recent proposal to introduce Implementing Acts under the VAT Directive, which allow for the adoption of harmonised definitions for various terms and concepts contained in that legislation by Qualified Majority among the remaining 27 Member States, rather than unanimity.¹ The key objective of the proposal is to allow the EU to introduce such binding definitions in those areas more “quickly and efficiently”.

As your Memorandum acknowledged, the primary relevance of the proposal from the UK’s perspective is the fact that EU VAT rules ‘concerning goods’ continue to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland to the UK/EU Withdrawal Agreement. That would include any future Implementing Acts adopted using these new powers. The draft legislation of course requires the unanimous approval of all 27 Member States in the Council of Ministers. Even if agreed, the Commission would need to produce further draft legal acts actually containing any proposed harmonised definitions under the VAT Directive, requiring the support of a Qualified Majority of EU countries. As such, we accept that the implications of the draft legislation for the application of the VAT regime for goods in Northern Ireland are indirect and, at present, hypothetical.

However, in our view this does not mean there is no need for the Government to follow the deliberations on the proposal closely. There may be a possibility that future Implementing Acts under the VAT Directive could require a

¹ Document [COM\(2020\) 749](#), 14293/20 (41758).

change in the application of tax rules in Northern Ireland. This would be of particular concern if future EU Implementing Act could affect the VAT treatment of goods brought into Northern Ireland from the rest of the UK, or result in administrative obligations for traders in Northern Ireland that may affect their competitiveness within the UK's internal market if they diverge from the application of VAT rules in Great Britain.

In light of this, we would ask you to clarify:

- Whether the European Commission has drawn the proposal to the Government's attention via the Joint Consultative Working Group or otherwise, and whether in doing so it identified any specific issues of interest to the UK in respect of Northern Ireland under the Protocol; and
- Whether there are any significant divergences between existing guidance issued by the EU Advisory Committee on VAT and the UK's application of the VAT Directive in Northern Ireland (where therefore the potential risk of a future binding definition under an Implementing Act requiring a change in the application of the EU VAT Directive in Northern Ireland is greatest).

We also ask that you keep the Committee updated of any important developments in the Council of Minister's legislative deliberations, should it appear that the remaining Member States are amenable to the general objective of the Commission proposal. If so, Parliament will want to clarify in due course whether the Government has identified any specific issues that application of harmonised definitions under the VAT Directive could cause, in particular with respect to the VAT treatment of goods entering Northern Ireland from Great Britain or in terms of administrative obligations on Northern Irish firms that may place them at a competitive disadvantage within the UK's internal market.

We look forward to your response to our initial queries by the end of March.

I am copying this letter to Lord Kinnoull, Chair of the House of Lords EU Select Committee, and to Chris Johnson, that Committee's Clerk; to Simon Hoare MP Chair of the House of Commons Northern Ireland Affairs Committee, and to Nicholas Beech, that Committee's Clerk; to Patrick Lynch and Victor Peluola at your Department; and to Les Saunders in the Cabinet Office.

CHAIR