

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

12 May 2021

Rt Hon Penny Mordaunt MP
Paymaster General
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Proposal for an EU Directive on the resilience of critical entities (COM(2) 829) (41751)

Thank you for your [Explanatory Memorandum of 11 March 2021](#) on a [proposed Directive](#) on the resilience of critical entities which the European Scrutiny Committee considered at its meeting on 12 May.

We note that there is some uncertainty about the interaction between the proposed Directive and the Protocol on Ireland/Northern Ireland (“the Protocol”). This is because there is a single “all-island” wholesale market—the Integrated Single Electricity Market—in the Republic of Ireland and Northern Ireland and electricity is one of the sub-sectors covered by the proposed Directive. The Protocol requires Northern Ireland to apply a number of EU laws which are considered necessary for the joint operation of the single wholesale electricity market. One of these laws—a 2019 Regulation on risk-preparedness in the electricity sector—is referred to in the proposed Directive.

We would welcome further information on the outcome of your legal assessment of the relationship between the proposed Directive and EU law that is applicable in Northern Ireland under the Protocol, as well as your analysis of the broader policy implications of the proposal for the operation of the single electricity market (or other critical infrastructure) in Northern Ireland.

The Protocol itself envisages that discussions concerning the possible application of proposed EU laws in Northern Ireland should initially take place

in the Joint Consultative Working Group (“JCWG”). We note that the JCWG met in January to agree its rules of procedure and again in April. Do you consider the JCWG a useful forum in which to discuss the relationship between the proposed Directive and the Protocol, not least to ensure that any UK concerns can be taken into account before discussions on the proposal in the Council and the European Parliament advance further? When do you next expect the JCWG to meet and do you anticipate that the Government will seek to include the proposed Directive as an item for discussion?

In your Explanatory Memorandum you also raise broader concerns about the impact that “increasingly divergent regulatory approaches” may have on UK national critical infrastructure or operators where, for example, there are strong links to the EU or other interdependencies, such as highly connected supply chains. You do not indicate how significant these interdependencies are or what effect a significant divergence in the rules applicable to EU and UK operators of critical national infrastructure would have. As the Government has no plans to consult external stakeholders on the proposed Directive, it is difficult to see how any negative impacts can be quantified and steps taken to mitigate them.

With this in mind, we would welcome further information on the Government’s approach to weighing the costs and benefits of regulatory alignment and divergence after Brexit, taking into account the impact of divergence within the UK as well as between the EU and the UK. How does the Government intend to ensure that the interests and concerns of all relevant Government Departments, regulatory bodies, devolved administrations and external stakeholders are taken into account in reaching an informed decision on alignment or divergence?

We look forward to receiving your response within ten working days.

I am copying this letter to Simon Hoare MP and Steve Habberley, Chair and Clerk of the Northern Ireland Affairs Committee; William Wragg MP and Gavin Blake, Chair and Clerk of the Public Administration and Constitutional Affairs Committee; the Earl of Kinnoull and Simon Pook, Chair and Clerk of the European Affairs Committee in the House of Lords; and to Les Saunders and Donald Harris in your Department.

CHAIR