

European Scrutiny Committee

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From: Sir William Cash MP

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The draft EU Machinery Regulation and implications for the UK

Thank you for your Explanatory Memorandum of 11 May on the European Commission proposal for a new EU Machinery Regulation, which would revise the safety standards and procedures underpinning the use of the EU's "CE" mark on machinery products.¹ We have taken note of the potential applicability of this EU legislation in Northern Ireland under the Withdrawal Agreement Protocol in due course, and your commitment that "the UK will make its own decision for [machinery] products placed on the GB market based on an assessment of the final Regulation and with due consideration of any impacts on the UK internal market, in due course".

Our main concern in relation to this EU proposal is the interaction between the continued application of EU product safety rules in Northern Ireland, and the market access principles under the Internal Market Act 2020.

Given that "qualifying Northern Ireland goods" which are legally on the Northern Irish market can be sold in England, Wales and Scotland as well, there seems to be the potential for EU businesses to circumvent the new UK conformity assessment (UKCA) system (and with it the UK's independent safety standards) for regulated goods like machinery, by lawfully bringing EU goods onto the market in Great Britain through Northern Ireland first.

This may not raise practical safety issues while EU and UK standards remain the same, and while the CE mark remains valid in the UK for a transitional period until the end of 2021. However, it does seem to have the potential to

¹ Document COM(21) 202, ESC number 41827.

undermine the integrity of the new UKCA system if, in practice, the CE mark demonstrating compliance with EU requirements remains widely available in addition to the new UKCA mark. Moreover, the EU is now actively considering changes to its machinery safety standards. If the UK does not implement similar amendments to its own standards in due course, this will by definition result in divergent safety requirements between the EU (and Northern Ireland) and Great Britain, even though it seems that goods compliant only with EU standards could still be sold lawfully in Great Britain if they were brought in from Northern Ireland.

In light of this, it would be helpful if you could set out how the Government intends to ensure the integrity of the safety standards underpinning the new UKCA system from 1 January 2022 if CE marked goods on the market in Northern Ireland can still be sold freely in England, Scotland and Wales after that date, and more particularly how it will prevent EU businesses moving their CE marked goods into Great Britain through Northern Ireland for the purpose of avoiding the need to obtain a UKCA mark.

Naturally, any new safety standards and processes for machinery agreed by the EU will also impact on the substantial flows of relevant UK exports to the EU. The evaluation process for the Machinery Directive was initiated in 2018 (and the Government first accepted its possible continued application in Northern Ireland post-Brexit that same year²). We note that the Government itself is also undertaking a review of UK product safety rules, the result of which is likely to be relevant in this context. We would therefore also be grateful if you could outline how the Government has engaged with the Commission and other EU institutions on the potential revision of the Directive to date, and what changes – if any – it would like to see made to the legal text of the draft Machinery Regulation in the context of the above.

We look forward to receiving your reply before the summer recess.

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 Anuska Raval in your Department; and to Les Saunders in the Cabinet Office.

CHAIR

² The Protocol requires Northern Irish alignment with the Machinery Directive pursuant to Article 5(4) in conjunction with section 14 of Annex 2. This requirement was present in the [first iteration of the Protocol](#) published in 2018 and remained, in substance, unchanged in the final version of the Protocol negotiated in autumn 2019 and ratified by the UK in January 2020.