

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

22 September 2021

Rt Hon Michael Ellis QC MP
Paymaster General
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Proposal for an EU Directive on the resilience of critical entities (COM(20) 829) (41751)

Thank you for the [letter dated 7 September 2021](#) from your predecessor (Rt Hon Penny Mordaunt MP) concerning the legal and policy implications of a proposed EU Directive on the resilience of critical entities.¹ Although EU law ceased to apply to the UK when the post-exit transition period ended on 31 December 2020, we retain an interest in the proposal because of a possible link with the Protocol on Ireland and Northern Ireland (“the Protocol”) and the wider impact that the proposal may have on UK national critical infrastructure or on UK operators involved in EU supply chains in the sectors it covers.

Turning first to the Protocol, the proposed Directive would apply to critical entities involved in the provision of essential services, including those operating in the energy sector. Your predecessor’s letter sets out the Government’s reasons for considering that the proposed Directive (or specific provisions within it) are not within the scope of the Protocol because they are not necessary for the joint operation of the single wholesale electricity market in Ireland and Northern Ireland. It also says that some of the provisions of EU law underpinning the operation of the SEM “still require implementation” and that it will be for the Northern Ireland Department for the Economy to determine what further

¹ See our First Report HC 121-i (2021-22), [chapter 2](#) (12 May 2021) and our Fifth Report HC 121-v (2021-22), [chapter 1](#) (7 July 2021).

changes to domestic law will be necessary. **We would welcome further information on the “elements [of the SEM] that still require implementation” in Northern Ireland given that ultimate responsibility for ensuring compliance with the Protocol rests with the Government.**

The proposed Directive includes a reference (in Article 4) to the [Risk Preparedness Regulation \(EU\) 2019/941](#). This Regulation replaced an earlier EU law—Directive 2005/89/EC—which *is* listed in Annex 4 to the Protocol and which, we assume, does apply in Northern Ireland by virtue of Article 13(3) of the Protocol. Under this Article, where the Protocol refers to an EU law, it is to be read as including later EU laws which amend or replace it. **We ask you to confirm that the 2019 Regulation is applicable in Northern Ireland.**

Your predecessor’s Explanatory Memorandum on the proposed Directive envisaged that there might be “links to the Single Electricity Market through the [Risk Preparedness Regulation \(EU\) 2019/941](#)”. **Do you consider that the reference to the 2019 Regulation in Article 4 of the proposed Directive could create a link between the proposed Directive and the operation of the SEM and bring at least part of the proposal within the scope of the Protocol?**

Given that there remains in our view some uncertainty about the relationship between the proposed Directive and the application of EU law under the Protocol, **we reiterate our request to be informed of any discussions concerning the proposal that take place in the Joint Consultative Working Group (under Article 15(3) of the Protocol) or in the EU/UK Joint Committee (under Article 13(4) of the Protocol).**

We are disappointed that your predecessor’s letter does not provide further information on cross-border supply chains and other interdependencies between the EU and the UK in the sectors covered by the proposed Directive and how they may be affected by the new obligations it creates. While we welcome the Government’s proactive approach to identifying any new opportunities to regulate differently following the UK’s exit from the EU, we are also keen to ensure that the Government keeps a close eye on changes to EU regulation which may, even if indirectly, affect UK businesses trading in or with the EU or consumers in the UK dependent on essential services provided by businesses in the EU with a view to identifying any necessary mitigations.

We ask you to provide the further information we have requested by the end of October 2021.

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; Darren Jones MP and Dr Rebecca Davies, Chair and Clerk of the Business, Energy and Industrial Strategy Committee; Lord Jay and Stuart Stoner, Chair and Clerk of the Protocol on Ireland/Northern Ireland Subcommittee in the House of Lords; and to Les Saunders and Donald Harris in your Department.

CHAIR