

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

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Helen Whately MP
Exchequer Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Northern Ireland Protocol: Draft EU Energy Taxation Directive

We write to thank you for your predecessor's Explanatory Memorandum of 26 August 2021 on the recent European Commission proposal for a new EU Energy Taxation Directive (ETD).

We were disappointed that no attempt was made to provide any substantive assessment of the implications of the draft Directive, in particular for Northern Ireland, despite the Government's acknowledgement that the EU's current legislation in this area continues to apply there by virtue of the Northern Ireland Protocol in the Withdrawal Agreement.

The applicability of the draft EU Energy Taxation Directive in Northern Ireland

Indeed, in that regard we note that the Government says it will continue to monitor how the draft Directive develops to "determine whether some or all parts of the revised ETD also fall within scope" of that Protocol. While we are of course aware that Lord Frost is actively seeking changes to the Protocol that would, among other things, give the UK in respect of Northern Ireland more flexibility to deviate from EU rules on excise, including fuel duty, the outcome of that process is currently uncertain.

It is our understanding that the new Energy Taxation Directive would 'amend or replace' the 2003 Directive which continues to apply in Northern Ireland by virtue of the Protocol, and as such this new legislation – as and when agreed by the EU – would also apply automatically in Northern Ireland, if the provisions of the Protocol requiring continued alignment with EU excise rules

are still in effect at that point. We would therefore ask you to clarify the basis for your statement that it remains to be determined “whether some or all parts of the revised ETD also fall within scope”, and in particular:

- Whether the Government accepts (or not) that the draft Directive as proposed by the Commission would ‘amend or replace’ the current ETD and therefore apply automatically in Northern Ireland under the Protocol as currently worded;
- Which, if any, of the provisions of the draft Directive the Government believes fall outside the obligation for Northern Ireland’s alignment with EU excise duty rules under the current Protocol; and
- To what extent the ETD, either in its current or any future amended form, would continue to apply in Northern Ireland under the Government’s envisaged “flexible settlement” with respect to excise duties under the Protocol.

The possible implications of the draft Energy Taxation Directive for Northern Ireland

Given that the new ETD may possibly apply in Northern Ireland, it would also be helpful if you could set out what assessment the Government has made of the potential impact of the new rate structure, and minimum rates, for taxation of fuel and electricity for Northern Ireland compared to the UK’s current approach to energy taxation as it applies there. In particular, we would be interested to know:

- Whether the structure and rates proposed by the Commission would prima facie necessitate any tax increases for fuel and electricity in Northern Ireland immediately upon the Directive taking effect, and what assessment the Government have made of the potential longer-term implications of the proposed new rates (taking into account the suggestion they would be automatically adjusted annually to inflation, a concept which the UK strenuously opposed as a Member State);
- Whether the proposal would affect (or, indeed, remove) any of the fuel duty reliefs or exemptions currently used by the UK in respect of Northern Ireland; and
- Whether the Government has, at this stage, identified any other potential issues with the Commission proposal that could lead to negative consequences for Northern Ireland.

We are of course aware that the draft Directive is likely to be subject to significant amendments as it is considered by the 27 Member States, and the analysis requested above is therefore subject to change as the legislation is considered in Brussels. However, as is normal in the scrutiny process, we must consider the European Commission proposal on its initial merits. Moreover, the Government will need to carry out this initial analysis in any event: clearly such an exercise is required for the UK to articulate and secure any changes considered necessary to avoid negative impacts on consumers and businesses in Northern Ireland in the event that the Directive does become applicable under the Protocol in due course.

If you have not yet completed an assessment that would enable you to answer our questions, we would welcome confirmation of the timescales involved and pursue the matter with you further in due course.

Potential application of the EU Energy Taxation Directive to Gibraltar

As you will be aware, the Government is currently also engaged in talks with the EU to arrive at a new trade and immigration arrangement between Gibraltar and Spain, to be concluded between the UK Government and the EU given their respective legal competences. The initial framework agreement the Foreign Office reached with Spain in December last year foresees that Gibraltar would have to apply the “relevant EU customs, excise and VAT legislation”, introducing “excise duties for particular sensitive products” including fuel. Under more detailed proposals made by the European Commission in July, Gibraltar would also have to align its duty rates for fuel, alcohol and tobacco with those set by Spain.

We understand the Government has rejected much of the Commission’s approach as inconsistent with the initial framework agreement, and uncertainty persists about the substance of any treaty that may be agreed with the EU (with respect to both excise duties, and the myriad of other matters relating to Gibraltar’s relationship with Spain and the wider EU that the agreement is intended to address). Nevertheless, in light of the above, we would welcome confirmation from you as to:

- Whether the Government accepts or objects to the proposed application of the Energy Taxation Directive (including any future amendments) in Gibraltar as part of an overarching UK-EU Agreement on that territory that meet its other objectives; and
- Whether it has undertaken, or plans to undertake, any assessment, as regards the potential implications of the proposed new Energy Taxation Directive for Gibraltar in that context, in particular with respect to the

economic implications for bunkering operations carried out in Gibraltar's port and waters.

We look forward to receiving your reply to our questions by 8 November.

I am copying this letter to Simon Hoare MP, Chair of the Northern Ireland Affairs Committee and Stephen Habberley, Clerk of that Committee; Lord Kinnoull, Chair of the House of Lords EU Select Committee, and to Chris Johnson, that Committee's Clerk; and to Les Saunders in the Cabinet Office.

CHAIR