

# European Scrutiny Committee

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From: Sir William Cash MP

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Paul Scully MP

Minister for Small Business, Consumers and Labour Markets

Department for Business, Energy & Industrial Strategy

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## **The EU Foreign Subsidies Regulation**

Thank you for your letter of 27 September 2021 in response to our questions on the EU's draft Foreign Subsidies Regulation, which – when approved – would allow the European Commission to investigate the potential economic impact of ‘distortive’ subsidies granted by non-EU countries on competition within the EU's Single Market, both in respect of non-EU companies and their EU-based subsidiaries.

We have taken note of the Government's assessment that there are likely to be “limited negative effects” for UK businesses arising from this new area of EU law. We welcome your conclusion that “the likelihood of a UK subsidy being considered distortive by the Commission will be significantly reduced” by the UK's proportional approach to subsidies, transparency requirements for granting authorities, and pre-existing commitments in relation to subsidy control under the UK/EU Trade and Cooperation Agreement. However, it remains of concern that the additional regulatory obligations implied by the Regulation for businesses operating within the EU, in particular with respect to notifying subsidies to the Commission before larger acquisitions or public procurement tenders can be finalised, may increase barriers to UK businesses doing business in an EU Member State.

With your reassurances in mind, the Committee is content to not pursue the potential implications of the Regulation for UK businesses with EU operations further until there is clarity about the outcome of the legislative process in Brussels, in particular with respect to the areas of ambiguity – like

the nature of commitments that may be sought from companies deemed to be in receipt of distortive subsidies – to which you referred in your letter.

The second matter that we previously raised with you in relation to the FSR is its possible interaction with the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement. We expressed concern that the EU might, in due course, request the Regulation be incorporated into the Protocol as a new area of EU law under Article 13(4). This could extend the European Commission's new powers to investigate alleged distortive subsidies to firms in Northern Ireland involved in trade in goods which might be in receipt of State financial support from outside the UK, for example in relation to a NI-based subsidiary of a Chinese firm.

In your response, you state that “the Government is of the view that this Regulation does not form part of the State aid legislation listed in Annex 5, upon which the functioning of Article 10 of the Protocol relies. It should be noted that the proposed regulation is based on the EU's Common Commercial Policy (Article 207(2) of the Treaty on the Functioning of the European Union (TFEU)) and the EU's Internal Market (Article 114 TFEU), not the Articles on State aid (Articles 107 - 109)”. You also refer to the Government's efforts to “find a new balance in the Protocol” with the EU, as part of which it wants to replace the provisions of the current Protocol that provide for the continued application of EU State aid law to subsidies that could affect trade in goods between Northern Ireland and the EU.

However, it is precisely the fact that the draft Regulation is based on Articles 114 and 207 TFEU that our concerns are not wholly assuaged. While the EU might not seek to add the FSR to the Protocol as a State aid measure under Article 10 and Annex 5, that does not preclude it from doing so as a trade policy measure – in relation to subsidies received by Northern Ireland-based companies from outside the UK – under Article 5 and Annex 2. While the Government is of course working actively (if necessary through recourse to Article 16 safeguard measures) to reduce the extent to which Northern Ireland would need to stay aligned with EU legislation more generally, including EU trade policy measures, the outcome of that process is unclear at this stage. As a matter of precaution, the Committee has to consider how this proposal might interact with the Protocol as currently worded.

With this in mind, we would be grateful if you could confirm the EU has ruled out seeking to add the Foreign Subsidies Regulation to the list of EU trade policy measures that apply in Northern Ireland under Annex 2 of the Protocol, in addition to having done so in relation to Annex 5 on State aid. We look forward to receiving your reply before the Christmas recess.

I am copying this letter to Lord Frost, Clare Rowland and to Les Saunders in the Cabinet Office.

**CHAIR**