UK-EU REGULATORY DIVERGENCE TRACKER

3rd edition – March 2022

INTRODUCTION

This is the third edition of the UK in a Changing Europe's UK-EU regulatory divergence tracker, covering 27 cases of divergence since December 2021. There are fourteen cases of active divergence (where the UK – or some part of it – takes steps to move away from retained EU law), ten of passive divergence (where the EU legislates and the UK – or some part – does not follow), and three of procedural divergence (where the UK has to introduce new systems to manage policy absent substantive divergence). There are also eleven cases with an additional 'internal impact' label, to indicate where UK-EU divergence is leading either to divergence in regulation between different parts of the UK, or has some other impact on the operation of relations between the four UK governments.

There have been three important developments since the last edition of the tracker was published. Firstly, Lord Frost has resigned his role as de facto Brexit Minister, replaced by Jacob Rees-Mogg as the first ever Brexit Opportunities Minister in the Cabinet Office. This has also resulted in changes to the wider government architecture for managing the various consequences of Brexit. Rees-Mogg's unit will be tasked with making the most of post-Brexit regulatory opportunities; while oversight of the UK-EU Trade and Co-operation Agreement (TCA) and Protocol on Ireland/Northern Ireland moves into the Foreign, Commonwealth and Development Office (FCDO); and responsibility for the Union and the review of intergovernmental relations sits in the Department for Levelling Up, Housing and Communities (DLUHC).

This tripartite split of responsibilities may prove a challenge, especially in terms of managing internal divergence – which this tracker shows to be an issue of growing importance. Plans for the **UK Shared Prosperity Fund** and **Professional Qualifications Bill** have both been critiqued by devolved governments for potentially diverting major decision-making powers (and in the former case also funding) back to Westminster. Moreover, **UK plans for electronic travel documents** for visa-free travel could introduce paperwork (albeit not physical infrastructure) for non-UK and -Irish nationals before they cross from Ireland into Northern Ireland, potentially undermining the notion of an entirely open Irish border. An **EU Directive on medicines** moving from Great Britain to Northern Ireland is a notable example of the UK and EU coming closer to resolving a dispute around the Protocol. However, new EU rules around **pharmacovigilance**, **persistent organic pollutants**, **energy duties**, **vehicle safety** and the **E171 food additive** (as well as UK **VAT changes on energy-saving materials**) will all see Northern Ireland diverge from the UK's rulebook and could mean Northern Irish traders face new financial and administrative costs which put them at a competitive disadvantage compared to the rest of the UK. The latest conclusions of the **review of intergovernmental relations** are considered by experts to provide a better structure for engagement between the four UK governments, but to be nonetheless far from sufficient without plenty more political goodwill. With internal divergence issues potentially cutting across at least three different departments at once, there remains a significant risk that the voices of devolved governments might fall through the gaps.

A second key development is the publication of the UK government's 'benefits of Brexit' paper. At 105 pages, it is not short of ideas for Brexit opportunities. However, many could have been realised within the EU, and most were re-cycled from previous announcements. Moreover, there is no sense of strategic priority or weighing up of trade-offs, and the Brexit Opportunities Minister's decision to invite Sun readers to send in their suggestions for inherited rules to scrap is more likely to create unwanted work for civil servants who have to parse the many responses, than it is to create a clear sense of direction for divergence. One sign that a clearer strategy may be emerging, however, is the new Minister's reported preference for **continued acceptance of EU authorisations** such as the CE product mark – although as the tracker shows the government has been quick to state this is not official policy.

A third development is the full-scale Russian invasion of Ukraine. Among the many questions this raises for the UK and the EU's foreign policies is how to sanction Russian individuals and entities most effectively. UK and EU principles have been relatively aligned, but the UK – operating under its new, **independent sanctions regime** – was initially slower to impose sanctions than the EU (and US). Limited resources and sub-optimal legislation have been blamed, highlighting the practical and bureaucratic challenges in getting an independent sanctions system to work effectively. Somewhat ironically, emergency UK legislation seeks help the government more easily replicate EU decisions.

More widely, the Treasury again stands out as the department with the most coordinated plans for divergence. Pace is gathering around reforms of existing EU **Solvency II insurance rules** and the **wholesale markets regulation**. This reinforces the sense from previous trackers that the department has accepted that there is no prospect of regaining access to the Single Market for UK institutions through equivalence, and is instead actively seeking to loosen some inherited regulations in pursuit of a competitive edge for the UK.

Other cases of active divergence cover a wide range of themes. The new **checks at the GB-EU border** are creating delays and new administrative costs for business, which plans to **digitise export health certificates** would only minimally offset. The new **trade agreement**

with New Zealand removes tariffs on exports but is expected to have a minimal impact on UK GDP. Amendments to the **Online Safety Bill** bolster already significant ambitions to control online harms, and are a notable case of the UK potentially going further than the EU on regulating internet companies, although, paradoxically, concerns have been raised about how much power it could place in the hands of said companies. Plans to **reform passenger compensation for domestic flights** could also have a significant impact on airline revenues and/or the level of customer refunds, although much depends on the final design of the scheme, while a planned **ban on imports of hunting trophies** appears mostly symbolic in effect. The TCA removed the **recognition of UK Blue Badges** in the EU, and the lack of bilateral UK recognition agreements with 11 EU/EEA states including France, Italy, Greece Spain and Portugal considerably limits the travel options available to the UK's 2.3m Blue Badge holders**. Capita's take-over of the running the Turing Scheme** also poses some questions about the scheme's future cultural value.

In terms of passive divergence, EU has unveiled plans for four major reforms around the themes of 'digital sovereignty' and 'strategic autonomy'. These comprise a mixture of new obligations on the wealthiest companies (**Directive on Corporate Sustainability Due Diligence** and the **Data Act**) and measures empowering the EU to protect domestic manufacturing against international competition (the **Anti-Coercion Instrument** and the **Chips Act**). In general, there is little likely impact on the UK, as these measures mainly target large state and non-state actors based in the USA and Asia, although there could be more significant implications for UK companies involved in the supply chains of major EU-based companies. More fundamentally, the EU's plans reflect a significant desire to impose its regulatory weight on big tech and emerging technologies – which raises an important strategic question for the UK in terms of whether to align or diverge via its own future regulation. Will the UK choose to copy or accept major pieces of EU legislation in these areas (EU updates to vehicle safety standards are another relevant case) in order to facilitate trade for businesses engaged in the EU market, and to minimise potential future bureaucracy for business from having to adhere to diverging EU and UK rules? Or will it instead seek competitive advantage in these areas by developing regulatory infrastructure which imposes fewer obligations on companies, potentially attracting investment and boosting innovation, albeit with the risk of greater barriers to trade with the EU? For the time being, the answer remains unclear.

Joël Reland, Jill Rutter & Anand Menon, March 2022

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Issue	Source & status	Implications & impact	Timeline & region
1. Animal welfare **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *Proposed ban on the import of hunting trophies from endangered species to Great Britain, as part of Animals Abroad Bill.*	Great Britain is set to introduce a new ban on the import of hunting trophies from endangered animals as part of the Animals Abroad Bill, which is yet to begin its passage through Parliament. At the moment, permits are required for the import and export of hunting trophies from any species protected under the Convention on International Trade in Endangered Species (CITES), and are issued only 'if there is assessed to be no negative impact on conservation of the species in the wild'. The new policy establishes an outright ban on the import of hunting trophies from around 7,000 endangered or near-threatened species into Great Britain. Between 2015 and 2019, there were 335 imports and 7 exports of hunting trophies to/from the UK under CITES permits – these would no longer be permitted under the new regulations. Reports suggest that a proposed ban on the import of foie gras and fur products will ultimately not be included	The relatively small number of trophy imports to the UK shows the ban is unlikely to have a major effect on the wider trophy trade, but does send a signal from the UK about addressing what it sees as an international issue. The founder of the Campaign to Ban Trophy Hunting says the bill 'looks set to be the strongest ban in the world'. However, over 100 scientists, conservationists and African community leaders signed an open letter criticising the ban, arguing that certain types of trophy hunting (not 'canned' hunting where captive animals are bred for shooting) are important conservation practices which also generate revenues for local communities. Trophy hunting of non-endangered species (for example deer) will still be permitted in the UK. The ban will not apply to Northern Ireland which, under the terms of the Protocol, is subject to EU Wildlife Trade Regulations, which presently mirror Great Britain's. There does not appear to have been any assessment done of what impact this might have on Northern Ireland, and whether it	The Animals Abroad Bill is yet to begin its passage through parliament. The ban will apply to imports into Great Britain but not Northern Ireland.

	Animals Abroad Bill. The BBC reports that new Brexit Opportunities Minister Jacob Rees-Mogg does not support the proposals as they would amount to a restriction on consumer choice, while Nothern Ireland Secretary Brandon Lewis raised concerns over divergence with Northern Ireland. The production of both foie gras and fur in the UK is already banned.	might become more of a popular destination for the import and/or smuggling of hunting trophies.	
2. Consumer Protection **ACTIVE DIVERGENCE** *Consultation on changes to UK air passenger compensation policy and other consumer protection measures.*	**Summary:** The Department for Transport is consulting on plans to reform air passenger consumer policy in four areas. The most-reported change is a review into regulations on compensation for air passengers, which were inherited from the EU. Under the retained EU law, a passenger whose flight is cancelled by the airline or delayed by over three hours is normally entitled to compensation (on top of a full refund or re-routing if the flight is cancelled). This applies to passengers departing a UK airport; departing from another country to a UK airport (with a UK or EU carrier); or departing another country and arriving in the EU (with a UK carrier). Passengers to or from the EU are also protected in a range of other circumstances under EU law. The additional	**Impact:** The government says the consultation is responding 'to calls from industry' for compensation to be more proportionate the price of a ticket, especially given the rise of low-cost airlines (where ticket prices for domestic flights are typically much lower than the £220 compensation fee). It would also, it argues, 'align domestic aviation compensation for delays and with other domestic modes' - although there is a question as to whether a government committed to ambitious net zero targets should be considering a reform likely to make domestic flights more financially competitive against other lower-carbon forms of transport. It is hard to predict exactly what the financial impact might be on airlines. Although pay-outs for delays over three hours	**Timeline/region:** Changes apply across the UK and are still in the consultation phase.

compensation is set according to the distance of a journey, regardless of original ticket price, ranging from €250-€600.

In many cases compensation thus amounts to far more than the original price of the ticket. The Department for Transport is consulting on whether to reform compensation for *delays* to *UK domestic fights* only, to make it more proportionate to the price of a ticket. The consultation document offers one example of what the new system could look like:

- delays of >1 but <2 hours: 25% of the ticket price;
- >2 but <3 hours:50% of the ticket price;
- >3 hours: 100% of the ticket price.

Currently, passengers receive no compensation for delays under three hours, so the level of compensation for shorter delays would be higher. However, compensation would in most cases be lower for delays over three hours, where passengers currently receive £220 for any UK domestic flight. It has not been confirmed whether compensation exemptions would be retained for 'extraordinary circumstances' such as a delay caused by adverse weather or air traffic management decisions, nor whether extras would typically be smaller under the proposed reform, passengers would newly be entitled to compensation for shorter delays. The legal firm Bott & Co concludes that: 'in theory, the changes expose the airlines to more compensation. However, the consultation acknowledges that, in reality, far fewer people will actually have the impetus to make a claim… The net result is that the airlines will save money because passengers will be disincentivised to make a claim. If compensation is going to be reduced to such a low level then it should be paid out automatically.'

Much may therefore depend on how well passenger rights are upheld in the wider regulatory architecture. The Department for Transport is also seeking views on whether to make membership of an Alternative Dispute Resolution (ADR) scheme mandatory for airlines. ADR makes it easier for passengers to make claims without going through the courts, and currently 22 airlines – covering an estimated 80% of consumers – are members.

Two other reforms are also under consultation. One concerns improving the rights of disabled passengers, simplifying the process entitling them to full compensation in the cases where mobility equipment (such as a

	such as baggage, seat selection and priority boarding would be considered part of the ticket price.	wheelchair) is damaged in transit. The other is about giving the Civil Aviation Authority new powers to determine if consumer rights have been breached, order compensation and impose financial penalties.	
3. DIGITAL & DATA **ACTIVE DIVERGENCE** *Changes to the forthcoming UK Online Safety Bill.*	**Summary:** In February 2022 the UK government announced changes to the forthcoming Online Safety Bill. The draft Bill was covered in the first divergence tracker, highlighting the plan to impose a new 'duty of care' on internet companies to prevent the proliferation of illegal content and activity online. It has since been subject to pre-legislative scrutiny, where a number of changes were recommended, and some adopted. Specifically, the government is accepting a recommendation from the Law Commission for a harm-based communications offence, a threatening communications offence and a false communications offence. The harm-based communications offence aims to 'make it easier to prosecute online abusers by abandoning the requirement under the old offences for content to fit within proscribed yet ambiguous categories such as 'grossly offensive,' 'obscene' or 'indecent'. Instead, it is based on	**Impact:** As noted in the first divergence tracker, the EU is also developing plans for the regulation of online harms, but the UK regime is seen as more onerous in the obligations it imposes on internet companies. The recent decision to widen the defined range of 'priority offences' against which companies must take proactive steps enhances that sense. As such, it remains a notable case of the UK imposing tougher restrictions on internet companies than the EU, with threats of harm to revenue if they fail to adhere to regulations (especially given the wider context where the EU is imposing significant wider regulation on such companies as part of its digital sovereignty agenda). However, one distinct element of the Online Harms Bill is that, rather than opening up internet companies like Meta (owner of Facebook) to increased competition on the European market, it imposes greater obligations upon them to monitor and control their platforms. As such, some	**Timeline/region:** The Bill is yet to be brought before Parliament although government says this will happen 'soon'.

	the intended psychological harm, amounting to at least serious distress, to the person who receives the communication, rather than requiring proof that harm was caused.' The threatening communications offence is designed to 'better capture online threats to rape, kill and inflict physical violence or cause people serious financial harm' by going beyond the existing law which covers 'menacing' behaviours, to address other behaviours such as coercion and control, stalking and financial and physical threats. The government says it 'will offer better protection for public figures such as MPs, celebrities or footballers who receive extremely harmful messages threatening their safety.' The false communications offence raises the threshold for criminality where 'a person sends a communication they know to be false with the intention to cause non-trivial emotional, psychological or physical harm.' Under the new offence, a court must prove the accused knew the information was false when sending it and that it was deliberately sent to inflict harm.	commentators have raised concerns that it will concentrate greater power in the hands of tech companies, which are increasingly expected the be the arbiters of what is acceptable online communication. There are also concerns that in some cases it could prohibit the use of end-to-end encryption (a privacy measure employed by platforms such as WhatsApp). The independent fact checking organisation Full Fact has expressed concern about the government's 'censorship-by-proxy' tactics relying on internet companies to self-censor content online with no independent oversight. It says the Bill 'does not set out a credible plan to tackle the harms from online misinformation and disinformation' and advocates a ten-point plan which includes promoting media literacy and enforcing transparency of government and internet company measures.	

	DCMS has also set out a new, much wider set of 'priority offences' (including encouraging or assisting suicide, revenge pornography, threats of violence, hate crime, the sale of illegal drugs and weapons and financial crime) where companies must take proactive steps to prevent the content rather than taking it down retroactively. Moreover, internet providers hosting pornographic content will have to take active steps to prevent children accessing the content.		
4. EMPLOYMENT ACTIVE DIVERGENCE INTERNAL IMPACT *UK Professional Qualifications Bill, designed to end preferential recognition of EEA and Swiss professional*	**Summary:** The Professional Qualifications Bill is currently at report stage in the House of Commons. It will create a new system for how qualifications from overseas are recognised, including giving regulators the power to develop mutual recognition of qualifications agreements with partners overseas. Professional qualifications (PQ) recognition is what allows professionals qualified in one country to practice in another. In the UK, PQ recognition applies to a list of (over 200) legally defined 'regulated professions', where a person can only be registered, practice or use a professional title if they have the necessary qualifications.	**Impact:** The government argues that the purpose of the Bill is to equalise opportunities for professionals around the world to work in the UK, rather than giving preferential access to those from the EEA and Switzerland: 'Workers with professional qualifications from outside these areas can face hurdles to getting their qualifications recognised in the UK. This can include higher application fees or, in some cases, no means to recognition at all.' This aligns with wider changes to the migration system, where preferential treatment (in the form of free movement) for EU nationals has ended. There is, however, a tension within the new policy between removing barriers for non-EU professionals seeking to	**Timeline/region:** The Bill is at third reading in the House of Commons. The Bill will apply to the UK as a whole, which has led to concern among devolved governments that it gives the UK government new powers to

qualifications in UK law.	At present, the UK's PQ system is based on interim provisions put in place after Brexit, which continue to give preferential treatment to qualifications from EEA states and Switzerland. The principle behind the new system is to end the favourable treatment of EEA qualifications and open up greater recognition for the rest of the world – similar to the changes to the UK migration regime. In practice, the Bill gives powers to regulators of 'regulated professions' to enter into new PQ agreements with their counterparts overseas. It also allows regulators to deliver on PQ recognition agreements set out in recently-agreed trade deals.	practice in the UK, and ensuring that standards are not lowered as a result. For example, the Commons Delegated Powers and Regulatory Reform Committee flagged that under the Bill Ministers could use a statutory instrument to create 'watered down' standards in areas of urgent labour shortage. The Royal College of Nursing and British Dental Association both expressed concerns about the risks to patient safety from such political interference. Amendments were agreed in November 2021 to protect regulators' autonomy and ensure they are consulted before new regulations in areas of their competence, which the Royal College of Nursing welcomed. Once the Bill becomes law it will be important to monitor whether it works as such groups envisage. Another tension is over areas where PQ regulation is devolved (for example teaching and legal professions). The Bill applies to the UK as a whole, and the Scottish Parliament's Economy and Fair Work Committee has expressed concern that it does not contain any provisions obliging the UK government to gain consent from the devolved governments before it enters into agreements (for example via trade agreements) which might lead to changes	intervene in areas of PQ regulation (such as teaching) which are a devolved competence.

		in PQ standards in areas that should be of devolved competence. Moreover, it has expressed concern that the devolved governments have no formal means of scrutinising such decisions. The Welsh parliament withheld against a legislative consent motion for the Bill, on the grounds that it gives the UK government powers falling into areas of devolved competence, and imposes restrictions on the existing regulatory powers of Welsh Ministers.	
5. Financial services **ACTIVE DIVERGENCE** *UK government indicates changes forthcoming to Solvency II regulation of insurance markets.*	**Summary:** The EU's Solvency II regulation came into effect in 2016, aiming to improve the robustness of insurance firms. It did this by issuing harmonised, EU-wide policies increasing the buffers firms have to hold to guard against insolvency, and standardising aspects of corporate governance and regulatory oversight. The government launched a review of Solvency II in 2020, following a speech by the Chancellor in June 2020 in which he announced plans to review elements of Solvency II with reference to the specific nature of the UK's insurance market.	**Impact:** Insurance markets are nationally diverse, reflecting different risks and population characteristics. The government's review of Solvency II is based on the argument that a one-size-fits-all approach to insurance regulation is misguided and leads to unfair burdens for some firms and/or national sectors. As a result, Solvency II has been identified as the source of a potential 'regulatory Big Bang'. The Economic Secretary to the Treasury said in February 2022 that 'EU regulation doesn't work for us anymore and the government is determined to fix that by tailoring prudential regulation of insurers to our unique circumstances… we have a genuine	**Timeline/region:** The government will publish a full consultation document on its proposed reforms to Solvency II in April 2022. A more detailed technical consultation is expected from

	There are two main areas of reform under consideration. First, the risk margin – an extra reserve insurers have to hold against some long-term policies in order to cover the potential costs of transferring them to another firms should they fail in the future. This was not in place in the UK prior to Solvency II. It is widely agreed that it is too large and not well suited to the low interest rate environment that has dominated since 2016. The European Commission has indicated that it will also look to amend the risk margin following proposals from the European Insurance and Occupational Pensions Authority (EIOPA). The second area is the matching adjustment. This is designed to allow firms to match liabilities on long-term policies against predictable cash inflows from certain types of investment, thereby reducing the buffers they need to hold against those long-term risks. Solvency II specifies the investments which can be used in this way but the insurance sector has argued that this is too prescriptive and prevents it from investing in areas that the government has prioritised for growth, particularly green energy and infrastructure investment.	opportunity to maintain and grow an innovative and vibrant insurance sector while protecting policyholders and making it easier for insurance firms to use long-term capital to unlock growth'. But there are risks regarding whether the proposed reforms will allow for a more competitive financial services sector whilst also meeting the government's aim for 'better outcomes for consumers'. Sam Woods, the head of the Prudential Regulation Authority has expressed doubts about possible changes, arguing that the underlying forecasts remain 'speculative' absent 'persuasive evidence'. Mick McAteer (a previous member of the Board of the Financial Conduct Authority and now a co-director of the Financial Inclusion Centre) has expressed concerns that the changes could lead to higher fees and dividends for shareholders but policy holders and those with pensions based on insurance products could lose out.	the PFRA later in 2022. Any EU changes are unlikely to come into force before 2024.

6. Financial Services ACTIVE DIVERGENCE *HM Treasury response to consultation on UK wholesale markets regime.*	**Summary:** As part of a wider focus on regulatory reform in financial services, HM Treasury launched a review for consultation of the UK wholesale markets regime in July 2021 which closed in September 2021 (as noted in the previous edition of the Divergence Tracker). On 1 March 2022 HM Treasury published the outcome of this consultation and its next steps. The government's aim is to 'ensure that the UK's regulatory regime for secondary markets is fair, outcomes-based and supports competitiveness, whilst maintaining the highest regulatory standards.' The government's approach also aims to 'take advantage of our newfound regulatory freedoms since leaving the EU'. The review is wide-ranging in scope and aligns with the Chancellor's wider vision for UK financial services as presented at his Mansion House speech on 1 July 2021. The review is focused on delivering an 'open, green and technologically advanced financial services sector that is globally competitive' and sits alongside other regulatory changes such as implementing the recommendations made in the UK Listings Review undertaken by Lord Hill.	**Impact:** It is hard to assess the full impact until the proposals are implemented but they echo the wider policy identification of financial services as a key sector for post Brexit regulatory reform in the UK. However, there is some evidence that not all parts of financial services welcome widespread and rapid reform, instead preferring a piecemeal approach, because of the sunk costs already experienced in adhering to MiFID up until this point. The European Commission has produced legislative proposals to amend MiFID and MiFIR that could be in place in early 2023. Whilst there are similarities between the Commission's proposals and those of the UK, the UK's Wholesale Markets Review is broader in scope, goes further in some areas (e.g. abolishing the UK volume price cap) and seeks to implement change more urgently in some areas.	**Timeline/region:** Proposed changes will be implemented through a variety of mechanisms on different timescales. Some proposals that require legislative changes will not be brought forward until the completion of the Future Regulatory Framework Review.

	The reforms focus on UK wholesale capital markets and specifically the EU's MiFID rules which have governed these since 2018. MIFID rules were developed to harmonise wholesale markets regulation across the EU. The reforms also cover the EU's prospectus regulation which has been in place since 2017 and focuses on the raising of capital and the floating of firms (the process by which a company goes from being privately to publicly held). The reforms are aimed at using domestic regulatory freedom to reform the listings regime in the UK and the regulation of wholesale capital markets. In particular they aim to give firms more choice about where they can trade and to offer a more flexible regime better suited to innovative growth companies in the UK seeking to list and raise capital.		
7. FOREIGN POLICY ACTIVE DIVERGENCE *UK and EU sanctions on Russia in response*	**Summary:** Following Brexit, the UK has an independent sanctions regime which is no longer integrated with the EU's. In early February 2022 – prior to the full-scale Russian invasion of Ukraine – the UK government amended the criteria within Russia sanctions regulations, allowing it to target measures at sectors of 'strategic significance' to the Russian government.	**Impact:** The UK government itself acknowledged that it had been slower to sanction Russian individuals than the US and EU. Moreover, the emergency legislation designed the speed up the process will effectively allow the UK to temporarily replicate decisions taken by the US and EU. The Foreign Secretary has blamed the issues on House of Lords amendments to UK sanctions legislation in 2018,	**Timeline/region:** Sanctions policy is not reserved. Emergency Further sanctions on Russian individuals and

to the war in Ukraine.	Since the February 2022 invasion, some major sanctions (such as the freezing the assets of the Russian central bank, excluding some major Russian banks from the SWIFT system and blocking their access to capital markets) have been done in conjunction with the EU and the US. There have also been UK-specific asset freezes targeted at entities and individuals. As of 9 March, the UK had reportedly imposed sanctions on 26 Russian individuals, whereas the US and EU had both sanctioned 65. New UK sanctions against seven individuals were announced the following day. Nine of the individuals sanctioned by the US and EU but not the UK feature on sanctions hitlist of 35 individuals published by imprisoned Russian opposition leader Alexei Navalny. The UK has banned exports of aviation and space-related goods and announced that it will end imports of Russian oil by the end of the year. The US is banning imports of Russian oil and gas, and the EU will reduce Russian oil imports by two thirds this year. Unlike the US, the UK has not sanctioned Russian gas and oil companies Gazprom and Sibneft. Foreign Secretary Liz Truss has acknowledged that the UK system has so far been slower than others in imposing sanctions on Russian individuals. In order to address the	arguing that a requirement to consider the appropriateness of sanctions and their impact on an individual entails significant paperwork and thus establishes a higher bar than in other countries. However, Philip Moser QC argues that the Lords' amendments made explicit requirements which the UK courts would have demanded anyway. Moreover, Helen Thomas in the Financial Times suggests that the sanctions regime illustrates the potential pitfalls of 'divergence for divergence's sake' - making the UK newly and entirely responsible for a policy area which has historically 'piggybacked' to a large extent on the EU, and which (as the previous divergence trackers shows) continues to largely mirror the EU's. The Russia case – demanding a huge scale of action in a short time-frame - raises the question of whether it is preferable to develop an entirely independent UK sanctions regime (for the benefit of some bespoke action against select individuals) given how much work previously outsourced to the EU now has to be done from the UK. The size of the government's sanctions team has tripled but it is still struggling to meet demand.	entities are expected.

	'cumbersome' response, the government has proposed emergency legislation allowing sanctions to be imposed for up to 56 days if an individual is already sanctioned in other designated countries (such as the US and EU). Following the passing of the Bill, the UK sanctioned a further 370 Russians, including members of the Russian parliament, eight entities and 51 oligarchs.	For Thomas this highlights a wider potential challenge with divergence: 'Sovereignty, it turns out, is no substitute for good lawmaking, adequate resourcing and plain old-fashioned competence.' This echoes other areas (such as medical devices and chemicals regulation) where the UK has expressed a wish for a bespoke regime, but presently lacks the funding structures and expertise to regulate effectively.	
8. Levelling Up ACTIVE DIVERGENCE INTERNAL IMPACT *UK Shared Prosperity Fund, replacing EU structural funds.*	**Summary:** As a result of Brexit the UK no longer contributes to or receives funding from EU structural funds, which invest in regional businesses and other infrastructure projects. Combined, England and the devolved governments received on average £1.5bn in spending during the 2014-2020 cycle. The 2019 Conservative election manifesto promised to 'at a minimum match the size of those funds in each nation' through the UK Shared Prosperity Fund (SPF). This funding, it added, would be 'better targeted at the UK's specific needs'. The recent Levelling Up white paper also promised the fund would 'slash away the bureaucracy of the old EU regional funds. Instead, local leaders will be empowered to direct funding towards their own, locally identified priorities'.	**Impact:** The consequence is that devolved governments and many local authorities will see reduced levels of funding in the immediate term. The Welsh government estimates it will be £750m worse off in terms of lost structural funds – compounding an expected loss of £242m in agricultural support payments as the UK regions move away from the Common Agricultural Policy. Wales is particularly badly affected because it received a disproportionately large amount of funding from the EU structural funds (over 2.5 times more than Scotland from 2014-2020.) The Stormont Budget Committee heard evidence that Northern Ireland could lose up to £65m a year. Within this, the loss of the European Development Fund is worth £23m a year, and its absence is estimated to lead to the loss of 4-	**Timeline/region:** The new funding cycle begins from 2022-23, running up until 2024-25. It will result in major funding shortfalls for the devolved governments (especially Wales) unless compensated for through wider

	The new SPF is set to launch in April, but provides significantly less funding overall. While the headline figure is £2.6 billion, split over three years: £400m in 2022-23, £700m in 2023-24, and £1.5bn in 2024-25. Average annual funding is therefore far below was provided by EU structural funds. A report by the House of Commons Treasury Committee in January 2022 stated that 'the Government is only providing to this new fund 60 per cent of the money provided by the EU fund' and said it was 'surprising' to see it reduced to such an extent given it is meant to be a centrepiece of the government's ambition around levelling up. Peter Foster of the Financial Times reports that the government is counting 'old' money from 2014-2020 EU funds which have not yet been disbursed, as well as various other regional funds and commitments, in order to make up some of the shortfall.	6,000 jobs and £430m-584m of investment. The SNP has also expressed concern about the change in funding, while some English regions such as Teesside and Leeds are expecting drops in funding of up to 50%, especially if other parts of the country are prioritised for receipt of the new SPF. The question remains as to whether other new funding sources will address the SPF shortfall and what form they will take. Another significant change arising from the new settlement is Westminster wresting back a major degree of control from devolved governments over how funding is spent. Devolved governments had a central role in deciding how EU funds were spent, but the Prime Minister has expressed a desire to increasingly bypass them on spending decisions, in favour of directly deciding the recipients of funding. This follows the approach taken by the Treasury last October allocating 'levelling up' money directly to local schemes in Scotland, Wales and Northern Ireland, and in the Levelling Up white paper which says local leaders 'will be empowered to direct funding' as they see best. The biggest recipient from the Northern Ireland tranche of the UK Community Renewal Fund (described as a forerunner to the UK SPF) has been an Oxfordshire-based company running a post-Covid business	government funds.

		programme which promises to invest in various Northern Irish locations, while Invest NI had two bids rejected - raising some concerns about decision-making behind new UK funding pools.	
9. MOBILITY & TRAVEL **ACTIVE DIVERGENCE** *UK Blue Badge parking permits no longer recognised in EU/EEA countries, except where individual agreements are in place.*	**Summary:** Automatic recognition of the UK 'Blue Badge' - which allows individuals with mobility difficulties to use reserved parking spaces - in the EU stopped at the end of the transition period. The UK government has stated its intention to negotiate the recognition of blue badges in 'some European countries', but the latest government guidance (last updated on 29 September 2021) shows that no agreements have yet been made with 11 EU/EEA countries: Bulgaria, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Spain. When asked directly, in November 2021, about the negotiations with Spain, the government responded that it continues 'to engage in discussions with a number of countries, including Spain' but that it 'cannot comment in detail on these discussions at this stage.'	**Impact:** There are 2.3 million Blue Badge holders in the UK. Non-recognition of the UK Blue Badge by a country can make it much more difficult for a disabled person to travel there. Disability Rights UK told The Independent: 'For many disabled people, a car with a blue badge is the only option for being able to leave home. The Blue Badge enables visits to family and friends, trips to shops, restaurants and cinemas, and visits to the doctor or hospital'. They added that it was 'essential that the government ensures that blue badges are recognised across Europe to ensure that disabled people enjoy the same opportunities to travel'. Given that the list of countries which have not granted recognition to the Blue Badge includes the most popular EU tourist destinations for British travellers (France, Greece, Italy, Portugal, Spain), disabled travellers face a potentially severe restriction of choice of travel destinations. The only	**Timeline/region:** There is no indication of when the government expects to conclude agreements with any other EU/EEA states.

	EU disability parking cards are still accepted in the UK but recognition of non-EU/EEA equivalents is at the discretion of local councils.	advice available from the government is to contact the relevant UK embassy for further information.	
10. Mobility & Travel **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *UK to demand Electronic Travel Authorisation for visa-free travellers to the UK, including those crossing from Ireland to Northern Ireland.*	**Summary:** As part of the Nationality and Borders Bill, those travelling visa-free to the UK will require an Electronic Travel Authorisation (ETA) to enter from 2025. Following evidence given to the Northern Ireland Affairs Committee in December 2021, it became clear that the UK government expects the ETA to be required for EU citizens without settled or pre-settled status travelling from Ireland to Northern Ireland. The ETA is being introduced for those travelling to the UK who do not require a visa or other specified clearance prior to arrival (except for UK and Irish citizens and those with leave to remain in the UK). It will require travellers to apply online to obtain clearance prior to travel, similar to the ESTA process for a UK citizen travelling to the USA. Travellers will need to make sure they obtain clearance in advance and will also have to pay a small fee. EU citizens are one of the main groups affected by this as they can travel visa-free to the UK as tourists. The EU is also	**Impact:** The introduction of ETAs for travel between Ireland and Northern Ireland could have significant impact on the state of the Irish border. Although the UK government says there will be no checks of documents at the border, it will require individuals resident in Ireland who do not have an Irish or UK passport (or leave to remain in the UK) to obtain advance clearance before travelling from Ireland to Northern Ireland. The Committee on the Administration of Justice in Northern Ireland concludes that this 'would create a hard border'. Even if there are no checks, it puts practical obstacles on movement. The requirement for advance clearance will have especially significant implications for non-UK and -Irish nationals living in Ireland who regularly cross the border for work, childcare or a range of other activities. The Committee has also expressed concern about the risks of increased racial profiling and discrimination around the border. As physical checks will not be taking place, there	**Timeline/region:** The ETA will be required from 2025, including for those without leave to remain travelling from Ireland into Northern Ireland.

	introducing a similar scheme known as ETIAS later this year, but it will not be required for travel to Ireland, which is not part of the Schengen Area. The Home Office anticipates having to issue around 30m ETAs a year, as part of wider plans to 'digitise the border'. This is in part a response to official statistics seemingly underestimating the number of EU nationals in the UK (there were presumed to be around 3 million EU nationals living in the UK, but over 5 million have applied for settled status). The Home Secretary says: 'Our new fully digital border will provide the ability to count people in and out of the country, giving us control over who comes to the UK.'	will be no way to determine whether someone is carrying an ETA other than through increased ad hoc inspections within Northern Ireland. The Committee says such checks have already been 'fertile ground for racial profiling and broader discrimination'. Some, however, have argued in reality ETAs for travel to Northern Ireland will only be checked upon further travel into Britain, and that the lack of clarity over exactly how the system will function (will it apply just to tourists? How long will one ETA be valid for?) mean it is too early to determine the scale of any impact. Away from the Irish border, the impact on EU travel to the UK is hard to determine. While not a major imposition, the additional time and cost associated with obtaining an ETA may put some travellers off coming to the UK.	
11. Mobility & Travel ACTIVE DIVERGENCE	**Summary:** Capita is to replace the British Council as the 'lead partner' responsible for running the Turing Scheme for international student placements, which is the UK's replacement for the EU's Erasmus+ scheme. This gives	**Impact:** The Capita decision points to the wider diminishment of the role of the British Council in British soft power and cultural exchange programmes. The Council has	**Timeline/region:** Capita takes over the running of the Turing Scheme

Capita replaces the British council in running the Turing student placement scheme.	Capita responsibility for administering the annual budget of the scheme (£110m next year), and it won the contract from the Cabinet Office after undercutting the British Council in the bidding process. Organisations including the Confederation of School Trusts, the Association of Colleges, the Sutton Trust and the Association of Commonwealth Universities will help Capita administrate the trust.	already had to close 20 international offices due to budget cuts. We do not yet know how Capita's running of Turing will affect its substance and potentially its international reputation. As highlighted in the previous edition of the divergence tracker, Turing does not (unlike the EU's Erasmus+) offer 'inward' placements for international students to study in the UK, prompting concerns that its soft power value will be much diminished. 'Inward' students are deemed to contribute to the standard of UK education and campus life, and often build lifelong cultural or economic links with the UK, although the exact impact is difficult to quantify financially. The value of these intangible cultural benefits of student exchanges could figure less strongly in the thinking of Capita than under the British Council.	from 2022/23. Northern Irish students still have access to Erasmus+ via agreement with the Irish government.
12. TAXATION ACTIVE DIVERGENCE INTERNAL IMPACT	**Summary:** In his March 2022 Spring Statement, the Chancellor of the Exchequer announced that the rate of VAT payable on the installation of 'energy-saving materials' by homeowners (like solar panels, heat pumps and insulation) would be reduced from 5% to zero for the next five years (after which it will return to 5%). This, he said, was possible	**Impact:** The Treasury says that the exemption is being introduced 'to help households improve energy efficiency and keep energy costs down - as well as supporting the UK's long-term Net Zero ambitions'. It estimates that a typical family will save £1,000 on the installation of solar panels and then £300 annually on energy bills.	**Timeline/region:** Changes to UK VAT regulations apply from April 2022, but not in Northern Ireland,

UK changes to VAT on energy-saving materials.	because 'we're no longer constrained by EU law' – namely a 2019 European Court of Justice ruling which restricted the contexts in which such VAT relief could be applied. Moreover, the UK is widening the scope of 'energy-saving materials' to cover wind and water turbines, and removing what it calls 'the complex eligibility conditions' around the relief, which included having to meet certain 'social conditions' or prove that 60% of the cost of the installation related to 'service' rather than 'goods' costs.	The Labour MP Chris Bryant has argued that the VAT exemption on solar panels and heat pumps is 'not a benefit of Brexit' because it 'already happens' in the EU. This is only partially correct, as the EU zero-rating of solar panels only applies from April 2022, and heat pumps will be eligible for a reduced VAT rather than zero-rated. Zero-rating will not apply to wind and water turbine installation in the EU. The government could also point to the fact that the UK first tried to zero-rate solar panels in 2015 but fell foul of EU regulations, and therefore could in theory have made its move faster outside the EU. This may be instructive for future VAT divergence: while in this instance the EU has moved alongside the UK, there may be cases in future where the UK wants to move faster or differently. The decision also impacts Northern Ireland, which will not be able to apply the UK-specific VAT changes as a result of the terms of the Northern Ireland Protocol. The Northern Ireland Executive will receive the cash equivalent of the tax relief as a 'Barnett consequential' – this is estimated at £2m. Practically, this may nonetheless put Northern Irish consumers and manufacturers at a competitive disadvantage compared to the rest of the UK. Politically, it also	which remains subject to EU rules under the terms of the Protocol.

		accentuates existing UK-EU tensions around the Protocol, with the Chancellor in his Spring Statement speech asserting that the policy 'highlights the deficiencies in the Northern Ireland Protocol' and that 'we will be raising it with the Commission as a matter of urgency'. Similar divergence was created by the Chancellor's decision to reform UK alcohol duties in his October Budget, although at the time he did not say it highlighted deficiencies in the Protocol.	
13. Trade & Customs ACTIVE DIVERGENCE *New customs requirements introduced for imports and exports between Great Britain and the EU.*	**Summary:** As of 1 January 2022, a range of new customs controls – delayed by a year – came into force for goods moving into Great Britain from the EU (with the exception of Ireland). Importers now have to make 'full' customs declarations on all goods. In practice, declarations must now be made and tariffs paid at the point of import (ports and other border locations), with it being no longer possible to delay these under 'Staged Customs Controls' rules that were in place since the end of the transition period. If checks cannot be done at the border, goods may be sent to an 'Inland Border Facility' away from the point of arrival itself.	**Impact:** These requirements create significant new administrative costs for importers and exporters, to ensure that the correct paperwork has been completed prior to departure/arrival. This has coincided with long queues emerging at the ports of Calais and Dover since the start of the year, sometimes extending for over 10km. Data shows that the Dover Access Traffic Protocol, used for managing overspill from long queues of lorries, has been used significantly more in January and February 2022 than in any other comparable period. The extent to which new customs requirements are responsible for this is disputed. The Port of Dover says new customs checks are 'not the sole reason' for queues, noting	**Timeline/region:** New requirements in place since 1 January 2022, with more to come in July 2022, and EU Entry/Exit system in September 2022.

	Exporters also have to present goods to customs officers and provide export declarations to HMRC, and there is a potential that physical checks may also be required at an Inland Border Facility or at the point of export. Lorries taking goods from Great Britain into the EU have to register with and go through a new Goods Vehicle Movement Service (GVMS) at a UK port, rather than being able to complete the paperwork later. Full rules of origin requirements also came into effect, as covered in the last edition of the tracker.	that up to a quarter of its fleet was out for re-fitting in January. Yet at the same time, the BBC reports that it takes each lorry approximately fifteen minutes to move through the GVMS before leaving the UK, which will undoubtedly be a major contributing factor. Indeed, the Port of Dover acknowledges that the time taken to pass through customs control checks has increased, with its assessment being it now takes twice as long as before (now 5-6 minutes). Delays aside, many exporters are also falling foul of the new declaration requirements. 30% of lorries at Calais were reportedly turned away in the first week following the introduction of the new checks, with the rate then stabilising at around 10%. The British Chambers of Commerce (BCC) reports that the new paperwork is proving ‘costly and time consuming’ for businesses, adding to existing problems they are facing with the new trade barriers put in place by the TCA. 60% of BCC members say shipping goods to the EU has become more difficult, with the BCC stating: ‘many of these companies have neither the time, staff or money to deal with the additional paperwork and rising costs involved with EU	

		trade, nor can they afford to set up a new base in Europe or pay for intermediaries to represent them'. It is possible that processes will become smoother over time, although there are other processes to be introduced which could create further obstacles for importers and exporters. In July 2022, full safety and security declarations will be required for all imports to the UK, there will be new export health certificatory requirements, and new certificatory requirements and checks for imports of live animals and products of animal and plant origin. Then, in September 2022, the EU will introduce a new 'Entry/Exit' IT system for registering travellers from non-EU countries, which could add to delays at UK ports while lorry drivers are scanned through. The Public Accounts Committee noted all of these factors in its assessment that 'new border arrangements have added costs to business'. It added that government plans to create 'the most effective border in the world' by 2025 are 'optimistic, given where things stand today and we are not convinced that it is underpinned by a detailed plan to deliver.'	

14. Trade & Customs **ACTIVE DIVERGENCE** *UK-New Zealand Free Trade Agreement.*	**Summary:** The UK and New Zealand signed a free trade agreement (FTA) on 28 February 2022. It is the second FTA the UK has negotiated from scratch outside the EU, following the December 2021 agreement with Australia. Once in force (the deal is first subject to scrutiny by Parliament), there will be zero tariffs on all UK exports to New Zealand, and on 99.5% of exports from New Zealand to the UK. Exceptions to this are for 'sensitive agricultural products' of beef, sheep meat, cheese, butter and apples from New Zealand, all of which will have tariffs phased out over periods ranging from 3-15 years. The deal covers a range of other areas beyond tariffs. On services, it includes an annex encouraging regulators to establish new 'routes to recognition' for professional qualifications, allowing professionals in the UK and New Zealand to work more easily in each other's territories. There are also new non-discrimination rules around financial services, guarantees of practice for lawyers, and a commitment to a 'mobility dialogue' on extending and improving existing agreements for youth workers.	**Impact:** The deal is expected to have a very limited overall impact on the UK economy. The government's own assessment is that it will increase UK GDP by 0.03%, with a positive effect across all countries and regions of the UK. The largest expected increases are in manufacturing sectors (motor vehicles, machinery, transport equipment and textiles) but it is expected to have a negative impact on agriculture, forestry and fishing, and semi-processed foods. Trade bodies including the British Chambers of Commerce and Federation of Small Businesses have welcomed the opportunities the deal provides to increase trade in both goods and services. Some of the most prominent criticism has come from the National Farmers' Union, which says 'sensitive sectors like beef and lamb, dairy and horticulture' will be exposed to unfair competition against New Zealand farmers who face lower costs to production and are already highly export-oriented in their practices. The Welsh government and Scottish Farmers have also expressed their concern about the impacts of the FTA for Welsh producers of meat.	**Timeline/region:** The agreement applies to the UK as a whole and is subject to at least three months of scrutiny in Parliament before it can be ratified.

	On the environment, there are commitments to promoting sustainable agriculture, and eliminating fossil fuel and fisheries subsidies.		
15. Digital & Data **PASSIVE DIVERGENCE** *Proposals outlined for EU Data Act, which will impose new regulations on who can access industrial data.*	**Summary:** In February 2022 the EU published its proposals for a new Data Act which will impose new regulations on how industrial data is used and accessed. The rationale is to better utilise the 'untapped potential' of industrial data (generated by users of smart devices such as smart watches and home appliances and connected cars), 80% of which the EU says is never used. At present, many contracts state that the generated data is owned exclusively by the manufacturer of the product. The Data Act proposals include allowing users of smart or 'connected' devices to access the data their devices generate, and to share it with third parties who can use it to provide 'aftermarket' services (for instance predictive maintenance or additional services). Safeguards will also be implemented to protect against unlawful data transfers by private companies, and to allow customers to switch without costs between providers of cloud-based data services.	**Impact:** The new rules form part of the EU's wider strategy for digital sovereignty and challenging the concentration of power (in this case via the form of smart data ownership) in the hands of a few major companies. The Commission briefing makes explicit that the Act is a challenge to the 'few actors' which are able to make use to the data generated by users of smart devices. For example, at present, manufacturers of smart devices often have exclusive access to the data which their users generate on a device, which allows them to 'track the use of the object and offer repair and maintenance even before a problem occurs'. The EU argues that, by allowing users to share the data they generate with other 'aftermarket' service providers, other providers of repair and maintenance services will be able to compete on an 'equal footing' with the manufacturer, allowing them to generate a broader and higher quality range of services which renders them more	**Timeline/region:** The proposed Act is subject to change as it passes through the Parliament and Council.

	The Act also attempts to 'rebalance negotiation power for SMEs' by stopping the present practice whereby large companies are 'unilaterally' imposing 'unfair' contractual clauses which given them a monopoly on data sharing. The EU will impose a new 'unfairness test' to root out such clauses and provide (non-binding) model contractual terms to help SMEs negotiate better terms. There will also be means for the public sector to access private sector data needed in 'exceptional circumstances' such as floods and wildfires (with an obligation on business to provide the data), or to implement 'public interest' mandates where the data is 'not otherwise available' - the EU offers the example of using anonymised location data during the Covid-19 pandemic 'for analysing the correlation of mobility and the spread of the virus'. Businesses will be obliged to provide data in a public emergency for free, but may be compensated for data provided to aid the recovery from an emergency or to fulfil a 'public interest mandate'.	competitive. For users, this could mean more, better or cheaper aftermarket services becoming available. The EU also argues that the availability of this data will allow the users of smart products (be it factories, farms or construction companies) to better understand the functioning of their products and 'optimise operation cycles, production lines and supply chain management'. The rules around unfair contracts have been interpreted by some tech commentators as a direct response to complaints about how Amazon in particular uses third party data. The proposals have already faced repeated criticism from EU industrial sectors including car manufacturers. The Computer and Communications Industry Association tech lobby group argues the approach should be based on 'incentives rather than obligations' while the German engineering lobby VDMA says it poses a threat to freedom-of-contract guidelines. Indeed, Pieter Haeck in Politico has emphasised that it will be important to monitor how Germany in particular responds to the Act as it passes through the Council, due to its major car and engineering industries, which are strongly critical of the Act.	

		The EU claims the new rules 'are expected to create €270 billion of additional GDP by 2028.' It will be interesting to monitor whether this is realised, and also whether the UK government feels any impulse to follow the direction the EU has taken.	
16. Environment **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *New EU limits on presence of persistent organic pollutants in products.*	**Summary:** The EU has developed a proposal to amend Regulation (EU) 2019/1021, in order to reduce the permitted amount of persistent organic pollutants (POPs) in waste, and therefore limit the amount of them returning into the wider economy. The EU is considering action on POPs – also known as 'forever chemicals' – because they do not decompose for a very long time, during which they can harm humans and the environment. Specifically, the proposal would impose limits on the concentration of certain substances (including three new substances - PFOA, dicofol and pentachlorophenol) permitted in a compound. These concentration limits have implications for how waste is treated, in particular whether a product should be recycled, destroyed or transformed.	**Impact:** If realised, the updated regulation will apply to Northern Ireland under the terms of the Protocol, bringing with it new costs and practical challenges for Northern Irish waste management. The Commons European Scrutiny Committee has reported that the most significant costs are likely to derive from 'the diversion of wastes containing two POPs (HBCDD and dioxins and furans) from recycling and non-hazardous landfill to more specialist hazardous waste disposal facilities.' HBCDD is found in construction insulation foam and it is estimated by Defra – in a letter to the Lords Protocol on Ireland/Northern Ireland Sub-Committee - that the cost of diverting such foam is around £540,000 per year. There is also an expectation that separate collection will be required for ash from domestic burning of wood and coal, with 'a one-off initial cost of around £5.4 million and then annual	**Timeline/region:** The reform will apply to Northern Ireland under the terms of the Protocol. It is expected to be adopted by the European Parliament in May 2022, and will apply from six months thereafter.

		costs of between £160,000 and £636,000’. Defra’s assessment is also that more waste would need to be shipped from Northern Ireland to Great Britain due to the expected increased incineration requirements, and limited capacity for this in Northern Ireland. Commercial waste brokers are presumed to be the ones to undertake this. Added to this, the divergent standards could have implications for the UK Internal Market, as goods from Great Britain which do not meet new EU standards may not be permitted in Northern Ireland, although Defra assesses that this risk is minimal due to the ‘extremely low’ levels of trade in such goods, and the fact that the government is attempting to amend the terms of the Protocol regarding at-risk goods. More broadly, Defra says it broadly agrees with the new EU approach to POPs but will need to consider the evidence – namely the outcome of a meeting of the Stockholm Convention in June – before determining what action to take domestically.	

17. FOOD STANDARDS PASSIVE DIVERGENCE INTERNAL IMPACT *EU bans food additive titanium dioxide (E171).*	**Summary:** The EU will ban the food additive titanium dioxide (E171) – which serves as a whitening agent – from mid-2022, following a six moth phase-out period. The European Food Safety Authority recommended a ban as the particles accumulate in low quantities in the body after ingestion, and it could not definitively rule out concerns about potential 'genotoxicity' (meaning a substance is capable of damaging the DNA in cells). France had already banned E171 in 2020. The UK has decided not to ban E171, after a review by the Food Standards Agency did not identify any safety concerns. That decision applies to England and Wales, and Food Standards Scotland also drew the same conclusion.	**Impact:** The E171 decision may seem of limited significance in isolation, but it reflects differences in regulatory approach which may have greater consequences over time. The EU decision to ban is based on the precautionary principle (not being able to rule out potential DNA damage) whereas the British decisions not to are based on the absence of any evidence of damage. The E171 case is thus unlikely to be an isolated incident of divergence over food standards. The fact that the EU ban applies to Northern Ireland could have implications for trade on the UK internal market. For example, GB suppliers to Northern Irish supermarkets will presumably no longer be permitted to supply goods containing E171. Suppliers could choose to siphon off a section of goods as Northern Ireland-compliant, which would create new processes and bureaucracy; or opt to wholesale comply with the EU ban. However, if EU food regulations diverge increasingly from GB's over time, the continued adherence to new EU rules may prove an increasingly impractical approach. The Financial Times' Peter Foster reports that businesses are concerned that these processes are going to get harder and harder to manage over time.	**Timeline/region:** The EU ban applies from mid-2022, including in Northern Ireland.

		Foster also points to the UK's emergency authorisation in February 2022 of the pesticide neonicotinoid to treat sugar beet crops. Foster says it remains unclear whether GB goods with potentially 'higher neonicotinoid residue levels than are allowable in the EU' will be able to be sold in Northern Ireland.	
18. HUMAN RIGHTS / ENVIRONMENT **PASSIVE DIVERGENCE** *EU draft Directive on Corporate Sustainability Due Diligence, imposing new environmental and human rights obligations on company supply chains.*	**Summary:** In February 2022 the EU published its draft Directive on Corporate Sustainability Due Diligence. Under the Directive, a new 'corporate due diligence duty' will require companies to examine their supply chains to 'identify and, where necessary, prevent, end or mitigate adverse impacts of their activities' on human rights and the environment. This includes taking appropriate measures to ensure the effective protection of human rights and ensuring 'safe and healthy working conditions'. They will also have to establish a complaints procedure, publicly comment on due diligence and monitor the effectiveness of their procedures – including a requirement to assess supply chains at least once a year as well as before major business decisions or starting new activities. 'Group 1' companies (see below) will also	**Impact:** The Directive was developed in the context of widespread concerns about practices in EU-based supply chains. For example, MEPs raised concerns over the use of forced labour in Xinjiang, and media attention has been paid to ongoing litigation alleging a lack of due diligence from the French oil company TotalEnergies regarding its drilling activity in Uganda, which led to major human rights and environmental breaches. Indeed, several EU member states have already developed their own laws around mandatory due diligence. The impact of the Directive will, however, be limited by the employee and turnover requirements, which mean it is estimated to apply to only 13,000 companies (1% of the EU total). The European Commission argues that SMEs 'might be indirectly affected by the new rules as a result of the effect	**Timeline/region:** The final form of the Directive is subject to scrutiny in the EU institutions.

need to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C.

The rules will apply to (Group 1) all EU limited liability companies with over 500 employees and net turnover worldwide of over €150m; and (Group 2) companies in 'high impact' industries with 250+ employees and annual worldwide turnover over €40m. It will also apply to non-EU companies meeting Group 1 or 2 criteria, if the turnover they generate within the EU is above the given thresholds.

'Public' enforcement of the rules will be via fines, to be developed and imposed by individual EU member states. A separate 'private' enforcement mechanism exists in terms of 'civil liability provisions' allowing injured parties to seek damages from companies in court. However, EU companies will be exempt from these if they can prove that their business partners assured them they would comply with the EU company's code of conduct. Company directors will also have to meet 'directors' duties' related to ensuring that the correct due diligence provisions are put in place, with potential consequences for their bonus payments.

of large companies' actions across their value chains', and a similar French regime has led to around 80% of companies having to implement at least some of the measures because they supply larger companies.

Gwamaka Kifukwe, of the European Council on Foreign Relations, suggests that a key purpose of the EU's policy is to 'promote its values in the world', allowing the EU to shape the business practices of the world's largest multinationals, who will want to maintain access to the EU's market despite the short-term costs associated with developing the new mandatory structures. Moreover, it is likely to have a shaping effect on trading relations with third countries.

Given the limited number of companies affected by the regulation, it will not have a major effect on UK trade with the EU. It does, however, serve as an example of the EU attempting to shape global human rights and environmental standards. The UK made similar moves in this area last year, when the government announced a review into what products can be exported to Xinjiang, financial penalties for companies which fail to comply with the Modern Slavery Act, and measures to ensure public bodies 'exclude

		businesses complicit in human rights violations from their supply chains'.	
19. MEDICINES & PHARMA **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *EU Directive allowing continued supply of medicines from Great Britain to Northern Ireland, Ireland, Cyprus and Malta.*	**Summary:** The European Council has agreed a mandate for a proposed Directive to allow for the continued supply of medicines from Great Britain to Northern Ireland. In addition, it will allow the UK to supply medicine products to Ireland, Malta and Cyprus for a three-year 'transitional period'. In practice, this means that medicines made available on the Great Britain market will at the same time be available in Northern Ireland, Ireland, Malta and Cyprus. The proposal was first presented by the EU in December 2021, as a response to the situation under the Northern Ireland Protocol whereby Northern Ireland remains subject to EU regulations on pharmaceutical products, while the rest of the UK does not. As a consequence, medicines from Great Britain (from where Northern Ireland gets most of its supply) were to be subject to additional certification and testing, following a 12-month grace period which was then apparently extended indefinitely. The new EU Directive effectively removes this requirement.	**Impact:** The Directive allays a major concern within the Northern Irish medicines industry. The British Generic Manufacturers Association had previously warned that its companies had put over 2,000 medicines on notice for withdrawal from Northern Ireland, in anticipation of the new requirements on labelling and testing. The EU had earlier proposed that the new checks and approvals could be done in Great Britain (addressing the cost for suppliers of moving regulatory procedures into Northern Ireland), which the UK rejected on the grounds of their continued complexity, instead arguing for the wholesale removal of medicines from the NI Protocol. The EU's Directive is thus also significant, as Politico notes, as 'one of very few areas where there has been convergence between the U.K. and EU negotiating sides regarding the functioning of the Northern Ireland protocol' – although the UK government is yet to say whether it regards it as a satisfactory solution.	**Timeline/region:** The Directive is first subject to scrutiny in the European Parliament.

20. Medicines & Pharma PASSIVE DIVERGENCE INTERNAL IMPACT *New EU pharmacovigilance requirements for authorising medical products.*	**Summary:** In late January the EU updated its regulations on 'pharmacovigilance' for veterinary medicines. Pharmacovigilance is 'the science and activities relating to the detection, assessment, understanding and prevention of adverse effects or any other medicine-related problem.' Previously, companies authorised to market a medicine had to complete what are known as periodic safety update reports (PSURs) – which provide an evaluation of the risk-benefit balance of a product at a defined point in time after it has been authorised. However, the EU (and Northern Ireland, which is covered by the legislation) is moving onto a new system known more reliant on what is known as 'signal management', which requires moving onto a new management system. However, PSURs will still be required for products in Great Britain (GB), creating what is known as an 'airgap' whereby industry will have to comply with different GB and EU processes in parallel, if engaged with both markets. Moreover, Northern Irish industry is expected by the UK government to continue reporting adverse events via existing British processes.	**Impact:** The EU changes are described by the UK government as 'significant', and involve relatively complex new processes which EU companies must adapt to when obtaining market authorisations for medical products. There is no clear, set checklist of processes which need to be undertaken. The result is that Northern Irish companies – which are covered by the legislation - need to adapt to the new EU system while also being expected to comply with existing GB systems, creating new administrative costs. The same costs apply to any companies operating in both GB and Northern Ireland or EU markets. The veterinary medicine sector is relatively small (5% of the size of the human sector), and smaller businesses often face greater disruption in adapting to new bureaucratic requirements. The changes could pose some risk to the UK internal market, if Northern Irish business is disadvantaged compared to the rest of the UK by having to deal with two sets of processes. The full scale of the impact and what the future might hold remains unclear. The UK Veterinary Medicines Directorate	**Timeline/region:** New EU legislation is in force as of 28 January 2022 and applies to Northern Ireland.

	The airgap will exist until the UK government makes any amendments to GB regulations – a consultation is expected in 2022.	notes that it played an 'active role' in developing the initial EU regulation 'and therefore agree with much of its content' and has said it is 'probable' that it will update its systems in response to the EU's change. This suggests the airgap could be bridged in future (at least to an extent), but only after GB regulations have been reviewed and undergone a formal public consultation.	
21. Road Transport PASSIVE DIVERGENCE INTERNAL IMPACT *Revised EU vehicle safety standards.*	**Summary:** From 6 July the EU and Northern Ireland (under the terms of the Protocol) will apply new rules stipulating that the 'frontal' crash protection must not disadvantage women and older people. This means airbags and seatbelts must be designed to protect men and women equally, in response to the bias towards male physiology in safety design and testing. Women tend to sit further forward than men when driving, and crash testing is normally carried out on dummies representing average and larger males, with the only 'female' dummy representing a much smaller than average women (47kg, 1.51m). The author Caroline Criado Perez notes that women are thus 17% more likely to die and 47% more likely to be seriously injured in a car crash.	**Impact:** The revised EU Directive imposes 15 new regulations in all. They are expected to increase the overall cost of cars in the EU, and so the UK could be argued to be gaining an advantage by not implementing the new rules and thus avoiding higher prices. However, the associated cost is that UK vehicles will not have the latest safety technology, likely leading to a greater number of road injuries and deaths. The Parliamentary Advisory Council for Transport Safety (PACTS) reports that it is estimated that the new EU regulations would prevent 1,762 deaths and over 15,000 serious injuries by 2037. It also notes that the reforms have the wide support of 'safety stakeholders and the UK automotive industry' and would	**Timeline/region:** New rules around crash testing introduced in the EU and Northern Ireland from 6 July 2022. Further measures commence in 2024 and 2026.

	England, Wales and Scotland have so far not developed plans to introduce similar legislation, despite the Department for Transport having previously been involved in drawing up a suite of new safety measures including around frontal protection. The Department for Transport said: 'The UK's departure from the EU provides us with the platform to capitalise on our regulatory freedoms. We're currently considering the vehicle safety provisions included in the EU's General Safety Regulation and will implement requirements that are appropriate for Great Britain and improve road safety.' The testing rule is one of 15 new vehicle safety standards being introduced by the EU as part of the revised General Safety Regulation. A range of other measures will also be introduced in the EU and Northern Ireland in July 2022, with others commencing in 2024 or 2026.	entail minimal costs to taxpayers and consumers 'because the measures will be fitted as standard'. Many UK manufacturers may choose to follow the new EU rules nonetheless, as this will be necessary to sell into the EU market (including Northern Ireland). The EU is by far the largest export market for UK car exports, and there is little desire within the industry to manufacture to different specifications for the UK market compared to the EU one. PACTS also notes that divergence from EU rules could affect the future competitiveness of the UK car industry as many of the 'technologies and systems' entailed by the new EU rules 'will be essential to progress connected and autonomous vehicles'. Part of the rationale for the EU's new regulations is to gain a competitive advantage in this sector through being at the cutting-edge of safety technology.	
22. State aid & subsidies PASSIVE DIVERGENCE	**Summary:** The European Commission has unveiled its 'Chips Act', designed to ensure the EU has a secure supply of microchips (or 'semiconductors') – which are used in a vast range of technologies (from transport, to home appliances and medical devices). The policy comes in response to the	**Impact:** This is a notable tweak of the EU state aid regime, permitting state subsidies for the development of microchips due to the 'extremely high barriers to entry and the capital intensity of the sector'. It is part of a wider plan for 'digital sovereignty' – being able to act more	**Timeline/region:** The proposal now needs to pass through the EU Parliament and

EU unveils plans for 'Chips Act' to boost EU manufacturing of microchips.	global slowdown in the production of chips – which are vital for a range of manufactured goods - during the Covid-19 pandemic. For example, overall production in the EU car sector fell by a third in 2021. The global microchip market is largely reliant on production from Asia. The aim of the act is to 'mobilise more than €43 billion of public and private investments and set measures to prevent, prepare, anticipate and swiftly respond to any future supply chains disruption', so that the EU can double its market share of chip production to 20% by 2023. Existing member state commitments cover the majority od spend (€30bn), with the rest covered through commitments from the public and private sector – including around €5bn from the EU budget. New regulations will also allow the granting of fast-track permits for the construction of new facilities for the design and production of chips in the EU. These facilities must be 'first of their kind' and the operator should be committed to continued investment in the EU semiconductor sector. Member states may also offer financial subsidies for the development of such facilities. This will not be considered in	independently in the digital world. The direct impact on the UK is limited, although in theory a greater supply of chips in the EU market might make the UK less reliant on Asian manufacturers, aiding overall security of supply. However, the Act is more notable for the UK as a comparator of its own subsidy policy. UK rhetoric notwithstanding, the EU has moved before the UK to facilitate investment in a crucial part of the digital technology market. In so doing, it is following the path of China, Taiwan, South Korea and the US, although it remains to be seen both how quickly the EU is able to approve any new subsidies, and whether smaller EU states with less manufacturing capacity feel discriminated against – EU attempts to develop an industrial policy at this pace have little precedent. The UK may argue it prefers not to follow such an expensive strategy – funded largely by member states themselves – in a sector which a handful of Asian states have come to dominate through decades of investment and the capacity to grant bigger subsidies. The Act may therefore prove to be an example of the UK being free of Brussels rules which do not serve its interests. However, UK industry has expressed	Council, including approval from individual member states, prior to adoption.

	breach of state aid rules, if the funds are deemed to help 'reach security of supply in the Union' and also meet other necessity and proportionality requirements.	some disquiet about falling behind the EU, with the UK-based firm PragmatIC Semiconductor stating 'the EU is not afraid to make significant investments in semiconductor manufacturing within its region, whereas in the UK there seems to be a reluctance to 'back winners' from our home shores.' The EU also argues it needs to invest now to get a foothold in an industry which will play a vital role in emerging markets such as driverless cars. Yet the UK may be a less attractive destination for investment in chips irrespective of its new state aid regime, simply by being outside the Single Market. In October 2021, Intel's Chief Executive said it was seeking to invest £70bn in opening or upgrading semiconductor plants in Europe over the next decade, but that it would not be considering the UK in the post-Brexit context. The EU offers a larger and more integrated market for investment (the purchase of the UK chip designer Arm by US firm Invidia recently collapsed due to regulatory hurdles), which puts the UK at a competitive disadvantage when introducing any major new state subsidies designed to boost industry and investment. Moreover, the UK alone will most likely mot be able to match the scale of wider investment planned by the EU (€43	

		billion, which is similar to the amount generated by the US Chips Act) when looking to kick-start set-piece subsidy projects.	
23. TAXATION **PASIVE DIVERGENCE** **INTERNAL IMPACT** *EU Proposal to modify structure of excise duties under its Energy Taxation Directive.*	**Summary:** As part of its 'Fit for 55' package to meet its targets for net zero, the EU has developed a proposal to amend its Energy Taxation Directive. This would make significant changes to EU energy taxation, with heavier taxes on fossil fuels than renewables, new minimum rates on duties with an automatic annual uplift to account for inflation, and fewer exemptions. If approved, the amended directive would apply in Northern Ireland under the terms of the Protocol, meaning that the structure of fuel and energy taxation in Northern Ireland would diverge from the rest of the UK.	**Impact:** The House of Commons EU Scrutiny Committee concludes that the new Directive could mean higher taxes on certain kinds of fuel and electricity in Northern Ireland, if UK rates fall below the EU's new minimum threshold. This is made more likely by the fact that EU rates will be automatically adjusted for inflation each year, unlike in Britain. In addition, the Committee notes that certain fuel duty reliefs which the UK currently offers will no longer be permissible in Northern Ireland under the reformed Directive, risking further divergence. There is precedent for the UK government aligning with increased EU duty rates – for example an increase on aviation gasoline in January 2021, to ensure 'consistency across the United Kingdom' – but the reformed Directive could entail more widespread and repeated instances, which the UK government may be less inclined to continually adhere to. It has told the Committee that - although it is too early to draw a final conclusion – in its assessment the UK's	**Timeline/region:** The proposal is still under consideration by member states and requires unanimous approval. There is no projected date for adoption, although 2022 or 2023 seems most likely.

		rates would largely adhere to minimum standards in the draft Directive, although 'some energy products' such as gasoline and kerosene used in aviation and heavy oil used in the maritime industry may fall below the EU's minimum rates. No indication has been given of what the policy response would be but the government has pointed to its July 2021 Command Paper, where it argued for 'a more flexible settlement… with greater freedom to set VAT and excise rates and structures in Northern Ireland'. Any divergence in fuel duties could re-animate this discussion and/or exacerbate the wider political tensions around the Protocol. Should divergence occur, the Committee notes that 'Northern Irish businesses could be placed at a competitive disadvantage within the UK's internal market if their energy taxes had to be increased or altered because of EU law, but there are no equivalent rate rises or tax changes in the rest of the UK. They could then face higher energy input costs than their counterparts in England, Scotland and Wales'. Divergent duties could also alter fuel consumption patterns in Northern Ireland and Ireland compared to Great Britain,	

		which may affect cross-border trade or increase the chances of smuggling. In its conclusions, the Committee also notes that the EU 'is preparing further amendments to excise duty rules in relation to alcohol and tobacco products, which may raise similar issues in the context of the Northern Ireland Protocol'. The last divergence tracker highlighted the potential impact of new UK alcohol duty rates on Northern Ireland.	
24. Trade & Customs **PASSIVE DIVERGENCE** *EU proposes Anti-Coercion Instrument to give it new powers to apply trade restrictions on states*	**Summary:** The EU has developed a proposal for a new 'Anti-Coercion Instrument'. Its main function is to give the EU powers to 'apply trade, investment or other restrictions towards any non-EU country unduly interfering in the policy choices of the EU or its Member States.' The underlying purpose is to allow the EU to deter the use of economic coercion against it. Economic coercion is defined as 'a situation where a third country is seeking to pressure the Union or a Member State into making a particular choice by applying, or threatening to apply, measures affecting trade or investment.'	**Impact:** In theory this could be a notable enhancement of the EU's powers to take economic action against third countries. However, questions remain over what exactly is within scope (for example: defining coercion to include 'measures affecting trade or investment' implies that the EU could use its new measures in response to behaviours which damage markets of value to it, even if no action is taken directly against the EU or a member state). There are also questions about how far the EU will be willing to use the new measures. The EU says it wants them to act primarily as a deterrent, implying the threshold for action will be high (perhaps, for example, Russian action to distort	**Timeline/region:** The proposal now needs to pass through the EU Parliament and Council prior to adoption.

interfering with its policy choices.	Examples of such coercion include a country introducing discriminatory duties, refusing authorisations or imposing border checks selectively against the EU, to try and shape its decision-making. The EU says the measures have been developed in response to 'recent rising geopolitical tensions, weakened international cooperation and increasingly weaponised trade and investment'. Whether coercion is deemed to be taking place will be determined on a case-by-case basis. The first step following a 'determination' of coercion would be negotiations with the country, with countermeasures being used as a 'last resort'.	energy markets, or in response to Chinese export blocks on Lithuania over its newly-opened de facto embassy in Taiwan). As a third country, the UK is within scope to have anti-coercion measures applied to it by the EU. However, the TCA and other agreements provide a pre-existing architecture for managing trade disputes with the UK. China, Russia, Turkey – and even the US – seem more likely focal points of the policy. Perhaps the most significant impact for the UK is what the Chips Act reveals about EU plans for 'strategic autonomy'. Chatham House has argued that, as part of developing a new foreign policy, the UK needs to take EU ideas about strategic autonomy seriously - to understand the nature of its ambitions and where relations can intertwine. The Anti-Coercion Instrument is therefore an important point of reflection for the UK: emphasising the growing extent to which the EU appears willing to equip itself with new powers in the face of global trade threats.	

25. Devolution PROCEDURAL DIVERGENCE INTERNAL IMPACT *Joint review of intergovernmental relations develops new three-tier structure for engagement between the four UK governments.*	**Summary:** In January 2022 the conclusions of the review of intergovernmental relations (IGR) were published – jointly undertaken by the UK and devolved governments. The purpose of the review is 'to update intergovernmental structures and ways of working'. To respond to the loss of the EU framework, the UK government has been negotiating 'common frameworks' for governing policy areas where competence was returned from the EU and then upped the ante with the passage of the Internal Market Act against the opposition of the devolved governments – those disputes intensified the urgency of the review. The House of Commons Public Administration and Constitutional Affairs Committee noted a 'growing consensus that the current UK inter-governmental relations mechanisms are not fit for purpose' A key outcome of the review is that the Joint Ministerial Committee, which has been the forum for the meeting of the leaders of the four nations since 2018, is to be replaced by a three-tier system. In ascending order, these cover: • 'Portfolio engagement' via inter-ministerial groups, with rotating chairs.	**Impact:** Professors McEwen and Wincott both conclude that the review could have a potentially transformative impact on relations between Westminster and the devolved administrations. In the context of growing internal divergence resulting from Brexit, this is a potentially vital development in managing the new procedures and potential disagreements. One development is parity in decision-making. Joint decisions will be made by consensus and the secretariat will also oversee a dispute resolution process which increases transparency and empowers devolved governments to escalate formal disputes. McEwen notes: 'The days when the UK government could act as the accused, the judge and the jury appear to be over.' However, there are still concerns around transparency and accountability, particularly in terms of the powers of the devolved parliaments to scrutinise the new structures. The secretariat will publish an annual report but otherwise serve the Council, with no requirement to engagement any of the UK parliaments on its processes.	**Timeline/region:** Conclusions published January 2022.

- ‘Engagement on cross-cutting issues’ via an Interministerial Standing Committee, meeting monthly. (A parallel Finance: Interministerial Standing Committee will meet quarterly with its own secretariat.)
- A ‘Council’ for the heads of government, meeting annually, chaired by the Prime Minister.

Professor Nicola McEwen and Professor Dan Wincott have both emphasised the structural and linguistic changes in the review which deliver or imply greater equality between the four nations. The secretariat for the Interministerial Committee is accountable to the Council as a whole, rather than the UK government (although it will sit in the Cabinet Office). Westminster is also no longer given implied priority through reference to ‘the UK government and devolved administrations’, and the devolved governments are referred to as ‘governments’ rather than ‘administrations’.

The TCA and Northern Ireland Protocol continue to be managed between the UK and EU via the Partnership Council and joint committee, however the new interministerial groupings will serve as fora for engagement between

Structurally, the new system seems better suited to dampening inter-governmental disputes. The first ‘portfolio’ tier is a forum for resolving technical policy issues - at a working level which should avoid issues rapidly being politicised, with the middle ‘Interministerial’ tier then used for governments to engage on an equal footing and resolved any escalated disputes.

McEwen points out that these processes may not work so smoothly withing the Financial equivalent of the IMSC (known as the F:ISC), because it will continue to be run by Treasury rather than a forum of equals, with a separate dispute process whereby ‘policy decisions on funding are strictly reserved to Treasury ministers, with engagement with the devolved administrations as appropriate’, meaning more limited avenues for raising disputes. Given most previous inter-governmental disputes have been financial, this could be a major barrier to better relations.

Therefore, as Dan Wincott concludes, while the structures certainly offer significant possibility for greater engagement, tensions remain and much will depend upon the ability of politicians on all sides to overcome differences to make them work as effectively as possible. Professor

	Westminster and the Northern Ireland government on policy-specific areas.	Michael Kenny and Jack Sheldon also write that 'real respect' from politicians for the new structures will be vital for them to work well in practice.	
26. Product Standards PROCEDURAL DIVERGENCE *Unconfirmed reports that the Brexit Opportunities Minister is considering removing the requirement for products to obtain a UKCA authorisation by 1 January 2023.*	**Summary:** It was reported in February 2022 that the new Brexit Opportunities Minister, Jacob Rees-Mogg, wants to end the requirement for companies to get products approved with the new 'UKCA' manufacturing standard mark, if they have already obtained the EU's equivalent 'CE' mark. However, the government quickly responded by saying that its position on CE marks had not changed. As reported in the first divergence tracker, the UKCA mark denotes virtually the same standards as the EU's CE mark (which British assessors can no longer provide, hence the development of a new, equivalent UKCA mark). However, the process of getting a product re-authorised with a UKCA mark is creating significant costs for business and there are widespread concerns that many products will not have received UKCA authorisation before the 1 January 2023 deadline, when it will be required for trade on the British market.	**Impact:** The suggestion that Rees-Mogg is reconsidering the UKCA requirement aligns with wider comments he has made since taking on the Brexit opportunities brief. He has praised a recent Institute for Economic Affairs report which advocated unilateral recognition of EU rules and the CE mark, stating 'anyone who believes in free trade will welcome this' and that 'non-tariff barriers are the delight of protectionists and should be removed wherever possible.' He also told the Times that 'in my view there's no point in us repeating things that other organisations and countries do to a perfectly competent standard. If a widget is a good and effective widget, why do we need to put the cost on companies of testing it twice?... doubling up on regulation is a non-tariff barrier. And it will be very bad for the UK because people will simply say, well, we're not going to bother with that market.' Rees-Mogg's comments suggested that he might also be prepared to look at other areas where the UK is replicating	**Timeline/region:** The potential changes remain just rumours for the time being. CE goods will continue to be accepted in Northern Ireland due to the terms of the Protocol.

	The reform would mean CE marked goods from the EU would be accepted in perpetuity in Great Britain. And British CE-marked products would not need to be reauthorised with a UKCA mark. However, British UKCA-marked goods would still not be accepted in the EU without a CE mark.	EU systems and standards after Brexit – for instance the development of an equivalent REACH regime for chemicals regulation, which has also been beset by early administrative difficulties. The car industry, while recognising that Rees-Mogg's comments do not amount to government policy, has reacted positively to his words, and there have been wider murmurings from the chemical industry that the government may be 'getting the message' about the challenges related to implementing UK REACH. Any changes would, however, in the words of one industry figure 'drive a coach and horses' through three years of government policy which business has been working towards.	
27. Trade & Customs PROCEDURAL DIVERGENCE *Plans to develop digital export health certificates for*	**Summary:** The government's 'Benefits of Brexit' document states in the 'Backing our Businesses' section that 'technical work is underway on the delivery of e-certification for export health certificates. We are in discussions with our EU partners on trialling digital Export Health Certificates this year.' As a result of Brexit, Export Health Certificates are now required to move live animals and animal products from	**Impact:** The government lists this as a benefit of Brexit but in practice is simply making a piece of Brexit related paperwork, which has imposed substantial additional costs on exporters, a bit less painful. Moreover, there is as yet no clear indication of when this will happen or how it will be delivered (and whether it will also help importers as well as exporters). Nor does there appear to be any consideration of digitising certificates for trade with the rest of the world.	**Timeline/region:** Technical examination of the possibilities is underway, with the UK government suggesting trials

trade between Great Britain and Northern Ireland and Great Britain and the EU.	Great Britain to Northern Ireland or EU countries, by confirming that exports meet the health requirements of the destination country. The purpose of this reform is to speed up processes at the border, as digital health certificates reduce 'unnecessary paperwork'.	Shane Brennan, chief executive of the Cold Chain Federation said: 'Stuff like saying they will at some undefined point in the future 'digitise export health certificates' as a Brexit divided is just trolling. The only reason we need the process and the expensive vet costs…etc is because of Brexit. Also they fail to admit that none of that will help UK based exporters to the EU because they are beholden to the rules that will be imposed on them by the market they are looking to export to.'	may begin this year. If delivered, they would be used on trade between Great Britain and both Northern Ireland and the EU.

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