UK IN A CHANGING EUROPE

UK-EU REGULATORY DIVERGENCE TRACKER

6th edition – January 2023

Introduction

This is the sixth edition of the UK in a Changing Europe's regulatory divergence tracker, covering developments since October 2022. There are six cases of active divergence (where the UK or some part of it changes its rules), 13 of passive divergence (where the EU changes its rules and the UK, or some part of it, does not follow), two of active alignment (where the UK and EU take the same regulatory steps in parallel), and five of delayed divergence (where either side postpones an upcoming case of divergence).

The UK has engaged in less active divergence over the past quarter. This is due in part to political instability, but also to Prime Minister Sunak's emphasis on calming the markets and projecting a wider sense of political stability. Though the Retained EU Law Bill started its parliamentary passage on the first day of Sunak's premiership, government sources now suggest it may not take full effect until 2026 rather than 2023, and the passage of the Northern Ireland Protocol Bill has been slowed too. There has also been talk of minimising regulatory barriers to trade with the EU, with some of the most disruptive upcoming cases of divergence quietly set back already. In one of his first acts as Business Secretary, Grant Shapps delayed by two years the deadline for using the new **UKCA mark**, arguing that it would 'remove barriers to businesses so they can get on with their top priorities'. The government has also postponed the introduction of new veterinary certification requirements for meat exports and delayed the registration deadlines for **chemicals** and **biocidal substances** under new UK regimes due – all due to regulatory capacity issues.

Nonetheless, the new administration has signalled its ambition to reform EU legislation, though in a more targeted manner than under Johnson. In his autumn statement speech, the Chancellor said that changes would be announced by the end of 2023 in 'five growth industries' – digital technology, life sciences, green industries, financial services and advanced manufacturing. An expert has been drafted in to lead on each policy area, and the first major announcement came in November, as the Treasury outlined its package of **'Edinburgh reforms' for financial services.** The plans entail some significant deregulation to try and enhance international investment in the City of London, though there is a long way to go before reforms take effect and any impact is felt.

Financial services appear likely to become a major area of regulatory competition between the UK and EU, with the EU announcing new requirements for a minimum level of **derivatives trades to be cleared within the EU,** likely reducing UK access to EU derivatives clearing markets in future. Meanwhile, the UK's new requirements around the disclosure of information on the **financial sustainability of investment products** go further than the EU's. This could potentially make it harder for asset managers to offer products in both the UK and EU, meaning they will need to make decide which market to prioritise – and which side stands to gain is uncertain. Meanwhile, the **UK's new subsidy regime**, which is much more hands-off than the EU's, may become a clear benefit of Brexit, not least by accelerating subsidy awards. However, the EU will doubtless assess whether it leads to distortive subsidies which break the TCA's level playing field provisions.

For the first time there are some cases of active alignment. Notably, the Westminster government has opted to align with **EU restrictions on a range of single-use plastics,** though the regulation is less comprehensive and has taken longer to develop than the EU's (and indeed Scotland's and Wales's). This may raise concerns about a comparative weakening of environmental standards outside the EU. Moreover, the **EU's signing of a data security framework with the US** should lead to free exchange of personal data between the US and EU and - because it remains aligned to EU data protection standards – the UK is able to effectively piggyback off this to sign its own agreement with the US. There is also loose alignment on digital regulation, where UK legislation on **online safety** and **cyber resilience** resembles the EU's, though it is notable that the UK has legislated more slowly than the EU.

The Northern Ireland Protocol also remains an area of significant tension, particularly with regards to health matters. The EU has extended the grace periods around the supply of **veterinary medicines** from Great Britain to Northern Ireland, offsetting one major potential flashpoint. Another critical case is the EU's updated safety standards around **substances of human origin** (i.e. the use of human blood, tissue and cells in medical procedures) which applies in Northern Ireland, meaning that, should the rest of the UK not adhere to it, the Northern Irish health sector will lose access to vital human blood supplies from Great Britain. New **EU duties on e-cigarettes** also apply in Northern Ireland, making them more expensive and likely increasing the number of people who take up tobacco smoking. The UK government might consider this an unacceptable health implication given its firm view that e-cigarettes are far less harmful than tobacco, which could lead to it refusing to apply the duties.

There is potential for further tension over the extent of the application in Northern Ireland of the **EU's upcoming Carbon Border Adjustment Mechanism**, which has now been provisionally agreed. The EU could also seek to apply its new **'Geographical Indication' protections for craft and industrial products** (for example types of ceramics, metal and clothing material) to Northern Ireland via Article 13(4) the Protocol, but this would be subject to UK approval at the Joint Committee. As the Article has never been used before, it will be an interesting test case of its function. Beyond this are a further suite of EU measures (on **wastewater management**, **F-gases**, **plastic packaging**, and **energy requirements in the ICT sector**) which all impact Northern Ireland and thus create divergence with the rest of the UK, which could lead to barriers to trade, reduced access to certain goods, or competitive distortions.

In the cases of single-use plastic packaging, F-gases, and substances of human origin, the Scottish and/or Welsh governments could opt to align with EU standards. Moreover, the UK government will seek the Scottish government's approval to apply a bill around digitised trade documents to Scotland, despite it falling under devolved competence. Divergence thus continues to throw up big tests for the post-Brexit devolution settlement.

Joël Reland, 30 January 2023

Issue	Source & status	Implications & impact	Timeline & region
1. Digital & data **ACTIVE DIVERGENCE** *UK Online Safety Bill.*	**Summary:** The UK government brought its Online Safety Bill back to Parliament in November 2022, with one of its most politically controversial elements removed. The Bill no longer requires tech companies to monitor for and remove 'legal but harmful' content, such as that which promotes acts of self-harm. Many MPs saw this measure as a threat to free speech, giving companies the power to monitor and remove users' content even when they have not broken any laws, and potentially leading them to 'over remove' legitimate content. Meanwhile the tech industry opposed the idea of being made responsible for enforcing the measures – effectively making them arbiters of what forms of legal expression are permissible online – and creating the risk of different standards on different platforms. These concerns were exacerbated by the relatively vague definitions of 'legal but harmful' material provided by the government. Instead, the government proposes criminalising certain types of content which the legal but harmful provision was	**Impact:** The EU has already introduced its own equivalent of the Online Safety Bill, known as the Digital Services Act (DSA). Both generally seek to impose greater obligations on tech companies to monitor and remove *illegal* content online, and the UK government's decision to remove the legal-but-harmful provision brings it closer to the EU which has not sought to impose general rules around legal but harmful content. However, the one exception to this is the EU's requirement for the very largest online platforms (reaching over 45m monthly users – like Facebook and Twitter) to take 'risk-based action' to mitigate against harmful content such as disinformation or election manipulation, cyber violence against women, or harms to minors online. Companies will have to carry out risk assessments to identify 'systemic risks' and act to mitigate these, and the regulation will be enforced through independent audits. The EU notes it 'must be carefully balanced against restrictions of freedom of expression' – though how this plays out in practice remains	**Timeline/region:** The Online Safety Bill awaits its report stage in the House of Commons. The EU's DMA rules start to apply from May 2023, with full obligations applying to the biggest tech companies from March 2024.

	designed to prevent, such as that which encourages self-harm; and the sharing of people's intimate images without their consent. The full scope of the Online Safety Bill was outlined in a previous divergence tracker, but its main effects are to create new definitions of what constitutes illegal behaviour online; and to impose greater responsibilities on tech companies to monitor for and prevent the proliferation of illegal content and behaviours on their platforms, with a particular emphasis on the protection of children.	to be seen. The UK, by contrast, has no such systemic assessment framework and instead enforcement relies upon the regulator Ofcom independently opening investigations. This nods to the fact that, while the general aims of the UK and EU regimes are similar, the biggest divergence appears in terms of how regulation is enforced, especially in relation to illegal content. The Heinrich Böll Foundation notes that, under the EU regime, online platforms will implement a 'notice and action procedure' where users can submit reports of illegal content, including a justification for doing so. Following common EU guidelines, the platform then checks the content against laws in the relevant member state (there are no EU-level rules on what constitutes illegal content) and if necessary, removes it. In contrast, the UK regime uses what has been called an 'upload filter' whereby content is actively checked by the platform as a user uploads it and, if necessary, removed. This reduces the risk of illegal content appearing on a site but gives greater discretion to tech companies to decide what constitutes illegal content in the first place, and what punishment to take against users. Unlike the EU regime, the UK has no redress rights for users	

		who think they have had their rights wrongfully or excessively restricted. As the Heinrich Böll Foundation summarises, these differences in approach raise questions for tech companies about how to deal with differing sets of legal responsibilities and monitoring obligations in the UK and EU. The UK requirement to pre-filter content, which is not permitted in the EU, means creating more separate, bespoke moderation systems for each regime, and also creates a likelihood of increasingly different user experiences on social media in the UK and EU. It is hard to predict how different users' experiences will be in the UK compared to the EU, but looking more broadly the UK could increasingly find that it is out of step with global norms for content moderation if, as the EU hopes, its 'notice and action' model becomes the international benchmark in the coming years. Indeed, the comparatively quick passing of the DSA compared to the online harms bill underlines that the UK has not been able to use its newfound regulatory autonomy to get ahead of the EU in this space.	

2. Financial Services **ACTIVE DIVERGENCE** *UK Financial Services and Markets Bill and the 'Edinburgh reforms'.*	**Summary:** In December 2022, the UK Chancellor Jeremy Hunt announced a package of reforms to the financial services sectors termed the 'Edinburgh reforms'. These proposals build on the Financial Services and Markets (FSM) Bill, which will repeal EU legislation as it relates to financial services with the aim of introducing reforms that are better tailored to the specific needs of the UK. Many of the 'Edinburgh reforms' set out by Hunt have already been identified within the FSM Bill. For example, the Bill introduces plans for UK regulators to focus more on competitiveness and growth, and the government has already made changes from other reviews such as Hill Listing Review which aims to make it easier for firms to raise capital in the UK. New announcements within the Edinburgh Reforms include plans to reform the division (or ringfence) between smaller banks and their investment banking activities. This was introduced in 2015 after the 2008 financial crisis with the aim for reducing risks and promoting the stability of banks. Hunt also committed to publishing an updated Green Finance	**Impact:** The Edinburgh Reforms and FSM signify an ambition to significantly change financial services regulation post-Brexit, with a particular emphasis on simplifying regulation to boost economic growth. Indeed, the UK's growth rate has fallen behind many G7 peers', and the Sunak government appears to see boosting the output of the financial services industry as a key means of catching up. The sector is seen as an important source of jobs and tax revenue across the UK - whilst 37% of the 1.08 million jobs in financial services at the start of 2022 were in London, there are significant clusters in a number of other cities, including Edinburgh, Bristol and Manchester. However, the announcements are unlikely to lead to much immediate change, as to a large degree they restate or build on plans which are already in process, and which will take some time to realise. For example, on ringfencing, the Edinburgh Reforms respond to the March 2022 review, led by Keith Skeoch, committing the government to consulting on the outcome of that review with a view to enacting changes later in 2023. On green finance, important questions remain about the benefits to businesses of developing UK specific	**Timeline/region:** Further details and timelines will become clearer as planned reviews are completed and translated into concrete regulatory and policy change.

	Strategy in 2023 and launching new consultations to foster innovation in digital finance in the UK.	regulation when climate finance is a fundamentally cross-border issue. The UK's approach reveals different internal priorities to the EU when it comes to financial services, opening up the potential for further regulatory divergence in future. For example, in contrast to the UK emphasis on growth, the EU's proposed reform to clearing markets (see entry #14) prioritises regulatory control over market openness by seeking to ensure that a greater degree of clearing by EU-based firms is done inside the EU, rather than in foreign markets over which the EU has no regulatory control.	

3. FINANCIAL SERVICES **ACTIVE DIVERGENCE** *UK Sustainability Disclosure Requirements and investment labels.*	**Summary:** In October 2022 the Financial Conduct Authority (FCA) outlined its proposals for 'Sustainability Disclosure Requirements' and 'investment labels', which were committed to in the government's 'Greening Finance' roadmap in October 2021. The purpose of these proposals is to prevent 'greenwashing' among firms which make exaggerated claims about the sustainability of products which they offer up for investment. The proposed 'investment labels' apply to products being offered for investment, and are designed to increase investors' confidence in their sustainability. These labels are not mandatory, but companies offering products for investment must prove that they meet certain criteria in order to obtain a label. Three types of label will be available: • 'Sustainable Focus' signifies assets that are sustainable; • 'Sustainable Improvers' signifies assets which may not be sustainable now but are aiming to improve over time;	**Impact:** The FCA argues that its proposals will increase trust and integrity in the environmental and social governance of the UK investment market. Financial markets worldwide, including the UK, are developing taxonomies to define what constitutes a sustainable investment - as part of wider strategies to reduce carbon emissions and reach net zero. Confidence in the quality of sustainability information available to investors is thus vital to the success of the UK's green finance agenda. Given this context, the EU is unsurprisingly developing its own Sustainable Finance Disclosure Regulation (SFDR), which the law DLA Piper describes as 'broadly equivalent'. However, it also picks out two important points of divergence – 1) the UK regime does not replicate the EU's 'do no significant harm' principle, and 2) the EU has been at pains to emphasise that it is not introducing a labelling regime. The EU's 'do no significant harm' principle sets out six environmental objectives which any new investment must not significantly harm. This is an EU-specific definition which is not replicated in the UK's regime, and could lead to some differences in what investments are considered sustainable.	**Timeline/ region:** The FCA proposals is out for consultation until January 2023, with the new labelling and disclosure requirements expected to be introduced between 2024 and 2025.

	• ‘Sustainable Impact’ signifies investment in solutions to problems affecting people or the planet. A separate recommendation is the introduction of Sustainability Disclosure Requirements (SDR), which will be mandatory. ‘Consumer facing disclosures’ will contain clear and easily accessible on key sustainability criteria for consumers seeking to make investments. There are also set of more detailed disclosures designed for wider industry, and the FCA will provide guidelines on exactly what information has to be included and how frequently it must be updated. Underpinning these two features is an ‘anti-greenwashing’ rule that applies to all FCA-regulated firms, making more explicit existing requirements that ‘sustainability-related claims must be clear, fair and not misleading’. This statement is intended to give the FCA greater powers to challenge inaccurate communication around sustainability.	This could in turn have an impact on the types of investment made in the UK and EU respectively. If it turns out that one side has less stringent safeguards in place, that location might increasingly become a centre for less sustainable investments. With regard to labelling, it is expected that qualifying for a label under the new UK regime will be a much more complex task than existing compliance processes, complicating life for the managers investment products. If they want the credibility afforded by a UK label, they may have to adjust their approach to product classification, meaning it may be harder to market a product in both the UK and EU simultaneously. Whom this stands to benefit is an open question. Some law firms see a risk that, if UK labelling requirements prove too prescriptive, it will stifle the development of newer, more innovative investment fund portfolios in the UK. Others, however, argue that the clarity provided by the UK labelling regime creates a confidence which will be of benefit to investors. Indeed, the EU SFDR has been criticised for a lack of ambition on sustainability, and the application of a UK sustainability label to an investment product could help it ‘stand out’ compared to EU-based ones.	

4. Science & Research **ACTIVE DIVERGENCE** *UK-Switzerland Memorandum of Understanding on science cooperation.*	**Summary:** In November 2022 the UK and Switzerland signed a Memorandum of Understanding (MoU) to deepen the relationship between their respective research and innovation sectors. The MoU outlines the principles of the relationship and specific forms of cooperation which will be undertaken, including coordinated or joint initiatives; workshops; exchange of information and documentation; mobility, visits and delegations; strategy and coordination meetings; and plans for an annual Ministerial-level Anglo Swiss Research Collaboration Council to oversee relations. So far, there have been no new funding commitments from either side. Reporting in the Financial Times suggests an early joint initiative could be the UK supporting a Swiss quantum research initiative which it is planning to launch this year, and a joint plan for finance and insurance in space activity.	**Impact:** The MoU must be understood in the context where the UK and Switzerland are both currently being refused association to the EU's Horizon Europe programme for research funding. The previous divergence tracker outlined that, despite the UK-EU TCA stating that the UK would continue to participate in Horizon, the EU has refused to finalise UK association as a non-EU member due to wider political tensions (over the Northern Ireland Protocol). Switzerland was excluded from Horizon Europe by the EU in June 2021 after long-running talks over a wider framework for the EU-Switzerland relationship fell apart. The UK Science Minister has said that 15% of top European professors have left the UK as result of the Horizon exclusion, and there is a clear need to maximise research opportunities outside of the Horizon framework. The government has committed to spending the £15bn of funding set aside for Horizon over seven years on other projects - including bilateral agreement. The Swiss MoU thus appears to be the start of such a shift to an 'alternative' strategy to Horizon (even if it is yet to lead to any new funding agreements). It remains to be seen what material	**Timeline/region:** The UK and Switzerland remain non-associated to Horizon unless and until an association agreement is made with the EU.

		differences the partnership leads to in terms of research cooperation. The exclusion of the UK and Switzerland from Horizon also has costs for the EU and other Horizon members, as their researchers have fewer opportunities to collaborate with peers from two of the most important countries for scientific research in Europe; and ultimately it leaves the whole field more fragmented.	

5. STATE AID & SUBSIDIES ACTIVE DIVERGENCE INTERNAL IMPACT *UK subsidy control regime.*	**Summary:** In October 2022 the UK government announced that the new UK subsidy control regime, which the UK was required to develop under the TCA, would come into force from 4 January 2023. The TCA stipulates broad principles to which the UK system has to adhere, which largely reflect the case law underlying the EU state aid regime, in order to ensure a 'level playing field' between the UK and EU. Consequently, the definition of a subsidy in the UK regime is similar to the EU's notion of state aid. For example, for financial assistance to qualify as a subsidy it must favour one enterprise over another (rather than applying to equally to the entire market) and be capable of having an effect on competition or investment within the UK, or UK trade with other countries. Alongside seven 'general' principles which largely mirror the EU's, there are nine additional principles on energy and the environment, which go further than required under the TCA. The TCA allows s the UK greater flexibility over the design of the system for granting subsidies and the UK is using this. Whereas under the EU regime subsidies must be formally approved by the European Commission, unless subject to an	**Impact:** The subsidy reform stands out as the one of the most significant cases of active divergence the UK has taken since Brexit, establishing a fundamentally different principle for subsidy approval compared to the EU. The biggest difference is the starting assumption that most subsidies can be self-assessed by the awarding body, rather than requiring independent approval, with the system relying on prompt judicial review to catch any unfair awards. This has potential benefits to the UK in terms of speeding up the awarding process and potentially making granting bodies more confident in their awards (through a lower burden of proof for the initial grant), though it creates a greater risk of unfair subsidies being awarded. Indeed, this may spark concerns on the EU side of significant competitive distortions arising from the UK's more permissive approach. It is worth noting that 90-95% of EU state aid awards are made using the 'block exemption' process where formal Commission approval is not required, and a similar proportion of UK subsidies could be subject to 'streamlined routes'. However, the minority of subsidies which require Commission approval tend to be the most significant, and equivalent awards in the UK will now be	**Timeline/region:** The new UK regime is now in force. EU state aid rules continue to apply to subsidy awards which may affect the trade in goods and electricity between Northern Ireland and the EU.

	exemption, under the UK regime the majority of subsidies will not require prior approval. The exceptions in the UK regime are for '<u>subsidies of particular interest</u>' (SOPI) – which must be referred to the new Subsidy Advice Unit (SAU) at the Competition and Markets Authority - and 'subsidies of interest' (SOI) – which the awarding body may choose to refer to the SAU. The government proposes that SOPIs be defined as subsidies with a value of more than £10m; of more than £5m in sensitive sectors; or which are for the 'restructuring' of an 'ailing or insolvent bank, other deposit taker or insurance company'. SOIs would cover all other subsidies of £5-10m which do not meet the SOPI threshold; and those which are for the purposes of rescuing a company or providing liquidity to an ailing or insolvent insurance company or despite taker. After accepting a referral, the SAU will have 30 working days to publish its report advising on the validity, though this will – unlike European Commission decisions in the EU regime – not be binding. The ultimate decision remains with the public authority granting the subsidy as to whether to proceed with doing so.	subject to much less thorough prior scrutiny, potentially creating an environment where UK-based subsidies become comparatively more generous and/or wide-reaching. The major caveat to all this is that we are yet to see how the UK system works in practice. We do not know whether public authorities will treat the new UK regime in good faith and grant fair subsidies (or indeed whether parties with a grievance are easily able to lodge them within the short 30-day window). On the flipside, the greater autonomy granted to public authorities to decide whether to grant a subsidy could lead to a 'chilling' effect - whereby they take a more cautious approach and opt not to grant subsidies which would be permissible, out of fear of a challenge in the courts. There could also be capacity issues. The £10m threshold for referrals to the SAU is relatively low, which could rapidly cause a backlog if the SAU is not adequately staffed or it struggles to get up to speed with its role. Indeed, insufficient regulator capacity has been a <u>prevalent feature of post-Brexit regulation</u> – including within the CMA - causing delays and uncertainty in a range of sectors.	

	Given the SAU's lack of enforcement power, if a competitor feels that a subsidy has been granted unfairly, its primary course of redress is to pursue legal proceedings at the UK Competition Appeal Tribunal (CAT - or equivalent court in the devolved nations). Actions must be brought withing a month of the decision being made public, and the CAT may cancel subsidy awards or call for disbursed funds to be recovered. By contrast, the European Commission can open an investigation – either at its own volition or at the request of another party - for up to ten years after a subsidy award. Another option available to aggrieved parties is to appeal to the Secretary of State, which may refer awards to the SAU if they perceive either a lack of compliance or the risk of negative impact on competition or investment. Finally, government will have the power to create 'streamlined routes' allowing certain types subsidy to be granted more quickly. Though the criteria are yet to be clearly defined, subsidies subject to streamlined routes will be considered compliant without a full assessment by the awarding body and/or SAU. The EU has a similar feature in its regime known as 'block exemption'.	While many questions remain to be answered, overall the new regime should provide greater clarity for businesses and public authorities. Since the TCA came into force, the UK has not followed EU state aid rules and instead adhered to the TCA chapter on state aid, even though it was not written to provide an entire subsidy regime framework. This has meant an absence of clear guidelines, structures or a formal regulator; which in turn has created confusion for public authorities granting subsidies and – according to insiders – engendered a culture of cautiousness among granting bodies. One final question is the impact on Northern Ireland, given that EU state aid rules continue to apply to subsidy awards which may affect the trade in goods and electricity between Northern Ireland and the EU. This could lead to a situation where Northern Irish companies are largely unable to benefit from the more flexible UK regime (should it function as intended), putting them at a competitive disadvantage compared to counterparts in the rest of the UK.	

6. TRADE			
ACTIVE DIVERGENCE INTERNAL IMPACT *Electronic Trade Documents Bill.*	**Summary:** In October 2022 the UK government introduced the Electronic Trade Documents Bill to Parliament. The Bill gives certain electronic trade documents the 'same legal treatment, effects and functionality' as paper ones. The current law in England and Wales grants entitlements of the 'holder' of specific trade documents, based on the idea that those documents can be 'possessed'. Because electronic documents cannot be physically possessed, they are in some contexts not recognised as valid under trade law in England and Wales. The Trade Documents Bill thus effectively redefines the meaning of a 'document' in a trade context, setting out the criteria electronic documents must meet to be considered equivalent to paper ones. Specifically, an electronic document must contain the same information as the paper equivalent; be distinguishable from any copies; be unalterable without authorisation; and be controllable by only one person at once (that person must also able to demonstrate their ability to do so), with the ability to exercise control always fully transferred along with the document.	**Impact:** The problem around digital trade documents is not unique to England and Wales, as much of international trade law was developed hundreds of years ago and is thus largely dependent upon paper documents. There has thus been a growing international consensus around the need for digitisation, accelerated by the growth in technologies (such as distributed ledgers) which enable greater use of digitised documents and a UN-level framework treating paper and electronic as functionally equivalent, which has since shaped new legislation in a handful of countries. In 2021 G7 ministers also committed to working together to create 'compatible domestic reforms' to support electronic documents in trade. The UK has, through the new Bill, moved quickly on this front and could become the first G7 country to pass relevant legislation. The commercial law firm Hill Dixon notes that, if the Bill becomes law, 'England and Wales will be one of very few jurisdictions that recognises the equivalency of electronic documents' and that 'the benefits ascribed to the reputation of England & Wales as a global centre of trade contracts would automatically be enhanced'.	**Timeline/region:** The Bill is currently making its passage through Parliament and is expected to become law at some point in 2023.

	The potential benefits of digitised documents are considerable. The Bill's explanatory notes state that, at present, a single trade finance transaction 'typically involves 20 entities and between 10 and 20 paper documents, totalling over 100 pages'. It is considered especially relevant to maritime trade, for which more than 99% of the over 16m 'bills of lading' issued by ocean carriers in 2020 were in paper form. Worldwide, it is estimated by the International Chamber of Commerce that digitising trade documents could create £224bn in efficiency savings and boost economic growth by £25bn by 2024. It also allows businesses to reduce their environmental footprint and there is also reduced vulnerability to fraud.	However, the challenge remains that, for a trade transaction to be entirely digital, other jurisdictions will also need to allow digitised documents, in a manner that is compatible with the UK's. Hill Dixon further note that, 'there seems little to be gained by individual countries introducing their own legislation in a piecemeal uncoordinated fashion where no reciprocity exists.' For the UK to reap the full benefits of digitisation it thus needs to engage with international partners - including the EU - to ensure interoperability of practices. There are also provisions on digital trade in the UK's trade agreements with Japan, Australia, New Zealand and Singapore which cannot be fully realised without interoperable digital trade systems; and the use of blockchain technologies (which the UK is keen to stimulate more widely) in trade requires similar digital interoperability. The extent to which the Bill applies to the entire UK could also be a point of contention. Clause 7(1) of the Bill extends its application to England and Wales, Scotland and Northern Ireland (bar one clause which does not apply in Scotland). This is despite the Bill's explanatory notes stating that 'the majority of the provisions in the Bill are considered to fall	

		within the devolved competence of the Scottish Parliament'. The UK government will seek legislative consent from the Scottish Parliament, but whether it will be granted is uncertain. The Scottish government has committed to 'keep pace' with future developments in EU law where appropriate, and should the EU develop its own digitisation regime which deviates in some ways from the UK's, there may be some recalcitrance in Scotland about adhering to the UK regime.	

7. CLIMATE **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *EU provisional agreement on form its Carbon Border Adjustment Mechanism.*	**Summary:** In December 2022 the EU announced that the Council and the Parliament had reached an agreement on the provisional form of its Carbon Border Adjustment Mechanism (CBAM). The CBAM ensures that imported goods are subject to a tariff for their carbon emissions which is equivalent to that paid on EU produced-goods under the EU Emissions Trading Scheme (ETS). This prevents carbon leakage, whereby EU businesses are incentivised to move their production processes outside of the EU, in order to avoid the higher price they must pay for their emissions. The EU first published its CBAM proposal in July 2021, but the latest announcement spells out a timeline for its introduction and exactly what sectors will be covered. The CBAM will become operational from October 2023, but in a simplified form where data must be collected on imports but no tariffs will be applied. No date has been set for when the CBA< will apply in full, but the EU says it will be phased in gradually, as the EU ETS phases out free allowances	**Impact:** As has been covered in a previous tracker, the EU CBAM creates a couple of significant new challenges for the UK-EU relationship. First, it is likely to create new barriers to GB-EU trade, as EU importers must ensure they have the necessary data on a good's carbon emissions, the carbon price which has been paid, and purchase additional CBAM certificates if necessary. These processes are potentially quite costly and time-intensive, making trade harder and more expensive. Moreover, there is a major tension around Northern Ireland. The EU is likely to argue that Northern Ireland must apply the EU CBAM at least in part, because it adheres almost entirely to the UK ETS, not the EU one. Thus, if it does not apply the CBAM, imported goods will be able to cross freely into the EU single market via the Irish border without paying the correct CBAM tariff. The alternative would be Ireland applying the EU CBAM on imports from Northern Ireland, but this would undermine the open Irish border guaranteed by the Protocol. Yet the UK has already insisted the EU would need to ask for consent to before applying the CBAM in Northern Ireland, which would create another series of problems. First, CBAM	**Timeline/region:** The EU CBAM is set to become operational in a simplified form from October 2023. No date has been set for its full implementation.

	(which is what it presently uses instead of a CBAM to try and prevent carbon leakage). The sectors covered will be: iron and steel, cement, fertilisers, aluminium, electricity and hydrogen, as well as some precursors and a limited number of downstream products. It could also be applied to cars following the trial period.	application in Northern Ireland could be considered unfair trade discrimination under WTO rules. Second, it would mean new controls on goods moving from Great Britain to Northern Ireland, even though they are part of the same ETS. Third, it does nothing to address the question of how you ensure goods made in Northern Ireland pay the correct CBAM tariff before crossing the Irish border. Ultimately, this means the UK and EU must have urgent and frank conversations to sort out a potentially very messy situation which could cause a large political rift. The simplest solution by far would be to integrate the UK and EU emissions trading schemes, or even the creation of a joint UK/EU CBAM. More broadly, the EU appears set to be the first jurisdiction in the world to introduce a CBAM, which it will likely take satisfaction from. CBAMs are seen as an important part of upholding the integrity of emissions trading systems and preventing carbon leakage. The UK government, by contrast, is still in the process of consulting on its own potential version.	

8. Data & Digital PASSIVE DIVERGENCE *EU Cyber Resilience Act.*	**Summary:** In September 2022 the European Commission presented a proposal for a new EU Cyber Resilience Act. The central aims are to 1) create common cybersecurity conditions for the design, development and production of goods placed on the EU market and 2) to better inform consumers about the security status of the goods they buy. The new Act is a mixture of extending the application of existing EU cybersecurity rules to all products with 'digital elements' alongside the implementation of some new rules. The Act sets out a range of broad 'essential' requirements which goods manufacturers must comply with, for example: 'products with digital elements shall be delivered without any known exploitable vulnerabilities'. These also cover the 'handling' of digital products by manufacturers, requiring them to 'identify and document vulnerabilities and components contained in the product', 'address and remediate vulnerabilities' and 'apply effective and regular tests and reviews'. The law firm Norton Rose Fulbright notes that these 'are not novel but rather codify existing good practice.' There are also requirements on companies to ensure adequate cybersecurity information is provided to users. This	**Impact:** The EU regulation will have an impact on British manufacturers looking to sell into the EU, who will have to ensure they are compliant with the new regulations. Moreover, they will have to provide documentation to EU importers of their goods, to prove they are compliant with the cybersecurity requirements. If obtaining this information proves to be burdensome for EU importers, there is a risk they cut ties with British companies and opt to source goods from inside the single market instead. However, the extent of divergence is likely to be minimised by the passing of the UK's own recently passed Product Security and Telecommunications Infrastructure Act. The law firm Norton Rose Fulbright describes the legislation as 'similar' to the EU's, as it includes powers for ministers to 'specify and amend minimum security requirements in relation to consumer connectable products', with obligations applying manufacturers, importers and distributors. The financial penalties for non-compliance are also of a similar degree. Because of the relatively general articulation of both the EU and UK legislation, the extent of their alignment will depend on how they are interpreted and implemented in practice.	**Timeline/region:** The EU proposal must be examined by the Parliament and Council before it becomes law. Once in force, Member States will have two years to adapt to the new requirements, with some exemptions. The Product Security and Telecommunications Infrastructure Bill will shortly become law in the UK after

	ranges from providing a point of contact for cybersecurity issues and product ID references; to guidance on 'any foreseeable circumstance, related to the use of the product… which may lead to significant cybersecurity risks' and publicly disclosing information about fixed vulnerabilities following security updates. For an estimated 90% of products covered by the regulation it will be possible for companies to carry out a self-assessment to certify they meet the new requirements. However, roughly 10% of goods will be considered 'critical products' and subject to a formal assessment by a notified EU body. The EU has outlined a list of 'Class I' products (for example identity management systems, browsers and password managers) and 'Class II' ones (for example operating systems, firewalls and microprocessors). Both classes must undergo design and performance tests by a notified body but, while Class I products can self-assess on wider conformity with EU standards, Class II products must also undergo assessment by a notified body.	For example, we don't yet know exactly what baseline requirements UK ministers might prescribe. Nonetheless, the regulatory direction of travel is similar. More widely, they are both also seeking to bolster the requirements around reporting cyber security incidents in 'essential' industries; the EU via its Network and Information Security Directive (NIS 2.0), agreed in May this year, while in the UK Ofcom has outlined a similar set of proposed reforms.	receiving royal assent.

	Products also require a declaration of conformity before they can be placed on the EU market, alongside 'technical documentation' which must be updated continuously and covers, for example, details on the design and development of the products, vulnerability handling processes which are in place, and an assessment of cybersecurity risks. This extends obligations to importers of goods from outside the EU, as they must ensure the necessary conformity assessments, technical documentation labelling and instructions are in place before being sold on the EU market. Once on the market, there are reporting requirements – with manufacturers having to notify the EU's cybersecurity agency ENISA 'without undue delay and in any event within 24 hours of becoming aware of any actively exploited vulnerability'. EU member states will also need to empower 'market surveillance authorities' to order the recall of products and impose penalties of up to 2.5% of annual turnover (or €15m, whichever is higher) on companies which fail to comply with their obligations. Failure to submit correct and complete information can result in a fine of 1% of turnover (or €5m, whichever is higher).		

9. Data & Digital / Energy PASSIVE DIVERGENCE INTERNAL IMPACT *EU action plan to digitalise the energy sector.*	**Summary:** In October 2022 the EU set out an 'Action Plan' to digitalise the energy sector. This considers how new technologies can help increase energy efficiency, and how to reduce the energy footprint of the information and computer technology (ICT) sector. This is a wide-ranging proposal, but the specific plans around ICT sector energy reduction stand out in a divergence context. The EU's 'ecodesign' regulation (obliging manufacturers of goods to meet minimum standards regarding energy consumption and avoiding other environmental harms) will be extended to cover new ICT products, and will be supported by a new energy efficiency label for computers (akin to the ones already seen on a range of white goods). These labels are meant to incentivise manufacturers to produce more energy efficient products, and the EU is introducing them for computers because the ICT sector is forecast to account for 13% of global electricity consumption by 2030. Data centres will also be subject to new requirements to monitor and report their energy consumption, with the Commission also planning to introduce an environmental labelling scheme for them.	**Impact:** The EU's ecodesign regulation currently applies to Northern Ireland under the Protocol, but whether the proposed updates – extending its application to a much wider range of goods including ICT ones - should also apply automatically is a point of contention. Under Article 13(3) of the Protocol, NI will have to dynamically align to existing EU laws as they are amended or replaced. However, under Article 13(4), new EU measures should be subject to a Joint Committee process to decide whether they apply. The UK government says that the proposed extension of the ecodesign regulation entails 'important differences' (applying to almost all products rather than just energy-related ones, and including new recording obligations) which could amount to a substantively new measure. Should the updated regulation be applied in NI, any British companies selling ICT goods into the EU or NI will have to make sure they comply with the new EU monitoring and labelling requirements. The issue is most acute in NI, which may see a reduced flow of ICT goods if GB-based suppliers are not aware of the new EU regulations or cannot be bothered to comply with them. It also means that ICT-related manufacturers and data centres in NI will be subject	**Timeline/region:** Formal proposals still need to be brought forward before definitive timelines are established.

	The Commission also announced plans to build an 'energy-efficiency label for blockchains'. Blockchain technology underpins certain cryptocurrencies (most notably Bitcoin) and the aim is to ensure crypto investors are more aware of the environmental credentials of such technologies. The EU considers this a priority due to the energy consumption of cryptocurrencies increasing by 900% in the past half decade, now accounting for 0.4% of global electricity consumption.	to certain technical requirements around monitoring and reporting energy usage which competitors in GB are not. This could put them at a disadvantage if the adaption costs are significant. The blockchain element is significant for the UK's own regulation of crypto technology, because – as highlighted in the last divergence tracker – there are notable differences in the UK and EU approaches to regulation. The UK regime is less restrictive on how such technologies can be used, with an explicit intention to make the UK a more attractive environment for crypto investment, whereas the EU's is focused on reducing risks to consumers, and more restrictive on permitted activities. These differences could be exacerbated by the EU labelling requirements - as certain cryptocurrencies may find that a poor energy rating makes their product less attractive, or that the cost of compliance with the regulation is too high - and thus seek greater investment in alternative markets like the UK. The flipside, however, is that the UK could become a home for the least environmentally sustainable cryptocurrencies. It is also worth noting that the EU intends to 'cooperate internationally' on its blockchain labelling efforts – and if	

		this means joint action with other major regulators like the US (which has also raised concerns about the carbon emissions of the crypto sector), the labels may become a global norm which the UK is forced to adopt anyway.	

10. ENERGY **PASSIVE DIVERGENCE** *EU gas price cap.*	**Summary:** In December 2022 the European Council agreed on a gas price cap, which limits how much gas can be traded for on the Title Transfer Facility (TTF) – the EU's main gas trading platform. Known as the market correction mechanism, it kicks in if, for three days in a row, the TTF's month-ahead price exceeds €180 and is 35€ higher than a 'reference' price for liquid natural gas based on global markets. At this point the EU energy regulator sets a 'dynamic bidding limit', calculated as the global market 'reference' price plus €35. This applies to month-ahead, three months-ahead and year-ahead derivative contracts. The bidding limit is automatically deactivated if it remains below 180€/MWh for three consecutive working days. It can also be suspended by the Commission if it deems there to be a risk to energy supply, financial stability, intra-EU flows of gas, or risks of increased gas demand.	**Impact:** The gas price cap is designed to prevent extreme surges in gas prices, which have been occurring over the last year due to Russian manipulation of gas supplies, and thus keep consumer prices lower. It has, however, been a long road to finding an agreement, with some EU member states including Germany, the Netherlands and Denmark opposing the idea on the grounds that lower prices could incentivise increased gas usage (contra wider EU aims) or lead to supply shortages if traders choose to divert gas to regions willing to pay more for it. Supply shortages could hinder EU attempts to fill up gas reserves ahead of next winter. The EU's initial proposal to cap month-ahead prices at €275 per megawatt hour was termed a 'joke' by critics, given there were only four days last year where prices exceeded that level. However, the now-agreed limit of €180 was breached on over 40 days. Germany agreed to the revised cap after the inclusion of the requirement that the TTF price be €35 higher than the global reference price, which reduces the frequency with which the cap might apply, and the strengthening of the terms on which the cap can be suspended.	**Timeline/region:** The EU regulation enters into force on 1 February 2023.

		The Netherlands and Austria abstained on the vote, while Hungary opposed it. The Dutch climate and energy minister said he was still concerned about disruptions to energy markets and security of supply. Some market operators, meanwhile, have expressed concern that the cap could in fact increase price volatility, if traders instead make greater use of 'over-the-counter' trades which are not regulated. Simone Tagliapietra of the Bruegel think tank has argued that it is at present 'difficult to understand fully how it will play out' given the wide range of safeguards in place. The UK might nonetheless consider itself pleased not to be adhering to the cap, given that the core group of countries with which it was more often aligned as an EU member (such as the Netherlands and Denmark) have been critical of the measure. However, the high degree of integration between UK and EU energy supplies means any shortage of liquid natural gas supply in the EU could have some knock-on effect on the UK. Yet, outside of the EU, the UK has no influence over this policy despite the material impact it might have on its energy resilience. Other EU member states, including Italy and Greece, refused to sign off on a wider set of gas-related measures until	

		agreement was found on a gas price cap. Now this has been achieved, the EU will also introduce measures on the sharing of gas between neighbour member states in emergencies; mandatory joint purchasing of some gas supplies; and speeding up the granting of permits for renewable energy projects.	

11. Environment PASSIVE DIVERGENCE INTERNAL IMPACT *Updated EU Regulation on Packaging and Packaging Waste.*	**Summary:** In November 2022 the EU outlined proposed revisions to its legislation on Packaging and Packaging Waste, to reduce the use of packaging among both consumers and industry. The first aim is to reduce the generation of new packing by restricting 'unnecessary packaging' and promoting reusable and refillable solutions. This will see a ban on single-use packaging in certain contexts, such as for wrapping small quantities of fruits and vegetables; for miniature shampoo bottles (and other similar toiletries); and for food and drink consumed in a restaurant or café. They will instead need to be provided in reusable packaging. For a range of other products (such as takeaway drinks) companies will have to provide a certain level (40% by 2040) of their products in reusable or refillable packaging; and there will be standardisation around how reusable packaging is labelled (showing what the packaging is made from and which recycling bin it should go in). The second aim is to make the recycling of all packaging on the EU market economically viable by 2030, through the	**Impact:** The updated EU rules should in theory apply in Northern Ireland under the Protocol, creating potentially significant barriers to trade with the rest of the UK. Because the new EU requirements also cover imported goods, any UK supermarkets with operations in NI will need to ensure that products destined for NI meet its specific packaging requirements. For example, many plastic-wrapped fruits and vegetables will not be permitted on Northern Irish shelves in future, and supermarkets may need to develop specific packaging streams for NI-destined goods. In addition, suppliers of any relevant goods to NI will need to ensure that any packaging they do use meets the necessary requirements around recycled content, and that goods are correctly labelled. There is thus a risk that certain goods disappear or become harder to obtain in NI, if GB companies fail to adhere to the new requirements; and there will likely be new administrative costs to business in managing the increased export bureaucracy. The same issues apply equally to British companies exporting to the EU. To mitigate some of these costs, the UK government could seek to align with the new labelling practices, even if it did not want to impose the same gamut	**Timeline/region:** The EU plan is still subject to approval by the Parliament and Council.

	setting of design criteria, and mandatory deposit systems for plastic bottles and aluminium cans. The third aim is to increase the use of recycled plastics in packaging, through mandatory targets around the proportion of recycled content in new plastic packaging. There are also new conditions which biobased, biodegradable and compostable plastics must meet. These products are made from biological material but can contribute negatively to plastic pollution, climate emissions and biodiversity loss if not sustainably generated.	of plastic restrictions. Northern Irish businesses will also need to set up new systems or change processes to ensure they comply with new design criteria, recycled content requirements, and new deposit systems. This could have administrative costs, with a range of EU industries (such as beer and hospitality) already raising concerns about the high logistical cost of compliance. The EU reform also throws up questions for Scotland and Wales, which have previously opted to align themselves with EU restrictions on single-use plastics, even as the Westminster government has not. The Scottish and Welsh governments will now have to decide whether to adhere to new EU restrictions once again and, if so, to what extent. For example, should they comply solely with the ban on certain types of single-use plastics, or move more widely to follow the new requirements around labelling and recycled content? If they do stayed aligned with the EU, this will likely also raise questions for the UK Internal Market Act, which guarantees unfettered trade across the whole of the United Kingdom. Wales and Scotland's previous decision to align with new EU single-use plastic restrictions led to the first-	

		ever exclusion under the Internal Market Act, stipulating that certain types of single-use plastic goods (such as cutlery) manufactured in England are not permissible for sale in Wales or Scotland; thus curtailing the unfettered flow of those goods within the UK Internal Market. At the time, the Scottish and Welsh governments expressed frustration at not receiving a wider exclusion, which might have meant an automatic ban on the sale of any other single-use plastic goods which they opt to restrict in future. Instead, there would have to be renewed negotiations for a similar exclusion next time. The UK government may also reflect on whether it should be following in the EU's footsteps, given its purportedly high level of ambition on environmental standards. The EU claims that its updated regulation will reduce greenhouse gas emissions from packaging by about a third by 2030 – the equivalent to the annual emissions of Croatia – and that water usage will be reduced by 1.1 million m^3. A range of industry groups, however, claim that the measures could be counterproductive (in terms of, for example, higher transport emissions and water usage in the recycling process) if the policies are poorly designed.	

12. ENVIRONMENT PASSIVE DIVERGENCE INTERNAL IMPACT *Updated EU F-gas regulation.*	**Summary:** In November 2022, Defra Minister Lord Benyon wrote to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland, outlining the expected impact of the EU proposal for a revision to its F-gas regulation. The EU proposal, tabled in April 2022, was covered in a previous edition of the tracker, but the government response sheds new light on its likely impact in Northern Ireland, where the revised regulation will apply. The existing F-gas regulation restricts the use of fluorinated greenhouse gases (F-gases), and the EU proposes extending its scope to cover more substances, like hydro-fluoro-olefins (HFOs). This would impose new requirements around the containment, labelling and certification of such substances. There is also a plan to rapidly phase down the permitted quotas of hydrofluorocarbons (HFCs) – which are widely used as cooling agents in air conditioning and refrigeration goods - on the EU market. Importers of HFCs to NI from GB (and vice-versa) already have to register on the EU or GB 'HFC Registry', to ensure they have sufficient quota authorisation and make a customs declaration. However, the new EU requirements will also	**Impact:** Although technical sounding, the updated regulation has a potentially significant impact on the supply and cost of a range of consumer and medical goods in Northern Ireland. The steep reduction in HFC quota allowances is not expected to have a major impact on NI as Defra reports there are very few quota holders to begin with. However, those few quota holders may find it harder to obtain them in future, due to the reduced allowances and stricter rules around eligibility, potentially disrupting their operations. There are also set to be new requirements to enforce the legislation through border checks, which could create new administrative and operational costs for HFC-based goods being moved from GB to NI, thickening the regulatory border in the Irish Sea. For Northern Irish consumers, the reduction in EU-wide HFC quotas, coupled with the new quota allocation charge, could well drive up the price of HFC-based goods which are on the NI market. Moreover, the EU will prohibit the sale of items containing F-gases where less harmful alternatives are available. Defra reports this could lead to reduced consumer choice in NI for product areas including refrigeration, air-conditioning and heat pump equipment, personal care products, skin coolant products and electrical switchgear.	**Timeline/region:** The EU plan is still subject to approval by the Parliament and Council. The UK, Welsh and Scottish governments are planning to deliver their own assessments on whether and to what extent to align with the updated F-gas regulation.

	apply stricter terms of registration, preventing the same 'beneficial owner' from placing multiple quota applications from different companies it owns, and there will also be a quote allocation charge of €3 per tonne of CO2 emissions.	There is also a specific concern about 'metered dose inhalers' (MDIs) such as asthma pumps, many of which use HFCs and which at present are exempted from HFC quotas. The EU plans to end this exemption, which is a challenge given that the majority of MDIs on the UK market, unlike many EU countries, contain HFCs. Defra notes that NI has no domestic MDI manufacturing capacity, meaning that the import cost of inhalers from the EU is likely to go up, given the more limited allowances and charge for quota allocations. Presumably there is also a risk of shortages in future if the demand for pumps exceeds the amount permitted for import under the HFC quotas. Defra does, however, note that MDIs from outside the EU would not be subject to the new quotas, meaning that the NI healthcare sector may need to consider diversifying supply chains. There is also a new requirement for MDIs to be labelled with information relating to HFCs, which may be an additional hurdle to importing from non-EU countries if they do not comply with the new labelling requirements. However, Defra assesses that 'industry will likely adapt to this Europe-wide requirement (even if GB does not make this change), so this possible divergence should not be too	

		problematic or cause NI specific divergence between the products on the GB and NI markets.' The revised EU regulation also proposes, from 2026, to restrict the use of desflurane as an inhalation anaesthetic only to cases where it is strictly required, and no other anaesthetic can be used on medical grounds. Defra notes that decisions about the use of anaesthetics is generally made by individual NHS trusts. This means that, while some may have already stopped using desflurane, it will be important to ensure those in Northern Ireland act early to ensure compliance with the new requirements from 2026. Another provision that requires forward planning is the requirement that product technicians are trained in alternatives to F-gases. NI has no training or certification bodies, meaning that it is reliant on bodies in other parts of the UK to license technicians. It will thus be vital that UK training bodies offer sufficient training on F-gas alternatives for accredited technicians to still be able to practice in NI under the terms of the updated EU Directive. Preparing for this could be made more challenging by the fact that the EU has not yet defined the level of training required.	

13. Environment PASSIVE DIVERGENCE INTERNAL IMPACT *Update to EU Urban Wastewater Directive.*	**Summary:** In October 2022 the EU announced plans to revise its Urban Wastewater Directive. The current Directive sets requirements for how wastewater is collected and treated, and the EU wants to increase standards and expand its scope to cover a wider range of pollutants found in wastewater. Thus, the updated directive introduces requirements around the treatment of micropollutants (for example residues stemming from pharmaceuticals and cosmetics), as well as stricter standards around the presence of nutrients in wastewater. The directive will also be widened to cover all urban agglomerations of over 1,000 inhabitants (at present it applies only to those with 2,000+), and the treatment of rainwater. Large cities (100,000+ inhabitants) will be required to establish 'integrated waste management plans'. The directive will also require producers of pollutants to pay for the treatment of them in wastewater, under the EU's 'polluter pays' principles. Initially this will apply to the pharmaceuticals and cosmetics sectors, which the EU says are responsible for 92% of the toxic load in wastewater, but its scope may be extended to other sectors in future. Operators will also have to publish key performance	**Impact:** Northern Ireland remains subject to EU environmental rules under the Protocol and would thus presumably have to adhere to the requirements of the updated wastewater directive. This has practical implications for the Northern Irish wastewater sector, as they will be subject to more stringent requirements around both water treatment and climate neutrality than counterparts in GB; and will face new bureaucratic requirements in terms of auditing their practices and publishing key performance indicators. Meanwhile, pharmaceutical and cosmetic companies in NI will be newly required to pay for the treatment of pollutants which come from their products. This could all lead to higher costs for businesses in Northern Ireland compared to counterparts in GB although, of course, the flipside is the environmental benefit of cleaner wastewater and greener practices. A particular challenge could be for the operators of wastewater systems in urban agglomerations of 1-2,000 people, which are newly subject to the directive. It may be a logistical challenge implementing the necessary systems to conform with the directive, requiring funding and support from local	**Timeline/region:** The EU proposal must be considered by the Parliament and Council before it can take effect.

	indicators around wastewater management, which the EU says is to increase transparency. Alongside the updated pollutant requirements is a proposed binding energy neutrality target (yet to be defined) for the wastewater sector, to be delivered through increased energy efficiency (e.g. through more efficient equipment and processes) and the production of renewable energy on-site. This will be underpinned by mandatory energy audits for companies to develop solutions around efficiency and renewables. Member states will also have to track industrial pollution at source to increase the amount of sludge and wastewater which is reused.	government which could be made more challenging by the current lack of an executive in Northern Ireland.	

14. Financial Services PASSIVE DIVERGENCE INTERNAL IMPACT *EU Capital Markets Union (new requirements around derivatives trading).*	**Summary:** In December 2022 the European Commission published proposals to develop its 'Capital Markets Union', including a set of proposals requiring EU-based financial services to clear a certain amount of their derivatives trades through EU-based clearing houses. Derivatives are financial contracts whose value are linked to an underlying asset, the price of which can fluctuate. Clearing houses act as intermediaries in financial trades, reducing the risk in the trade by finalising the terms and setting out contractual obligations. Under the proposal, EU-based banks managing high numbers of contracts (referred to as 'systemic') would have to clear a minimum amount of them (to be defined by a new EU regulator one year after the regulation comes into force) through accounts located in EU-based clearing houses. The Financial Times also reports that there are likely to be exemptions for certain types of transaction and there could be a loophole allowing funds to be moved to London via New York. For the time being, EU-based banks can use UK-based clearing houses due to a temporary 'equivalence' agreement	**Impact:** The EU reform is explicitly designed to address what it sees as a 'strategic vulnerability' whereby the majority of derivative trades using the euro currency take place in London. More than 90% of interest rate derivatives trades using the euro currency were handled in London in 2020. Phillip Stafford in the Financial Times argues that the EU's main concern is not about the value of clearing contracts being lost to London, but the wider financial stability of the Eurozone from euro-denominated trades taking place in a location over which the EU has no regulatory control. He notes that, while clearing isn't an especially lucrative market, billions of dollars of real-world assets are hedged daily to back trades in the market. The EU is concerned that, with the majority of clearing taking place in London, it lacks regulatory oversight of the very large sums being hedged in the majority of euro-based trades. An EU official told the Guardian: 'What recent experience has told us, with the pandemic and the effects of the war [in Ukraine], is that supply chains, no matter how robust they may seem from the outside … are vulnerable… if something goes wrong we will be vulnerable."'	**Timeline/region:** The Proposals must now be considered by the Council and Parliament.

	with the UK that has been extended to June 2025. However, the Commission does not want to maintain that situation longer-term (though some member states might), arguing that 'heavy reliance… on services provided by UK-based [clearing houses] could raise important issues related to financial stability' – given the lack of regulatory oversight it has for UK markets.	Earlier this year the EU launched a call for evidence on reducing its reliance on third country clearing houses. It now aims to make its own clearing houses more attractive by speeding up the authorisation of new derivative products and enhancing the power of its central European Securities and Markets Authority. However, Stafford notes that 'what unique oversight EU regulators can bring has never been explained', given that clearing houses use common global standards and 'move far too fast for any regulator to react'. Given this, and the fact that it remains uncertain exactly what the final EU policy package will look like, it is difficult to predict the likely impact of the EU measures. However, it does make the chances of the equivalence agreement - which allows EU-based financial services to use UK-based clearing houses up to 2025 – less likely to be extended. This could have costs for EU firms, as the process of moving some trades to EU-based clearing houses will likely cost them millions. The process is thus likely to be a test of how far the EU can impose financial services regulation which goes against the commercial interests of the firms subject to it, and potentially some member states.	

15. Health			
PASSIVE DIVERGENCE INTERNAL IMPACT *EU proposed new directive on quality and safety standards for substances of human origin.*	**Summary:** The European Union has adopted a proposal for a new Regulation on quality and safety standards for substances of human origin (SoHO) intended for human application. It would update and replace the existing Blood Directive and Tissues and cells Directive (known as the BTC Directives). The BTC Directives, in place for almost 20 years, established minimum safety requirements for the use of blood, tissues and cells in application to other humans, following a spate of contaminated blood scandals which saw patients infected with HIV and hepatitis through blood and plasma-related medical treatments. The introduction of the new regulation stems from an acknowledgement that BTC provisions have not kept up with 'health and societal evolutions', for example new infectious disease risks and biotechnologies used in treatment. The new regulation is widened to apply to *all* substances of human origin, newly covering human breast milk and microbiota. Safety standards will be extended to cover donors of blood, stem cells and eggs, and children born from medically assisted reproduction. Another proposed change will see safety rules mostly set by scientific expert bodies,	**Impact:** The UK government has confirmed that the new SoHO regulation will apply in Northern Ireland under the terms of the Protocol, and will have an 'overall positive impact on the SoHO sector in NI' due to the higher safety standards and possibilities for greater innovation. However, it also notes that NI 'has a reliance' on SoHO imports from GB, specifying a 'dependency on England for its import of blood, for use in patient transfusions'. This opens up the prospect that, if GB-based SoHO is not fully compliant with the new EU technical requirements, then vital medical supplies will not be exportable to NI. There are also risks for the wider GB medical sector, as access to EU SoHO registers - which are searched when SoHO cannot be found in the UK - will be lost unless alignment with the minimum standards of the new EU regulation are maintained - despite the government acknowledging that some GB SoHO establishments will continue to have a strategic supply dependency on some EU Member States for SoHO. The government has said it is reviewing the situation and will take a decision in due course about whether to introduce a similar reform to GB regulations. It further notes that UK regulators actively fed into the EU's earlier BTC	**Timeline/region:** The EU Regulation is yet to be approved by the Council and Parliament. Once approved, there will be a two-year transition period before most provisions apply, and a three-year period for the rest.

	to allow regulation to more rapidly reflect scientific developments. There will also be a new EU-wide procedure for authorising SoHO preparations, while entities working with SoHO will have to report their annual activity and entities undertaking activities which might affect the safety and quality of SoHO must register with the competent authorities.	directives and that they will likely voluntarily choose to align with the new standards set by the EU. However, it has so far set out no detail on how it will ensure that the necessary alignment takes place. There are also implications for the other devolved governments, which have competence over blood and nonreproductive tissues and cells policy (while reproductive tissues and cells policy is reserved). It is not yet clear whether Scotland and Wales will opt for alignment, and these topics could be in scope for discussion under The Blood Safety and Quality Provisional Common Framework, and the Organs, Tissues and Cells (apart from embryos and gametes) Provisional Common Framework. Even if GB, or some parts of it, develop legislation that aligns with the EU's, there is the repeated risk of divergence in future as the EU has granted significant autonomy to export bodies to update safety guidelines in line with new technology. This means GB bodies will need to pay constant adherence to these decisions if they want to ensure continued alignment in future.	

16. LABOUR RIGHTS **PASSIVE DIVERGENCE** *EU directive on gender balance on company boards.*	**Summary:** In October 2022 the European Council approved a new directive on gender balance on company boards, which member states must now work to implement. By 2026, the gender ratio for non-executive director positions in listed companies should be no greater than 60:40 (this in effect means at least 40% of directors must be male). If member states opt to apply the regulation to both executive and non-executive directors, the ratio must be no greater than 66:33. Companies which fail to meet these requirements will have to implement updated 'fair and transparent selection and appointment procedures, based on a comparative assessment of the different candidates on the basis of clear and neutrally formulated criteria'. When companies have a choice between equally qualified candidates, they should prioritise the candidate of the underrepresented sex. Companies will be required to report yearly on their performance in relation to the gender balance targets, and the measures they are taking to achieve them, with member states publishing a list of companies which have achieved the objective.	**Impact:** The EU hopes to address the fact that women are presently underrepresented in economic decision-making, comprising only 31.5% of board members and 8% of board chairs. However, there are a number of questions about the effectiveness of the policy. First, the level of ambition is not necessarily that high, given that the minimum female board representation level of 33% is barely higher than the current EU-wide average of 31.5%. Second, it does nothing to address gender balance in the wider economy, as it applies only to the most senior roles at listed companies, thus not helping drive more women into positions where they can apply for board directorships in the first place. Third, the wording of the regulation – whereby 33% or 40% of board members should be of the 'underrepresented sex' - means that in effect boards must be 33-40% male *at a minimum*. This could create situations where a man must be preferred to an equally qualified woman for a position, if applying to a board which is already majority women. This regulation would not have had a big impact on the UK had companies opted to comply only with the requirement around women in non-executive director positions. The UK	**Timeline/region:** The directive must first be adopted by the European Parliament. Member states have two years to adopt the requirements once it has been adopted.

		ranks second in the world for female representation on listed company boards (at 39%), behind only France, and only four FTSE100 companies have less than 25% female representation. However, it would have had a much bigger impact in cases where companies chose to apply it to both director and non-director positions, with only 13.7% of FTSE100 executive director positions filled by women, and only two companies having more than one woman in an executive role.	

17. MEDIA PASSIVE DIVERGENCE *European Media Freedom Act.*	**Summary:** In September 2022 the European Commission proposed a new European Media Freedom Act (EMFA). It establishes common rules for all EU 'media players', which aim to strengthen editorial freedom, ensure transparency of ownership, and protect media pluralism. In addition, it aims to provide greater legal certainty in the EU media market, to make it easier for companies to expand across member states. The Act consists of a legally binding 'Regulation', and a 'Recommendation' for measures which can be voluntarily adopted. The Recommendation requires Member States to respect the editorial freedom of media providers by not interfering with or influencing decisions in any manner, and there are new 'strong safeguards' limiting the use of spyware against media. For public service media, state funding must be 'adequate and stable' enough to ensure editorial independence, and appointments to the governing board must be transparent and non-discriminatory. There are also requirements around assessing the impact of 'market concentrations', to protect media pluralism and editorial independence (including the development of rules requiring parties within a concentration to notify national	**Impact:** The EU's proposal is clearly designed to protect press freedoms in member states where it is under threat, in particular Poland and Hungary – where they form part of wider concerns about civil rights and the rule of law - but also Greece, Slovenia and Malta. However, there is a deep tension between the need for greater press protections in countries like Poland and Hungary, and the longstanding independence of the press from the state which is prized in many EU countries. Indeed, the Act has led to concerns among some publishers about what it means for their editorial independence. Most EU countries do not have an independent regulator for the written press, instead using frameworks based on ethics codes and media councils, and some have regulations to protect the independence of the press from the state, which could be overridden by the EU regulation. The European Newspaper Publishers Association argues that the Act - by establishing a European Board for Media Services comprised of national authorities - means regulators are newly empowered to 'interfere with the free press', threatening 'the principle of freedom of a publisher to set	**Timeline/region:** The proposal will now be examined by the European Parliament Member States.

	authorities about it); and transparency requirements around the allocation of state advertising to media. There are also obligations for media companies. They must take appropriate steps to safeguard the independence of editorial decisions (with the Recommendation providing a toolbox of best practices which may be followed), and publicly disclose ownership information. Very large online platforms (as defined in the Digital Services Act, i.e. those like Meta and Twitter) must grant a special status to 'media content produced according to professional standards', with regard to content moderation. If they seek to take down such content because it falls foul of their policies, they will have to inform the media outlet of the reasons why before it can be removed, and complaints from those outlets will be processed as a matter of priority. Media users will also gain a new 'right of customisation' allowing them to change the default settings on their devices and connected hardware (such as connected TVs and remote controls). This means users can alter the set up of such devices to simplify access to their preferred media	up their business and work jointly with their journalists to deliver news and information'. The EU argues in response that the Board's powers extend only to issuing non-binding opinions, not enforcing the Act's rules (which can rather be used in legal proceedings). A range of other European press associations have also welcomed the proposal, arguing that 'such is the threat posed to media freedom that an EU wide action has become necessary to protect Europe's democratic values'. They in fact argue the Act should go further on ownership transparency; financial relations between the state and media; the independence of national regulators the European Board; and protection for journalists against all forms of surveillance (beyond spyware). Damian Tambini of the LSE has pointed out that the de facto establishment of 'approved' media under the framework could have a chilling effect on those who fall outside the categorisation. It is perhaps possible to imagine this being used to marginalise unwanted media organisations if adequate safeguards against such manipulation are not in place.	

	platforms, rather than being stuck with the preferences pre-set by the device manufacturer. A new European Board for Media Services, made up of national media authorities, will support the application of the framework, in particular by aiding the Commission in the development of guidelines and issuing opinions on national measures and decisions related to markets and concentrations.	Tambini also notes that it might have been difficult for the EU to garner such widespread support had the UK still been a member state. While the UK does already have an independent regulator for the majority of the newspaper and magazine industry – known as IPSO - there may well have been strong political resistance to any enhanced powers and what Tambini characterises as a step towards a 'European super regulator' – based on harmonised regulations and a central coordinating function provided by the EU Board of regulators.	

18. PRODUCT STANDARDS **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *Application of Geographical Indication rules to craft and industrial products.*	**Summary:** In December 2022 the Council of the EU adopted a mandate to widen its 'Geographical Indication' (GI) rules to cover craft and industrial products. The EU issues GIs to specific products, granting them intellectual property rights. Typically, these have been applied to food and drink, and denote that they have been produced in a specific location: for example champagne or Parma Ham. However, the EU notes that there is no GI for craft and industrial goods, even though some member states have similar laws for specific goods (such as Solingen cutlery in Germany). Hence the EU is proposing to establish GIs for such goods, offering a range of examples of the products it would cover: Murano glass, Donegal tweed, Porcelaine de Limoges, Solingen cutlery and Boleslawiec pottery. The EU intends for these GI protections to take effect beyond to EU, by ensuring they are compatible with the Geneva Act on Appellations of Origin and Geographical Indications under the UN World Intellectual Property Organisation – comprised of 193 member states.	**Impact:** Under Article 13(4) the Northern Ireland Protocol, new EU measures can be made applicable in Northern Ireland (NI), and the European Commission has informed the UK government that it plans to do that in the case of the new GI regulation. This is subject to agreement at the UK/EU Joint Committee, and the House of Commons European Scrutiny Committee notes that it gives the UK government an effective veto on the application of the new regulation. However, were the government to do so, the EU could take remedial action against the UK. What this remedial action would look like is not defined, and the Committee further notes that there 'has not yet been a case where the EU has made a formal request for a new law to be added to the Protocol under Article 13(4), so the possibility of the UK refusing and the EU considering remedial measures in response has not yet arisen.' It means the new GI regulation could be an important test case of the function of Article 13(4) and the ability of the UK and EU to find common agreement on the application of new EU regulation to NI. Another point of contention will be the application of new EU GIs in the rest of the UK. The UK has not opted into the	**Timeline/region:** Having agreed a mandate, the Council will now enter into negotiations with the European Parliament.

		Geneva Act on Geographical Indications since leaving the EU, meaning the new GI protections would not automatically apply in GB. The EU may instead seek to gain protection for GI-protected goods as part of the 2025 review of the TCA, but this would be subject to negotiation with the UK. On the other hand, some UK companies may actively pursue GIs under the EU scheme, which is open to non-EU countries. The European Scrutiny Committee gives the examples of Harris Tweed and Sheffield steel cutlery as the kind of goods which could seek new protection under the EU regulation. This potentially gives them enhanced brand protection inside the EU and other jurisdictions which adhere to the Geneva Act.	

19. TAXATION / HEALTH PASSIVE DIVERGENCE INTERNAL IMPACT *EU update to Tobacco Taxation Directive and ban on the sale of flavoured heated tobacco products.*	**Summary:** In November 2022 the Financial Times reported that the EU is set to update its 2011 Tobacco Taxation Directive, doubling the minimum excise duty on cigarettes, and for the first time applying excise duties (which are payable on top of VAT) to a wider range of smoking-related products such as e-cigarettes (known as vapes) and heated tobacco. The minimum duty on a packet of 20 cigarettes will rise from €1.80 to €3.60. For vaping goods, a minimum excise duty of 40% will be applied to high-strength products, and 20% to weaker ones. Heated tobacco, meanwhile, will face a duty of 55% or €91 per 1,000 items sold. Separately, in June 2022 the European Commission outlined a proposal to ban the sale of flavoured heating tobacco products.	**Impact:** The tobacco duty increase would not have impacted the UK were it still a member state, as its minimum duty rate (£347.86 per 1,000 cigarettes) is well above the new proposed EU minimum rate of €180 per 1,000. However, the increased duties will raise cigarette prices in some EU countries, and are expected to raise €9.3bn in additional tax revenue. The more significant divergence comes from the EU plan to apply excise duties to e-cigarettes, which are a non-tobacco-based nicotine product. This reflects a different assessment of the relative health benefits and risks of using such 'novel smoking products', compared to the UK. The UK government says it has no plans to introduce an excise duty for such products, which it argues are an effective way of encouraging smokers to switch to less harmful alternatives. However, a leaked EU impact assessment seen by the Financial Times notes that novel smoking products 'are particularly appealing to young people, who are at risk of developing addiction'. While the scientific consensus is that e-cigarettes are much less harmful than normal cigarettes, the EU appears concerned about their novelty meaning there are still questions over possible long-term risks, especially	**Timeline/region:** The EU intends to update the Tobacco Taxation Directive in 2023. The ban on flavoured heated tobacco is still to be approved by the Council and Parliament.

		among young people who develop lifelong addiction – though the question is whether those young people would have smoked had they not started to vape. A division could also appear over the approach to heated tobacco products (HTPs), which are marketed as 'reduced exposure' because they involve heating processed tobacco rather than burning it as in a conventional cigarette. The World Health Organisation reported in 2019 that there is 'insufficient evidence to conclude that HTPs are less harmful than conventional cigarettes'. The UK already applies an excise duty of £251.60 on every kg of 'tobacco for heating' but it is not clear from the Financial Times' reporting whether the new EU minimum rate will be higher than the existing UK rate. However, the EU appears to be taking a more restrictive approach overall due to its proposal to ban the sale of flavoured heating tobacco products, which the UK has not replicated. These divergences all have an effect on Northern Ireland, which is subject to both the new EU excise duties and ban on heated tobacco products. This will likely result in more people taking up the smoking of tobacco cigarettes in NI compared to the rest of the UK – where e-cigarettes will be	

		cheaper - and is thus a significant public health consequence stemming from the function of the Northern Ireland Protocol. Given the implications, the UK might refuse to apply the e-cigarette excise duty in Northern Ireland, which could become a major political row. Should the new duties be applied to NI, this will also create additional processes around the exportation of e-cigarettes from GB to NI, to ensure the correct rates have been paid.	

20. Digital & Data ACTIVE ALIGNMENT *EU-U.S. Data Privacy Framework.*	**Summary:** In October 2022 US President Joe Biden signed an executive order restricting US intelligence authorities' access to Europeans' personal data - when transferred to the US - to only that which is 'necessary and proportionate' for defined national security purposes. A new redress mechanism, including a new court within the US Department of Justice, will also be established to investigate and resolve complaints about data access. The introduction of these safeguards, as well as new obligations for US companies importing data from the EU, are the key tenets of the new US-EU Trans-Atlantic Data Privacy Framework. This framework addresses concerns raised by a 2020 Court of Justice of the European Union ruling (known as *Schrems II)* that the previous framework for EU-US personal data transfers (known as Privacy Shield) did not provide adequate safeguards for Europeans' data. This resulted in the invalidation of Privacy Shield, which increased compliance costs for businesses transferring data from the EU to the US. The EU says the new framework with the US offers 'significant improvements' on Privacy Shield, and the EU will now prepare a draft 'adequacy' decision for the US and	**Impact:** The *Schrems II* decision made personal data exchanges between the US and EU more difficult, as businesses conducting transfers had to carry out increased due diligence to understand the risks of foreign surveillance and, if necessary, introduce additional safeguards to comply with EU data protection requirements. This was rendered more complicated by the fact that it was not always entirely clear what those safeguards should be. Politico reports that the agreement stands to benefit 'thousands of companies' which move data between the US and EU. It also provides legal certainty for businesses looking to establish new links between the US and EU, and is politically a signal of a desire for closer economic cooperation. It also has a significant impact on the UK, which is seeking its own adequacy agreement with the US to facilitate the free exchange of personal data. Up to now, such an agreement with the US would have imperilled the EU adequacy decision which allows free personal data exchange with the UK - because of the risk that EU citizens' data	**Timeline/region:** The EU adoption procedure is expected to be finalised in spring 2023. The UK also expects to lay its adequacy regulations before Parliament in early 2023.

	launch its adoption procedure. An adequacy decision would acknowledge that sufficient safeguards are in place to allow a free exchange of personal data between the EU and US companies certified by the US Department of Commerce under the framework. The EU has only adopted adequacy decision for 14 jurisdictions worldwide (including the UK).	which was freely shared into the UK could then move into the US without additional safeguards. However, the UK can now effectively piggyback off the framework established by the US-EU agreement, conducting its own adequacy assessment of the new US safeguards in parallel to the EU. Given both the UK and EU adhere to same data protection standards established by EU GDPR, this should lead to both sides establishing adequacy agreements with the US - without bringing to an end the EU-UK adequacy decision. Indeed, the UK government publicly welcomed Biden’s signing of the executive order implementing the new safeguards linked to the EU-US agreement, announcing that official UK-US talks had been held that same day which ‘paved the way for a new data adequacy agreement’. This is thus a case where continued UK alignment with EU regulations (in this case GDPR) has facilitated closer economic integration with another jurisdiction.	

21. Environment ACTIVE ALIGNMENT INTERNAL IMPACT *Ban on range of single-use plastic items in England.*	**Summary:** In January 2023 Defra Secretary Thérèse Coffey announced that a range of single-use plastic items will be banned in England. The ban covers single-use plastic plates, trays, bowls, cutlery, balloon sticks, and certain types of polystyrene cups and food containers. It applies to said items when used in restaurants, cafés and takeaways, but does not cover items used for takeaway food and drink from supermarkets and shops. The government has defended this omission on the grounds that takeaway packaging will be covered by a separate scheme coming in next year obliging packaging manufacturers to help pay for the disposal of it (though this would not appear to constitute an outright ban). This would bring England largely into line with the EU, which has already banned those items, as well as Scotland and Wales, which have opted to align with those EU regulations.	**Impact:** In one sense, this is a rare and notable case of the UK government actively choosing to align itself with EU regulations which have been introduced since Brexit. This may reflect both sides having similar ambitions when it comes to tackling plastic pollution, and the political tide turning to a point where the UK government is willing to pursue alignment in certain cases. In another sense, however, the UK government has opted for a less comprehensive ban than the EU, given the exemption for takeaway items from supermarkets and shops. This may raise concerns about a comparative weakening of environmental standards outside the EU. Moreover, Defra has been much slower in introducing such a ban than the EU (which brought it in in 2021) and Scotland and Wales (which brought it in last year). It is also possible that part of the rationale for alignment is the fact that Scotland and Wales have already chosen to copy the new EU restrictions. This created divergence within the UK internal market, resulting in an agreement to ban the sale of England-manufactured single-use plastic items from sale in Scotland and Wales. It will be interesting to monitor whether the Westminster government opts to align with	**Timeline/region:** The ban will be introduced in October 2023.

		similar EU legislation in future, for example the recently proposed ban on a range of single-use plastic packaging (see entry #11).	

22. AGRICULTURE **DELAYED DIVERGENCE** *Requirement for British farmers to obtain veterinary export attestations postponed.*	**Summary:** Defra has postponed by one year new certification requirements for British farmers exporting meat to the EU. The requirements, which will now come into force on 13 December 2023, will require farmers to obtain a formal attestation from a vet about the health of any animals which are to be slaughtered for export. For the time being, farmers themselves can declare the necessary vet inspection had taken place. Farms which have an accreditation with a food quality assurance scheme – such as Red Tractor – will be exempted from the new requirement, but the Financial Times reports that only around 75,000 of 125,000 sheep and cattle holdings in Great Britain are part of such schemes.	**Impact:** The one year delay was introduced following intense lobbying from industry groups. A letter from 14 industry lobby groups to Mark Spencer, Defra Minister for Food, expressed concern that the new bureaucracy would 'have an immediate impact on livestock prices here in the UK as well as causing significant and costly disruption for the supply chain'. The Financial Times reports that 70% of UK meat exports - worth almost £1bn last year - are to the EU, with the industry concerned that a significant amount of this trade would have been lost due to a lack of capacity for carrying out the new veterinary certifications. The lack of capacity in the system was highlighted when the Food Standards Agency recently reported that the staffing of abattoirs had been 'hand to mouth' in Autumn 2021, with the number of available vets meeting only 80% of the typical requirement. Due to Brexit, 65% more staff resource is required for surveillance of disease threats as the UK is no longer part of EU early warning networks. The pre-existence of such capacity challenges raises questions as to why Defra opted to 'gold-plate' EU regulation through stricter certification requirements for exporters, generating further pressure on the regulatory	**Timeline/ region:** The new requirements came into effect for farms in Great Britain on 13 December 2022.

		system, even though was not obliged to do so. Peter Foster of the Financial Times writes that Defra was 'perhaps fearful that an EU audit of the current system wouldn't pass muster', hence the need for a more onerous system. It remains to be seen whether the one year delay will be enough time for farmers and vets to adapt to the new certification requirements, or whether similar concerns about disruption will be raised as the December 2023 deadline approaches.	

23. Chemicals **DELAYED DIVERGENCE** **INTERNAL IMPACT** *Extension of authorisation deadline under GB Biocidal Products Regulation.*	**Summary:** In December 2022 the UK government passed legislation extending the evaluation of biocidal products under the new GB Biocidal Products Regulation (BPR) until 31 December 2027. Biocidal products are 'used to protect humans, animals, materials or articles against harmful organisms like pests or bacteria, for example wood'. The EU BPR establishes rules around the testing and authorisation of biocidal products for sale, and the Health and Safety Executive (HSE) is now setting up a GB BPR which largely replicates this system - requiring products to be resubmitted for approval under the GB regime. However, due to the 'large number of resubmissions received', the deadline for the completion of these evaluations has been pushed back to the end of 2027, having already been pushed back to 2023. The deadline for completing evaluations of new product applications (i.e. those not already on the market) will also be pushed back to the end of 2027.	**Impact:** The HSE notes that the 2027 deadline 'ensures that products can remain legally on the market during these extended time periods'. However, it also reflects its fundamental lack of capacity to carry out the new authorisations, having failed to meet its original ambition of a three-year transitional period to the new regime. The House of Lords Secondary Legislation Scrutiny Committee notes that there is no indication of 'what progress the HSE has made in the last three years in reducing the backlog, or whether HSE is building up its own database to prevent such delays in the future.' The delayed deadline also brings wider risks. One is about access to goods: certain companies may deem the process of applying for a new or updated GB BPR authorisation to be too complicated to bother with, leading to certain biocidal substances lacking authorisation for use on the British market. Another is about consumer safety, as the five-year window means that any product with an authorisation due to expire before 2027 will be able to remain on the market without undergoing new checks, which is a deviation from standard practice. Moreover, it is likely to lead to an increasing	**Timeline/ region:** The GB BPR authorisation deadline has been set back to 31 December 2027. The EU BPR continues to apply in Northern Ireland.

		divergence from EU standards, as any substances the EU decides not to re-authorise in the next five years will likely still be circulating freely on the GB market up to 2027. This creates a risk of the GB market becoming a dumping ground for substances which are banned by the EU. Similarly, the EU may authorise new substances before GB, meaning they are accessible in the EU but not the GB. There are likely to be additional issues in Northern Ireland, which continues to adhere to the EU BPR under the terms of the Protocol. Any divergence in restrictions between the EU and GB will mean Northern Irish businesses will have to be more vigilant in ensuring they do not import restricted substances from GB, and supply chains which involve those newly restricted chemicals will be disrupted.	

24. Chemicals **DELAYED DIVERGENCE** **INTERNAL IMPACT** *EU REACH update delayed and UK REACH deadline extended.*	**Summary:** The EU has postponed a major update to its 'REACH' regulation of chemicals. A full proposal will now be presented at the end of 2023, effectively halting the possibility of its implementation before the next European elections. The formal presentation of the roadmap was initially set to for 2022 but was first delayed to the spring of 2023 and has now been put back to the end of 2023. Professor David Bailey notes that, because European elections are scheduled for the Spring of 2024, this means 'effectively it is game over for revised REACH'. Once a new Commission is in place after the next elections, there is no guarantee that it will bring forward the same legislation. Meanwhile, in November 2022 Defra announced that the deadline for registrations under its own UK REACH regime would be delayed by three years, to 27 October 2026. Separate deadlines for substances imported in lower quantities and newer 'candidate' ones have been extended to 2028 and 2030. UK REACH largely replicates EU REACH, and its implementation primarily involves getting substances which	**Impact:** The EU's postponement of its update prevents a case of potentially very significant UK-EU divergence over chemicals regulation. The new EU 'roadmap', announced in Spring 2022, could have led to up to 12,000 new restrictions on chemicals in the EU, stemming from a shift in regulatory strategy to carry out risk assessments on entire groups of chemicals rather than individual ones. The aim was to clamp down on the practice of 'regrettable substitution' - where manufacturers slightly alter the chemical composition of a restricted product to create a 'sister' one which is not bound by those restrictions. This would have meant potentially thousands of chemicals being subject to restrictions in the EU but not GB, opening up risks of Britain becoming a dumping ground for those substances and imposing new limits on the types of goods which would be exportable to the EU (and Northern Ireland, which is subject to EU REACH regulations). However, coupled with the delay to the full implementation of UK REACH, UK and EU chemicals regulation will remain much more aligned in the coming years than previously seemed likely. This gives the UK government time and space to potentially reconsider how the transition to UK REACH is	**Timeline/ region:** The EU's proposed revision to reach is now not expected to be presented before late 2023. Any updates would apply to NI. UK REACH registration deadlines have been extended to 27 October 2026, 2028 and 2030.

	were registered on the EU database re-registered on the UK one. However, there have been significant capacity issues in obtaining those registrations, hence why the deadlines before substances must be on the UK REACH database are to be delayed.	managed, given it has been a major bureaucratic task for companies and is expected to cost them £1.5-3.5bn. The lack of impending divergence means the UK could consider an lower-cost approach to registrations, for example based on a 'Swiss-style' approach which keeps the UK aligned to EU regulations in order to negate the need for full re-registration of chemicals data on the new UK database. This has been ruled out by the current government (given the active alignment to EU standards which it entails) but could be an option for future administrations. It is unclear whether there are any other viable lower-cost approaches to re-registration.	

25. Product Standards DELAYED DIVERGENCE INTERNAL IMPACT *Requirement for mandatory use of UKCA product mark delayed.*	**Summary:** The UK government has opted to extend the date from which products placed on the GB market will be required to have a 'UKCA' manufacturing mark. The requirement was set to come into effect on 31 December 2022, but this has now been pushed back by two years to 31 December 2024 for most products, and to June 2025 for construction products. The reasons why the UK is introducing UKCA, and the challenges it has faced, have been outlined in a previous divergence tracker. Since the end of the transition period, goods with a CE mark (the EU equivalent of UKCA) have continued to be accepted on the GB market, while the UKCA regime gets up to speed. This grace period – which has already been delayed before - was set to expire on 31 December 2022, but it has now been set back by another two years to 31 December 2024. Even after that deadline, CE-marked goods which entered the GB market before then will not need to be obtain a new UKCA. Different rules apply in Northern Ireland, where a good placed on the market must have a CE mark, though it may	**Impact:** The extension of the deadline by two years follows widespread pressure from industries which were concerned about goods not obtaining UKCA marks in time. For example, the Construction Leadership Council and Construction Products Association expressed concern to the BEIS and DLUHC Secretaries of State that the new UKCA requirements would significantly impact supply chains for the construction sector. They noted that 28% of products used in construction are imported, with more than half of those from the EU. Many of these goods are essential to the building of homes, schools and hospitals; and from January 2023 the foreign manufacturers of those goods would have needed to have obtained a UKCA mark in order for them to continue being used in GB supply chains. There was a significant risk that many would not have done so, with industry bodies writing that 'many global manufacturers now regard the UK as just too difficult to do business with, which has resulted in products being withdrawn – impacting on the UK's ability to deliver completed projects.' Over time the shortage of goods would have likely grown as more and more products were changed or upgraded, requiring renewed certification, which many	**Timeline/ region:** The new deadline for mandatory UKCA markings is now 31 December 2024. The UKCA regime applies to GB only, with different rules for NI.

	also have a 'UKNI' mark in addition, if it was assessed for conformity by a UK-based notified body.	foreign manufacturers may not have bothered to obtain given the processes involved. Moreover, there was a major risk that even companies (domestic or foreign) that did seek new UKCA certification would not have received the necessary authorisation by 31 December 2022, due to a lack of testing and approval capacity. The same letter to government reported that the EU has around 770 testing facilities (compared to around 40 in the UK) and much more established standards and processes for testing, whereas UK bodies have 'been slow to come together'. The issue is especially acute for certain products used in construction such as glues and sealants, glass, insulation, radiators and passive fire protection. There is only one testing facility for all radiators in the UK, meaning it would in theory take 75 years to retest them all. This lack of capacity meant goods could have temporarily disappeared from the GB market while awaiting a UKCA mark. The British Chambers of Commerce (BCC) has also pointed out that that the separate rules for Northern Ireland create problems for the UK Internal Market. CE-marked goods produced in NI will be permitted to circulate in GB, while	

		CE-marked goods from the EU will not – yet no system has been developed for differentiating between NI and EU CE-marked goods. The lack of clarity about how this will be managed was creating uncertainty for business, the BCC said. The deadline extensions offset the above issues for now, but do not fundamentally address the problems with a lack testing and approval capacity; nor the risk that foreign manufacturers don't bother to obtain a UKCA mark in future; nor the NI-specific issues. Many questions thus remain about whether mandatory UKCA marking will be a much more viable initiative in December 2024/June 2025 than it was in December 2022. The UK could opt to address these concerns by accepting CE-marked goods on the GB market in perpetuity. However, if that is to be the case, business would likely appreciate the certainty that comes from having the plan formally communicated as far in advance as possible, rather than worrying about looming deadlines only to see them repeatedly set back.	

26. VETERINARY MEDICINES DELAYED DIVERGENCE INTERNAL IMPACT *EU extension of grace periods around veterinary medicines supply to Northern Ireland.*	**Summary:** In December 2022 the EU announced its decision to extend until December 2025 the grace period allowing citizens and business in Northern Ireland (as well as Ireland, Cyprus and Malta) to buy veterinary medicines from Great Britain. The relates to the new EU Veterinary Medicinal Products Regulation, which first became applicable in January 2022 and applies to Northern Ireland (but not the rest of the UK) under the Protocol. An initial grace period was applied delaying its full implementation in Northern Ireland until the end of 2022. This was because the Regulation necessitates new authorisations and checks on imports of veterinary medicines from GB, and operators in NI lacked much of the accreditation and infrastructure required for this. The UK government claimed that ending the grace periods and applying the regulation in full would mean 'potentially half of all veterinary medicines for a variety of animals and livestock facing discontinuation', because Northern Irish operators would not be able to deal with the new technical requirements.	**Impact:** The EU decision prevents the prospect of NI losing access to a large proportion of its veterinary medicine supplies. This could, naturally, have had serious implications for animal, food and public health. It mirrors a similar decision made by the EU in December 2021 to allow the continued supply of human medicines from Great Britain to Northern Ireland, Ireland, Malta and Cyprus for a three-year 'transitional period' - staving off concerns that many would disappear from shelves due to new EU requirements around labelling and testing of imports. Like the 2021 case, the latest EU decision was made unilaterally, suggesting a continued inability among the UK and EU to work jointly to resolve situations which pose clear threats to Northern Ireland. The UK government had stated in the summer of 2022 that it did not intend to apply the EU regulation in Northern Ireland after the end of the grace period, and was instead seeking to alter the function of the Protocol through the Northern Ireland Protocol Bill.	**Timeline/ region:** The grace period is extended to December 2025.

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