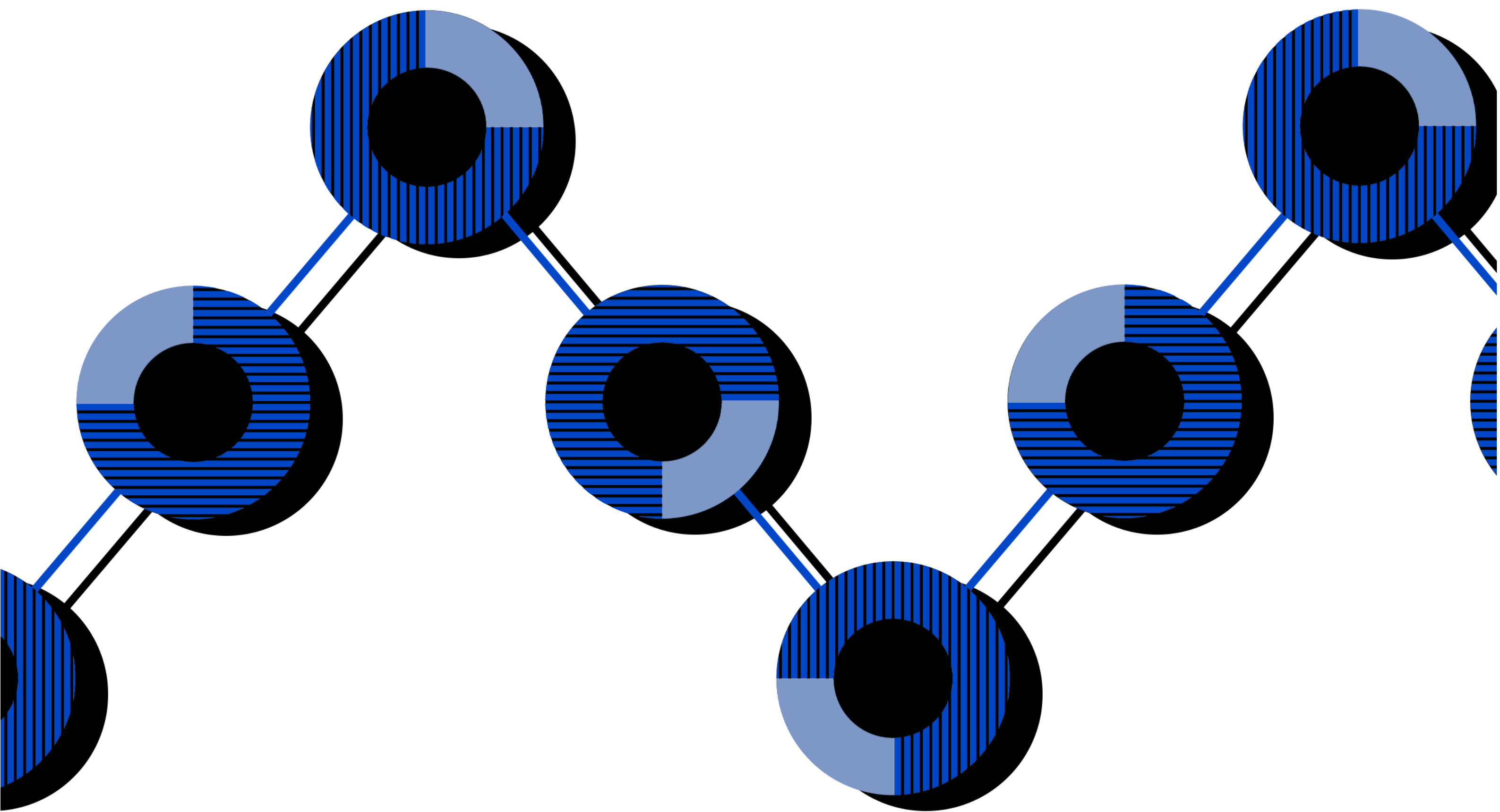
UK IN A CHANGING EUROPE

UK–EU REGULATORY DIVERGENCE TRACKER

Q4 2023



JOËL RELAND

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OVERVIEW

This is the tenth edition of the UK in a Changing Europe's regulatory divergence tracker, covering developments from October 2023 to January 2024. There are nine cases of active divergence (where the UK, or some part of it, changes its rules); ten of passive divergence (where the EU changes its rules and the UK, or some part of it, does not follow); two of procedural divergence (where policy does not diverge but the processes for managing it do); and four of active alignment (where the UK takes steps to align more closely with EU rules, systems or programmes).

The last quarter has seen a relatively high pace of legislative activity by both the UK and EU, as they seek to complete flagship reforms before their respective elections later this year. On the UK side, this has led to several changes which could be chalked up as Brexit 'wins' – bills to ban the export of live animals and amend the UK's GDPR regime; a new financial services agreement with Switzerland; and the use of secondary legislation to amend the EU-derived working time regulations and cap on bankers' bonuses. Yet the day-to-day impacts of these reforms are likely to be limited, as many of the changes are largely technical in nature or effectively update the law to reflect existing practices. That said, the reforms to GDPR, while not radical, do reduce some personal data protections – and could prompt the EU to drop, or not renew, its data adequacy decision for the UK (which is up for review in 2025).

While the UK has opted to loosen individuals' data privacy and paid leave protections, in exchange for reducing business' administrative costs, the EU has brought forward some notable measures to increase the burden on businesses in the name of upholding labour and environmental protections. The Platform Workers Directive could reclassify millions of people working via digital platforms (like Deliveroo riders and Uber drivers) as employees rather than self-employed, entitling them to new social protections, though member state objections mean the law is not guaranteed to be completed. Meanwhile, new rules on products made with forced labour and corporate sustainability due diligence will force companies (including from third countries importing to the EU) to take on active responsibility for ensuring there is no forced labour, or other human and environmental rights violations, linked to their supply chains. And updated rules on packaging and 'ecodesign' will place new obligations on businesses to improve the sustainability of goods and their packaging – which could also create adaptation costs for UK exporters to the EU, in terms of new labelling and procedures.

Elsewhere, with its AI Act now in near-final form, the EU claims it 'becomes the very first continent to set clear rules for the use of AI'. The likely global adaptation to the EU rulebook

limits the scope for the UK to diverge, and tech companies also warn that the UK Investigatory Powers (Amendment) Bill could lead to them halting the rollout of new technologies in the UK, due to what they see as excessive demands to notify government of changes. There are, however, a couple of areas where the UK is seemingly trying to introduce lighter-touch regimes than the EU. The government has issued a 'strategic steer' to the Competition and Markets Authority to focus on boosting economic growth - which could be seen either as a deregulatory push or, more prosaically, as an admonishment for some notably interventionist decisions post-Brexit. The UK is also introducing an 'alternative' process for registering chemicals under its UK REACH regime, requiring less data to be submitted than under the EU system. This stems from the inhibitive cost to business of replicating EU registrations, but the plan has raised serious concerns about the impact on chemicals safety.

In other areas, the recent trend of the UK seeking to minimise divergence continues. In some cases, this amounts to replicating or restating EU law. The government has intervened to retain EU principles on VAT and excise duty law - which would otherwise have lapsed at the end of 2023 under the Retained EU Law Act - because their removal risked opening government up to re-litigation from major companies; and the working time reforms restate EU case law principles around carrying over leave. Elsewhere, the UK is replicating a landmark EU policy by outlining plans for a UK Carbon Border Adjustment Mechanism (CBAM), which it was in effect forced into to avoid high-carbon goods being dumped in the UK once the EU CBAM takes full effect. That said, there are some technical differences in scope compared to the EU version, and a UK CBAM alone will not remove the new non-tariff trade barriers created by the EU CBAM. The UK and EU have also jointly agreed to extend the TCA's grace period on rules of origin for electric vehicles by three years, to avoid manufacturers facing new export tariffs; and the UK has introduced simplified immigration rules for French school groups, with the aim of increasing the number of school trips from France to the UK.

In stark contrast, however, the UK has separately toughened the requirements for obtaining a visa under its post-Brexit immigration regime, and its plans for an Electronic Travel Authorisation (ETA) visa-waiver system could also complicate border processes in future. The ETA also throws up specific issues for tourism in Northern Ireland, which could also face trade and economic disruption from new EU regulations on packaging, ecodesign, supply chain due diligence, glyphosate and common chargers, as well the UK CBAM.

24 January 2024.

1. Agriculture

Changes to farm payments scheme in England.

ISSUE

Defra has announced changes to the workings of its post-Brexit farm payments scheme. These schemes, which replace the EU's Common Agricultural Policy (CAP), provide farmers with financial rewards in exchange for carrying out specific practices which help the environment and boost sustainability. The latest changes will apply to the 2024 offer, which farmers can apply for from this summer.

The changes include a 10% uplift in the average value of agreements under two of the schemes (the Sustainable Farming Incentive (SFI) and Countryside Stewardship (CS)); a streamlined application process for SFI and CS mid-tier; around 50 new actions for which farmers can receive payment; enhanced payments for 'creation' and 'maintenance' options (designed to boost long-term incentives for famers to create new habitats); and 'premium payments' for the most high-impact actions. To aid tenant farmers, more shorter-length actions, which can be completed in three years or less, will be added to the scheme.

The schemes will also be kept under review, with every action receiving a 'health check' over a three-year period from 2025. The changes apply to England - there are separate schemes for Wales, Scotland and Northern Ireland.

NEXT STEPS:

This refers to the scheme in England only. Farmers will be able to apply for the new offers from summer 2024.

IMPACT

The latest updates are designed to increase the scale of the schemes, with more and larger payments available, including premiums for certain high-impact actions. The schemes have previously been criticised for leaving farmers financially worse off than under the CAP, ensuing low levels of take-up, and for not delivering on the stated ambition to more evenly distribute payments between large landowners and smaller ones. CAP payments will be phased out completely by 2027.

It also aims to increase productivity and innovation, by giving farmers advance notice of the 2024 offer so they can plan ahead. Another criticism of the scheme so far has been that it offers farmers much less certainty than under the CAP, which operated on seven-year budget cycles. This speaks to the underlying challenge of creating a post-Brexit farm payment scheme. It can certainly be better tailored to the needs of British farmers, as it does not need to work for 27 member states with very different landscapes and agricultural economies. But, at the same time, tailoring it requires a large degree of iteration and adaptation, and thus farmers do not know exactly what the scheme will look like from one year to the next, making it hard to plan ahead.

Whether the latest updates satisfy farmers remains to be seen. There continue to be criticisms of the scheme for paying insufficient attention to supporting food production at a time when there is a heightened risk of domestic food insecurity.

2. Animal welfare

GB ban on export of live animals for fattening and slaughter.

ISSUE

The UK government has introduced a new Animal Welfare (Live Exports) Bill, which would ban the export of live animals from Great Britain (GB) for fattening and slaughter. The ban would apply to exports of cattle, sheep, goats, pigs and equines to third countries.

This has been promoted as a chief benefit of Brexit, because EU rules prevent such a ban between member states. Defra initially outlined proposals for a ban in December 2020, and the Animal Welfare (Kept Animals) Bill was introduced in June 2021. The Bill included a ban on the export of live animals for fattening and slaughter alongside a range of other animal welfare measures.

The government dropped the Bill in May 2023, announcing that it would instead take forward a number of single-issue bills over the remainder of the parliament instead - of which the Live Exports Bill is an example.

NEXT STEPS:

The Bill is going through Parliament and remains subject to potential amendment. It will apply in England, Wales and Scotland.

IMPACT

The distress and injury caused to animals during export has been a longstanding issue of concern for animal rights campaigners. The Food and Animal Welfare Committee, which has advised Defra on the matter, concluded that the exportation of live animals for fattening and slaughter was not justifiable 'where such actions could be carried out within the host country'. 87% of respondents to a Defra consultation agreed, and Defra notes that the ban will ensure 'animals are slaughtered domestically in high welfare UK slaughterhouses'.

Some farming groups have argued that a ban will negatively impact their livestock trade, though the Institute of Export and International Trade believes that the impact will be minimal, as there is already an industry preference for slaughtering animals domestically prior to export. It adds that the much bigger issue for farmers is the competitive imbalance created by the lack of import controls on agricultural goods from the EU (which GB exporters face in the other direction).

Defra notes that the Bill 'will create some minor charges on the public revenue' due to 'administrative and enforcement costs for the Animal and Plant Health Agency as well as a minor impact on the criminal justice system.' Some concerns have been raised that the Bill could come into conflict with the UK's obligation at the WTO not to ban exports to other countries, but exceptions are allowed 'when necessary to protect human, animal or

plant life or health'.

Though animal welfare is a devolved matter, the ban will apply to Wales and Scotland as well as England. The Bill grants the Scottish and Welsh governments the powers to make appropriate regulations to enforce the ban. The Bill does not apply to Northern Ireland, which means its regulations will remain aligned with the EU's. Northern Ireland's livestock industry is highly integrated with that of Ireland - to which it exports an estimated 5,000 lambs each week - meaning a ban on live exports to the EU would be extremely disruptive. The ban will not apply to exports from GB to NI, as it is not a third country.

The EU is also reforming of its rules on live animal transport, though it will not impose an outright ban akin to the UK's. Instead, a maximum journey time of nine hours will be applied to animals meant for slaughter (there is currently no time limit), and for other animals the maximum journey time will be 21 hours, alongside new obligations to give the animals rest, feed and water. There will also be a minimum space allowance per animal, and restrictions on how long for and when animals can be transported during periods of high or low temperature. Businesses will have five years to adapt to some of the rules which require longer term planning and investment. The rules will be applied to imports from third countries, but this will have little bearing on GB exporters should it proceed with its live animal export ban.

The Guardian obtained copies of official records showing that EU countries exported over 180,000 consignments of live animals, on journeys of eight hours or more, in a 19-month period between 2021 and 2023.

3. Climate

UK carbon border adjustment mechanism.

ISSUE	IMPACT
The UK government has announced that it will introduce a carbon border adjustment mechanism (CBAM) by 2027. It will be applied to imports of iron, steel, aluminium, fertiliser, hydrogen, ceramics, glass and cement; ensuring they pay the same price for their carbon emissions as if they had been produced in the UK. This seeks to level the playing field between UK manufacturers and those from third countries with less strict regulation on carbon emissions. Under the UK emissions trading scheme (ETS), certain goods must pay a tariff for each unit of emissions produced during the manufacturing process - designed to encourage key industries to reduce their overall emissions. However, this creates a risk of 'carbon leakage', where companies move production processes abroad to avoid the UK ETS. This both undercuts UK manufacturers and means carbon emissions are displaced, rather than reduced. The UK CBAM addresses that risk by applying the ETS's carbon price to third country imports. It also means the principle of carbon pricing is applied more widely across the UK economy, as 43% of the UK's consumption emissions come from imported products. The exact design and delivery of the CBAM (including exactly which products fall within scope) is yet to be finalised, with government to consult further this year. In cases where a good has paid a carbon tariff in its country of production, which is lower than the UK's, the CBAM will levy the difference between the two prices.	This represents, simultaneously, both important alignment with and divergence from EU regulation. It represents alignment in so far as the UK is replicating a major new piece of EU regulation, with its own CBAM having come into provisional effect in October 2023 (declarations must be made but tariffs are not yet being levied). Moreover, some experts argue that the EU's regulation effectively forced the UK's hand, due to the significant risks of not following suit. First, the EU CBAM is likely to reduce its imports of carbon-intensive goods, creating a risk that those goods are diverted to the UK market. Second, the EU CBAM imposes new costs for UK exporters to the EU, in terms of increased administrative work to calculate and declare the embedded carbon emissions in goods, and (from 2026) having to pay export levies. Implementing a UK CBAM would level the playing field somewhat, and could be a step towards seeking an exemption from the EU CBAM (though this most likely relies on the UK and EU linking their ETS regimes). There appears to be divergence, however, in the scope of the UK and EU CBAMs. Unlike the EU's, the UK's provisionally covers imports of ceramics and glass, but not electricity. And whereas Scope 2 emissions are only partially covered by the EU CBAM (only for electricity consumed in the production process), they are fully covered by the UK's. There are also likely to be differences in the UK and EU CBAM prices, given they are set by their respective ETS regimes (the EU's carbon price is currently much higher than the UK's, though

Liability for payments will lie with the importer. The CBAM will be applied to Scope 1 and 2 emissions (those for which the manufacturer is directly responsible - like combustion during the production process; and indirectly responsible - like those stemming from its electricity and heating usage). Scope 3 emissions (indirect emissions created upstream or downstream - for example the transportation of finished goods or production of tools used to create the good) are mostly excluded from the UK CBAM, except for 'select precursor product emissions', so as to align with the UK ETS' coverage.

NEXT STEPS:

The UK is set to consult further on its CBAM this year, with a system to be in place by 2027.

this could change by 2026). And whereas the EU has explicitly stated that it will phase out free carbon allowances from 2026-2034 (which the CBAM effectively replaces as a tool to stop carbon leakage), the UK has not provided such clarity, stating only that the UK CBAM will work cohesively with the UK ETS, including free allowances'.

The exact implications of these differences are hard to determine at present, not least because the UK is yet to confirm the final form of its CBAM. But the fact that it is set to take effect in 'by 2027' - potentially a year after the EU's - has prompted UK Steel to voice concerns that this 'risks high-emission steel being dumped in the UK' in the interim. If the UK CBAM is significantly more or less strict (in price and/or scope) than the EU's, this could blunt the effectiveness of the lower-regulation regime, with it being seen as a comparatively easy target market for carbon-intensive goods. And regardless of any policy divergence, EU exporters of CBAM-linked goods will face new costs (the same as those detailed above for UK exporters under the EU CBAM). This may be of concern to some British businesses reliant on EU imports, and who will be liable for the CBAM declarations and payments.

There is also an issue around Northern Ireland, which is subject to the UK ETS for everything except electricity. Were the UK CBAM to be applied to Northern Ireland's imports (including from the EU via the Republic of Ireland) this would create trade friction at the Irish Border, undermining the Good Friday Agreement. Yet, should it not be applied, there is a risk that EU goods can circumvent the UK CBAM via the Irish border. There is a similar question in reverse around whether Northern Ireland should apply the EU CBAM on goods imported from Great Britain, and discussion over this could take place at the UK-EU Joint Committee.

4. Digital & Data

Investigatory Powers (Amendment) Bill.

ISSUE

The November 2023 King's Speech included the Investigatory Powers (Amendment) Bill. This updates the 2016 Investigatory Powers Bill, which established a framework for the use and oversight of investigatory powers by UK intelligence services, law enforcement and others. The Bill makes a range of 'targeted changes' which are designed to help the UK better respond to evolving threats.

Among the proposed changes is an update to the 'notices' regime, which imposes obligations on telecoms operators to ensure lawful access to data in relation to national security matters and law enforcement investigations. The 2016 Act gives the government powers to compel companies to share user data for reasons of national security or criminal investigations.

The Amendment Bill would create a new obligation for operators to notify the Home Secretary - following a written request - of technical changes they are making to their technology which could affect 'lawful access to data'. The draft Bill contains provisions for regulations to be made, setting out the threshold for a notification requirement to be imposed.

NEXT STEPS:

The bill is making its way through Parliament and therefore subject to potential amendment. The bill applies, in most part, to the UK as a whole.

IMPACT

The 2016 Investigatory Powers Bill is not a piece of retained EU law and the UK would have had the freedom to implement these reforms as a member state. However, they could negatively affect tech companies' perception of - and presence in - the UK, with some raising concerns about the proposed requirement to pre-notify government of technical changes, which they deem could give government powers to block or intervene in the rollout of new technology.

The Home Office says the 'notification requirement will not allow the Secretary of State to prevent a technical change to an existing service, rollout of a new service or any other relevant change. Equally, it is not intended as an approval mechanism.' It says that the notification requirement 'is intended to ensure law enforcement and other relevant public authorities have time to adjust accordingly and mitigate the impacts wherever possible'.

However, the trade body Tech UK says it has concerns that a notification by a company could then be used by the Home Office as grounds to start a 'notice process' (an existing power it has under the 2016 Act) which could ultimately lead to it compelling a company to make changes to a system or product. It says: 'this would in effect could grant the Home Office de facto power to prevent companies from making changes to their services'.

Tech companies have raised particular concern about the government blocking the addition

of new encryption features (which prevent third parties from reading messages sent user-to-user on a platform). The President of the private messaging service Signal said this could amount to an 'over-reach that will make it nearly impossible for any service, homegrown or foreign, to operate with integrity in the UK'. Tech companies have previously raised concerns about threats to their encryption features stemming from the UK's Online Safety Bill.

Tech UK also notes that Clause 18 of the bill changes the definition of a telecoms operator to cover those not entirely based in or controlled from the UK. The Home Office says this is done 'out of an abundance of caution' to ensure that 'large companies with complex corporate structures are covered in their totality' by the law. But Tech UK has raised concerns about the lack of clarity over exactly who this will apply to in practice. It adds that there is a risk that it could be seen to infringe upon the sovereignty of other nation states (by potentially granting the UK powers to access the data of users in other countries) and 'could make the UK a less attractive place to provide technology services'.

Human rights organisations have also said the Bill may violate the European Convention on Human Rights because it reduces the safeguards on how security services hold data.

5. Digital & Data

Data Protection and Digital Information Bill.

ISSUE	IMPACT
Following the King's Speech in November 2023, the Data Protection and Digital Information Bill, first brought forward in March 2023, was reintroduced to Parliament. The bill makes changes to the UK General Data Protection Regulation (GDPR), which transposes EU data protection regulations into UK law, and the Data Protection Act 2018, which exercises derogations permitted under EU GDPR. The provisions are technical but extensive, grouped into six parts. The analysis below focuses mostly on Part 1 (data protection). The bill aims to improve the clarity of existing rules, by developing a test to help organisations understand whether data is personal or anonymous. Only data which is personal needs processing in accordance with GDPR - so the test could help businesses avoid unnecessary compliance work for anonymous data. The bill also amends the definition of data processing for research and statistical purposes, and exempts those doing so (as well archivists) from needing to provide certain information to individuals whose data they are reusing for a new purpose. Further clarification will also be provided on when personal data can be reused for a different purpose. Article 6 of UK GDPR will be amended, creating a new ground on which data may be processed, termed 'recognised legitimate interest'. This, in effect, is for reasons of safeguarding national security, emergency response and crime prevention. The Secretary of State will have powers to amend the set of recognised legitimate interests.	The government says the Bill is intended to 'update and simplify the UK's data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards'. These 'highly technical' changes consist largely of tweaks and clarifications to help certain groups better navigate the system, rather than wholesale reform. However, the law firm Linklaters says that the 'detailed interactions' between different UK data protection laws, added to the flurry of upcoming changes, could mean the UK has 'the most complex data protection law in the world based'. It also notes that, 'despite some ambitious claims, the reforms are generally modest'. For example, though the number of 'annoying cookie pops-up' (sic) is being reduced, this falls well short of the initial plans to remove them for all cookies. It also notes that in some cases the law has been strengthened, for instance by giving new powers to the Information Commissioner. Linklaters does say, however, that replacing data protection officers with 'senior responsible individuals' could be significant - this removes the requirement for the individual in charge of an organisation's data compliance to be independent from senior management. It also notes the greater permitted use of automated decision making - which at present is not allowed in cases that could create legal or similarly significant effects for the data subject. The Bill would instead ban automated decision making only for significant decisions

There are also changes to the rights of individuals regarding their personal data. Data controllers will be able to to charge a 'reasonable fee' or refuse to act in response to 'vexatious or excessive' data subject access requests (when an individual requests a copy of their personal data under UK GDPR). Respondents will also be given more flexible timeframes to respond in more complex cases. Demands on organisations to demonstrate compliance with their obligations will be streamlined, and they may now appoint a senior internal individual to be responsible for data protection compliance, rather than needing to appoint a 'Data Protection Office' who is independent of senior management. Users will also no longer need to consent to the use of cookies for certain 'low-key privacy reasons'.

Shortly after the bill was reintroduced, the government outlined several new amendments. This includes new powers for the Department for Work and Pensions to carry out regular checks on benefit claimants' bank accounts 'to spot increases in their savings which push them over the benefit eligibility threshold, or when people send more time overseas than the benefit rules allow for'. This is currently only permitted when there is already a suspicion of fraud. Social media companies would also be obliged to preserve the data of children who die through suicide, to aid subsequent investigations. The policy will also newly be allowed to keep the biometric data of individuals who pose a potential national security threat for as long as they are subject to an INTERPOL notice.

NEXT STEPS:

The bill is yet to complete its passage through Parliament and is therefore still subject to potential amendment.

(defined as producing a legal or 'similarly significant' effect for the data subject) based solely or partly on 'special category' data (i.e. highly sensitive data like ethnicity and sexual orientation). Labour and the SNP tried (but failed) to amend this provision due to fears of bias in automated decision-making systems.

A key question will be whether the EU considers that the changes in the bill create significant enough divergence for it to remove its data adequacy decision for the UK. The decision acknowledges the UK's data protection regime as equivalent to the EU's and allows a free flow of personal data between the two. The UK government estimates this to be worth £1.4bn to UK businesses in reduced administrative costs over five years. The decision expires in June 2025, so the EU may wait until then to decide whether the divergence is significant enough not to renew the adequacy decision. The fact that the EU is also considering whether to reform its own GDPR rules could complicate this picture further.

The law firm Bell Gully concludes that the bill, in particular following the recent set of amendments facilitating government and police access to personal data, is set to 'significantly change the UK data and privacy landscape…' running against the EU-led preference for 'stricter data protection and more personal control over data'.

6. Financial services

UK removal of bankers' bonus cap.

ISSUE

The Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have announced the removal of the UK cap on bankers' bonuses.

The PRA and FCA undertook a consultation earlier this year on whether to remove a rule imposed in 2014 by the EU, which limits bonuses to twice an employee's basic salary. It was introduced with the aim of limiting excessive risk-taking following the global financial crisis.

The PRA concluded that the cap pushes banks to pay higher salaries instead of bonuses, which 'can place upward pressure on salaries and allowances that may not be linked to longer-term performance and cannot be reduced or clawed back in the event of later failure and/or previous misconduct coming to light'. It added that 'growing evidence has emerged of undesired consequences of the rules on firms' safety and soundness and UK competitiveness.'

NEXT STEPS:

The cap was revoked in the UK on 31 October 2023.

IMPACT

The proposal was initially made by then-Chancellor Kwasi Kwarteng in September 2022. He argued that the cap acted as a disincentive for firms to move to the UK. In its statement, the PRA and FCA said they 'consider that growing evidence has emerged of undesired consequences of the rules on firms' safety and soundness and UK competitiveness'. It added that 'a bonus cap is not routinely imposed in other leading international financial centres outside the EU... [and] has been identified as a factor in limiting labour mobility'. For example, a US-based banker (or indeed bank) might be less likely to move to London due to the more limited bonuses on offer (while UK-domiciled banks operating in the US are unable to offer the same bonuses on offer from US firms).

The extent of the impact of the decision is, however, open to question. Some argue that the fact that UK banks offer higher salaries to compensate for smaller bonuses largely offsets differences in pay compared to other markets. Meanwhile, others note that staff who saw salary rises when the bonus cap was imposed are entitled to maintain those salaries and will be reluctant to have them cut in exchange for greater bonuses. Because those higher salaries are now 'baked-in', the removal of the bonus cap is could to lead to larger renumeration overall, rather than to a recalibration where overall pay remains stable but more is paid out in performance-related bonuses (which is in effect what the PRA and FSA have argued for).

7. Financial services

UK-Switzerland financial services agreement.

ISSUE

The UK and Switzerland have signed an agreement on enhanced financial services cooperation. In selected sectors (insurance and reinsurance, investment services, over-the-counter derivatives, central counterparties) British firms will be able to provide services in Switzerland while largely following UK regulation, and vice-versa. This means a diminished need to comply with Swiss rules. It will allow, for example, UK firms to advise high-net-worth clients in Switzerland (where many are based) without registering with a Swiss body. The UK has also secured an exemption from a new Swiss requirement, which took effect at the start of this year, for overseas insurance brokers to establish a base in Switzerland.

In a wider range of sectors (those above, plus asset management, trading venues, corporate banking), the UK and Switzerland have made new 'stability enhancing commitments' to maintain openness between their respective markets. A joint committee will be established to oversee dispute settlement, and there is a commitment to close cooperation on sustainable finance, with a potential mutual recognition agreement in future.

NEXT STEPS:

The agreement is now subject to approval in the UK and Swiss parliaments.

IMPACT

The UK used to be part of EU equivalence agreements with Switzerland, which facilitated financial services trade in certain sectors. Since Brexit, it has instead been operating under a series of temporary agreements to maintain market access. The new agreement, in negotiation since 2020, permanently restores UK market access, providing greater certainty for the sector.

Though levels of market access are similar, the UK-Swiss agreement is based on different principles to the EU-Swiss one. Whereas the EU deal uses 'line-by-line' assessments to determine legal equivalence, the UK-Swiss deal is based on 'deference' - focused on common outcomes rather than strict alignment of rules. This denotes a higher level of reciprocal regulatory trust which could pave the way for further mutual recognition agreements in future. Indeed, the UK Chancellor Jeremy Hunt has hopes the deal will provide a 'blueprint for future mutual recognition agreements' - be that with Switzerland or other countries. The UK and Switzerland are currently negotiating a comprehensive free trade agreement with could lead to deeper integration of their financial services markets.

8. Immigration

Changes to rules under UK immigration system.

ISSUE

The UK government has announced that, from next spring, it will increase the income threshold required for overseas workers to get a UK visa from £26,200 to £38,700. Certain jobs are exempted from the threshold if they are on the 'shortage occupation list', but the government says the '20% going-rate salary discount for shortage occupations' will be replaced with 'a new Immigration Salary List, which will retain a general threshold discount'. Care workers will no longer be allowed to bring dependants to the UK under the Health and Care Worker visa (which is not subject to the uplifted salary requirement).

British and foreign nationals settled in the UK will now need to earn £29,000 (up from £18,600), eventually rising to £38,700, for their spouse or partner join them. The annual Immigration Health Surcharge, which visa holders must pay as a contribution to UK public services, will increase from £624 to £1,035. The new rules will apply to all foreign nationals - not just EU citizens.

NEXT STEPS:

The changes take effect in spring 2024 and apply to the UK as a whole.

IMPACT

These changes represent a significant tightening of the UK's post-Brexit immigration regime, responding to the major increase in net migration (which reached 672,000 in the year to June 2023) which it has engendered. The government's target is to reduce this to under 300,000 a year, and claims the package means 'around 300,000 people who came to the UK [in 2022] would now not be able to come'. The increase in net migration has been driven primarily by non-EU nationals (in particular students, who are not subject to the salary threshold) whereas net migration from the EU has been net-negative since freedom of movement ended. This underlines how the new regime has fundamentally reshaped migration flows to the UK, and the new rules add yet more barriers to entry for EU nationals compared to pre-Brexit.

Professional bodies have criticised the new salary threshold for sending a message that the UK economy is 'closing ranks' on foreign workers. University leaders have flagged that the average early-career academic salary is lower than the new threshold, meaning they will not be able to offer visas unless other funds are diverted into topping up salaries. This makes UK universities less competitive on the international jobs market, and is likely to diminish their talent pool. A professor at the University of York noted: 'If you're a German postdoc looking at positions in Germany, France or the UK, these are extra obstacles and any extra obstacles to bringing the best and brightest here are bad obstacles and we need to work around those.'

9. Labour rights

Employment Rights Regulations 2023.

ISSUE	IMPACT
The UK government has enacted The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023, changing how holiday pay is calculated for part-year and irregular workers. In 2022 the Supreme Court ruled that workers who have a contract lasting a full year, but who are not employed for all weeks of the year, are still entitled to a full year's worth of statutory holiday (5.6 weeks per year). The ruling relates to the application of the UK Working Time Regulations, which originate from EU law. In response to the ruling, the government has enacted new legislation, reducing those workers' holiday entitlement to the pro rata equivalent of 5.6 weeks per year, depending on time worked. This is based on an accrual method, with holiday entitlement calculated as 12.07% of total hours worked in a pay period (weekly, fortnightly, or monthly). The legislation also newly entitles that same group of workers to 'rolled-up' holiday pay. Under this system, holiday pay is folded into a worker's standard pay, topping it up by an amount equivalent to their leave entitlement (the legal minimum is 12.07%) but they are not paid during any holiday leave they take. The practice was made unlawful in the EU because of the risk that it disincentivises workers from taking holiday. The Statutory Instrument also restates elements of EU case law around the carrying over of holiday allowance. Workers can now	These changes amount to the most significant amendments to Working Time Regulations since the UK left the EU. That said, they to a large degree make lawful actions which many employers are already taking in practice. An employment lawyer at Pinsent Masons says that pro-rating of holiday entitlement according time worked is the method which many employers used prior to the Supreme Court decision in 2022, and which many in fact continued to use afterwards. 'It seemed unfair to effectively give part-year and irregular hour workers a windfall of annual leave for time not worked in a year.' Government analysis estimates that the new law will save employers between £50m and £248m per year in the medium to long term, though in the short term employers will face one-off familiarisation and implementation costs amounting to £64m. Another lawyer at the firm notes that, although rolled-up holiday pay is unlawful under EU law, 'many employers also retained this long-standing practice as an efficient method of aligning holiday pay with pay actually received in a timely way', adding that 'employers will welcome the removal of legal risk' around the practice. Though there is a risk it discourages workers from taking leave, it has also been argued that rolled-up pay offers greater flexibility to casual workers and makes clear to them how much paid holiday they are entitled to (which can be hard to calculate). The 2017 Taylor Review of Modern Working Practices argued that 'individuals should have the choice' to take rolled-up holiday pay if they

carry over leave which they could not take due to family-related or sick leave. Workers are also able to carry over leave if their employer fails to a) recognise their right to leave or payment for it; b) give them reasonable opportunity to take that leave; or c) inform them that leave which is not carried over will be lost.

The instrument also addresses a 2019 Court of Justice of the European Union ruling that employers must set up a system to record the hours workers each day by a worker, to ensure compliance with obligations to workers under the Working Time Regulations (WTR) such as keeping to maximum weekly working hours. The instrument amends Regulation 9 of the WTR to clarify that employers 'do not have to keep a record of the daily working hours of their workers if they are able to demonstrate compliance without doing so'.

NEXT STEPS:

The Statutory Instrument applies to England, Wales, and Scotland, meaning Northern Irish employers and employees will remain subject to the existing form of the WTR.

so wish, but safeguards would be needed to ensure workers do in fact take the leave they are entitled to.

The elements in the legislation on carrying over leave allowance constitute a continuation of EU case law. Yet Pinsent Masons notes that this could strengthen their force as 'workers are likely to have a greater awareness of these entitlements now they are codified as express statutory rights'. The firm adds that this could mean employers have to build in new procedures to ensure they comply with the more explicitly stated requirements.

The clarification that employers do not have to keep a daily record of workers' hours is likely to reduce administrative costs for businesses (from having to implement new recording systems) though they must still be able to demonstrate adequate alternative means of recording hours worked.

10. Artificial intelligence

EU Artificial Intelligence Act.

ISSUE	IMPACT
The European Council and Parliament have reached a political agreement on the EU's Artificial Intelligence (AI) Act. The Act was first proposed by the Commission in 2021 and has been covered in a previous divergence tracker. The latest political agreement does not change the core approach. The Act works by defining different types of AI according to a set of risk categories ('minimal'; 'high'; 'unacceptable'; and 'specific transparency risk') which entail different obligations. The vast majority of AI systems fall into the 'minimal risk' category - which imposes no specific obligations. High-risk systems (like AI for managing critical infrastructure) have a wide range of obligations including risk mitigation and activity logging. 'Unacceptable risk' AI which violates fundamental rights (like emotion recognition and social scoring systems) will be banned. 'Specific Transparency Risk' applies to AI where users may not be aware they are interacting with a machine (for example a chatbot) or material that is AI-generated; and users will need to be made aware of AI's role in such cases. There are certain exemptions to these rules in relation to law enforcement and national security. One new development, however, is a set of dedicated rules for general purpose AI. Whereas 'narrow' AI is trained to repeatedly carry out the same task (like speech recognition), 'general' AI (also called 'foundation' or 'generative' models) can perform a wide range of tasks and adapt to new situations (such	With the AI Act now all but finalised, the EU has claimed that it 'becomes the very first continent to set clear rules for the use of AI'. This, it believes, is a 'launch pad for EU start-ups and researchers to lead the global AI race'. The EU has moved faster than other major regulators such as the US in implementing a rulebook for AI. This, it hopes, will give it significant influence over global norms, as firms start adapting their processes to conform with EU requirements (indeed, British firms will have to meet the new requirements if their AI is to be used in the EU). Though the UK is planning to introduce a more flexible AI regime than the EU, which it hopes could give it an edge as a location for research and development, it has yet to introduce anything concrete. This ambiguity around the future UK regulatory environment is likely to detract from companies investing in the UK. That said, AI companies have raised concerns about the content of the EU Act. The trade association DigitalEurope has criticised 'the last-minute attempt to regulate foundation models' which it says will create significant new legal and compliance costs for AI firms which will detract from investment in innovation. France's President Macron has also criticised this element, saying: "France... is probably the first country in terms of artificial intelligence in continental Europe. We are neck and neck with the British. They will not have this regulation on foundational models."

as ChatGPT, which can generate original images and text, for a variety of purposes, on command).

The behaviour of such AI is hard to predict, and therefore poses a challenge to the EU's risk-based model, which is based on clearly-defined AI behaviours and responsibilities. The latest version of the AI Act thus introduces binding obligations for such models, in terms of 'managing risks and monitoring serious incidents, performing model evaluation and adversarial testing'. This includes disclosing information on models to downstream users, and ensuring processes are in place to prevent copyright breaches. The Commission will work with stakeholders to develop codes of practice to implement those obligations, and a panel of scientific experts will issue alerts on systemic risks.

National authorities will oversee the implementation of the AI Act, including the new rules on general purpose EU, with supervision from a new EU-level 'European AI Office'.

NEXT STEPS:

The political agreement is subject to formal approval by the European Parliament and Council before it enters into force. The rules will then apply after six months (twelve months for general purpose AI), meaning it is likely to take full effect in early 2025.

The sudden addition of rules for generative AI highlights a challenge for the EU legislation, which aims to create a defined set of AI risks and obligations at a time when the field is still developing rapidly. This means there is a high likelihood that the framework quickly becomes outdated as new technologies emerge, meaning it is likely to need regular updating or fundamental revision. The UK's proposed model, based on empowering sectoral regulators to develop rules in response to specific issues they identify, according to a set of core principles, could in theory be suited to rapid adaption as technology advances. However, the problem remains that there is little clarity over how the system will work (and indeed be funded) in practice.

11. Energy / Subsidies

EU electricity market reform.

<table>
<tr><th>ISSUE</th><th>IMPACT</th></tr>
<tr><td>The European Council has reached agreement on a reform of the EU's electricity market, after a dispute between France and Germany on the subsidies which should be made available to nuclear facilities.

The overarching aim is to make electricity prices less volatile, following the price spikes caused by the war in Ukraine, and accelerate the deployment of renewable energy sources. Prices have been volatile because, under the 'merit order' pricing system used by the EU, the price of electricity is set by the last (and thus most expensive) input needed to meet demand. This is usually natural gas, and its price has soared due to the war in Ukraine.

The EU wants to make electricity prices less dependent on fossil fuel prices by increasing the quantity of renewable energy on the grid. One key proposal is to make 'two-way contracts for difference' (CfDs) the mandatory model for long-term contracts involving public funding. These guarantee the energy generator a minimum price for their supplies (which the state tops up when market prices fall below the threshold) and if the market price rises above a certain limit the generator pays the excess back to the state. This is a way of providing greater long-term economic security for renewable energy projects.

However, there had been division between member states over which sectors CfDs should apply to. France wanted to use CfDs to support its nuclear industry, which provides around 70% if its electricity. This was opposed by</td><td>As highlighted in a previous divergence tracker, there is relatively little divergence in how the UK and EU are seeking to address volatile electricity prices, with the UK's primary mechanism also being contracts for difference.

However, unlike the EU, nuclear projects are not eligible for CfDs under the UK's auction process. The Hinkley Point C nuclear plant was awarded a CfD in 2016 (before auction rounds began) but no nuclear power producers have received CfDs since. The UK government in 2022 introduced an alternative funding model for nuclear called Regulated Asset Base, which has been used to help fund the new Sizewell C project. In July 2023 the government also announced 'Great British Nuclear' - an arm's length body to help secure funding for small modular reactor projects.

Ultimately, therefore, the UK shares the ambition of some EU member states to make nuclear a core part of its energy security strategy, but has taken a different approach to how funding is made available. And, whereas the UK is planning to build new reactors, CfDs will be used by France primarily to maintain the lifespan of its existing fleet - perhaps indicative of the fact that nuclear makes up a much smaller proportion of the UK's energy mix (14% from 2020-22).

Another potential issue of note for the UK is the question of whether EU CfDs for nuclear amount to unfair subsidies for French industry. As noted in the previous column, a number of EU member states are concerned that the</td></tr>
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member states including Germany, Austria and Luxembourg due to their opposition to nuclear power and concern that it would allow the French government to subsidise a key energy producer, ingraining lower prices than in other member states that cannot offer CfDs to such a significant proportion of their energy grid.

Ultimately, the Council has agreed to allow CfDs for new nuclear facilities, as well as for wind, solar, geothermal, and hydropower without reservoir. The full package of EU proposals for electricity market reform were discussed in a previous divergence tracker.

NEXT STEPS:

Now it has an agreed position, the European Council will enter negotiations with the Parliament on the final form of the legislation.

French government will be able use CfDs to embed structurally lower electricity prices in France. This in turn is of benefit to French industry, which can take advantage of lower energy costs. If any such structural advantages are gained, there may be a future question for the UK as to whether this is in violation the level playing field provisions of the Trade and Cooperation Agreement.

12. Environment

Revision of EU Packaging and Packaging Waste Directive.

ISSUE	IMPACT
The European Parliament has approved a proposal, drafted a year ago, for stricter rules on plastic packaging. A central aim is to make all packaging reusable or recyclable by 2030. By 2035, it must all be reused or recycled. The Commission will have powers to set performance grades and design criteria for recycling - which producers must meet for their products to be considered recyclable. Substances of concern (like lead and mercury) must be kept below a maximum level of 100mg/kg, and there will be minimum recycled content targets for plastic packaging. Certain packaging (e.g. tea and coffee bags, sticky labels for fruit and very lightweight plastic bags) will have to be compostable 'in industrially controlled conditions' within two years of the regulation coming into force. Certain single-use packaging (e.g. for restaurant food, small quantities of fruit in supermarkets, or individual portions of condiments) will be banned from 2028 at the latest. The weight and volume of packaging will also have to be minimised, and the empty space will have to be kept to a maximum of 40%. Three and a half years after the regulation's entry into force, packaging must be labelled with information on its material composition. After four years, there must be a label with information on reusability, and a QR code to help track the packaging. From 2028, there will have to be distinctly labelled bins for each 'material-specific' type of packaging waste.	The regulation creates significant new compliance costs for businesses: in terms of sourcing recyclable packaging; getting it conformity assessed and labelled; and ensuring it can be properly tracked and reused. Yet the proposal has received backing from multinational food companies who support harmonised EU measures - as they will no longer need separate production lines for different parts of the EU. Some smaller producers, on the other hand, have mounted heavy opposition against the regulation. For example, producers of Camembert cheese in France claim that the small wooden boxes in which the product is traditionally sold will not be permitted after 2030 because they are not recyclable. The Parliament has since passed an amendment exempting products of protected origin (including Camembert) from the rules. The new rules could create significant compliance costs for British exporters to the EU. Any companies using packaging that falls foul of the regulation will have to change their supplier or packaging process to maintain access to the EU market. Moreover, packaging manufacturers will have to obtain a conformity assessment and technical documentation, and affix the correct labelling. There is an open question as to whether the EU will accept products with both UK and EU labelling, or whether packaging can only display the EU-standard label. Were this to be the case, companies would need separate packaging for the UK and EU market - further adding to

By 2029, member states must have in place deposit return schemes for single use plastic and metal drinks containers.

Manufacturers will have to ensure a conformity assessment procedure is carried out, obtaining technical documentation and an EU declaration of conformity, before packaging can be placed on the EU market. Those placing packaging on the market will have to ensure a system for reuse of the packaging is in place, and ensure labelling and other obligations around the sale of packaging are being complied with. There will also be obligations on member states to reduce packaging waste per capita and set up register to monitor producers' compliance with the regulation.

NEXT STEPS:

The European Council must now adopt its position on the regulation, after which negotiations between the EU Parliament and national governments will begin.

costs. While major corporations are likely to be able to shoulder this cost (and may indeed welcome uniform EU standards), it could be a significant challenge for smaller businesses.

The updated directive will apply in Northern Ireland, meaning its businesses will have to undertake the new compliance costs. This could put them at a competitive disadvantage compared to rivals in the rest of the UK. Moreover, GB-based companies which export to NI will have to ensure they meet the new EU rules. This means, for example, that supermarket supply chains will have to create separate packaging for NI or otherwise ensure all packaging meets EU regulatory requirements. Again, small businesses in particular may stop exporting to NI due to the excessive compliance costs.

It is also notable that member states are meant to have a deposit return scheme (DRS) in place by 2029. It is not clear whether NI will be subject this element (as it is not a member state). If it is, this could mean the UK's DRS scheme (which is set to come in from 2025 and will apply with NI) has to comply with any EU technical standards.

13. Environment / Chemicals

EU renews approval of glyphosate.

ISSUE

The European Commission has renewed the approval of the pesticide glyphosate, subject to new restrictions on its use - following objections to its reapproval from a range of member states. It may no longer be used as a desiccant (i.e. to dry out crops), and there will be new maximum application rates for glyphosate-based pesticides - unless risk assessments show that specific uses at a higher rate do not 'lead to any unacceptable effects on small herbivorous mammals'. Impacts on small animals and non-target plants will have to be considered in risk assessments and applicants for approval of a glyphosate product must submit information on possible indirect impacts on biodiversity within three years.

The European Food Safety Authority began an assessment of glyphosate's impact on human, animal and environmental health in December 2019, which 'did not identify critical areas of concern', in spite of claims it is a carcinogen. However, because research on its effects is increasing, and new insights can be expected, the Commission granted its re-approval for ten years rather than fifteen.

NEXT STEPS:

The re-approval of glyphosate, including the new conditions on its use, is already complete.

IMPACT

The introduction of new restrictions on glyphosate reflects ongoing concerns about its potential damaging effects on human, animal and plant health. The re-approval was, exceptionally, granted despite member states failing to approve it by qualified majority - because the previous approval would otherwise have expired.

The UK has not introduced any new conditions on the use of glyphosate since Brexit, but the new EU restrictions will apply in Northern Ireland. This has caused concern among farmers in Northern Ireland, because they will no longer be able to use glyphosate as a desiccant, in order to dry out crops for burning and harvesting at a time of their choosing. The Ulster Farmers Union says 'the viability of the cereal sector in Northern Ireland comes into question' as a result.

It notes that certain EU member states, including the Republic of Ireland, are lobbying for a derogation to use glyphosate for harvesting, but Northern Ireland - as a non-member state - has no means of making such a request, despite being subject to the legislation. It could perhaps seek to raise the issue at the Joint Committee of the Withdrawal Agreement.

14. Human rights / Environment

EU Corporate Sustainability Due Diligence Directive.

ISSUE

The European Council and Parliament have reached provisional agreement on the form of the EU's new Corporate Sustainability Due Diligence Directive (CSDDD). This makes large companies responsible for human and environmental rights violations in their supply chains.

The draft directive was first published in February 2022, requiring companies to 'identify, assess, prevent, mitigate, bring to an end to and remedy' the negative impacts of their operations on human and environmental rights. The actions they may have to take include investments, changes to business plans, and support for partners in the supply chain. As a last resort, they will have to end relationships with partners whose adverse impacts they cannot prevent. They will also have to introduce a complaints mechanism, monitor the effectiveness of their measures, and adopt a plan to ensure their business model is in line with keeping global warming below 1.5°C.

The rules apply to EU companies with an annual worldwide turnover above €150m and more than 500 employees. If a company makes revenue of €20m or more in a 'risk sector' (manufacture of textiles, clothing, footwear and food; agriculture, mineral resources trade, and construction), the thresholds drop to €40m and 250 employees. The rules also apply to non-EU companies, if their turnover within the EU meets the above thresholds, from three years after the directive enters into force. The Commission will publish a list of non-EU companies within the directive's scope.

IMPACT

The CSDDD is part of a clear trend in EU policymaking towards forcing companies to take greater responsibility for labour and environmental rights in supply chains. It is supplemented by other measures on products made with forced labour, and goods linked to deforestation. The UK government said in 2022 that it did not intend to replicate the EU's proposals on due diligence, citing the 'burden of regulation'.

The CSDDD will, however, still have an impact on British firms which meet the applicability criteria, as they will have to introduce new measures to comply with the requirements. While this is likely to create new administrative costs (the EU estimates the average annual cost to be €23-52,000), it will only apply to the very largest firms, which are likely to be able to absorb them.

Indeed, the directive will apply directly to only around 13,000 companies (1% of the EU total), though many SMEs could be indirectly affected, if they are part of the supply chain of a large company subject to the CSDDD. This could bring a much larger number of British companies, supplying large EU firms, into scope - and result in them being asked to introduce new monitoring practices or change behaviour in other ways. A similar regulation in France led to around 80% of SMEs which were not subject to the law - but supplied larger companies which were - having to implement at least some of the measures.

Each member state will designate a 'supervisory authority' to monitor firms' compliance, with powers to launch investigations, 'name and shame' non-compliant companies, and impose fines of up to 5% of worldwide turnover. Companies themselves will be liable for breaching their due diligence obligations, and their victims will have the right to claim compensation in a European court.

In a departure from the original draft directive, and following pressure from the French government, the 'downstream' activity of financial firms (i.e. investment and lending) - which forms the bulk of their operations - will be excluded from the requirements, though a review clause allows for its potential inclusion in future.

NEXT STEPS:

The directive needs to be approved by the European Parliament and Council before it enters into force. The rules will only apply to non-EU firms three years after its entry into force.

There is an unresolved question as to the application of the new directive in Northern Ireland, which is subject to a wide range of EU regulations for goods. The EU may well believe that Northern Ireland should fall within the scope of the CSDDD, as it relates directly to the supply chains of manufactured goods. Because it is a substantively new piece of legislation, its applicability would be subject to joint discussions between the UK and EU under Article 13(4) of the Northern Ireland Protocol. The UK could opt not to refuse to apply the legislation in NI, but the EU would be entitled to take retaliatory measures.

15. Human rights / Environment

EU ban on products made with forced labour.

ISSUE	IMPACT
The European Parliament has proposed amendments to the EU Commission's draft regulation on products made with forced labour, which would strengthen the obligations on companies to prove that products have not been made with forced labour. In September 2022, the Commission brought forward a proposal to ban all products made with forced labour from the EU market. Member states will have to designate a responsible authority 'with necessary powers and resources' for implementing and enforcing the ban. This entails identifying supply chains which are likely to use forced labour, before opening investigations into suspected cases. To aid authorities, the Commission will provide guidelines on how to detect forced labour and a database on risks. National customs authorities will have to enforce the rules at external borders. The original draft regulation puts the burden of responsibility primarily on member states to identify and act upon cases of forced labour in supply chains. However, the Parliament's proposal would impose significantly more responsibility onto businesses, to actively prove that no forced labour has been used in the production of good, if it originates from a 'high-risk' area or sector (where a presumption of forced labour would apply). The Commission would be tasked with creating a list of 'geographical areas and economic sectors at high risk of using forced labour'.	The prohibition on forced labour applies to all goods placed on the EU market, no matter where they are made. This means that any British firms placing goods on the EU market will need to ensure they are compliant, entailing additional costs, primarily in terms of monitoring supply chains and engaging with competent authorities. The Parliament's proposal would impose further costs on businesses as they would also need to actively prove the absence of forced labour linked to high-risk goods. The compliance costs could be quite challenging for smaller businesses to meet, especially for 'high-risk' sectors. Clothing could be particularly affected, as it has been widely alleged that China, which produces 20% of the world's cotton, uses forced labour in its production processes, with an estimated that 20% of global cotton products linked to human rights abuses. The regulation could - subject to UK-EU agreement - also apply in Northern Ireland, meaning the same compliance costs would be imposed on exports of goods from GB to NI. Given the responsibility falls on national authorities to enforce the regulation, there would also be new costs for Northern Irish regulators (for example the NI Health and Safety Executive oversees machinery and electrical equipment) in setting up the necessary systems. These costs are, of course, being imposed deliberately, in order to push companies to

When a product is identified as made using forced labour, it will no longer be permitted to be sold in or exported from the EU. The company responsible for the goods will be required to withdraw and dispose of them, which the EU says will provide an 'incentive for companies to comply'. Member states 'face penalties under national law' for failure to comply. The Parliament is pushing to strengthen the rules so that goods can only be placed back on the market once a company proves it has stopped using forced labour and affected workers have been compensated; and to widen the definition of forced labour in line with ILO standards. It also wants the Commission to coordinate investigations and act as an enforcer (alongside member states).

NEXT STEPS:

The European Council will now adopt its position on the regulation before 'trilogue' negotiations between the Council, Commission and Parliament begin on the final form of the text.

adapt their supply chains to avoid forced labour, and the EU's regulation could have some impact on global market dynamics. The UK has historically sought to be a leader on the eradication of forced labour, with the 2015 Modern Slavery Act requiring businesses with an annual turnover above £36m to report on steps they are taking to eradicate forced labour in supply chains, including a statement every year (though it was found that 40% of companies had not complied with their obligations - with no penalties being imposed). Though it remains to be seen whether it works in practice, the EU's regulation appears to be wider-reaching and more stringent in terms of the obligations it imposes on companies to avoid the use of forced labour. The UK has no equivalent power to ban or withdraw products linked to forced labour.

16. Labour rights

EU Platform Work Directive.

ISSUE

The European Council and Parliament reached provisional agreement in December 2023 on a new Platform Work Directive, before the Spanish presidency pulled a vote on it after a number of member states expressed their opposition - meaning it is now subject to further negotiation and potential amendment. The provisional deal could lead to large numbers of workers on platforms like Uber and Deliveroo being reclassified as employees (rather than self-employed) and granted additional rights accordingly.

The EU defines platform work as the 'matching of demand and supply of paid work through an online platform using an algorithm'. This practice is widespread in among certain types of workers including taxi drivers and food delivery drivers (where customers order services using an app). Most of the EU's 28m platform workers are formally classified as self-employed, yet the EU notes that many should in fact be considered to be in a relationship of employment with their platform company, because they are subject to many of the same rules and restrictions on their behaviour as an employed worker.

The Directive therefore stipulates that platform workers be legally presumed to be employees of a digital platform, if two of five criteria - around how the platform treats the worker - are met. These are:

- upper limits on the amount of money workers can receive;
- supervision of their performance, including by electronic means;

IMPACT

The Directive would significantly increase the rights of platform workers who are re-classified as employees, entitling them, according to the Commission, to 'a minimum wage (where it exists), collective bargaining, working time and health protection, the right to paid leave or improved access to protection against work accidents, unemployment and sickness benefits, as well as old-age pensions.'

Some member states have expressed concern about the five criteria through which a worker can be judged to be an employee, arguing that it will create too strong a presumption of employment and pushing for workers to have to provide a minimum level of evidence to prove they meet the criteria.

Should the directive pass in close to its current draft form, the Commission estimates that prices for some services (such as Uber rides) could rise by 40%, due to companies having to absorb additional costs such as leave payments and healthcare benefits. Meanwhile platform companies themselves, who are strongly opposed to the changes, unsurprisingly warn that it could lead to lower quality services and them shutting down in smaller locations, due to the extra costs. The sensitivity of the issue is reflected in the fact that the Directive has been subject to almost two years of negotiation.

There are also question marks over how the directive will work in practice. A similar law implemented by Belgium has had little practice effect, in large part due to a lack of enforcement power. The fact that the new legislation comes

- control over the distribution or allocation of tasks;
- control over working conditions and restrictions on choosing working hours;
- restrictions on their freedom to organise their work and rules on their appearance or conduct.

Member states will enforce the regulation (including deciding on penalties for non-compliance) and may add further criteria to the five above. Because it is assumed that any worker subject to two of the five criteria is an employee, it will be up to the platform company to prove that 'no employment relationship exists according to national law and practice'.

The Directive also seeks to increase the transparency of algorithms used by platforms to allocate work - by requiring workers to be informed about the use of automated monitoring and decision-making systems; preventing important decisions (like dismissals) being taken without human oversight; requiring systems to be monitored by qualified staff; and preventing the processing of sensitive personal data.

Shortly after provisional agreement was reached in December 2023, the Spanish presidency of the EU concluded that it would not be supported by a qualified majority of member state permanent representatives. Therefore, negotiations will resume between the new Belgian presidency and the European Parliament, to finalise the shape of the directive.

NEXT STEPS:

The directive is subject to further negotiation between the presidency and the Parliament. Once formally adopted, member states have two years to apply the directive in national legislation.

from the EU should give it more heft, but it is still down to individual member states to enforce - which risks it being ineffectively or inconsistently enforced (especially as there is no firm guidance over what sanctions to impose for non-compliance). There are also likely to be attempts from platform companies to work around the new rules, and to mount legal challenges if they are found to be an employer, which could stymy its effect.

Should the directive manage to achieve its aim of large numbers of platform workers being reclassified as employees, it will be interesting to see what effect this has on the EU's economy compared to the UK's - where no similar proposals have been brough forward. In the UK, Uber must treat its drivers as workers while they are working, granting them more rights than independent contractors but fewer than employees; and in November 2023 the UK Supreme Court ruled that Deliveroo riders should not be considered employees.

17. Manufacturing

EU Ecodesign for Sustainable Products Regulation.

ISSUE	IMPACT
The European Council and Parliament have reached a provisional political agreement to adopt the Commission's proposed Ecodesign for Sustainable Products Regulation. This will empower the Commission to set new 'ecodesign' requirements, by delegated act, for selected manufactured goods. Ecodesign requirements set performance standards in a potentially wide-ranging set of areas, including: energy and resource efficiency; durability, reusability, upgradability, and repairability; carbon and environmental footprint; and recycled content. There are also new information and transparency requirements, with products subject to new regulation requiring a 'Digital Product Passport' – a tag or label which provides instant access to a product's sustainability information (and is meant to be of use to consumers and customs and market surveillance authorities). New ecodesign requirements will be targeted at selected goods, as set out in a list by the Commission (which it can regularly update). It will prioritise 'highly impactful products, including textiles (especially garments and footwear), furniture (including mattresses), iron and steel, aluminium, tyres, paints, lubricants and chemicals, as well as energy related products, ICT products and other electronics.' Rules can vary sector-by-sector or even product-by-product, and the Commission has the power to update their scope and nature as it wishes.	The EU's rationale for the new regulation is to 'make sustainable products the new norm in the EU' while also creating a more level playing field within the single market in terms of products' sustainability standards. The UK has done comparatively little to update its own ecodesign rulebook, which it copied over from the EU during the Brexit transition. The new rules will have a potentially significant impact on British manufacturers, as they will only be able to place their goods on the EU market if they meet the new ecodesign requirements. This means not only adhering to performance criteria but also labelling the product with a Digital Product Passport. Though manufacturers of energy-consuming products will already be familiar with the old ecodesign rules (on which the new regulation builds), for many sectors – including textiles, furniture, steek and chemicals – this will be a brand new requirement to adapt to. The same issues apply in relation to trade from Great Britain to Northern Ireland. If GB-made products do not meet the new ecodesign rules, they will not be exportable to NI. Whereas large companies with a significant EU presence are likely to be able to adapt to the new rules, there is a greater risk that smaller firms, which perhaps only have a small export market in NI, consider the costs of adaption to be greater than the benefit from maintained access to the NI market. This could, in turn, lead to goods shortages or price increases in NI.

The regulation builds on the 2009 Ecodesign Directive, which sets energy efficiency criteria for 'energy-related products' (i.e. those which consume energy throughout their life cycle) and is the reason why goods like washing machines have energy efficiency labels. However, the new regulation goes further by broadening the scope to potentially almost all goods (with the exception of motor vehicles and those with an impact on defence and national security). And whereas the original ecodesign rules focused on energy efficiency, the new rules will be broader: addressing issues like sustainability and environmental footprint.

The regulation will also impose a ban on large companies destroying unsold textiles and footwear (from two years after it enters into force), and the Commission has the power to introduce new bans for other unsold products. Companies will also be obliged to take measures to avoid the destruction of unsold consumer products (with large companies having to report every year on how many products are discarded and why).

NEXT STEPS:

The regulation will enter into force 20 days after it is adopted by the Council and Parliament. The Commission will then be able to adopt its first plan on which products to target with new ecodesign rules.

That said, its application in NI could depend on whether the regulation is considered a new piece of legislation, or rather an update of the existing ecodesign directive. Should it be considered an update, Northern Ireland will have to dynamically align by default (though Assembly Members, if sitting, could in theory seek to block this via the Stormont Brake). But should it be considered new, a UK-EU Joint Committee process would be initiated to decide whether the update applies in NI (though the EU would be entitled to take retaliatory measures should the UK refuse its application).

An additional challenge is that we do not yet know exactly which sectors will be subject to the new rules, nor what specific requirements the Commission will lay down. This could create some uncertainty for businesses and makes it harder to prepare early for adaption to the new rules.

18. Manufacturing / Digital & data

EU common charger for electronic devices.

ISSUE

A new EU law mandating a common charging port for electronic devices has been approved by the European Parliament, paving the way for its implementation this year.

By the end of 2024, all mobile phones, tablets and cameras sold in the EU will have to have a USB Type-C charging port. From spring 2026, laptops will also require a USB Type-C port.

The USB-C requirement also applies, from end-2024, to headphones and headsets, handheld videogame consoles and portable speakers, e-readers, keyboards, mice, portable navigation systems and earbuds that are rechargeable via a wired cable, operating with a power delivery of up to 100 watts.

Consumers must be given the choice to purchase a new product either with or without a charger, and products will require a label stating how the device is charged, so consumers can make an informed choice about whether it is compatible with their existing chargers.

NEXT STEPS:

The new measures will take effect from the end of 2024.

IMPACT

The measure is designed to reduce waste in the electronics sector, as consumers will be able to rely on a single charger for most or all of their electronic devices. The EU estimates that the measure will save consumers up to €250m a year in unnecessary charger purchases.

While many electronic goods already use USB-C ports, there are notable exceptions, in particular Apple products. The company will have to add USB-C ports to its products to comply with the new EU regulation, entailing significant adaptation costs. Any UK businesses exporting electronic devices to the EU will also have to ensure they have USB-C ports, once the new rules kick in.

As a revision of the Radio Equipment Directive, the updated rules will presumably apply in Northern Ireland under ther terms of the Protocol. Were this to be the case, there is a risk that certain supplies of electronics from GB to NI will no longer be permissible, if GB-based suppliers do not bother to obtain USB-C enabled devices specifically for the NI market.

19. Trade

EU-Chile trade and political agreements.

ISSUE

The EU and Chile have signed an 'Advanced Framework Agreement' (AFA) and an 'Interim Trade Agreement' (ITA), which build on the existing EU-Chile association agreement.

The AFA is a 'next generation' agreement, which widens the EU and Chile's 'ambition in tackling present and future challenges' such as climate change, sustainable development and gender equality; and includes new articles on democratic principles, human rights and the rule of law.

The ITA is a separate agreement underpinning this, in particular through measures to enhance EU access to raw materials like lithium, cooper and hydrogen - which are critical to the green transition and often hard to procure because of their scarcity and concentration in specific locations. The new measures ensure non-discriminatory access for the EU and provide commitments to sustainable extraction.

The deal also removes Chile's tariffs on EU dairy products and quota on EU cheese; and liberalises terms of trade for services sectors.

NEXT STEPS:

Some elements of the AFA will come into provisional application pending ratification by EU member states. The ITA must be ratified by Chile's congress.

IMPACT

The deal shows how the EU's trade policy is being used to drive forward its net zero and values agendas. Chile is an important partner for the EU when it comes to net zero, because it is rich in certain critical raw materials like lithium, providing 40% of global supply and around 80% of the EU's. Given the scarcity of such goods and growing levels of demand, it is important for the EU to secure supplies from likeminded, reliable trade partners such as Chile where it can. The two sides also signed an MoU on critical raw material supplies in June 2023.

There is also a clear focus on values, with the new articles on commitments to shared principles like democracy and human rights. It also includes chapters on sustainable food systems, trade and gender, and confirms the parties' commitments to International Labour Organisation standards and the Paris Agreement.

All of these additions represent divergence from the UK's association agreement with Chile, which was based on the previous form of the EU-Chile agreement. Negotiations on the updated EU-Chile agreement began in 2017.

20. Chemicals

UK REACH alternative transitional registration model for chemicals.

ISSUE	IMPACT
The UK government has outlined proposals to change the registration process for its new regulatory framework for chemicals. The UK regulatory regime (known as UK REACH) was implemented following the UK's exit from the EU. The core task is to establish a database of authorised substances, and requires over 22,000 EU-registered substances to be re-registered under UK REACH. Businesses, however, have raised major concerns about the cost of completing registrations for UK REACH, which Defra estimates to be at least £2bn overall. In explicit response to 'concerns raised by the chemicals industry', Defra has now published an 'alternative transitional registration model', which it says 'will aim to reduce the costs to businesses while continuing to ensure our overarching commitment to high levels of protection of human health and the environment.' Defra says it is now apparent that UK REACH does not need a 'complete replica of all the registration data on all chemical substances held under EU REACH', and will instead 'adopt a more targeted approach by using information already available and building on work done in the EU and globally to identify areas of emerging risk and shape our regulatory priorities'. Specifically, the proposals include: • 'refining' the information required on 'use and exposure' (i.e. the critical information to help industry understand and manage the risks from chemicals);	The cost of registrations under UK REACH, alongside a lack of regulatory capacity, has been a major challenge for businesses trying to navigate the new system, and has already led to the initial deadline for registrations being pushed back by three years to October 2026. In theory, a lighter-touch UK registration process should reduce the administrative burden, and free up regulatory capacity to focus on new restrictions (where the UK has lagged behind the EU since Brexit). This could allow the Health and Safety Executive (HSE) to focus on replicating new EU restrictions, if so directed, or government could direct the HSE to focus on other, new emerging risks of particular concern to the UK environment. However, some campaign groups have expressed major concerns about the proposed changes. Ruth Chambers of Greener UK argues that reducing the required information to the 'irreducible minimum', will leave the UK 'lagging far behind the EU', which 'does not instil confidence that the new UK system will put the health of consumers and the environment first'. CHEM Trust concurs that the reform prioritises 'reducing costs to the industry over maintaining high chemical safety standards', and argues that reducing the amount of information companies submit could also make it harder to impose new restrictions, as it 'will increase the burden on the regulator to chase information it needs to ban or control harmful substances'.

- reducing required information on hazards to ‘the essential minimum’ for registrations copied over from the EU (meaning registrants will not need to pay for EU-held data);
- enhancing powers for the regulator to access data in response to new or emerging risks;
- exploring potential fee reductions for UK REACH registrations.

NEXT STEPS:

Defra intends to consult on a more detailed version of the policy in early 2024. The UK REACH regime applies to Great Britain, with Northern Ireland subject to EU REACH.

Any new divergence with the EU on chemicals restrictions would create a simultaneous divergence between Great Britain and Northern Ireland - which is subject to the EU REACH regime. This could mean certain GB-based goods are not exportable to NI in future, if they contained substances banned under EU REACH.

21. Immigration

EU Entry/Exit System; UK and EU traveller authorisation systems.

ISSUE	IMPACT
It has been reported that the EU's digital border system - known as the Entry/Exist System (EES) - will begin from 6 October 2024. The first time that non-EU passport holders encounter the EES upon arrival in the EU, they will have to register their name, type of travel document, fingerprints, facial images, and date and place of entry. After that, their passport and biometric information will be verified each time they cross an EU external border, and their date of entry/exit logged - replacing the existing practice of wet stamping passports. The EU is replacing wet stamping because it is 'time consuming, does not provide reliable data on border crossings and does not allow a systematic detection of over-stayers' as well as document and identity fraud. It is also expected to lead to wider use of automated border control checks (i.e passport and biometric scans). From mid-2025, UK nationals will also need an 'ETIAS' travel authorisation to enter the EU. Similarly to the US 'ESTA', travellers from visa-exempt countries will have to apply online to have their entry pre-authorised. This will cost €7 and lasts for three years. The UK is introducing a similar Electronic Travel Authorisation (ETA), costing £10. As of November 2023, the ETA is required for Qatari nationals and from February 2024 this extends to a handful of other countries. It will 'in the future' be extended to all other travellers who do not need a visa for a short stay (including EU nationals) - but no date has yet been set.	In the short term, the EES is likely to be extremely disruptive for UK travellers to the EU. The Channel Tunnel operator, Getlink, estimates that the average time taken to process a car will increase from under a minute to five-to-seven minutes, and there are likely to be similar delays at the Port of Dover and the St Pancras Eurostar terminal. The key problem is the time it takes to record traveller information for the first time under the EES. At the Channel Tunnel, passengers will be required to get out of their cars and record their biometric data on computers, before proceeding to French border control. Getlink says the new facilities will cost £67m to install. The EES was initially meant to begin in 2022, but was repeatedly delayed. Most recently, the French government lobbied to have it pushed back until after the 2024 Paris Olympics due to concerns about travel disruption. In the longer-term the ending of wet-stamping and wider use of automated border controls may save travellers time. The EES also makes it more likely that any UK nationals who have overstayed in the EU will be caught and refused entry. The requirement for UK travellers to have an ETIAS from 2025 could create additional travel disruption, if there is confusion over the requirements, and result in some travellers being refused entry. Individuals will reportedly be advised to apply a minimum 96 hours before travel, to allow time for processing.

NEXT STEPS:

The EU EES is set to take effect from October 2024 with the EU ETIAS in place from mid-2025. There is no date set for the full rollout of the UK ETA.

Meanwhile, the British-Irish Parliamentary Assembly has warned that the UK's ETA is 'unworkable' on the island of Ireland because some tourists to Ireland would require an ETA to visit Northern Ireland, undermining the principle of an open Irish border and 'Common Travel Area' between the UK and Ireland. This could also have a significant detrimental impact on tourism in Northern Ireland, given over 70% of visitors arrive via Ireland. The Assembly has called on the UK government to introduce an ETA exemption for tourists staying for up to seven days in Northern Ireland (which accounts for 93% of tourists). The government rejected this, stating that it would 'undermine our efforts to strengthen the security of the UK border'.

22. Competition

Strategic steer to Competition and Markets Authority.

ISSUE

The UK government has issued a 'strategic steer' to the Competition and Markets Authority (CMA) - the UK's competition regulator. The CMA has taken on greater responsibility for competition and mergers regulation in the UK following Brexit, and the paper seeks to clarify how it should approach its work.

The policy paper is wide-reaching, but the first expectation is that the CMA 'prioritise outcomes that promote competition, investment, innovation and boost economic growth', specifically by 'increasing understanding of why competition in key markets is not as strong today as it could be', using its powers to 'monitor and intervene in markets where competition is not working well, and 'prioritising markets and sectors which have a disproportionate impact on economic growth'.

Government also says the CMA should focus on 'minimising the burdens on businesses engaging with the CMA' and 'securing post-Brexit opportunities by ensuring its analysis, decisions and remedies are fully focused on maintaining competitive and well-functioning markets'.

NEXT STEPS:

The steer has immediate effect and the CMA is the regulator for the whole of the UK.

IMPACT

The steer has been interpreted as a 'rap over the knuckles for the CMA' which faced criticism for the way it handled Microsoft's acquisition of Activision. The government thus appears to have eschewed an opportunity to adopt a fundamentally different regulatory philosophy to the EU on competition matters post-Brexit.The CMA initially blocked the acquisition, despite the EU approving it, as it deemed it would harm growth in the emerging cloud gaming sector - but then approved it a few months later after some concessions on rights sharing from Microsoft (and also, allegedly, pressure from government). In blocking the merger, the CMA was seen by some to be adopting a more radical 'interventionist philosophy' post-Brexit, focused on risks of future monopolies in emerging sectors. Microsoft, unsurprisingly, condemned this, arguing that the CMA's decision 'discourages technology innovation and investment' in the UK, while Activision said the UK was 'closed for business'.

The government appears to have sided with those firms, as, shortly after the CMA's initial decision, the Chancellor said that UK regulators need to 'understand their wider responsibilities for economic growth'. The new steer reiterates that message, directing the CMA to take a more hands-off approach, 'minimising the burdens on businesses' and promoting investment. It remains to be seen whether the CMA's approach changes significantly following the new steer, and whether the increased focus on economic growth does indeed engender better regulation.

23. Immigration

Relaxation of UK travel rules for French school groups.

ISSUE

The UK government has announced changes to its immigration rules to simplify entry requirements for French schoolchildren.

Under the UK's post-Brexit points-based immigration system, EU and EEA and Swiss nationals are no longer permitted to travel to the UK on a national ID card. This has been a particular issue for school groups, because many people (roughly half the population in France) do not own a passport – as their ID card is sufficient to move within the EU. Under the new rules, EU, EEA and Swiss nationals aged 18 and under in French school groups will once again be able to enter the UK with an ID card.

Non-EU, -EEA and -Swiss nationals in French school groups will still be required to use a passport, but will no longer have to obtain a visa for entry. Following Brexit, the UK is no longer part of the 'List of Travellers' scheme which allowed non-EU/EEA/Swiss children to enter the UK visa-free as part of an EU school group. That entitlement is now being reintroduced for children in French school groups.

NEXT STEPS:

The changes took effect from 28 December 2023.

IMPACT

These changes address a major concern raised by UK tourism industry, which reported an 83% drop in the number of EU students travelling to the UK in 2022 compared to 2019. Though this was partly a pandemic effect, the drop-off in student numbers was far more limited (32%) for trips to EU destinations. The requirement for students to have a passport was cited by tour operators as the top reason for the decline in numbers. The UK's exit from the List of Travellers scheme was another, as it was estimated that around half of French school groups included children who would newly need to apply and pay for a visa.

It is notable that the UK has opted to relax the rules for a single member state – given almost all discussions on amending the post-Brexit settlement so far have been done directly with the EU. The UK committed to relaxing the rules for French groups following the UK-France summit in March 2023, suggesting that high-level political dialogue (and perhaps policy trade-offs) was key to the agreement. This could set a precedent for any further agreements on mobility – which have been mooted – being done at a member state level rather than with the EU.

The UK tourism sector may be disappointed that the relaxation of rules does not apply to all member states, though France is particularly lucrative market – which provided 10,000 school trips a year to the UK pre-Brexit. The House of Lords European Affairs Committee has called for the measures to be extended to all EU member states.

24. Manufacturing

Three-year extension to TCA rules of origin for electric vehicles.

ISSUE

The European Commission has agreed to extend by three years the current rules of origin on electric vehicles (EVs) under the UK-EU Trade and Cooperation (TCA). The TCA's rules of origin for EVs define what proportion of its components must be local content (i.e. from the EU or UK) in order to qualify for tariff-free trade. The local content requirements were set to increase from the start of 2024: from 40% to 45% for the vehicle; and from 30% to 50% for the battery. From 2027, the requirement increases to 55% for both.

Manufacturers in both the UK and EU expressed concern that they would not be able to meet the new content requirements from 2024, due to a lack of domestic battery making capacity (which was why the grace period up to 2024 was originally put in place). Failure to comply would mean a 10% tariff on EVs traded between the UK and EU, and thus industry had lobbied heavily for the delay to which the EU has now, belatedly, agreed.

The rules of origin requirement for EVs is still set to increase to 55%, for both battery and vehicle, from 2027.

NEXT STEPS:

The original TCA grace period on rules of origin has now been extended until the end of 2026.

IMPACT

The principal impact of the decision is that EV manufacturers will avoid a 10% tariff on their exports from the UK to the EU (and vice-versa). Inudstry groups had warned that those additional customs duties could cost €4.3bn and reduce EU manufacturers' UK sales by up to 500,000 units. The EU's decision has thus been welcomed by carmakers and the UK government (which had long been pushing for a delay). However, the fact that the decision came only weeks before the end of the grace period meant that carmakers had had to start preparing to mitigate the effects of the increase in the local content requirements from 2024 - ultimatealy wasting of time and money.

Ahead of the next increase to the rules of origin requirements, in 2027, the car industry will likely want to see greater clarity from the EU, if it is considering another delay. Key to avoiding a similar issue in 2027 will be the UK and EU significantly increasing their domestic battery making capacity so manufacturers can meet the increased local content requirements. Indeed, at the same time as agreeing to an extended grace period, the EU announced €3bn of funding over the next three years to support EU battery making capacity, which it acknowledges has developed 'slower than initially anticipated'.

The decision is also notable as an example of the UK and EU jointly agreeing to amend the terms of the TCA. The EU was in part reluctant to countenance an extension of the grace period beyond 2024 because it did not want to be seen to be reopening the terms of the agreement.

25. Tax

UK to continue applying EU general principles on VAT and excise law.

ISSUE	IMPACT
The UK government has announced that general principles of EU law will continue to apply when interpreting UK VAT and excise law. EU VAT and excise rules were copied over into UK law as part of the Brexit process, as part of what is known as 'retained EU law'. But under the Retained EU Law Act, which took effect on 31 December 2023, retained EU law will no longer be interpreted according to the general principles of EU law. That means EU case law ceases to have effect when a matter of retained EU law is raised in a legal dispute. However, an exception has been made here for VAT and excise law, which will still be subject to the EU general principles, and the precedents it established, which were applicable when retained EU law was implemented in the UK. **NEXT STEPS:** The Retained EU Law Act took effect on 31 December 2023.	This is a potentially significant decision, as tax scholars have pointed out that a large number of EU principles apply to tax and excise law, and are often decisive in important cases. VAT was applied in the UK from the moment it joined the European Economic Community in 1973, and it is one of the most harmonised areas of EU law. That means the much of UK VAT law is EU-derived, and it has never operated without reference to EU case law. This raises major questions about what would happen if EU principles were suddenly disapplied. Fabian Barth of Bournemouth University argues that 'significant gaps and uncertainty would arise'. The UK government argues that the decision 'mitigates the risk of re-litigating settled interpretation of UK law, directly relevant to the collection of billions of pounds of revenue — VAT and excise duty from alcohol, tobacco and hydrocarbon oil raise over £200 billion of revenue per year.'

UK in a Changing Europe promotes rigorous, high-quality and independent research into the complex and ever changing relationship between the UK and the EU. It is funded by the Economic and Social Research Council and based at King's College London.

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