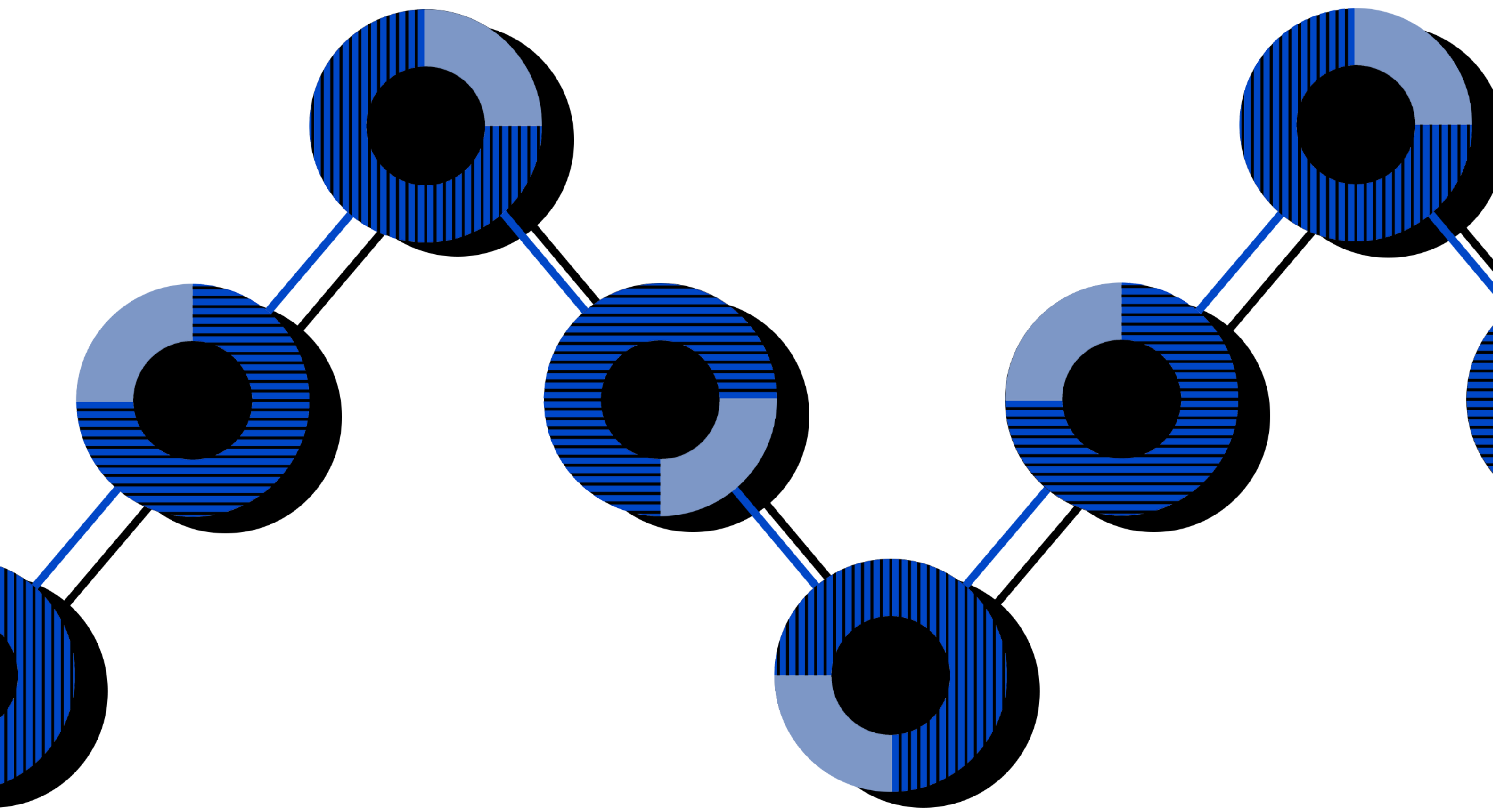
UK IN A CHANGING EUROPE

UK–EU REGULATORY DIVERGENCE TRACKER

Q1 2024



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OVERVIEW

This is the eleventh edition of UK in a Changing Europe's regulatory divergence tracker, covering developments from January to March 2024. There are five cases of active divergence (where the UK, or some part of it, changes its rules); fifteen of passive divergence (where the EU changes its rules and the UK, or some part of it, does not follow); one of 'NI divergence' (a new category covering cases where action is taken on the potential application of new or updated EU legislation in Northern Ireland); one of procedural divergence (where new processes are introduced to change how pre-existing divergence is managed); and three of active alignment (where the UK takes steps to align more closely with EU rules, systems or programmes).

The standout trend in this tracker is the large volume of EU-led divergence, due to the rush to complete files before the parliamentary elections in June. This legislation is significant not only in scale, but also in impact, with many of the files being marquee ones initiated much earlier in the von der Leyen presidency, which have been pushed to the wire due to member state resistance. Many of these reforms will have a significant impact on the UK and other third countries, as they make access to the EU market conditional on meeting new standards across a range of areas.

One area is human rights. Companies supplying the EU market will be obliged to conduct new due diligence to ensure an absence of environmental and human rights violations in their supply chains under the Corporate Sustainability Due Diligence Directive (CSDDD), and to sever ties with suppliers suspected of using forced labour under a separate regulation. In both cases the final agreements have been criticised for being watered down, as the number of companies subject to the CSDDD has been cut by around 70% and there is no default presumption of forced labour having been used for certain high-risk goods (such as clothes from Xinjiang).

The EU is also increasingly ensuring tech firms respect its labour and competition rules. The landmark Platform Workers Directive grants a legal presumption of employment - rather than self-employment - and therefore enhanced social protections to people who work via digital apps (like Uber and Deliveroo) if they meet certain conditions (as determined by member states). Some member states lobbied heavily against the directive and the Commission ultimately dropped plans for harmonised EU-wide criteria for determining a relationship of employment - which could lessen its effect. The EU's Digital Markets Act has also now taken effect and already forced Apple to alter some of the services it provides to users in the EU (for instance permitting the use of third party app stores), while the Commission has opened a handful of new investigations into Alphabet, Apple and Meta under the Act, over suspected anti-competitive practices.

There are also a number of new measures around sustainability and the environment. New rules on packaging and the repairability of products impose significant new obligations on manufacturers to change the composition and labelling of packaging; meet EU standards on recycling emissions; and to offer to repair, rather than replace, defective products. Cosmetics and pharmaceutical firms will be obliged to pay 80% of the cost of wastewater treatment caused by microplastics in their products under the 'polluter pays' principle, and there are a range of new restrictions on chemicals and mercury-based dental fillings.

These regulations, too, have been criticised for being watered down in the face of pressure from the farming lobby, with specific emissions and pesticide reduction targets for the agricultural sector dropped, and agreement yet to be found on a proposed law on nature restoration. The Commission has also loosened some of the conditions of its Common Agricultural Policy to reduce the 'administrative burden' on farmers, and paused the introduction of elements of its regulation on products linked to deforestation due to concerns about the potential negative impact on food imports.

Many of the above rules and regulations will – or may – apply in Northern Ireland once complete: namely those on packaging, supply chain due diligence, forced labour, product repairability and the mercury ban; as well as new rules on the marketing of certain foodstuffs (known as the 'breakfast directives') – while the deforestation regulation has already been applied. These have the potential to create competitive imbalances between firms in NI – who are subject to enhanced administrative responsibilities – and those in rest of the UK – who are not (unless they supply the EU). They could also curtail supplies of certain goods from GB to NI, if GB-based producers find the costs of compliance with the new EU regulation excessive and prefer to stop supplying NI instead.

This legislative hyperactivity also risks creating flashpoints in Northern Ireland over their application. Now that the Northern Ireland Assembly is sitting, updates to EU rules can be subjected to the 'Stormont Brake', and the application of new EU rules can be 'negatived' if they fail to get a majority of both nationalist and unionist MLAs. The potential for this was shown in the recent vote in the NI Assembly rejecting the application of an EU regulation on geographical indications for craft and industrial products – highlighting how politically contentious these issues can become, even when the expected trade disruption is very limited.

In contrast to the EU, the pace of UK legislation has slowed in the run-up to the general election. The most significant intervention of the last quarter has been legislation to create the first smokefree generation (preventing those born from 2009 onwards from ever buying tobacco) and banning the sale of disposable vapes. The EU has not introduced comparable restrictions here, and the UK is also set to impose stronger consumer protections around fraudulent payments and misleading consumer practices.

There are also a handful of cases of new regulatory alignment, with the UK having opted to turn a time-limited equivalence decision for EEA investment firms into an indefinite one under its post-Brexit Overseas Funds Regime. The likelihood of the EU extending its equivalence decision for UK-based clearing houses beyond June 2025 also appears to have increased now that it has significantly rowed back on plans to redirect trading towards EU-based clearing houses. Elsewhere, the two sides have announced a new working arrangement on jointly policing irregular migration – though there are no legally binding commitments – and the UK has followed a number of EU member states in pulling out of the Energy Charter Treaty, which has been widely criticised for allowing fossil fuel companies to sue nation states over net zero-related legislation.

10 April 2024

1. Consumer rights

New restrictions on unfair trading practices

ISSUE	IMPACT
The UK government has announced new restrictions on a number of 'unfair trading practices' as part of the Digital Markets, Competition and Consumer (DMCC) Bill. Posting fake online product reviews will become a 'blacklisted' practice, with website hosts accountable for ensuring reviews on their sites are genuine. The Competition and Markets Authority (CMA) will enforce the ban, though its powers are still to be determined. Businesses will also be required to take proactive steps to comply with the ban, with the government and the CMA developing new guidance to aid this. Some forms of 'drip pricing' will also be blacklisted. This involves showing a consumer an initial price before additional fees are 'dripped' in later on. Drip pricing will only be banned in cases where the additional fees are unavoidable (like taxes and delivery fees), while optional drip fees (like paying for extra luggage on a flight) will still be permitted. Once blacklisted, regulators will no longer have to prove that unavoidable drip pricing is affecting consumer behaviour before they can intervene. A piece of assimilated EU law – the Price Marking Order (PMO) – is also being updated. The PMO requires sellers to clearly display the final price and price per unit of goods and was last updated 20 years ago. The government plans to update it this spring to ensure more consistent labelling across equivalent products. **NEXT STEPS:** The DMCC Bill is completing its passage through Parliament.	The UK government notes that consumers currently pay £2.2bn per year in unavoidable fees, with drip pricing used by over half of entertainment and hospitality providers, and by almost three quarters of businesses in the transport and communication sectors. It also notes that 90% of consumers use online reviews – of which an estimated one in seven may be fake – as part of £224bn worth of retail spending in 2022. It also opens up some moderate divergence compared to EU consumer protections. The EU banned the selling, buying and submitting of fake consumer reviews in 2022 as part of its Better Enforcement and Modernisation Directive, with traders obliged to provide information on whether and how it ensures product reviews are genuine. The UK approach appears similar, with an obligation on websites to actively prevent the posting of fake reviews, though the relative effectiveness of the two regimes may depend on the enforcement powers provided to the CMA. On drip pricing, the EU's regulation is similar to UK's at present – where it is banned if it leads to misleading commercial practices. The changes to the UK rulebook remove the requirement to prove that unavoidable drip pricing is unfair – thus amounting to a stronger restriction. Similarly, the UK's updates to the Price Marking Order rules are likely to go further than the EU's.

2. Consumer rights

Payment Services (Amendment) Regulations 2024

ISSUE	IMPACT
The UK government is to amend assimilated EU law, to permit delayed processing of payments where there is a suspicion of fraud. It will amend, via statutory instrument (SI), the Payment Services Regulation 2017 - which presently requires an outbound payment order to be credited to the payee's 'payment service provider' (PSP) account by the end of the next working day. The SI will allow PSPs (for instance banks) to delay outbound transactions by up to four businesses days when there are reasonable grounds to suspect that the payer has placed the payment following an act of fraud or dishonesty from someone else. These grounds must be established (on an 'evidential basis') by the end of the next business day following the payment order; and a delay may only be used to allow the PSP more time to contact the customer or a third party as part of its investigation into the payment. The legislation will apply only to 'Authorised Push Payments' made in sterling within the UK. PSPs will be liable for any costs incurred as a result of delayed payments, and businesses may opt out of the provisions subject to mutual agreement with their PSP. **NEXT STEPS:** The SI is in near-final form, but the Treasury will still consider technical comments. It will be laid before Parliament in final form in summer 2024, and is set to take effect from 7 October 2024.	An estimated £240m was lost in 2023 to 'authorised push payment' (APP) scams - when an individual is tricked into sending money to someone posing as a someone else. The UK has already legislated, as part of the Financial Services and Markets Act, to require victims of APP scams to be reimbursed from 7 October 2024 - the same time as the new rules on delaying payments will come into effect. The EU is also looking to update its payment services directive. Last year the Commission outlined proposals to allow PSPs to share fraud-related information with each other; extend the refund rights of fraud victims; and strengthen payment authentication and verification processes; alongside wider proposals to allow non-bank PSPs to access all EU payment systems; and to mandate greater transparency on hidden charges. Negotiations on the proposals between the European Parliament and Council will start after the June elections. There is thus some alignment between the UK and EU in their focus on updating payment services rules, though the EU's approach is more wide-reaching, concerned in particular about creating a level playing field between banks and other PSPs, whereas the UK has focused more narrowly on the issue of fraud, with more stringent safeguards in that regard. The EU has not brought forward UK-style proposals to delay suspicious payments, though it will strengthen other safeguards and, like the UK, is set to place the liability on PSPs to reimburse fraud victims.

3. Energy

UK withdrawal from the Energy Charter Treaty

ISSUE	IMPACT
The UK government has announced its withdrawal from the Energy Charter Treaty (ECT), which it says is not aligned with its net zero ambitions. The ECT is an international treaty which entered into force in 1998 aiming to promote cross-border competition and investment in European energy markets. It has more recently received widespread criticism for allowing private companies to sue governments for implementing policies which harm their profits. For example, in 2021 the energy companies RWE and Uniper sued the Dutch government for €2.4bn in damages over its decision to phase out coal by 2030. In 2020 negotiations began on modernising the ECT, with an agreement in principle reached between 53 contracting parties in June 2022. This would have seen protection for fossil fuel investments phased out over 10 years (rather than 20) and excluded new fossil fuel investments from protection after nine months. However, the EU blocked its approval after nine member states rejected it for not going far enough. Investments made in the UK after its formal departure will no longer be covered by the ECT's provisions. However, investments made prior will remain covered for another 20 years. **NEXT STEPS:** The UK must give one year's written notice of its withdrawal from the ECT, and remains a full member in the meantime.	The UK's announcement emphasised that it was supportive of staying in an updated ECT, noting that 'the UK helped broker a landmark agreement to modernise the ECT' which 'would have maintained its current benefits, while supporting the transition to cleaner energy'. The statement also hints at some frustration with the EU - which it appears to blame for its ultimate withdrawal - noting that the modernisation agreement 'should have been adopted in November 2022, [but] was rejected by 9 EU member states' and that 'European Parliament elections in 2024 mean modernisation could now be delayed indefinitely'. The UK's withdrawal is widely seen as precipitating the wider collapse of the Treaty and has been supported by a range of climate organisations who see the treaty as anathema to the net zero transition. The UK has taken a decision to leave before the EU, which proposed a coordinated departure for its member states in 2023, but failed to obtain unanimous agreement. Yet nine EU member states have already unilaterally opted to leave the ECT (France, Germany and Poland have formally left), so in some senses the UK's departure represents belated alignment with EU member states.

4. Health

Ban on disposable vapes and creation of 'smokefree generation'

ISSUE	IMPACT
The UK government has announced a plan to ban disposable vapes, alongside new restrictions on the marketing of other vape products. The sale of disposable vapes - those which cannot be both recharged and refilled - will be banned under a draft statutory instrument published in March 2024. The government cites concern over disposable vapes' environmental impact (they contain hard to recycle components and are frequently littered) and the ambition to create a 'smokefree generation' as the reasons for the ban. The number of children using vapes has tripled in the past three years; and the use of disposable vapes - which are seen as a key driver in the overall rise in youth vaping - has increased by nine times among 11-17 year olds in the past two years. Under the Tobacco and Vapes Bill, also published in March 2024, ministers will get powers to impose restrictions on the flavours, packaging and display of non-disposable vapes, so as to reduce their appeal to children; and to extend those restrictions to other alternative nicotine products such as nicotine pouches. It will be made an offence to sell non-nicotine vaping products to under-18s, and trading standards officers will get new powers to issue on-the-spot fines for violations of the new restrictions. The Bill also fulfils a commitment made last year to make it illegal to sell tobacco products to anyone born after 1 January 2009 - meaning anyone turning 15 this year can never legally	This is a relatively rare example of an area where the UK has imposed more stringent regulation than the EU. Public health is mostly a matter for individual member states, but the Commission has the power to impose legislation in some areas, including for 'major cross-border health scourges' and 'the protection of public health regarding tobacco'. Though vapes are not tobacco products, the EU has kept options for more stringent regulation on the table - via revision of the Tobacco Products Directive - but is yet to act, while some member states are also considering their own restrictions. The four governments of the UK agreed to make the application of the Tobacco and Vapes Bill UK-wide (though some of the ministerial powers and restrictions are already in place in Scotland), while the governments of Wales, Scotland and Northern Ireland all intend to separately legislate, like England, to ban the sale of single-use vapes. This is also a rare example of the UK governments having reached 'four nations' agreement on coordinated policy action in an area of devolved power. Dr Thomas Horsley notes that this 'could indicate a new openness on the part of the devolved governments to shaping policy through multilateral coordination' or could be indicative of the challenges the devolved governments have faced in pursuing unilateral policy measures post-Brexit, which have often been constrained by the UK Internal Market Act.

be sold tobacco. While they will still be able to buy vaping products, the government is aiming to reduce their appeal, as 'the long-term health impacts of vaping are unknown and the nicotine contained within them can be highly addictive'.

Meanwhile, in the spring budget the Chancellor announced the introduction of an excise duty on vaping products in October 2026, with a one-off increase in tobacco duty at the same time, so as not to make smoking more financially appealing than vaping.

NEXT STEPS:

The Tobacco and Vapes Bill is making its way through Parliament, and government will then consult on how the new powers are applied through regulation. The Statutory Instrument banning disposable vapes still requires final ministerial approval.

5. Taxation

Removal of tax relief for orchestras touring the EEA

ISSUE	IMPACT
On 1 April 2024, the UK government removed the right of orchestras to claim tax relief of 50% on the cost of performances in the European Economic Area (EEA). Politico reports that the Treasury has dropped the relief in order to comply with the UK's obligation as a member of the World Trade Organisation (WTO) not to discriminate between different WTO members. Offering tax relief on performances in the EEA incentivises orchestras to perform there rather than in other countries. Such targeted tax relief is permitted under WTO rules if it is part of a formal free trade agreement, but the measures are not part of the UK-EU Trade and Cooperation Agreement. From 1 April 2024, the Treasury also reduced the rate of touring tax relief for orchestras – now only applicable within the UK – from 50% to 45%. However, the 50% rate was a temporary level introduced in 2021 to support their post-pandemic recovery, and was set to drop to 35% from 1 April 2025 and to 25% from 1 April 2026. The Musicians' Union thus welcomed the setting of a permanent rate of 45%, and the UK government said it was designed 'to continue to offset current pressures on these industries and boost investment in our cultural sectors'.	The Association of British Orchestras told Politico that the change to the rules 'risks making European tours financially unviable' and deprives them of an important income source. Its members made 150 visits across 22 EEA countries in 2019 – accounting for 12% of orchestras' total earned income. This is not the first such challenge to affect UK musicians and artists seeking to tour the EU. They have also had to get to grips with more complex visa requirements, as well as restrictions on the time they can spend in the EU and the transport of equipment. It is estimated that offering the EEA touring tax relief to orchestras has cost the Treasury £75m since 2016, which orchestras argues is a relatively low spend for the value it brings them. The Treasury also notes that the decision brings orchestras into line with other arts sectors like film, TV and video games.

6. Agriculture

Review of the Common Agricultural Policy

ISSUE	IMPACT
The European Commission has announced a review of its Common Agricultural Policy (CAP), to ease the regulatory burden on farmers. The proposed changes relate to requirements around 'good agricultural and environmental conditions' (GAECs). This is a set of nine standards which farmers must meet in order to obtain many of the subsidies available under the CAP. The Commission notes that 'farmers faced challenges to fully comply with some of the standards' and has thus proposed some changes to the conditions: • For GAEC8 (on non-productive features), farmers will no longer have to keep a minimum amount of their arable land as non-productive areas - though they will have to maintain existing landscape features on their land. The Commission had already proposed a one-year derogation in January 2024. • For GAEC7 (on crop rotation), farmers may opt for crop diversification rather than crop rotation - which the Commission says will aid compliance among farmers affected by regular rainfall or drought. • For GAEC6 (on soil cover during sensitive periods), member states will have more flexibility to define - based on local conditions - both what counts as a sensitive period, and which practices meet the soil cover requirement.	The review should be seen in the context of the widespread farmer protests which have been taking place in recent months against a range of the EU's green policies. Ahead of the upcoming elections, the Commission is making a concerted effort to show that it is 'responding to farmers' concerns for reducing administrative burden'. As well as simplifying the administration around the CAP, it has rowed back on some of its plans to impose stronger emissions regulations on farmers. The UK's own farm payment schemes (the policy is devolved) introduced post-Brexit are facing similar tensions between environmental imperatives and farmer interests. The schemes aimed to put a greater emphasis than the CAP on encouraging farmers to adopt more pro-environment and sustainable practices. Yet there are concerns about how this could compromise food security, with Defra in March 2024 announcing restrictions on how much land (up to one sixth) can be taken out of direct food production for six of the environmental actions which entitle farmers to payments under the Sustainable Farming Incentive (SFI) - one of the new payment schemes in England. This reflects another challenge which has beset the UK schemes - the regular changes to payment conditions as governments iterate their fledgling regimes. This has left farmers frustrated about the lack of certainty the scheme provides, compared to the CAP, with some also losing out on income as the CAP is phased out in favour of domestic payments.

Member states will also be able to exempt particular crops, soil types and farming systems from having to comply with GAECs 5, 6 and 7; introduce twice as many amendments each year; and introduce temporary derogations in response to extreme weather conditions. Small farms (under 10 hectares) will be exempted from controls and penalties linked to the GAECs.

NEXT STEPS:

The Commission's proposals are still subject to negotiation within the European institutions.

In February 2024 the government announced some updates to the scheme for England, including a doubling of the management payment under the SFI - meaning the 11,000 farmers who have taken up the scheme will receive a £1,000 top up this spring. The government had already announced an average increase of 10% for SFI payments at the start of this year - but take up of the scheme remains well below the 82,000 farmers eligible.

7. Chemicals

Restriction on PFHxA

ISSUE	IMPACT
The EU has announced a new restriction on the use of the PFHxA and related substances. This is a subgroup of PFASs (widely known as 'forever chemicals') used in a range of products – from clothing and paper and card food packaging – for their water repelling properties. The Commission has also launched a consultation on the use of bisphenol and other hazardous bisphenols in food contact materials; and a proposal to ban certain chemicals – including PFASs – from children's toys was recently endorsed by the European Parliament. The proposal would also require toys to have a 'digital product passport' to aid their traceability. Meanwhile, Defra has published its UK REACH work programme for 2023/24, outlining its priorities for chemicals regulation over the past year. One priority was work on PFASs (which have been a key focus of EU policy) through the preparation of a dossier on PFASs in firefighting foams, and an assessment of possible further restrictions on the 'dispersive' use of PFASs. Other priorities are continued analysis and assessment of formaldehyde and formaldehyde releasers; bisphenols on thermal paper; hazardous flame retardants; and intentionally added microplastics (another area of EU focus). **NEXT STEPS:** The UK REACH work programme is ongoing, and applies to England, Wales and Scotland. The EU restriction on PFHxA will apply to clothes two years after entering into force, and to other items after three years.	Comparing the recent UK and EU developments highlights the stark difference in regulatory rhythm since Brexit, with the EU actively restricting a range of substances while the UK remains in the realm of consultation and analysis. Chloe Alexander of CHEM Trust notes that the UK REACH work programme for 2023/24 constituted 'new layers of preparatory work' which 'is tying up an already stretched regulator with unnecessary work, reconsidering and re-evaluating extensive EU analysis'. The fact the UK published its work programme for 2023/24 so late into the year is seen to reflect the lack of capacity and progress within the UK's regulatory regime. Meanwhile, the gap between the EU and UK on chemicals restrictions continues to grow, with the UK having, for instance, opted not to replicate an EU restriction on rubber crumb in artificial sports pitches. Overall, the EU has added 31 new substances to its list of 'very high concern' in the past three years – none of which have been replicated by the UK. The new EU restriction on PFHxA will apply in Northern Ireland, meaning products containing PFHxA will no longer be exportable from Great Britain to Northern Ireland. GB manufacturers will continue to be able to make use of PFHxA, while those in NI will not. GB producers will also no longer be able to export toys to the EU or NI, unless they comply with the new chemicals restrictions, once they take effect, and have the necessary digital product passport.

8. Climate

2040 climate targets

ISSUE	IMPACT
In February 2024 the EU announced its '2040 climate target' - to reduce greenhouse gas emissions by 90% relative to 1990. This is a key intermediate target linking the EU's existing ambitions to reduce emissions by 55% by 2030 and reach net zero (100% emissions reduction) by 2050. Following the European elections in June, the next Commission will introduce legislation to make the 2040 target legally binding and decide on a policy framework to support it. The Commission's text announcing the target does, however, already pick out key areas of focus. As well as the full implementation of legislation related to the 2030 target, it asserts that industry and transport will overtake power generation as the main priorities for decarbonisation, as the 'electricity sector should come close to full decarbonisation in the second half of the 2030s'. The paper outlines the need for an 'industry decarbonisation deal' to increase the EU's manufacturing capacity for green technologies. This will be supported by over €100bn of investment and trade defence measures (to protect European industry from subsidised imports) and 'win-win partnerships with like-minded partners' (in areas like critical minerals). It also highlights a 'renewed agenda for the circular economy' - as already reflected in updated rules on ecodesign and repairability of products.	The EU has moved before the UK to set its 2040 emissions reduction target, which states are required to do by 2025 under the terms of the Paris Agreement. This sets an international benchmark for others to follow, sending clear messages about the EU's continued commitment to net zero and the medium-term regulatory horizon it is setting for policymakers and businesses. In these regards, the EU is showing clearer leadership on the net zero transition than the UK. That said, the EU is not currently on track to meet its emissions reduction targets, though its policy arsenal and industrial strategy has developed much more than the UK's of late, with a carbon border adjustment mechanism in place, updated ecodesign regulations, the net zero industry act, economic security strategy and sustainable finance framework. Though the UK's 2030 target is higher than the EU's (at 68%), it is 'substantially off track' to meet it according to the UK's independent assessor. The EU's 2040 target has not been without controversy, however, in particular due to the absence of specific targets for the agricultural sector. A draft proposal specifying a 30% reduction in emissions of certain gases linked to farming was reportedly cut from the final text. Europe has been hit by a wave of farmer demonstrations in recent months, in opposition to measures aimed at cutting their use of pesticides and greenhouse gas emissions. The final text's language on agriculture is notably emollient, acknowledging the 'multiple vital services' farmers offer and the need to

There are also sector-specific targets, such as an 80% reduction in transport emissions by 2040 compared to 2015, and the Commission has set up a 'Strategic Dialogue on the future of EU agriculture'.

An additional 1.5% of GDP is to be invested annually in the transition compared to 2011-2020, through a mixture of public and private funds. The text notes that 'Europe must become more attractive for private investment', identifying €470bn in potential annual private funding via the EU Capital Markets Union. It also notes that the EU's framework on sustainable finance (encouraging greener investment practices) will continue to be developed.

NEXT STEPS:

The target will be made legally binding and a policy framework will be outlined following the EU elections.

'address trade-offs and decrease costs' for the sector when exploring potential approaches to emissions reductions.

Around the same time as the 2040 target was set out, the EU formally dropped its plan to halve the use of pesticides in the agricultural sector, which was rejected by the European Parliament last November. It has also since published a paper with proposals 'to help reduce the administrative burden weighing on farmers' shoulders'. These largely revolve around simplifying the conditionality requirements and assessment methodologies linked to Common Agricultural Policy payments.

9. Consumer rights

Updated 'Breakfast Directives'

ISSUE	IMPACT
The European Council and Parliament have reached provisional agreement on a range of new consumer information requirements relating to a range of foodstuss – known as the 'breakfast directives'. The draft proposal was covered in a previous tracker, and stems from the Commission's desire to establish common standards around the composition, naming and labelling of these goods; to aid consumers. Whereas honey can currently be labelled as a blend of EU or/and non-EU honeys, labels will now be required to show the countries of origin (and proportion of content from each country). And to aid consumers seeking low-sugar products, three new categories of reduced sugar fruit juices will be created; and the minimum sugar content for jam will increase from 35% to 45%, and from 45% to 50% for 'extra jam'. The use of the term 'marmalade' is currently only permitted for citrus fruit mixtures, but member states will be allowed to authorise its use for other types of jam (which are commonly called 'marmalade' in many member states). As a result, 'citrus marmalade' will become the term for products currently known as marmalade (with it being possible to switch the word citrus for the specific fruit in question, or to use the term 'mixed fruit marmalade' if it is made from three or more fruits). **NEXT STEPS:** Technical work remains to be concluded on the exact details of the directive before it is submitted to the Special Committee on Agriculture for endorsement.	The update affects GB-based food manufacturers who export to the EU, as they may have to re-label or change the content of their products to comply with the new requirements. The ban on the use of the generic term 'marmalade' could be another challenge, as manufacturers currently using it for the UK market may prefer to carry on doing so (to avoid confusing consumers) – thus requiring separate 'marmalade' and 'citrus marmalade' or 'orange marmalade' labels for the UK and EU markets respectively. The update is applicable in Northern Ireland, and therefore potentially subject to the Stormont Brake if it is considered to have a significant, persistent impact on everyday life. The main potential impact is around competition, as NI manufacturers will be operating to different standards (i.e. more detailed honey labelling, and higher fruit content requirements for jam) which entail higher production costs compared to producers in the rest of the UK. However, this effect is likely to be diminished if many GB manufacturers opt to comply with the new EU standards to maintain access to the single market. There could also be a sensitivity around NI-made marmalade not being able to carry the name 'marmalade' unless prefixed by 'citrus' or the fruit in question. The impact on GB-NI trade is likely to be very limited, as goods made in GB which do not meet the new EU standards can still be exported to NI under the provisions of the Windsor Framework, as long as they are labelled 'not for EU'.

10. Digital & data

EU Digital Markets Act

ISSUE	IMPACT
The deadline for tech firms to comply with the EU's Digital Markets Act (DMA) passed on 6 March 2024, and has already resulted in some significant changes. The DMA, covered in a previous divergence tracker, imposes pro-competition obligations on a handful of very large companies (known as gatekeepers), which are deemed to have such a dominant position in a digital market as to be able to significantly shape it in their own interests. One of the obligations on gatekeepers is 'to allow third parties to inter-operate with the gatekeeper's own services in certain specific situations' – something which Apple was failing to do in numerous ways, for instance by blocking the installation of third party app stores on its devices. Thus, in January 2024 Apple announced a number of changes to its software for European Union users. Third party app stores can now be used on Apple devices, NFC technology (widely used for payment services) will be allowed for banking and wallet apps, and users will be prompted to select their preferred browser, rather than it being Apple's Safari by default. The commission paid by apps for using Apple's App Store – something which has long been decried as anti-competitive – has dropped from 30% to 10% (or 17% in some cases), though companies will have to pay €0.50 for every time their app is installed, once it has been installed one million times in a year. Separate to this, the European Commission in March 2024 announced that it was fining	The DMA already represented divergence between the UK and EU (which has not – yet – introduced equivalent legislation) and its effect is now being felt in practice. The recent changes announced by Apple apply only in the European Union, meaning a different experience for consumers and developers compared to in the UK and the rest of the world. EU-based users now have a greater degree of choice over the services they use on an Apple device; while developers have greater flexibility over they how develop apps and will face lower commission fees for using the App Store. (Apple, unsurprisingly, claims users are also exposed to greater security risks as a result.) This case demonstrates the power of EU legislation to impose behavioural change on major companies – and, arguably, other jurisdictions. As noted in a previous divergence tracker, the UK is planning very similar legislation to the DMA as part of its Digital Markets, Competition and Consumers Bill (which is completing the final stages of its passage through Parliament). That means the changes applied by Apple in the EU could soon apply in the UK too – though there will presumably be a bedding-in period before firms have to comply with the new legislation. It is not clear whether the UK always wanted to introduce similar regulation to the EU, or felt compelled to once the EU took action. Either way, the UK's comparative slowness to legislate has created a temporary regulatory gap. Some experts have raised questions about how effective the DMA will be in practice,

Apple €1.8bn for breaching anti-steering rules. The Commission ruled that Apple has abused its dominant position in distributing music streaming apps to iPhone and iPad users, by restricting rival music streaming apps (like Spotify) from informing users about alternative and cheaper services they offered outside of the Apple system. Spotify argued its prices were artificially inflated on Apple because of the high commission fees charged, and the Commission agreed that the fees 'have led many iOS users to pay significantly higher prices for music streaming subscriptions'.

The rules Apple was found to have breached predate the DMA, with the Commission having opened formal proceedings in 2020. The fine is equivalent to around 0.5% of Apple's worldwide annual turnover and is the first time it has been penalised for breaching EU competition law.

Later in March 2024 the EU also launched its first investigations under the DMA: into whether Alphabet (Google's parent group) and Apple have unduly 'steered' users towards their own apps in their app stores; whether Alphabet's display of Google search results favours Google services; whether Apple's measures adequately let users opt for alternative default services (e.g. third party web browsers or search engines) on iPhones; and whether Meta's new 'pay or consent' model meets DMA standards on gaining consent for personal data collection. It intends to conclude these investigations within twelve months.

NEXT STEPS:

Apple intends to appeal the EU's antitrust decision, meaning the case could take some time to conclude.

arguing that tech companies are adept at finding ways to adhere to the letter rather than the spirit of the law. They point to Apple imposing a €0.50 charge on companies for every installation of their app after the millionth as an example of this, as it is likely to disincentive companies from trying to grow their user base through alternative app stores, and Spotify says it is 'the same or worse than the old rules'. Moreover, the fact that Apple has only introduced the changes in the EU means companies wanting to take advantage of the new rules would have to run separate processes for EU and non-EU services - which is more complicated and costly than one uniform process.

Nonetheless, the EU's antitrust case against Apple further demonstrates its desire to tackle anticompetitive practices by major tech firms. The practices being punished in that case overlap heavily with those Apple is now changing (like commission fees) as a result of the DMA. The fine was reportedly first set to be around €500m, but the EU subsequently opted to increase it to €1.8bn - the third-largest antitrust fine it has imposed - in order to 'show [its] resolve'.

It is notable that, under the terms of the UK-EU Withdrawal Agreement, the UK will be given its share of any fine which the EU collects from Apple, because the case was initiated before the end of the transition period and the EU continues to be competent for the UK in the case.

11. Environment

Review of Urban Wastewater Treatment Directive

ISSUE	IMPACT
The European Council and Parliament have reached provisional agreement on a review of the Urban Wastewater Treatment Directive. The directive, adopted in 1991, imposes standards on how member states collect and treat urban wastewater - in order to prevent pollution of rivers, lakes and seas. The updated directive imposes new responsibilities on the companies which produce certain pollutants (known as the 'polluter pays principle'). Producers of pharmaceuticals and cosmetics will be required to pay at least 80% of the cost of any quaternary treatment - which is an additional process for treating micropollutants in urban wastewater - necessitated by their products. There are also new obligations around systemic monitoring for microplastics and 'forever chemicals' (called PFASs) at treatment plants' inlets and outlets. The obligation to carry out tertiary (removal of nitrogen and phosphorus) and quaternary treatment will be extended to larger agglomerations between 2039 and 2045, with intermediate targets for 2033 and 2036. Obligations will extend to those in smaller agglomerations after 2045. The obligation to apply secondary treatment (removing biodegradable organic matter) will be extended to all agglomerations of 1,000 plus inhabitants (instead of 2,000 at present) by 2035. **NEXT STEPS:** The text must now be approved by Coreper and the Parliament's Environment Committee.	The UK followed the EU's wastewater directive as a member state but has not introduced comparable updates since Brexit, leading to warnings from campaign groups about the UK lagging behind in protecting its water from harmful substances. Water pollution has been a major concern in the UK in recent years, with a chief cause being a lack of state capacity and investment in infrastructure to properly treat wastewater. This pressure led, for instance, to the Environment Agency in 2021 temporarily allowing wastewater companies to release water which had not been fully treated back into the environment. Untreated sewage was discharged into English waterways for 3.6m hours in 2023 - more than double the level for 2022 - and only 14% of UK rivers are rated as in 'good' ecological condition. There could also be divergence within the UK around wastewater treatment and water quality, with the Scottish government reportedly intending to align with the updated EU regulations, while Northern Ireland is obliged to align under the terms of the Windsor Framework.

12. Environment

Regulation on Packaging and Packaging Waste

ISSUE	IMPACT
The European Council and Parliament have reached a provisional agreement on a proposed regulation on packaging and packaging waste. Most of the provisions are unaltered from those covered in the previous divergence tracker, with the notable exception that plastic recycled outside of the EU will have to be processed to EU standards on pollution and emissions, if it is to count as recycled material under the regulation. This was a late amendment by France, and it was adopted despite reported opposition from Commission officials due to concerns that very few recycling plants outside the EU meet the necessary standards. The measure could be seen as a *de facto* import ban, which opens the EU up to legal challenge at the World Trade Organisation (WTO). More broadly, the regulation, which amends existing EU law, sets 2030 and 2040 targets (which vary by packaging type) on the amount of recycled content in plastic packaging; sets a binding 2030 target and indicative 2040 target (varying by sector) on the proportion of goods which must be sold in reusable packaging; and imposes maximum thresholds on the presence of 'forever chemicals', known as PFASs, in packaging. Further measures include requirements that some forms of packaging be compostable and that empty space in packaging for transport be kept to maximum of 50%; a ban on single-use packaging for certain items (like fruits and vegetables); and a requirement that, by 2029,	The regulation is one of a number of major pieces of legislation which the EU is seeking to pass before the parliamentary elections in June, which aim to make businesses take greater responsibility for their environmental and social footprint. The EU notes that the amount of packaging waste being produced by member states is increasing at a faster pace than recycling rates, hence the need for the measure. Unlike some of the other associated pieces of legislation - like that on due diligence in supply chains - the packaging regulation's provisions have not been significantly scaled back prior to their final agreement among member states. In fact, the late amendment around non-EU recycling plants having to conform to EU standards amounts to an increase in its stringency. As noted in the previous column, this has caused some consternation within the European Commission about the risk of being challenged at the WTO. Germany has also called the move 'protectionist', as it increases the regulatory burden for companies seeking to export to the EU. As well as having to recycle goods to EU standards (near impossible in many countries outside the EU), exporters face a range of other new compliance costs, such as getting packaging conformity assessed and correctly labelled, and ensuring it can be properly tracked and reused. This could increase the cost of packaged goods in the EU, and such is its potential impact that the industry lobbying around the regulation is

member states set up a deposit return scheme and separately collect at least 90% of single-use plastic and metal drinks containers.

Manufacturers will have to undergo a conformity assessment and obtain technical documentation before their packaging can be placed on the EU market. Packaging will also have to be labelled with information on its material composition and reusability (to aid recycling), alongside a QR code to help track it.

NEXT STEPS:

The regulation must now be approved by Coreper and the Parliament's Environment Committee. If approved, it will apply from 18 months after its entry into force.

reported to have been exceptionally high. While British businesses should be better able than most to meet the requirements around meeting EU recycling standards on emissions and pollution, the wider administration involved in conforming to the regulation is still likely to be significant, and could result in some – especially smaller - businesses stopping their exports to the EU rather than incurring the new costs.

The regulation is set to apply in Northern Ireland. Northern Irish businesses could be put at a competitive disadvantage by the increased compliance costs they face compared to competitors in the rest of the UK who are not subject to the regulation. It also means GB-based businesses will have to create packaging which meets the new EU standards if they are to continue exporting to NI which adds costs to exports and could mean some prefer to stop supplying the NI market instead.

13. Environment

'Right to Repair' Directive

ISSUE	IMPACT
The European Parliament and Council have reached provisional agreement on a new 'right-to-repair' (R2R) directive, which introduces new rights for consumers to have their products repaired. The directive aims to incentivise consumers to repair rather than replace a defective good. If a defect appears during the legal guarantee period, consumers will have that guarantee extended by one year if they opt to have the product repaired, rather than replaced. The directive also seeks to make it easier to obtain repair services outside of the guarantee period. Consumers will be able to request a repair from the manufacturer (with the option to borrow a spare during the repair process) or to get a refurbished product. Manufacturers will have to publish information about the repair services they offer (including indicative pricing) and there are new rules ensuring spare parts are made available at a 'reasonable price'. Manufacturers will also be forbidden from using practices which make it harder for other parties to repair their products (for instance by impeding the use of second-hand or 3D-printed spare parts). EU member states will be required to take at least one measure encouraging consumers to repair products – such as vouchers, funds, or support for repair initiatives. A 'European repair platform' will also be set up to help consumers find a repairer.	The directive is part of the EU's wider 'circular economy' strategy which aims to promote more sustainable use of products through greater repair and re-use. It complements the updating of the 'ecodesign' requirements – which set performance standards around efficiency and sustainability – to cover a wider range of goods; and action on substantiating green claims which aims to help consumers better understand the sustainability credentials of goods they buy. The UK copied over the EU's ecodesign regulations during the Brexit transition, but has not kept pace with EU updates – or wider circular economy policies – since, despite the fact that this is seen as an important element of the green transition. The Commission originally outlined its proposals in March 2023, and some ambitions have been watered down. A proposal to amend EU law to make repair the default option for defective goods under legal guarantee has been dropped – with consumers instead incentivised to choose repair over replacement via the offer of a 12-month extension to the guarantee. The R2R Directive's provisions apply to all relevant goods placed on the EU market, not just those produced in the EU. This means UK-based manufacturers who export goods covered by R2R will have increased obligations to offer repair services for their goods. As Northern Ireland continues to follow EU regulations on manufactured goods, it is possible it will also be subject to the new directive. This would mean that GB-based manufacturers would have to offer repair services if they export

The Directive applies only to products covered by existing EU repairability obligations (known as ecodesign). The full list of products is yet to be published but is expected to include mobile phones and tablets, white goods, vacuum cleaners and electronic displays. The Commission can in future introduce repairability requirements for new products through ecodesign legislation.

NEXT STEPS:

The European Parliament and the Council must formally adopt the political agreement. It must then be transposed into member states' national law within 24 months.

relevant goods to Northern Ireland - which may incentivise them to stop exporting rather than conforming to the new rules. It would also mean manufacturers in Northern Ireland would be held to higher standards around repairability than those in the rest of the UK - which has potential implications for competitiveness within the UK Internal Market.

The EU has to obtain the UK's approval before it can apply new legislation in Northern Ireland, while updates to existing legislation apply automatically but are subject to potential veto via the Stormont Brake. It is not entirely clear which category the R2R directive falls into, as it amends the Sale of Goods Directive, but also creates substantive new rights and obligations.

14. Environment

Regulation on Deforestation-free Products

ISSUE	IMPACT
The EU has delayed the implementation of a new classification system under its regulation on deforestation-free products, which was meant to be introduced by the end of this year. The regulation entered into force in June 2023, and will take full effect at the end of 2024, obliging 'operators' who bring a range of commodities (cattle, wood, cocoa, soy, palm oil, coffee, rubber; and some of their derived products, such as leather, chocolate, tyres, or furniture) into the EU market to prove that they are not linked to deforestation. This involves collecting the geographic coordinates of the plots of land where the commodities were produced and submitting them as part of due diligence statements. The EU was set to introduce a benchmarking system - classifying countries (or parts of them) into areas of high, standard and low risk of deforestation - determining the level of obligations on operators. Commodities from low-risk areas were to be subject to simplified due diligence obligations (i.e. no requirement to assess and mitigate risks), with goods from high-risk areas subject to enhanced security checks. This proposal has now been paused, with every country to instead be classified as medium risk. An EU official said more time was needed to get the classification system in place. **NEXT STEPS:** The regulation takes effect at the end of 2024.	The decision to delay the introduction of the classification system was reportedly made in response to concerns raised by certain countries - as well as the food industry - about the impact on trade and investment. Indonesia and Malaysia, who are major producers of palm oil, wrote to the European Commission last September arguing that the regulation 'disregards local circumstances and capabilities', and that the EU had not provided sufficient guidance on how to meet new requirements. Companies had also warned that they could stop procuring from high-risk areas because of the cost of proving that commodities were not from deforested land, or that they would need to move to bigger suppliers that can afford to operate the necessary geolocation technology. The deforestation regulation is one of a number of EU measures which effectively imposes its climate and environmental standards on third countries which want access to its market (see also the CBAM, CSDDD, ecodesign and packaging regulations) and highlights the hostile reaction it can generate among third countries and businesses. The EU views the regulation as necessary because, without it, its imports would lead to roughly 250,000 hectares a year of deforestation by 2030. Yet the decision to delay the implementation of the risk categories reflects a perceived need to balance those principles against the impact on businesses and third countries. The regulation will also affect British exports to the EU market, with importers having

to prove the necessary due diligence has been done on goods containing any relevant commodities. This adds administrative costs to exports to the EU, as well as to Northern Ireland, which is also subject to the regulation. There is a risk for Northern Ireland that GB businesses prefer to stop exporting to NI rather than undertake the necessary due diligence; while NI businesses importing goods subject to the regulation will also be put at a competitive disadvantage within the UK internal market – as they will have to bear the costs of the additional administration, while GB businesses will not (though the UK government is committed to introducing similar legislation).

Professor David Phinnemore and Dr Lisa Claire Whitten have argued that the deforestation regulation could have had significant enough an impact on Northern Ireland as to meet the criteria for triggering the Stormont Brake, had the Assembly been sitting when it passed.

15. Environment / Health

Revision of Mercury Regulation

ISSUE

The European Parliament and Council have reached a provisional agreement on revising the Mercury Regulation so as to ban all remaining intentional uses of mercury in the EU.

Specifically, the use of dental amalgam (a type of tooth filling) will be banned from 1 January 2025, with a temporary derogation until 30 June 2026 for member states who need more time to adapt their national health systems.

From 31 December 2025, the manufacture, import and export of some mercury-containing lamps will be banned, with it extending to cover a wider category of mercury lamps from 31 December 2026.

NEXT STEPS:

The regulation must be formally adopted by the Council and Parliament.

IMPACT

The revision has been proposed because mercury 'is a very toxic substance which represents a global and major threat to human health and the environment', and is another restriction on a harmful substance which the UK has not replicated.

The EU decision has major implications for Northern Ireland, which will be subject to the ban. The British Dental Association (BDA) notes that amalgam is used in around one third of filling procedures in the UK, with no other materials competing on 'speed of placement or longevity, meaning the ban will eat into clinical time and resource that are in short supply, likely creating further access barriers', in particular for those unable to sit for longer treatment, or who will struggle to afford more expensive alternatives.

This does not, however, address the health and environmental benefits of phasing out amalgam, and the World Alliance for Mercury Free Dentistry says the BDA 'has an obvious financial interest in maintaining the use of amalgam in NHS care', as dentists make 'substantial income' from private non-amalgam filling services, and those profits could drop if such services became available via the NHS.

The application of the EU ban on amalgam fillings in Northern Ireland could potentially be blocked via the Stormont Brake.

16. Financial services

Revision of European Market Infrastructure Regulation

ISSUE	IMPACT
The European Council and Parliament have reached agreement on a revision of the European Market Infrastructure Regulation (EMIR) to, among other things, amend rules on the operation of central counterparties (or 'clearing houses') which act as intermediaries in derivatives trades (to reduce risk for the trading parties). Of particular note is the requirement for larger EU firms to clear at least five trades, in certain 'sub-categories of derivatives of substantial systemic importance', through an EU clearing house. Parties trading more than €100bn per year will have to meet that quota every six months, and those trading €6-100bn per year will have to meet it every month. It is estimated that this could result in a firm having to clear up to 900 trades per year through an EU clearing house. The products in scope are euro and Polish zloty-based interest rate derivatives, and euro-based short-term interest rate derivatives. There is also a new 'active account requirement' (AAR) for parties subject to the above clearing obligation. They must have an active account with an EU-based clearing house - which must have the ability to handle the party's transactions at short notice. An active account must be established within six months of a party meeting the criteria to be subject to it. **NEXT STEPS:** This is a provisional political agreement which must now be approved by the Council and Parliament.	The European Commission initially sought to revise the EMIR in order to reduce EU firms' ongoing reliance on UK-based clearing houses - over 90% of euro-denominated derivatives trades were cleared through London last year. However, the EU openly acknowledges that the revisions agreed are much less ambitious than initially envisioned, with the Commission in effect accepting that, contrary to its initial ambitions, EU-based firms may continue to use London as their primary clearing market. The Commission's initial plan was to require that a specified proportion (the exact level was never decided) of trades be cleared through EU-based clearing houses, for the three types of clearing service provided by London. This has now been abandoned, in favour of a much more limited requirement for larger firms to clear a small number of trades in areas of 'systemic importance' through EU-based clearing houses. The Commission wanted to redirect clearing activities inside the EU to give it greater regulatory oversight over the sector - hence the 'active account' requirement that firms can access an EU-based clearing house at short notice. However, financial services firms lobbied the EU to water down its proposals, arguing that moving clearing activities out of London would increase both costs and risk. The final form of the proposal is widely seen as a win for the banks, allowing clearing activity in London to continue largely as before. According to industry experts, this also makes it very likely that the EU will extend its

equivalence decision for UK clearing houses. Equivalence decisions grant third country businesses simplified access to the EU market, and the only equivalence decision the EU has granted the UK on financial services is in relation to clearing houses - indicative of the vital role London plays for EU firms. The decision was, however, time-limited to June 2025, with the Commission expressing its intent not to renew it past that point - as part of its plan to re-orient clearing activities into the EU. The fact that it has now heavily scaled back this ambition, allowing EU firms to instead continue using London as their key clearing location, provides a strong incentive to extend the equivalence decision beyond June 2025.

17. Human rights / Environment

Corporate Sustainability Due Diligence Directive

ISSUE	IMPACT
EU member states have agreed the final terms of the Corporate Sustainability Due Diligence Directive (CSDDD), which is designed to hold large companies accountable for environmental and human rights violations in their supply chains. However, the scope of the Directive has been markedly curtailed after last-minute negotiations between member states. The CSDDD was provisionally agreed last December. The previous divergence tracker outlined its core features: imposing new responsibilities on companies to monitor, identify and act to address negative human rights and environmental impacts in their supply chains - with potentially heavy fines for non-compliance. The rules would have applied to EU companies with an annual worldwide turnover above €150m and more than 500 employees, with lower thresholds for some 'high risk' sectors like textiles, clothing and footwear. However, a number of member states (including France, Germany and Italy) mounted opposition to the scope of the agreement, and a compromise text has now been agreed, which doubles the minimum employee threshold (to 1,000) and triples the minimum turnover threshold (to €450m), while stricter rules for high risk sectors have been removed. It is estimated that 5,500 European companies will now have to comply with the CSDDD - a drop of 67% compared to 16,400 companies which would had been covered under the December draft text.	The revised agreement constitutes a significant watering down of what has been seen as a landmark piece of EU legislation; one of a number of measures designed to ensure that EU-based companies take responsibility for environmental and human rights issues linked to their business which occur outside of the EU. The EU has been keen to get these all passed before the Parliamentary elections in June. The deal has been heavily criticised by human rights and environmental organisations, with the environmental law group ClientEarth saying the deal has been 'butchered' by corporate pressure and Oxfam saying it 'deals a blow to Europe's self-proclaimed standing as a champion of democracy and human rights'. The corporate accountability group Global Witness said it is 'an affront by national governments' to the idea that 'preventing abuses like child labour is a priority'. The CSDDD's scope has been diminished to such an extent that it is now less wide-reaching than Germany's own domestic due diligence legislation. Nevertheless, the lobby group BusinessEurope has said that the rules create 'unparalleled obligations' and it is that administrative burden which was at the heart of member states' objections to the earlier version of the agreement. Even with its more limited scope, some British businesses could be affected by the CSDDD. A few very large companies, whose EU-based turnover exceeds the threshold, could

NEXT STEPS:

The revised agreement is subject to approval by the European Parliament before becoming law, and companies will have several years to comply with the new requirements.

be subject to the new obligations which the CSDDD creates. A larger number of British companies are likely to be affected as a result of being in the supply chains of EU-based companies subject to the directive. This could result in them having to introduce new monitoring practices or change behaviour in other ways.

As noted in the previous tracker, it is unclear whether the EU will seek to apply the legislation in Northern Ireland - which would require a discussion with the UK via the Joint Committee on matters relating to Northern Ireland.

18. Human rights

Regulation on Products Made With Forced Labour

ISSUE	IMPACT
The European Parliament and Council have reached provisional agreement on new rules to ban products made with forced labour from the EU market. Though the principles of the ban had already been established, this provides more clarity on exactly how the rules will be applied. The first thing to note is that there will be no default assumption that goods from certain high-risk areas (like Xinjiang) are linked to forced labour unless proven otherwise. The Parliament had pushed for such an assumption but, instead, the Commission will take a 'risk-based' approach, building and updating a database with information on the risk of forced labour occurring in specific sectors within specific geographical areas. This will support investigations into suspected instances of forced labour (which, if proven, will result in a ban on the import of those goods). The Commission has also outlined four criteria which must be met for investigations to be launched (around the scale and severity of suspected forced labour; the volume and proportion of products connected to it; and the leverage of economic operators to address the issue) and it will provide guidance to authorities on how to navigate these. The Commission will also have the power to name specific products or product groups for which additional information on the manufacturers or suppliers will have to be submitted prior to import. Another notable element is that the	Though not explicitly framed as such, the regulation is seen as an attempt by the EU to clamp down in particular on the importation of products from Xinjiang in China - where human rights abuses against the Uyghur population have been widely documented. There are warnings that the EU risks becoming a dumping ground for goods linked to forced labour if it does not act - with solar panels and cotton clothing from China viewed as particular items of risk - given the United States has already imposed a similar ban, with specific heightened restrictions for products from Xinjiang. The EU has opted not to adopt such targeted measures against Xinjiang, reportedly out of concern about the regulation being challenged at the World Trade Organisation on discrimination grounds. It has instead opted for a risk register to ensure greater attention is paid to high-risk regions (like Xinjiang), but its provisions are seen as weaker than the US's, given the dropping of the recommendation that goods from high risk regions be presumed by default to be linked to forced labour. Anti-slavery charities have argued that the regulation does not go far enough, also due to the absence of obligatory remediation for victims (which was seen as a strong incentive for companies to comply with the regulation). That said, the UK has not introduced a comparable ban on forced labour goods, though its 2015 Modern Slavery Act imposes some weaker safeguards. The new rules on forced labour intersect with other, connected EU

Commission, rather than member states, will lead investigations relating to territories outside the EU, with member state authorities responsible for investigations within their own territory. This puts greater responsibility on the Commission than under the original proposal, which proposed that member state authorities lead investigations, including for cases occurring in third countries.

If an investigation concludes that a good is linked to forced labour, the investigating authority can mandate its withdrawal from the EU market (with withdrawn goods to be donated, recycled or destroyed). For goods of 'strategic or critical importance', the authority can opt not to have the good disposed of but instead withheld until the economic operator can prove the good is not linked to forced labour. When only part of a product (such as the battery of a car) is deemed at risk of being linked to forced labour, it is only that part (the engine) rather than the whole product (the car) which needs to be withdrawn.

An obligation for economic operators to provide remediation to victims of forced labour to whom they are linked has been dropped. Companies found to be non-compliant with the rule will be fined - but there are no lower or upper thresholds on this.

NEXT STEPS:

The provisional agreement must be formally adopted by the European Parliament and Council. Once in force, member states will have three years to apply the new rules.

measures like a new directive imposing greater due diligence requirements in supply chains.

The regulation could - subject to UK-EU agreement - also apply in Northern Ireland, meaning NI businesses would be subject to the regulation, while those in the rest of the UK would not be (unless exporting goods to the EU or NI).

19. Labour rights

Platform Work Directive

ISSUE	IMPACT
The European Council has reached agreement on a new 'Platform Work Directive' which aims to improve working conditions for platform workers, like Uber drivers and Deliveroo riders. A provisional agreement collapsed in December 2023, due to objections from some member states, and a compromise text was similarly rejected in February 2024, before Estonia and Greece opted to approve the text, allowing it to pass (despite France and Germany's continued non-support). The compromise text, does, however, represent a watering down of the core provisions agreed last year. The EU defines platform work as the 'matching of demand and supply of paid work through an online platform using an algorithm'. Most such workers are classed as self-employed, but the EU's view is that many should be considered as in a relationship of employment, because they are subject to many of the same rules and restrictions on their behaviour as an employed worker. Being classified as an employee would entitle platform workers to a range of additional rights, including a minimum wage, paid leave and sick pay. Under the newly-agreed directive, member states must establish a new legal presumption of an employment relationship between worker and platform, triggered 'when facts indicating control and direction are present'. It is up to individual member states to establish a process for determining when the necessary conditions have been met, based on national law, collective agreements, and European Court of Justice case law. This process must make it easier	The revision is likely to have two main effects, compared to earlier drafts. First, because it establishes a vaguer legal framework around what constitutes an employment relationship, platform workers will have less certainty about their right to claim employment status. Some member states could also implement standards for a legal presumption of employment which are harder to prove than those initially proposed by the EU, further complicating matters. Second, and relatedly, there will be different standards across the EU, meaning platform workers will find it easier to prove an employment relationship in some member states than others. Uber called this lack of harmonisation a vote to 'maintain the status quo'. The EU estimated, prior to the revision of the text, that 5.5m of its 28m platform workers could be reclassified as a result of its new legislation, but that is now uncertain given how much depends on the actions of individual member states. Nonetheless, had a compromise not been reached, the directive risked disintegrating altogether, given it must be completed before June's European Parliament elections. And the final law does mark a significant strengthening of platform workers' rights - not only to be classed as employees, but also to be protected against automated decision-making and the other risks that come from algorithm-based work allocation. The directive is one of the Commission's flagship proposals, in the works since 2021,

for platform workers to prove an employment relationship compared to now. The burden would then lie with the platform - if it so wishes - to disprove the relationship.

This represents a watering down of the agreement which was rejected in December 2023. Under that text, a relationship of employment would have been presumed to exist when two of five fixed, EU-wide criteria were met (explained in detail in the previous divergence tracker). It is now down to member states to make their assessments.

Other elements of the previous agreement - on 'regulating algorithmic management'- remain. This includes a requirement that workers be informed about the use of automated monitoring and decision-making systems; the prevention of important decisions (like dismissals) being taken without human oversight and evaluation; and the banning of automated monitoring and decision-making systems for the processing of certain sensitive types of personal data.

NEXT STEPS:

The text must now be formally adopted by the EU institutions. Member states will then have two years to apply the directive in national legislation.

seeking to address a 'grey zone' of the digital economy where workers with precarious jobs lack employment protections. The determination of the Belgian Presidency to complete the process is reflected in it apparently being the first time that legislation has passed the EU Council without the approval of either France or Germany.

The UK has not brought forward comparable legislation, meaning employment protections for platform workers could end up being much weaker than in the EU. That said, as highlighted in the previous tracker, the efficacy of the new EU directive remains to be seen, especially now there are no harmonised EU standards, and claims will instead be disputed 'country-to-country and court-to-court'.

20. Trade

Economic security initiatives

ISSUE	IMPACT
The EU has outlined five new initiatives to bolster its economic security. The first proposal is to strengthen foreign investment screening (which is designed to ensure that investment by non-EU actors does not pose a risk to security or public order). This would create harmonised national rules on screening (rather than powers lying with member states), with the Commission to define sensitive sectors (like AI and quantum computing) which must be subject to investment screening. It also intends to extend screening measures to investments by EU nationals which are ultimately controlled by non-EU businesses or individuals. The second proposal concerns outbound investments (by EU investors in foreign markets) – which are not currently subject to screening. The Commission has proposed an analysis of outbound investment risks – including a 12-month monitoring and assessment period – before it decides whether to impose any formal monitoring or controls. The third proposal is to introduce coordinated controls on member states' exports with 'civil and defence uses' (e.g. advanced electronics, toxins, nuclear or missile technology) to ensure they do not undermine security and human rights. The fourth proposal is a consultation – running to the end of April – on new ways to boost spending on research and development around technologies with both civil and military uses.	The new initiatives build on the EU's Economic Security Strategy, published last year, which aims to reduce the ability of malign foreign states to influence sensitive sectors of the EU economy. The risks stemming from foreign direct investment have been a primary concern because they could give foreign states access to sensitive information in critical sectors like AI and national security. There is also growing concern about similar risks from outbound investment, which could also allow EU companies to avoid domestic regulation by producing goods in foreign countries which are subject to sanctions. The measures are part of the EU's wider push for strategic autonomy, i.e. increasing self-sufficiency in key strategic sectors like green technology, AI and defence (where excessive dependence on third countries could be weaponised against the EU). While it has introduced a range of measures to increasing domestic manufacturing capacity, the economic security elements are designed to actively curtail links to foreign states. The UK has not sought to follow the EU in pursuing strategic autonomy or trade defence measures, and the latest economic security initiatives represent further divergence in this regard. However, the EU's initiatives have been criticised for their vagueness, and focus on consultation rather than firm proposals. The EU reportedly rowed back on grander ambitions to impose export controls on member states,

The fifth proposal is 'to provide more clarity, guidance and support to Member States' on the potential security risks from open, borderless research cooperation in research and innovation – as well as uniform measures to guard against those risks.

NEXT STEPS:

The initiatives are distinct and subject to differing timelines and processes. Most are still at the stage of consultation before the EU decides whether, and in what form, to bring forward legislation. Those decisions will fall to the next Commission.

for instance by actively blocking them from moving supply chains for certain advanced technologies overseas, instead opting to consider a non-binding screening mechanism on outbound investment.

The ultimate shape, and thus impact, of the five initiatives is still very much subject to the willingness of the next Commission to impose firm measures and confront potential member state resistance to them.

21. Product standards

Regulation on Geographical Indications for Crafts (Applicability Motion)

ISSUE

The Northern Ireland Assembly held its first ever vote on whether the UK government should agree to a new EU regulation being applied in Northern Ireland. This is known as an 'applicability motion' and is one of the democratic consent processes created by the Windsor Framework.

The motion - on the application of a new EU regulation on geographical indication protections for craft and industrial products (explained here) - did not pass because, despite being supported by 61% of NI Assembly members (MLAs), it failed to obtain a 'cross-community' majority (from both nationalist and unionist blocs), with all unionist MLAs voting against.

Though by default the UK government 'must not agree' to the adoption of new EU laws in NI without an applicability motion, it could ultimately decide to allow its application in NI anyway if, in its view, it 'would not create a new regulatory border between Great Britain and Northern Ireland'. This is open to some interpretation but, by its own assessment, the UK government expects the trade impact to be 'limited' (see next column for more detail), suggesting it could opt to overrule the Assembly and permit the application of the regulation.

If the government opts not to do this, the UK and EU will have to look into 'all further possibilities to maintain the good functioning' of the Framework. What this constitutes is unclear, but it could, for example, amount to a

IMPACT

A Democratic Unionist Party (DUP) MLA said that his party voted against the motion because it 'would create a new regulatory border within the United Kingdom', whereas a Sinn Féin MLA said it was a 'sham fight' and an MLA from the Social Democratic and Labour Party called it a 'stunt' designed to 'prove [the DUP's] anti-EU machismo' which could harm craft producers in Northern Ireland.

The new EU regulation establishes a geographical indication (GI) scheme for craft and industrial products. Similar to that which already exists for food and drink, it grants intellectual property rights to products made in a specific location and to particular standards to carry an exclusive name - for example Murano glass or Limoges porcelain (the scheme is also open to products from non-EU countries).

Under the Windsor Framework, NI continues to adhere to EU regulations on manufactured goods and the EU takes the view that the new regulation should be applied in NI. This would mean that only goods meeting the designated criteria could carry a protected name (like 'Murano glass') on the NI market. The UK government notes that this could, in principle, create trade disruption as, for example, a GB good indicated as Murano glass (but not meeting the EU's criteria) could not be exported from GB to NI unless it were relabelled.

However, the government expects 'this effect to be limited' in practice, 'given that the UK's partial application of the regulation alongside safeguards to ensure the integrity of the EU single market is protected. If no resolution is found 'within a reasonable time', the EU could adopt 'appropriate remedial measures' - though, again, what this would amount to is unclear.

NEXT STEPS:

It is up to the UK government to decide on its course of action following the rejection of the motion by the Assembly.

collective and certification marks offer broadly similar protection', meaning only a 'few products' would be 'marketable in GB but not NI'. It adds that its application in NI 'would have limited cost implications with respect to the administration... given low anticipated uptake by NI producers' and the fact that existing UK systems could be expanded in line with changes in NI. Moreover, there would be 'no financial implications for NI public authorities' given enforcement matters are reserved to the government in Westminster.

This case raises questions about whether applicability motions can be conducted in good faith, rather than as opportunities for politicised interventions, given this was a case where motion was rejected by one bloc despite the evidential grounds for doing so appearing very weak. As Jude Webber notes in the Financial Times: '[e]xploiting the region's unique dual EU-UK market access to unlock trade and investment will require stable politics'.

Should the UK government overrule the MLAs and allow the application of the law, this could be damaging to Westminster-Stormont relations. Yet it could also create challenges for the UK-EU relationship if the UK opts not permit the law's application in NI and the two sides struggle to find alternative means of resolving the situation - especially as the ultimate risk of EU trade retaliation remains live.

22. Trade

UK Target Border Operating Model - first and second phases

ISSUE	IMPACT
The UK implemented the first phase of its 'border target operating model' on 31 January 2024, imposing new customs requirements and controls on EU imports to Great Britain. These controls should have been implemented at the start of 2021, following the end of the post-Brexit transition period, but the UK delayed their introduction five times. Since 31 January, EU exporters have been required to submit health and phytosanitary certificates for 'medium risk' animal products, plants, and plant products (such as raw/chilled/frozen meat and dairy products, and some fruit and vegetables) as well as 'high risk' food (predominantly live animals) and feed of non-animal origin from the EU. From 30 April 2024, documentary, physical and identity checks (including a flat-rate inspection fee) will be introduced for 'medium risk' animal products, plants, and plant products; and 'high risk' food and feed of non-animal origin. The government has now announced the 'common user charge rates' for inspections of different types of commodity, ranging from £10 to £29. Consignments of mixed goods could thus be subject to multiple different inspection charges at once (capped at a maximum of five) - meaning a maximum possible charge of £145. From 31 October 2024, safety and security declarations will also be required.	Many industry groups have expressed concern about the impact of the new border regime. In particular, there is apprehension about the cost of obtaining the necessary veterinary certification, and the lack of vets available to administer them which, it is feared, could lead to shortages of certain goods (or increased costs for consumers). This concern is especially acute for sectors, like the meat industry, which are highly dependent on EU imports. There are also concerns that the costs of the newly required certification could prove particularly hard to bear for smaller EU businesses, who lack the resources to comply and thus stop supplying the GB market. Meanwhile certain specific goods, like liquid eggs mixed with sugar - used in the manufacture of sauces and baked goods - are no longer importable from the EU because the new UK health certificates do not meet industry standards. As of yet, there has been little reporting on whether the feared impacts of the border controls have come to pass. There are additional warnings about the introduction of inspections charges on consignments from the end of April, which the British Chambers of Commerce have called a 'hammer blow' as 'importing a small consignment of goods with only five different meat, poultry, egg, milk or some fish products in the 'medium-risk' category will now face a bill of £145 per package'. There are fears that this could push up the cost of food for British consumers or lead many smaller European businesses to stop supplying the GB market.

23. Financial services

UK equivalence decision for EEA investment funds

ISSUE	IMPACT
The UK government has determined that European Economic Area (EEA) regulation of investment funds is equivalent to the UK's, paving the way for EEA-based funds to indefinitely access the UK market on the same terms as pre-Brexit. The equivalence decision was made as part of the UK's Overseas Funds Regime (OFR), which was established in 2021, to create a more streamlined system for approving the sale of overseas funds to UK investors. EEA-based funds, like all financial services, lost their right to passport into (i.e. access without additional barriers) the UK market as a result of Brexit, but the UK government opted to grant a temporary equivalence decision - until the end of 2025 - for those funds already marketing into the UK pre-Brexit. This effectively provided them with the same terms of access as before Brexit. Those funds will now be able to transition into the OFR instead, which guarantees that same level of market access indefinitely - without any new administrative requirements. To do so, funds will have to apply to the UK Financial Conduct Authority (FCA) for recognition via the UK's OFR portal, and the temporary equivalence decision has been extended by a year - to the end of 2026 - to give them more time to complete the process. EEA funds not subject to the temporary equivalence decision will also be able to apply for recognition under the OFR.	The equivalence decision means EEA investment firms accessing the UK market will not face additional administrative barriers from the start of 2026. Part of the rationale for the decision was that not granting equivalence would have created new administrative challenges for the FCA, which would have had to undertake lengthy and time-consuming individual assessments of all EEA-based funds seeking access to the UK market. Given that there are around 8,000 funds subject to the current temporary equivalence decision, this would have placed major new resource demands upon the FCA. It could also have risked some of those 8,000 firms opting to stop - or reduce - the marketing of their funds to UK investors, due to augmented compliance costs. This could have been an issue for UK asset managers, given the majority of overseas funds marketed in the UK are EEA-domiciled. It remains to be seen, however, whether the data which must be submitted to gain recognition under the OFR will pose challenges for any EEA funds. The decision is also reflective of the improvement in UK-EU relations, with a memorandum of understanding on financial services cooperation also having been signed last year. The EU has also recently rowed back on a plan which would likely have seen the ending of equivalence for UK-based clearing houses in 2025.

Though the opening date and form for applications have not yet been published, we know firms will have to provide the FCA with data on their scheme's profile; fees and charges; share class level; characteristics of unit/share classes; parties connected to the scheme; and marketing and distribution. The data submitted will be published on a public register, to aid investors. Once in the OFR, operators will also have to notify the FCA about any of a defined set of changes to their schemes.

Money market funds are excluded from the equivalence decision, due to ongoing regulatory developments, and the UK government has also said it will 'monitor this equivalence decision on an ongoing basis, in light of UK and EEA regulatory developments'. The EU has not granted a reciprocal equivalence decision for UK funds to access the EU market.

NEXT STEPS:

The decision must be enacted by the UK government through secondary legislation.

24. Migration

UK-EU deal on operational cooperation on irregular migration

ISSUE	IMPACT
The UK and EU have announced a new working arrangement on jointly policing irregular migration between the European Border and Coast Guard Agency and the UK Home Office. Specifically, cooperation will involve: • information sharing, to help joint situational awareness and to support joint activities and risk analysis; • joint training and capacity-building activities, including the provision of joint support to third countries and inviting each other's representatives to participate in activities of common interest; • participation of staff in each other's operational activities on the other's territory; and, upon request, use of each other's airports and seaports for operational cooperation; • cooperation, and exchange of best practice and expertise, on initiatives to return, readmit and reintegrate migrants in third countries; • the option to invite experts from each other's authorities to participate as observers in their activities. This is an administrative arrangement 'at the technical level', which does not constitute a legally binding agreement under international law. **NEXT STEPS:** The UK and EU will jointly decide on the scope and nature of joint activities, to be set out in annual or multi-annual cooperation plans.	The deal is indicative of the slow deepening of the UK-EU relationship in the past year (since the signing of the Windsor Framework). While cooperation is increasing, it is limited in scope, with an administrative agreement focused solely on the operational level. There are no new, legally binding commitments to one another, such as a returns agreement - which the UK pushed for and which could have allowed the UK to return irregular migrants crossing the Channel to the EU (likely in return for taking in asylum seekers from the EU). Indeed, the deal was reportedly delayed due to the UK pushing for this, and underlines the piecemeal nature of progress which the UK and EU are making in enhancing their relationship. The commitment to share information and best practice on third country returns initiatives (like the UK's Rwanda Treaty) could prove of significance given that the European People's Party - to which Commission President Ursula von der Leyen belongs, and which is likely to remain the largest bloc in the European Parliament after elections in June - is supportive of a Rwanda-style scheme for the EU.

25. Product standards

Extension of CE mark recognition

ISSUE

In its 'Safeguarding the Union' command paper – a document focused on Northern Ireland's place in the UK internal market – the UK government announced that it would 'shortly' extend the range of products for which the EU's 'CE' mark will be recognised indefinitely.

The CE mark is used to denote that electronic, industrial and consumer products have been tested for conformity with the EU's technical standards. Now that UK authorities can no longer administer CE markings, they instead administer a 'UKCA' marking – denoting conformity with the UK's (very similar) standards.

The UKCA mark was initially set to be made mandatory for goods circulating on the GB market from 2023. This was delayed to 2025 before, in August 2023, the Department for Business Trade (DBT) announced that the CE mark would be accepted indefinitely for goods on the GB market which it has regulatory responsibility for.

The notable exceptions to this were medical devices and construction goods, because they are subject to separate legislation which does not fall within DBT's portfolio. These are presumably the new 'range of products' referred to in the command paper, for which the CE recognition will be extended indefinitely. However, the UK government is yet to provide confirmation of this.

IMPACT

Industry groups have warned of significant disruption should medical devices and construction products be obliged to adopt the UKCA mark from June 2025. There is a risk that many manufacturers in their supply chains fail or do not bother (due to capacity issues) to obtain a UKCA mark. It was such a risk which prompted DBT to introduce indefinite CE recognition in the first place.

The continued lack of clarity is a cause of continued consternation for industry groups. A coalition of building trade associations has warned that it is leading to hesitation among suppliers, who are unsure whether they need to start the process of getting products tested for a UKCA mark. The building engineering sector is similarly uncertain about whether to increase its testing capacity for product approvals – which it needs to start scaling up well in advance of June 2025, if the UKCA mark does indeed become mandatory.

The separate DBT decision to relax assessment requirements for pressure equipment is reflective of further pressures created by the distinct UKCA and CE regimes. The fact that UK bodies could not take account of EU assessments as part of their own assessment processes was, DBT said, placing 'extra costs and administrative burdens on pressure equipment manufacturers' and reducing 'the ability of UK businesses and consumers to purchase pressure equipment required for domestic industries, workplaces and homes'.

Separately, DBT has announced a relaxation of rules around the certification of pressure equipment. Up to now, if such equipment was being assessed for a UKCA (rather than CE) mark, the personnel and materials involved in earlier stages of manufacturing also had to be certified by a UK body. This has now been changed so that they may be certified by an EU body instead. DBT has made the change because, at earlier stages in the manufacturing process, it is often not known whether a good will end up in the UK or EU, and so having to decide at that point whether to seek UK or EU authorisation is proving 'too constrictive to supply chains in an industry which is multi-national'.

NEXT STEPS:

The UKCA mark will become mandatory for medical devices and construction products from June 2025, unless indefinite recognition of CE markings is granted.

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