UK IN A CHANGING EUROPE

UK-EU REGULATORY DIVERGENCE TRACKER

5TH EDITION - OCTOBER 2022

INTRODUCTION

This is the fifth edition of the UK in a Changing Europe's regulatory divergence tracker, covering developments since May 2022. There are 13 cases of active divergence (where the UK or some part of it changes its rules), nine of passive divergence (where the EU changes its rules and the UK does not follow), and three of procedural divergence (changes in the systems for managing pre-existing divergence). In addition, there are two cases of a new category – legal action – where the actions of one side result in the other initiating a legal dispute.

The UK political summer was dominated by the Conservative leadership contest, and Liz Truss's fledgling premiership already appears to herald a couple of important shifts in approach to divergence. First, the pace of reform is likely to increase, with the deadline for a review of all retained EU law brought forward from 2026 to (a remarkably ambitious) 2023 and now overseen from BEIS rather than the Cabinet Office. Second, the government appears intent on pausing more interventionist reforms (such as the ELM scheme for agricultural subsidies) in favour of decidedly more deregulatory and – it argues – 'pro-growth' initiatives like a removal of caps on bankers' bonuses.

Another urgent issue, at both UK and EU level, is the surging cost of energy, and here we can already trace a fundamental divergence in approach. While the UK has made a major intervention to keep consumer energy bills down, funded in the first instance through borrowing, the EU is not taking action on consumer bills (because member states are) and instead focusing on a wide package of energy demand reduction measures. Set against one another, the UK approach appears much less comprehensive, with little-to-no strategy for building wider energy resilience into society (the Energy Security Bill has also been paused), leaving it more vulnerable to future price shocks.

For the EU, another priority in the last quarter has been tackling competitive distortion in procurement markets, and again its response has been to build comprehensive regulation to plug a strategic threat. Its new Foreign Subsidies Regulation and International Procurement Instrument respectively restrict the access of foreign companies to EU procurement markets if they receive state subsidies, or if their domestic markets discriminate against EU companies.

One contrastingly liberal EU measure has been a new free trade agreement with New Zealand, which allows for tariff-free trade in almost all goods. Yet it is notable that quotas will remain perpetually in place on EU imports of certain meat and dairy goods from New Zealand, whereas the UK-New Zealand deal eventually phases out all quotas. The question remains as to whether this is a deliberate pro-competition policy choice by the UK, or is rather borne of a willingness to compromise on protections for domestic farming in order to conclude new trade deals more quickly. The UK's new Developing Countries Trading Scheme – which goes further than the EU equivalent by removing more tariffs on trade with a wider number developing countries – suggests that highly liberalised trade is an increasingly clear policy agenda for Global Britain, though again there is a trade-off as it is only able to go further than the EU regime by lowering human rights safeguards.

The seemingly contrasting instincts of the UK (towards trade liberalisation) and EU (towards protecting its internal market) are perhaps most clearly distilled in their latest frameworks for emerging technologies. The EU's framework for AI regulation lays out specific obligations for a defined set of technologies, whereas new UK plans eschew such comprehensive definitions in favour of principles to guide the decision-making of sectoral regulators, which are granted significant autonomy. The EU priority is safeguarding against the threats of AI (e.g. lack of transparency in decision-making), whereas the UK - while mindful of such threats - hopes its more flexible regime can be more easily updated as technology evolves, making it a more attractive environment for investment in AI development. Almost the exact same philosophical divide can be traced in their respective approaches to crypto-assets regulation.

In many cases there is little incentive for the UK to loosen its standards compared to the EU, because the size of the EU single market means businesses prioritise compliance with EU rules even when they are more onerous, and because adherence to the EU rulebook for UK business to export there. However, there is a much clearer potential benefit with certain emerging technologies, because there is a clear market need for a lower-regulation 'testbed' - where companies can more freely test and refine systems during the 'alpha' stage - before adapting their goods so the 'beta' version conforms to EU regulation in time for full-scale market launch. The UK, on the doorstep of the EU and compliant with large amounts of its existing rulebook, is well-placed to fulfil that role.

There is a potential symbiosis here between the UK and EU, as separate but complementary regulatory environments. But in other cases - like border management - they are struggling to make divergence work effectively. A lack of capacity for carrying out more stringent post-Brexit passport checks at Dover led to major delays for travellers at the start of the summer holidays, which could in future be exacerbated by the introduction of new UK and EU visa-waiver systems and biometric passenger checks, while France has not built the border control posts necessary for British livestock exporters to access the EU market. In each case, the situation could be significantly improved through practical cooperation, but this relies on a political atmosphere of trust and goodwill which is severely lacking (see also: the breakdown in talks over data cooperation, Horizon Europe, and the European University Institute).

The border issues underline that divergence is not just about changing rules, but also implementing the systems to effectively manage change: empowered institutions matter as much as the right regulation. For example, Defra is planning stricter regulations for managing sewage overflows, yet the pollution of British beaches is nonetheless getting worse - because of a lack of enforcement power at the Environment Agency. Meanwhile the new UK Trade Remedies Authority (TRA), established to advise government on trade remedies, has twice changed its advice on steel tariff issues - calling into question the very purpose of this new post-Brexit body.

Finally, as always, divergence is having a unique impact on Northern Ireland (NI) because under the Protocol it is bound to a range of EU rule changes, and unable to follow a host of UK ones. Recent developments mean certain steel goods and products from developing countries could be subject to tariffs when moving from Britain to NI, while goods potentially linked to deforestation may be subject to new border checks. Non-Irish or -British nationals resident in Ireland, meanwhile, will soon need to apply for a visa-waiver, creating a new layer of bureaucracy at the Irish and GB-NI borders; while the participation of Ireland and Northern Ireland in a single electricity market with Great Britain could become a political hot potato if either side embarks on major reform of its electricity market in light of the energy crisis. Divergence thus continues to resemble a game of regulatory whack-a-mole, with the constant need to plug unforeseen challenges taking precedence over any expansive vision for a new UK regulatory environment. Whether Liz Truss can change that pattern remains to be seen.

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KEY: **ACTIVE DIVERGENCE:** the UK or some part of it changes a regulation.

PASSIVE DIVERGENCE: the EU changes a regulation and the UK (or some part of it) does not follow.

PROCEDURAL DIVERGENCE: changes in the systems for managing pre-existing divergence.

ACTIVE CONVERGENCE: the UK (or some part of it) and/or EU changes its regulation to align more closely with the other.

LEGAL ACTION: regulation or behaviour by one side results in the other initiating a legal dispute.

INTERNAL IMPACT: where a case of divergence has a differentiated impact on different parts of the UK.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
1. CROSS-CUTTING **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *UK Retained EU Law (Revocation and Reform) Bill.*	The UK government introduced the Retained EU Law (Revocation and Reform) Bill to Parliament in September 2022. 'Retained EU law' refers to EU legislation which applied to the UK and was copied onto the UK statute book during the Brexit process. Under the terms of the Bill, the 'majority' of retained EU law will 'sunset' (expire) on 31 December 2023, unless actively retained or restated by government. EU retained law which takes the form of Acts of parliament (as opposed to statutory instruments) are not affected by this legislation. Therefore, for example, the Equality Act 2010 which implements a number of EU Directives is not affected. Further, according to the press release 'all required legislation relating to tax and retained EU law will be made via the Finance Bill (or subordinate tax legislation) which is usual and appropriate for tax provisions. The government will also introduce a bespoke legislative approach for retained EU law concerning VAT, excise, and customs duty in a future Finance Bill. This approach will revoke any remaining retained direct EU law that the government did not repeal in the Taxation (Cross-border) Trade Act 2018, and make clear that UK Acts of Parliament and subordinate legislation are supreme.'	Prior to the change of Prime Minister, government had been planning to sunset all EU retained law by 2026, so this is a significant acceleration of the programme, which has followed Jacob Rees-Mogg in moving from the Cabinet Office to BEIS. It amplifies the already significant risks associated with the sunset plan first drafted by the Cabinet Office. From a policymaking perspective, the job of reviewing thousands of pieces of law in just over a year is a mammoth undertaking for civil servants, significantly restricting their capacity to focus on other government priorities. Moreover, this leaves very little time to design new legislation to replace EU laws which expire, or to draft and implement restatements of existing EU law. The risk is poorly designed new legislation and gaps on the UK statute book where laws expire before they are replaced (especially in areas like environment and transport which have high levels of retained EU law). The risk of poor legislation is exacerbated by new government powers to amend retained EU law via statutory instrument, giving parliament much less scrutiny over legislative reform.	The sunset deadline is 31 December 2023, though it can be extended up to 23 June 2026. In areas of devolved policy competence it will be up to the devolved governments to decide what action to take.

	For legislation which is covered by the Bill, it will be up to departments to review and decide which laws should be maintained or amended. No action from departments means the secondary legislation will no longer apply due to the sunset. An 'extension mechanism' allows for the sunset deadline to be extended until 23 June 2026 (the tenth anniversary of the EU referendum) in cases where more time is needed to make a decision and in some cases there is no deadline at all (if a department were to use the powers in Clause 1(2) to list all of the relevant regulations in a Statutory Instrument and say they are to be kept, potentially indefinitely). The Bill also provides for the supremacy principle to be turned off meaning that UK law to take precedence over retained EU law, reversing the existing order of priority (though this will not be possible in certain cases). Retained EU law will be downgraded to a status akin to secondary legislation, allowing government to amend it more easily. There will also be new powers allowing government to make secondary legislation to more easily amend and repeal retained EU law. EU law which is retained will be called 'assimilated law'. EU interpretative rule will no longer apply and courts will be given greater discretion to depart from retained case law.	The full impact of the sunset programme will depend on how officials and ministers apply the Bill. It could be that in most cases the extension mechanism is triggered, pushing the sunset deadline to 2026, rendering the 2023 deadline largely symbolic. This would still a very short deadline for a comprehensive review of most retained EU law, but it opens up the possibility of a future government extending it further or repealing it altogether. Much will also depend on whether officials' modus operandi is to retain EU law unless there is a good reason not to – or something closer to the opposite. In alternative possibility is that departments de facto extend the life of most or all relevant EU law indefinitely under the powers of Clause 1(2) (see previous column). The process will create a huge amount of uncertainty for businesses, which are facing the prospect of a wide range of regulations relating to their operations changing or disappearing altogether in just over a year's time. This uncertainty hinders their ability to plan ahead and deters international investment, and even once they know which laws are to be repealed and how, businesses may have to devote significant resources to determining the implications and adapting to new standards. Moreover, divergence in technical standards between the UK and EU often creates more bureaucracy for UK businesses which trade with the EU, as they have to adhere to two different sets of standards. Meanwhile, the Welsh Counsel General has said that Bill could grant UK government ministers 'unfettered authority' to amend regulation even in areas of devolved competence, and expressed concerns about what this means for 'Wales' constitutional integrity'. The Senedd has also questioned whether this will put an effective 'regulatory ceiling' on Wales's ambition to increase post-Brexit standards in areas like environment - where a lot of regulations are in scope for reform under the Retained EU Law Bill.	

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2. DIGITAL & DATA **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *UK paper on AI regulation.*	In July 2022 the UK government published its paper on 'Establishing a pro-innovative approach to regulating AI'. While the full AI White Paper is not set for publication before the autumn, the documents give some sense of the direction of travel. Coran Darling, Gareth Stokes and Lisa Urwin of DLA Piper note that the policy paper takes a different approach to classifying AI than the EU's own framework which was launched last year. Whereas the EU's definition of AI in need of regulation is 'technology-based' (i.e. based on specific forms of technology used) the UK is following a 'principles approach' (i.e. certain principles define whether or not to regulate something). The UK government argues that the EU's technology-based approach is 'relatively fixed' and therefore 'does not capture 'the full application of AI and its regulatory implications'. It therefore prefers to set out the 'core characteristics' of what constitutes AI but allow regulators to evolve more granular definitions suited to their specific sectors, adapting it as technology evolves and new risks emerge. Specifically, the UK's two working regulatory principles are 'adaptiveness' and 'autonomy'. 'Adaptiveness' refers to the fact that AI often operates on the basis of instructions which it has learnt, rather than which were pre-programmed, making it hard to decipher the logic or intent behind its outputs. This makes it hard to intuitively understand, which carries risks. For example, it may not be possible to know the basis of decisions it makes about someone's health or in legal disputes – where such information is essential. 'Autonomy' refers to the fact that AI can automate 'complex cognitive tasks' to act without express intent or human oversight, meaning undesirable outcomes can occur quickly without being spotted.	The UK has opted for a fundamentally different approach to AI regulation than the EU, which could make it an attractive environment for the development of cutting-edge AI. The UK regime will, unlike the EU's, not flatly restrict certain categories of AI and can be more quickly be adapted to keep pace with evolving technology due to the autonomy given to sectoral regulators. This could build on the UK's existing status as an AI development hub – it received more private investment than France and Germany combined in 2021. In a worst-case scenario, however, the UK's approach – based on giving as-yet unspecified sectoral regulators autonomy to evolve rules for their own specific contexts – could create divergence in AI regulation between different UK sectors. This could lead to AI operators having to duplicate processes to adhere to multiple UK sector-specific regimes at once. Added to this, the UK's divergence from the EU's regulatory approach will mean that AI businesses which want to operate in both the UK and EU sectors simultaneously will have to conform with both sets of regulations. Given the EU's ambition to set global norms on AI, there is a risk that international operators prioritise compliance with EU rules due to the value of its single market, reducing investment into the UK. Another risk is that international companies are reluctant to use British-made AI if it is not EU-compliant. The scope of the EU's AI framework is very extensive, meaning even companies which create 'outputs' (such as credit rating software) using AI will have to ensure that the underlying AI meets EU standards, if it is to subsequently be sold onto the EU market.	The AI White Paper is set for publication later this year. The EU regulation is not set to be applied in full before 2024 at the earliest.

	The emphasis on allowing regulators to shape sector-specific rules could result in contradictory regulations across sectors. For that reason, the paper states the intention to establish 'overarching principles' to ensure a 'coherent and streamlined' cross-sector approach. The paper states the these will be 'tailored to the UK's values and ambitions'. More detail will be provided in the forthcoming white paper but early proposals include: • Safety: this will be a 'core consideration' for some regulators but should – like in other sectors – 'remain commensurate with actual risk', which implies some deviation from the EU focus on the precautionary principle. • Technical security: testing regimes must ensure AI reliably does what it claims to, so that consumers have confidence in the proper functioning of products. • Transparency: while acknowledging that AI systems cannot always be meaningfully explained, 'in some high risk circumstances, regulators may deem that decisions which cannot be explained should be prohibited entirely (for example tribunals where there is the right to challenge the logic of an accusation).' • Fairness: 'high-impact outcomes' based on AI, such as credit scoring or job application reviews, must be 'justifiable and non-arbitrary'. • Legal persons' responsibility: 'accountability for the outcomes produced by AI and legal liability must always rest with an identified or identifiable legal person - whether corporate or natural.' • Routes of redress: the risk of biases and other quality concerns in AI outcomes mean regulators will be expected to 'implement proportionate measures to ensure the contestability' of outcomes.	An alternative reading is that divergent AI regimes may allow the UK to become a hub for high-end tech development, which will be harder to pursue under the EU's more prescriptive regime. Tech groups argue that, post-development, it might be possible to switch off or adapt aspects of technology which are not permissible in the EU, prior to export into its market. The UK could thus carve out a niche as the pre-eminent 'testbed' for cutting-edge technology, attracting major investment, before companies adapt products to launch them full-scale into the EU.	

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3. DIGITAL & DATA / FINANCIAL SERVICES **ACTIVE DIVERGENCE** *EU Regulation on the Markets in Crypto Assets; UK regulation of crypto assets in Financial Services and Markets Bill.*	The UK and EU have both begun developing regulatory frameworks for crypto-assets. On the EU side, the Council and the Parliament in June 2022 reached provisional agreement on a proposed Regulation of the Markets in Crypto-Assets (known as MiCA), which it brands as the world's first comprehensive regulatory framework for crypto-assets. The UK, by contrast, is developing a narrower framework focused specifically on stablecoin. These are crypto-assets whose value is linked to more stable assets such as the US dollar to minimise volatility. Some stablecoins ensure this value through large cash reserves but others do not and have, in some recent high profile cases, collapsed. The UK's July 2022 Financial Services and Markets Bill lays out the contours of its approach: developing a definition of stablecoin but not creating a new regulatory regime for it, instead widening the scope of existing pieces of financial markets regulation. Issuers of stablecoin will be required to obtain a license from the Financial Conduct Authority and the Treasury is empowered to develop a regime to identify potential systemic risks in stablecoin payment systems. Stablecoin-based payment systems operating in the UK will need to be first established in the UK; and consumers will have a legal right to redeem the value of their stablecoin against the issuer. The EU's MiCA goes much wider. Anybody providing services related to crypto-assets will need authorisation to operate within the EU and face new consumer protection requirements – including liability for wallet providers if assets are lost. The European Securities and Markets Authority will have the power to intervene to restrict or prohibit services by providers with over 15 million active users if there are deemed to be threats to market integrity, investor protection or financial stability.	Much like its regulation of Artificial Intelligence (see entry #2), the EU has opted for what Linklaters calls an 'all-encompassing' approach to crypto-assets regulation, setting clear standards and obligations which it hopes will become global norms (hence the emphasis on having produced the world's first comprehensive framework). The UK, by contrast, is opting for more 'organic' reform over time, without a crypto-specific regime. This fundamental difference in approach could have a significant impact. Whereas the EU focus is on limiting the 'risks incurred... in the absence of regulation', the UK is considering how to use regulation to exploit opportunities which stablecoin offers, such as providing 'a more efficient means of payment and widen(ing) consumer choice'. Its stablecoin regulation is thus more permissive than the EU's, without requirements around liquid reserves and interest payments to consumers, and being developed more piecemeal. Industry and legal voices have perhaps unsurprisingly suggested that the EU regulation could be over-exerting itself given the crypto industry is still in its early stages – with its regulation at risk of being quickly overtaken by technological development. The UK may thus benefit from greater investment in crypto development, as firms look for an environment that imposes fewer restrictions on their ability to develop and refine technology. Indeed, the UK has explicitly stated its intention to become a 'global cryptoasset technology hub'. The Financial Services Bill also outlines plans for a new 'sandbox' allowing industry to explore ways to use blockchain technology (in particular tokens and distributed-ledger technology) in a controlled, lower-regulation environment.	The provisional agreement is subject to approval by the Council and European Parliament. It is expected to come into force at the end of 2023.

	There will also be regulations aimed at preventing insider dealing and market manipulation. The European Banking Authority will keep a public register of non-compliant service providers; and providers whose parent company is located in a country which the EU considers high-risk for money laundering will have to complete enhanced checks. Actors in the market will also have to declare their environmental and climate impact, with the Commission to report on the environmental impact of crypto-currencies and plans for minimum sustainability targets within two years (as part of the EU taxonomy). Some crypto-currencies have very high carbon footprints due to the computer power required to generate new currency – one estimate suggests that Bitcoin consumes 0.5% of all the world's electricity. There are also new requirements for stablecoins. Similarly to the UK regime, MiCA will require stablecoin issuers to be present in the EU and subject to the supervision of the European Banking Authority. In addition, they will need to have liquid reserves at a 1:1 ratio. Reserves will be fully protected against insolvency and stablecoins will be prevented from granting interest payments to coin holders.	The difference in philosophy – broadly speaking between the EU's protective instincts and the UK's pro-innovation ones - is also reflected in the EU's much clearer desire to address carbon emissions in the industry. Indeed, the EU earlier mooted strict identity checks on the users of crypto wallets and a full-scale ban on 'proof-of-work' cryptocurrencies like Bitcoin – due to the energy-intensive processes required to produce currency.	

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4. ENERGY **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *EU and UK interventions in energy markets.*	In September 2022 the European Commission outlined a set of emergency measures for dealing with the energy price crisis driven by the war in Ukraine. The three key pillars of the strategy are 1) targets for reducing electricity demand; 2) a revenue cap for low-cost energy producers; and a 3) 'solidarity contribution' from oil and gas companies. The electricity saving target is to cut demand by 5% at peak time and 10% in total up to March 2023. Member states have discretion over what measures to take, which can include financial compensation. The target supplements another aim to reduce overall gas consumption by 15% (see entry #5). The revenue cap applies to companies generating electricity from low-cost sources (e.g. renewables, nuclear, coal), which have made significant profits due to surging consumer energy prices (driven by the high wholesale price of gas) even though their own production costs have remained relatively stable. Revenues will be capped at €180 per megawatt (just under half the current market price) with the excess to be collected by member states (which are encouraged to share them bilaterally) and spent on measures to support consumers with energy costs (which many member states have already introduced). The Commission is also recommending 'solidarity contributions' from oil, gas, coal and refinery companies not covered by the revenue cap. Member states can collect a contribution on any profits which amount to more than a 20% increase in average profits compared to the previous three years, and redirect these to vulnerable households, hard-hit companies, and energy-intensive industries. The EU estimates that the revenue cap and solidarity contribution will raise about €140bn combined.	The UK and EU face common challenges in terms of spiralling energy prices, driven by a tenfold increase in the wholesale cost of gas in the past year. However, their policy approaches differ significantly. Most fundamentally, the UK focus is on minimising cost increases for consumers, whereas the EU has put a much greater focus on reducing energy demand. The UK approach does nothing to address the underlying cause of the crisis (high dependence on gas), leaving it more vulnerable to supply and price shocks over the longer term. The lack of UK strategy for reducing demand makes the UK more vulnerable to blackouts if supplies run low this winter (especially as the UK is unusually reliant on gas for heating), and ultimately means consumers will face higher bills – as the price cap puts a limit on the cost of energy per unit, so lower usage still means lower bills. The decision to subsidise energy bills across the board – rather than allowing relatively higher bills but giving targeted cash transfers to vulnerable households – compounds the issue as UK consumers have less incentive to reduce energy consumption or invest in long-term energy saving measures such as insulation. The UK strategy thus does nothing to address a major vulnerability – it has some of the worst-insulated homes in Europe – nor prepare the country for a scenario where energy supplies remain squeezed and prices remain high beyond the two-year deadline of its price cap freeze. The one longer-term element of the UK policy is a plan to increase oil and gas extraction, which will take at least a decade to fully implement. However, this is likely to neither significantly boost the UK's energy supply or bring down costs, because these new fossil fuels would be sold onto the global market, not reserved for the UK.	The UK energy price cap does not apply in Northern Ireland. Northern Ireland and Ireland are part of a single electricity market with the UK.

	The EU says it is also working on tools to improve liquidity for operators - which have signed future contracts and thus lack the cashflow to trade in the meantime (as rising gas prices mean higher levels of collateral have been required for trading) - and wants to reform its energy market to break the 'dominant influence' of gas prices on electricity costs. One notable absence from the EU announcement was any price cap on imports of Russian gas. This had been mooted as a way to stop Russia manipulating European gas prices by turning its pipeline supply on and off; and to reduce overall Russian revenues from EU gas purchases. Meanwhile the UK government announced its 'Energy Price Guarantee' in September 2022. Energy bills are to be capped at £2,500 a year for a household with typical usage (based on the price per unit of energy) for the next two years. Prior to the intervention, typical energy bills were forecast to increase from £1,971 to £3,549 in October 2022 with some forecasts projecting bills over £6,000 next year. In addition, all households will receive a £400 energy bill discount (first announced in the spring). The government will pay energy providers the difference between the new price cap and what they would have received had government not intervened. This means that the UK taxpayer is effectively subsidising the cost of energy for companies and, while government has not given an estimate of the total cost of its intervention, it is widely expected to cost somewhere between £100bn and £150bn. For context, the government bailout of the banks during the financial crisis cost £137bn. Businesses are not covered by the cap but will be given equivalent will be given equivalent support for the next six months (if they signed a contract after 1 April this year). Government says that after the six-month package support may be 'focused' on 'vulnerable industries' specifically. The UK also announced measures to increase domestic energy supply, including a new round of licenses for oil and gas extraction, lifting the moratorium on shale gas production (fracking), pushing on with increasing nuclear infrastructure and a new review of UK energy regulation.	The relatively small amounts of oil and gas the UK might extract will have a minimal impact on global energy supply and therefore barely affect market prices. There could be a much bigger impact on UK energy supply and prices if the UK chose to nationalise these industries or heavily tax their revenues at source. The EU, by contrast, has refrained from price freezes (financial support for households has been implemented at member state level instead) in favour of widescale energy reduction targets, supported by advice on how to reach them. For example, Spain has limited how high and low central heating and air conditioning apparatus can be respectively be set, and lights in shop windows must be switched off after 10pm. There are still questions over how effectively the EU will be able to implement its demand-reduction aims, and nor are they considered enough to fully address the implications of the energy crisis. Other fundamental questions to address are about potentially decoupling electricity and gas prices, supporting further renewables development and energy-saving programmes such as insulation. But the EU is nonetheless much further along in its thinking on longer-term resilience than the UK. The EU also has a clearer funding strategy for member states' consumer cost interventions, based on the solidarity contribution and de facto windfall tax, which Liz Truss has ruled out. Her policy will thus be paid for though higher government debt unless taxes rise. As of yet, there is no clear indication of how government plans to pay for its policy. There are also longer-term financial risks: should the energy price crisis last beyond the next two years, the UK would be hard-pressed to avoid maintaining its very costly subsidy scheme (which is by some distance the costliest in Europe) because it has not invested in other demand reduction strategies. This could also keep inflation higher for longer (as artificially lowered household costs increase consumer spending in the coming two years).	

		For all the contrasts in approach, the UK and EU could have something to gain from more formalised cooperation on gas prices, as they are plugged into common pipelines and their respective levels of demand and supply both have an effect on global wholesale prices. A unified set of measures around, for example, demand reduction would be more effective if carried out by the UK and EU together as it sends a clearer market signal. At present, no such cooperation appears to be under consideration. The UK and EU are also both considering how to potentially decouple electricity prices from gas – which would complicate the picture further. Should either side manage to significantly reduce electricity prices through this measure, it could cause concerns about its cheaper energy 'leaking' to the other partner via interconnectors, necessitating politically difficult conversations about how to manage the situation. The position of Ireland and Northern Ireland could amplify the tension, as they are are part of the Single Electricity market on the island of Ireland. Were the UK and EU's electricity regulations to diverge significantly, this would raise difficult questions about whose regulations should apply on the island of Ireland.	

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5. ENERGY **PASSIVE DIVERGENCE** *EU Coordinated Demand Reduction Measures for Gas.*	In July 2022 the European Commission proposed a new 'Council Regulation on Coordinated Demand Reduction Measures for Gas'. This sets a target for all member states to reduce gas demand by 15% between 1 August 2022 and 31 March 2023, in response to the energy crisis caused by the war in Ukraine. The target is estimated to amount to around six weeks of total EU gas consumption. For the time being it remains voluntary but could become compulsory if 'there is a substantial risk of a severe gas shortage or an exceptionally high gas demand' – or if five member states request it. Member states are required to set out 'national emergency plans' outlining how consumption will be reduced, with a progress report every two months. While it is 'an exceptional and emergency measure' the EU will decide – based on the general gas supply situation – by May 2023 whether to extend it. The EU has recommended specific measures to reduce gas demand, and criteria for determining which groups' interests should be prioritised. The central aim is to safeguard households, hospitals and producers of essential products and services. The EU says priority should be given to switching to renewables or cleaner energy sources, but switching to coal, oil or nuclear will be permitted 'as long as it avoids long term carbon lock in'. Consumers will also be encouraged to reduce demand, for example by turning off lights and reducing heating and air conditioning usage. There are exemptions for states whose gas networks are not interconnected with others' (as they would not be able to free up gas for others) and for those who are not part of the European electricity system and 'heavily reliant on gas for electricity production' (in order to avoid electricity shortages). Member states can also request amended obligations if they have limited interconnections with other member states and are redirecting their liquified natural gas capacity to other member states; have overshot their gas storage targets; are heavily dependent on it for critical industries; or have had a rapid increase in gas consumption in the past year. The EU is taking other measures to reduce its dependence on Russian gas, including increasing non-Russian gas imports (the increase so far is equivalent to around 20% of the amount the EU imported from Russia in 2021) and accelerating the deployment of renewable energy (with the increase worth around 3% of 2021 gas imports from Russia).	The UK's interconnector links to the EU mean it would have been subject to these obligations were it still an EU member state; and the regulation has created some tensions within the EU. Officials reported 'serious issues among member states regarding the policy', given their varied levels of dependency upon both gas and Russian gas in particular (which varies from zero to close to 100%). This has led to Cyprus, Ireland and Malta being exempted from the obligations as they are not part of the EU's gas network. Yet other member states – like Spain and Portugal – which have very limited reliance on Russian gas complained about a uniform 15% target and pushed for the exemption based on limited interconnection with other member states. Only Hungary voted against the proposal but the wide range of exemptions could mean many member states (one analysis suggests as many as 18) seek some form of opt-out, and it remains to be seen whether the EU will achieve its 15% target. An initial analysis suggests only three quarters of the target will be met if all exemptions are successfully sought. Given the priority groups for protection, factories are likely to feel some of the biggest impacts, especially in terms of targets for heating and cooling reduction. Lobby groups for industries such as steel and fertilisers have been quick to highlight potential risks if their sectors face significant reduction targets.	The regulation applies for one year but could be extended, with a decision to be made by May 2023.

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6. ENVIRONMENT **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *Pausing of Environment Land Management Scheme in England.*	The Observer reports that Defra is to abandon its plans for its Environment Land Management Scheme (ELMS) which was developed by former Secretary of State Michael Gove under the previous Boris Johnson administration. Under ELMS, subsidise for landowners were to be reworked to incentivise practices which support environmental, sustainability and net zero ambitions. Pilot schemes began last year, with the aim of having the new system fully in place by 2027. Participants in the pilots told the Observer that meetings with government about ELMS have now been cancelled and the scheme is being paused. Defra confirmed to the Observer that the scheme is under review and that a system where landowners subsidies are linked to the amount of land they cultivate are under consideration.	This is a significant shift in policy which curtails one of the most notable cases of active UK regulatory divergence. ELMS' principle of 'public money for public goods' – rewarding farmers for more sustainable practices – was a notable departure from the EU's Common Agricultural Policy (CAP), which links payments to the amount of land being farmed. The CAP was widely seen as poorly designed and the chance to reform it as a major Brexit opportunity. Yet, if the Observer's reporting is accurate, Defra is now looking at reverting to a system much more aligned with the EU's CAP principles. The transition to ELMS was a major undertaking – hence the seven-year timeline – with many questions about its design as yet unresolved, including concerns from landowners about their economic viability during the transition away from the land-based payments towards ones based on environmentally friendly practices. Yet at the same time most experts considered that, if delivered well, it offered considerable benefits in terms of ambitions to preserve the environment and aid the goal of net zero emissions by 2050. Pilot schemes were starting to deliver some benefits such as the return of rare species to certain areas. The pausing of ELMS also creates new forms of uncertainty for landowners, many of whom had begun the transition towards the new system. They may already be putting in place systems to support more sustainable practices, but now face the prospect of not receiving the level of financial support they had expected to underpin this. Moreover, as agricultural timescales are much longer than typical government policy cycles, and moving back towards a system more akin to the CAP will take time to initiate and could be highly disruptive. It also raises the prospect of increased divergence in farming practices within the UK. Agriculture is a devolved policy area and Scotland, Wales and Northern Ireland are developing their own plans for new agricultural subsidy schemes, with the former two not dissimilar in structure to ELMS. Should they continue along this path while England reverts to something closer to the CAP, farmers in certain parts of the UK may feel they are being placed at a disadvantage because they receive different levels of subsidy compared to competitors in other nations.	No announcement has been made on what will replace ELMS in England. Scotland, Wales and Northern Ireland continue with their respective reforms to agricultural subsidies.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
7. ENVIRONMENT **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *Proposed ban on peat sales in England referred to the Office for the Internal Market.*	In August 2022, the Office for the Internal Market (OIM) announced that for the first time it had accepted a request from the UK government to consider the potential impact of a proposed regulatory change. It will advise on how the proposed ban on the sale of peat in England (not applicable in Wales, Scotland or Northern Ireland) will affect the UK internal market. The UK government began consulting last year on a potential ban on the use of peat in amateur horticultural (i.e. to aid the growth of plants). 70% of peat sold in the UK is currently sold as 'growing media' for plants. It is considering the restriction because peatlands are the UK's largest carbon store, and that carbon dioxide is released when peat is dug up. The process also damages habitats for rare species and reduces peatland's effectives as a flood defence. The OIM was established in 2021, to provide expert – but legally non-binding – advice to the governments of the UK about the operation of the Internal Market.	The planned restriction on peat sales would apply only to England. Yet, under the market access principles of the UK Internal Market Act, peat produced in Scotland, Wales or Northern Ireland could continue to be sold to customers in England – reducing the ban's effectiveness. Following the restriction of single-use plastics in Wales and Scotland, there is now precedent for an 'exclusion' to be applied to the Internal Market Act in such cases of regulatory divergence within the UK. English-made single-use plastics may not be sold in Wales or Scotland. It could thus be the case that the sale of peat produced in Wales, Scotland and Northern Ireland is banned in England. In the single-use plastics case, the exclusion was agreed at an inter-ministerial group meeting – yet the UK government has opted to instead refer a case to the OIM for the first time. It will be interesting to see what the OIM advises; whether the UK governments choose to adhere to its advice; and whether the process results in a different kind of exclusion to the one agreed on single-use plastics. The single-use plastics exclusion was a 'narrow' one pertaining only to the products newly restricted in Scotland and Wales, whereas the Scottish and Welsh governments wanted it widened to apply automatically to future restrictions of similar plastic goods. The OIM decision could set a precedent for how future cases are managed.	The OIM aims to provide analysis by February 2023..

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
8. FINANCIAL SERVICES **ACTIVE DIVERGENCE** *Financial Services and Markets Bill and removal of banker bonus cap.*	The Financial Services and Markets Bill (FSMB) is currently at Committee Stage. The Bill seeks to implement regulatory changes, including from the Treasury's Regulatory Framework Review, with the aim of developing a UK domestic regulatory framework that is tailored to the specificities of the UK's financial services sector. In his Growth Plan 2022 Speech, Kwasi Kwarteng indicated that the new government intends to implement a more deregulatory agenda than currently set out in the FSMB. Kwarteng stated that "to reaffirm the UK's status as the world's financial services centre, I will set out an ambitious package of regulatory reforms later in the Autumn". One such change was announced in the speech: the ending of the cap on bankers' bonuses in the UK. The cap, introduced in 2014 by EU, limits bonuses to twice a banker's basic salary, with shareholder approval. It was introduced with the aim of limiting excessive risk taking following the global financial crisis. Its ability to meet this aim has been debated, with critics, including Kwarteng, arguing that total remuneration unchanged but a greater proportion is paid through salaries rather than bonuses. Kwarteng also argued that it acted as a driver for firms to relocate outside the EU although this is not corroborated by research. The details of further anticipated deregulatory changes are currently unknown. However, the previous Chancellor Zahawi stressed that the FSMB does not set out mechanisms permitting ministers to 'call in' regulatory decisions made by the Bank of England. He stressed in his Mansion House speech that such a change should be considered by his successor.	The planned ending of the banker bonus cap is politically sensitive in the UK during a cost-of-living crisis. These political risks explain why previous Chancellors opted not to diverge with the EU on banker pay. The economic impacts of the cap's removal are unclear. Without the cap, it should be easier for large US institutions to make their remuneration packages in the UK more attractive and will allow UK domiciled banks to offer more attractive pay in competitive international markets such as New York. However, it may make the prospects of closer dialogue and market access with the EU less likely which could be reflected in less positive outcomes for the UK in the approach the EU takes to regulatory change such as requirements to avoid shell UK entities in the EU. Kwarteng's wider signalling of further regulatory reform creates further uncertainty for the financial services sector although the industry will welcome the closer attention he is paying to the City compared to his predecessors. Firms have already absorbed costs of implementing EU regulation and further change would inevitably incur additional costs. Therefore, the benefits of regulatory change need to be considered alongside the cost of implementation. There is a risk that suggestions that ministers would be permitted to 'call in' regulatory decisions made by the Bank of England would undermine the position of the Bank as an arm's length regulator. This move risks re-politicising regulation which, in turn, could undermine the attractiveness of the UK as a location for financial services. The perceived high and predictable regulatory standards in the UK are frequently identified by market participants as one of the strengths of London as an internationally competitive financial centre.	Further details and timelines will become clearer when the Chancellor brings forward his plans for further financial services regulatory reform, scheduled for the Autumn.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
9. MEDICINES & MEDICAL DEVICES **ACTIVE DIVERGENCE** *Consultation response on medical devices regulation (UK).*	In June 2022 the Medicines & Healthcare Products Regulatory Agency published its response to its consultation on the future regulation of medical devices. Medical devices are most products other than medicines used in medical treatment and diagnosis – everything from artificial hips, to wound dressings, MRI scanners and scalpels. The government's stated intention is to create a new regulatory regime which protects patients while facilitating access to the latest advances in medical technology. On the safety front, the intention is for a high degree of alignment with international standards including the EU's. The consultation notes that some rules for the classification of medical devices (for example certain implants) are 'out of step with best international practice' and will be updated to align with this. The regime will also be extended to cover some cosmetic products which have a similar risk profile to medical devices. Surveillance requirements once a device is on the market will also be strengthened, for example through more data being submitted at the point of registration and a more comprehensive database. One area where the UK is planning to regulate more stringently than the EU is on equivalence, i.e. the practice whereby manufacturers can use clinical data from similar devices as evidence that their own device is safe. The government assesses there to be a risk that new devices can in practice become very different from the 'equivalent' device and is planning a new requirement that a product must be 'entirely equivalent' if it is to draw on data from another device. In terms of innovation, there will be a new definition of software (including that which uses artificial intelligence) in medical device regulation, which aims to support 'alternative and safe' routes to market for innovative products. The UK government says these will enhance the supply of devices while maintaining 'appropriate levels of scrutiny', ensuring alignment with international best practice. Precise details on this are yet to be published.	This a significant development, as the UK has curbed plans for major divergence in favour of high alignment to minimise industry disruption – a decision out of step with its wider approach. Last year, the EU updated its Medical Devices Directive, imposing more stringent requirements on companies to prove medical devices are safe. The UK elected not to follow suit and instead stated its intention to 'grasp the opportunity of innovation' outside the EU. Early drafts of UK proposals led to industry concerns that they would face greater bureaucracy from having to conform to UK and EU regimes in parallel, and that devices might disappear from the UK market because manufacturers would prioritise conforming with EU standards (even if more stringent) because the EU market represents 22% of global healthcare spending, compared to the UK's 3%. The new consultation response, however, shows that the UK has opted to minimise divergence in order to maximise its market access to medical devices, stating: 'The regulations aim to modernise our rules to better align with international best practice and keep pace with technological advances. This will ensure that the UK remains a favourable place to do business'. It also notes that a significant number of respondents requested close alignment with EU standards 'to avoid confusion and potentially duplicative or divergent requirements and to facilitate the ongoing supply of devices to the UK market'. Indeed, another industry point of contention with the initial UK plans was the need to get devices re-authorised with a UKCA mark (which replaces the EU 'CE' mark certifying that a manufactured good meets the necessary standards). The marks represent virtually identical standards and so the need to replace CE with UKCA creates more bureaucratic process for manufacturers, despite no substantive change.	The new UK regime is set to be introduced in July 2023. The CE mark will continue to be accepted in Northern Ireland.

		While it is still the government's intention to require devices to be UKCA-marked in the long term, it will introduce a longer transitional period to soften the impact. Devices with a valid CE mark will be allowed to be placed on the British market either until their certificate expires, or for five years after the new UK regulations take effect (whichever is sooner). This will apply even if certification is dated after the new regime takes effect. Similarly, capacity issues mean it will be impossible to re-assess all medical devices to ensure they conform with the standards of the new UK regime before it takes effect (July 2023). Therefore, UKCA-marked devices will be permitted on the British market either until their certificates run out, or for three or five years after the new regulations take effect (depending on the type of device) – whichever is sooner. This should reduce the risk of backlogs and delay as manufacturers rush to get their goods re-authorised all at once, and the British Healthcare Trades Association has praised the government for acknowledging the 'serious concerns' raised by industry. The biggest divergence (much depends on more detailed proposals which we are yet to see) may come in the approach to medical technology, where the UK has plans to create its own faster route to market for software and AI-based technology. The intention is to align with international best practice but the more limited precedent in this area gives the UK a chance to move ahead of the EU if it can act quickly. Professor Derek Hill of University College London told the Financial Times that UK has joined the International Medical Device Regulators Forum which may allow the it to influence global approaches to regulation and then (as a single nation rather than 27-member bloc) implement recommendations faster than the EU. For example, it may be able to move faster in deploying and updating software-based devices, including those on Apple and Google app stores which store data outside the UK.	

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
10. MOBILITY / EDUCATION **ACTIVE DIVERGENCE** *UK to leave European University Institute.*	The UK government will end its association with the European University Institute (EUI) in December 2022, after the two sides failed to agree terms for the UK's continued participation, despite 18 months' worth of negotiations. The EUI, based in Florence, is a centre for postgraduate and post-doctoral research in the social sciences and humanities. It offers a range of PhD programmes as well as a range of post-doctoral research opportunities which are funded directly by the EUI's 23 contracting states. As a result of disassociation, UK researchers will no longer have access to funding for the vast majority of programmes, and will be able to apply for just a handful of highly competitive grants as international students. All of the EUI's contracting states are EU members, though this is not a requirement as the EUI's legal grounding lies outside EU treaties. In 2019, the UK government announced that, as part of Brexit, it would end its participation in the EUI despite it not being under any obligation to do so. It agreed an interim measure to keep the UK in the EUI while discussions took place on the UK's potential continued membership.	The decision drastically decreases the opportunities for UK students to study at the EUI – in many years there may be no UK researchers at all. EUI programmes were highly prestigious and were one of the few avenues available to British students to pursue a fully-funded PhD. It also creates uncertainty for current British EUI students. The UK government has said it will continue to pay the grants it has already committed to for students who have started courses, but those with applications in train will no longer be entitled to grants from the UK government once the interim partnership ends in December 2022. The UK's disassociation also diminishes the UK's influence within a significant educational institution that runs a range of widely respected courses and fellowships. As an EUI member, the UK had contributed 8% of the total budget – the same as France, Germany and Italy. Disputes over the UK's future influence was reportedly the principal reason why its continued participation was not agreed. Other member countries rejected its request to regularly attend meetings of the EUI's most senior decision-making body.	UK association will end in December 2022.

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11. ROAD TRANSPORT **ACTIVE DIVERGENCE** *EU and UK plans for regulatory frameworks for autonomous vehicles.*	In July 2022 the EU's Vehicle General Safety Regulation came into force, empowering the Commission to complete its legal framework for approvals of autonomous vehicles (AVs) this Autumn. This will set out regulations for automated vehicles where the driver can for a period hand over complete control (level 3 automation) and vehicles which can complete a whole journey autonomously but where a driver can still intervene and its route is often limited (level 4). The EU says its level 3 legislation will be aligned with UN rules on automation, which is set to allow automated level 3 driving at speeds of up to 130 km/h. Politico reports that – because the technology is still in early development – the legislation will allow for the registration and approval of only 1,500 level 4 vehicles per carmaker model each year in each member state. Separately, in August 2022 the UK government announced that the first level 3 self-driving cars could be on roads in 2023, alongside plans for legislation to allow a wider rollout of level 4 technology by 2025. The level 3 technology which could be on UK roads by 2023 is known as Automated Lane Keeping Systems (ALKS). It will be permitted only in very limited circumstances: with the vehicle allowed to temporarily assume control at slow speeds (under 37mph) in a single motorway lane (in effect during traffic jams). The UK government initially hoped to have the first approvals in place by later 2022, serving as a first test case for the UK's testing and approvals framework. With regards to plans for level 4, the UK is, much like the EU, still at the stage of setting out its intentions - with much more regulatory detail expected in a new Transport Bill next year. We also know that there is an ambition for AVs to be as safe and competent as a human driver; manufacturers will be responsible for proving the safety of vehicles; regulators will be required to ensure the necessary approvals have been obtained; and pilots are planned for 2023 and 2024, supported by £100m of funding.	The evolving nature of AV technology means the regulatory field remains a 'moving target', and it is too early to determine how the UK and EU might diverge. The regulation of level 3 technology has only occurred in a few limited cases on either side (Mercedes Benz got regulatory approval for sales in Germany, up to 60km/h, in 2021; while the UK is about to permit its use at similarly low speeds in single-lane traffic) so we are yet to see the full spectrum of the respective regimes. Level 4 technology, meanwhile, is still very much in trial stage making it impossible to develop a fully-fledged regulatory framework at this point. One reason why the UK and EU are nonetheless moving forward with such frameworks is to gain a first mover advantage by establishing foundational legislation in the field which potentially sets a precedent for future global developments. Given how wide-ranging AV legislation will have to be – covering approvals, accident liability, cybersecurity, personal data and more – there could be significant benefit to getting ahead of the rest. Nonetheless, there are likely to be limits to the extent of any divergence. For a start, the UK and EU are both members of the World Forum for Harmonisation of Vehicle Regulations - which sets vehicles technical and safety standards – and must continue to implement its standards under the Trade and Cooperation Agreement. This means we are unlikely to see fundamental differences in approach to the safety elements of regulation. Where there could be greater divergence is over data protection – as the UK could opt to grant manufacturers easier access to personal data than permitted under EU GDPR, potentially speeding up the testing and development process. This would be in line with ambitions in the fields of AI and cryptocurrency to make the UK a more permissive 'testbed' for new technology.	The UK expects to introduce the first self-driving cars onto roads next year. Legislation on more high-end technology will be put forward next year with the aim of implementation by 2025.

		However, divergence from EU GDPR could sever the UK's data adequacy agreement with the EU, which provides for a free exchange of personal data. This agreement is vital to UK vehicle manufacturers, and losing it would majorly disrupt their processes. It could also deter investment in the UK, with the US AV company Rivian recently pausing plans to begin manufacturing in the UK due to concerns over planned UK reforms to GDPR. Adherence to EU standards is also necessary for UK companies to sell vehicles into the EU. Given the EU remains by far the industry's largest export market, there would be a strong incentive for UK companies to keep manufacturing to EU standards, even where divergence occurs.	

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
12. SCIENCE & RESEARCH ACTIVE DIVERGENCE LEGAL ACTION *UK 'alternative' plans for R&D in case of non-association with Horizon Europe, and formal dispute proceedings against the EU.*	The UK government has outlined its plans for an alternative research and development funding programme, should the EU continue to deny it access to its Horizon Europe programme. Article 708 of the Trade and Cooperation Agreement (TCA) says 'the Parties have agreed that the United Kingdom participates' in programmes including Horizon, as well as Copernicus (earth observation) and Euratom (nuclear). No timeline was specified for UK participation and the EU has refused to finalise it due to wider issues around the Northern Ireland Protocol. Some Horizon-funded grants for UK-based projects are already being cancelled unless researchers relocate to the EU. The UK government's preference is still to participate in Horizon and the other programmes. However, should the EU continue to deny it access, its 'alternative' plan is to fund any grants reviewed and approved by Horizon for UK-based researchers (up until the date the UK's non-association is formalised). Any 'in flight' applications (which have been made but not reviewed) submitted before the date of non-association will be transferred to a UK review scheme and funding pool. Funding will also continue to be made available for 'third country' applications to Horizon Europe, whereby researchers from non-associated countries can collaborate on projects including at least three partners from countries associated to Horizon, if they provide their own funding. Alongside this is a 'long-term Horizon Europe alternative'. The government has a research and development budget of £39.8 billion up to 204/25 and will invest in new programmes to promote international collaboration with 'EU and global partners'. The details are yet to be outlined but will 'likely include' a fellowship scheme for talent to move to the UK, a programme for global collaboration, investment in industrial research and innovation and additional funding for higher education institutions. There is also an intention to make proposals 'less bureaucratic and much more flexible' than under Horizon Europe.	As covered in the previous tracker, industry is near-unanimous in its preference for the UK to remain associated to Horizon Europe due to the level of funding it provides (€96bn up to 2027) and unique opportunities for international between its members (including 16 non-EU countries). However, in absence of this, university groups have welcomed the UK government setting out a planned alternative, and in particular the guarantee to match any funding already offered to UK projects by Horizon. UK-based researchers have won almost 150 European Research Council (ERC – the most prestigious funding pillar of Horizon Europe) grants but will not be able to take these up unless they move to a Horizon member country. As of July 2022, 18 had chosen to move to the EU, 8 more were awaiting transfer approval and 6 were undecided. 115 grants had been cancelled. The UK plan not only gives those research projects certainty, but should somewhat offset the considerable risk of brain drain, with many UK-based researchers in receipt of multiple offers to relocate their projects to the EU. However, while funding can be matched, the UK alternative scheme lacks the prestige and level of collaboration offered by Horizon Europe. The UK funding may allow UK researchers to continue participating in Horizon-funded projects as third country partners, but they will lose their leadership role, diminishing their ability to shape the research and hire new fellows in support of their work	More detail on UK plans are expected later this year while the date of any EU agreement to or rejection of the UK's association application is uncertain.

		Questions also remain over how the UK funding will be delivered. Many research projects in line for support are yet to receive their funding and are uncertain of how to navigate the process, and there are further questions how the UK can continue to match the Horizon funding offer long-term. The government has ringfenced £6.9bn to support Horizon Europe association – or fund a domestic alternative - up to 2024/25, but media reports suggest this may be under review under the new Truss government. Moreover, by the government's estimates UK researchers would have received £15bn over the coming decade – whether (and how) this will be matched remains undecided. There is some suggestion that UK Research and Innovation could be the chief disburser of funds and that the UK's national academics have been approached to run fellowships. More details are expected later this year on the 'alternative' Horizon as well as replacements for Copernicus and Euratom. In addition to its alternative plan for R&D, the UK government has launched formal dispute proceedings against the EU over its ongoing exclusion from the EU programmes. The UK sees it a breach of the TCA, where it was agreed the UK would fully associate with the programmes as soon as possible. The UK has triggered the 'formal consultations' mechanism of the TCA, which is the first step in the dispute resolution process, and leads to a meeting of the UK-EU Partnership Council or a sub-committee. If this fails to produce a mutually satisfactory resolution (the ongoing conflict over the Northern Ireland Protocol reduces the chances of this), the UK can request the beginning of arbitration proceedings, where a tribunal will rule on whether the EU has breached the TCA. If found in breach, the EU must set out how it will act to comply.	

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
13. TRADE & CUSTOMS **ACTIVE DIVERGENCE** **INTERNAL IMPACT** *UK Developing Countries Trading Scheme.*	In August 2022 the UK launched a new Developing Countries Trading Scheme (DCTS) which reduces or removes tariffs on hundreds of products from 65 countries across Africa, Asia, Oceania and the Americas. The Department for International Trade (DIT) estimates that this will save businesses £750m a year in import costs, while providing more choice and lower costs for consumers. The DCTS covers a range of products including clothes, shoes, bike parts and foods which are not widely produced in the UK (such as olive oil and a range of flours and grains). Tomatoes, cucumbers, globe artichokes, strawberries and some 'hybrid' citrus fruits will receive a 'seasonal' preferential tariff during the months where they cannot be widely grown in the UK. The regime also simplifies trade rules including rules of origin, showing more flexibility on how much a good's content can originate from a country other than the importer's (though this still falls short of the standards developing countries asked for).	The UK now has the power to set its own trade policy and the new DCTS goes further than the EU's Generalised Scheme of Preferences (which similarly removes import duties on goods from developing countries. While the EU's scheme provides tariff reductions on 80% of product lines, the UK's puts zero tariffs on 85% of lines (covering trade worth £2bn) and reaches eight more countries than the EU's. The government has emphasised the cost-of-living benefits to consumers through cheaper prices, though this impact will be relatively small. The scheme is much more significant as an example of the UK using its post-Brexit trade policy to support wider development goals, by increasing levels of trade with developing countries and facilitating their access to the UK market. This is estimated to be worth tens of millions of pounds to partner countries, and potentially hundreds of millions by 2030. The reason the DCTS extends to eight more countries is because countries' access is granted based purely on economic vulnerability, rather than them also needing to have signed and ratified international conventions. The UK government reserves the right to suspend a country for 'serious and systematic' human and labour rights violations, or violations of anti-corruption, climate change and environment conventions – but overall it has greater discretion over when to apply such suspensions than the EU. On top of the DCTS the government has announced a new 'Platinum Partnerships' initiative to 'grow trade between the UK and selected lower and middle-income Commonwealth countries and reduce dependency on aid'. It is also meant to help countries' adaptation to climate change, though wider details are scant, making it hard to assess its likely impact.	The scheme was launched in mid-August. Northern Ireland remains subject to the EU's external tariff regime, meaning certain goods now subject to preferential tariff in GB would have to pay a separate rate to enter NI.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
14. TRADE / MANUFACTURING **ACTIVE CONVERGENCE** **INTERNAL IMPACT** *UK extension of steel import restrictions.*	In June 2022 the UK government announced that it would extend restrictions on five categories of steel imports by two years. Quotas will continue to be applied on imports from a range of jurisdictions - including the EU, China, Taiwan and South Korea - and once quotas are exceeded a tariff of 25% will apply. Import restrictions were originally introduced by the EU in 2018 and the UK copied them over after Brexit. These aimed to guard against cheap international steel being dumped in the EU following 25% tariffs imposed by the Trump Presidency in the USA. While restrictions on ten categories of steel run until 2024, the UK has elected to roll over restrictions on five categories which were due to expire in June 2022. The US and EU are also continuing with their own trade remedies. The UK Trade Remedies Authority (TRA) originally recommended removing restrictions on nine categories of steel but the Secretary of State for Internal Trade overruled this (via emergency legislation) to continue with trade remedies for five of the nine categories. Government then asked the TRA to re-consider the issue based on different criteria, following which it approved the measures. Then-Trade Secretary Anne-Marie Trevelyan acknowledged that the extension of restrictions against specific countries 'departs from our international legal obligations' at the WTO but that removing them would mean 'serious injury or the threat of serious injury to UK steel producers'. She also stated: 'from time to time, issues may arise where the national interest requires action to be taken which may be in tension with normal rules or procedures'.	The extension of steel tariffs has bled into a wider debate about propriety and ethics in government. Lord Geidt, the Prime Minister's Independent Adviser on Ministers' Interests, quit his role in June 2022 citing being put in an 'impossible position' by 'measures which risk a deliberate and purposeful breach of the Ministerial Code'. The Prime Minister's response suggested this related specifically to the question of steel tariffs and the conflict between 'protecting a crucial industry' and living up to WTO obligations. Geidt subsequently said the specific issue of steel tariffs was a 'distraction' and 'simply one example of what might yet constitute deliberate breaches by the UK of its obligations under international law'. As covered in the previous divergence tracker, the Northern Ireland Protocol Bill is widely seen to break international law, and the EU has also launched a legal challenge against the UK at the WTO over its 'contracts for difference' scheme which it says unfairly discriminates against foreign importers. The new steel tariffs could now lead to further challenge at the WTO, with Brazil and China having already questioned their legality, and suggestions that others such as Turkey, India and South Korea may impose retaliatory tariffs on UK imports. The EU is also at risk of retaliatory trade measures after it elected to extend a range of steel tariffs last year and the US also continues with similar measures. Nonetheless, the decision has been welcomed by the British steel industry (and the Labour Party) as guarding against a flood of cheap international steel - which cannot enter the US and EU markets due to their own import restrictions - which they say risked undercutting British manufacturers. The decision will, however, likely keep steel prices higher and supply lower than they would be otherwise, with industries which use steel products complaining of financial costs and supply chain disruption.	All restrictions on steel now run until June 2024. GB-NI exports are subject to EU trade remedies if goods are at risk of entering the EU single market.

		The decision also raises questions about the function of the newly-formed TRA. The TRA was established to factually investigate whether new trade remedies are needed and is the body to which businesses can complain about imports which they think unfairly distort competition. To protect it from political influence, government can only accept or reject its recommendations – not amend them. Yet in the case of steel tariffs government was able to subvert this stipulation, first by passing emergency legislation to amend the TRA's initial recommendation, and then (when that legislation was set to expire) by asking it to re-assess its proposed measures based on a different set of criteria (which the TRA subsequently approved). The EU's renewed steel tariffs also have implications for Northern Ireland (NI). Under the Protocol, goods moving from Great Britain (GB) to NI will be subject to the EU's external tariff regime if they are deemed 'at risk' of moving into the EU. Previously the UK had its own tariff-free quota for steel exports to the EU, but this has now been assimilated into a single quota covering 'other countries', which was exhausted – earlier than expected – by August; leaving future GB steel exports to NI subject to a 25% tariff. The UK says this is an example of how the Protocol 'is needlessly damaging trade' while the EU argues the issue could be resolved 'very, very quickly' if they get information about the products which have historically been sent to NI.	

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15. TRADE / MANUFACTURING **ACTIVE DIVERGENCE** *UK Trade Remedies Authority recommends continued import restrictions on Chinese rebar steel.*	In September 2022 the UK Trade Remedies Authority (TRA) changed its interim conclusion to advise that anti-dumping measures on a type of Chinese steel called 'rebar' should be maintained. The TRA had previously advised in July 2022 that the measures should be lifted. Although the UK had just - with the TRA's belated consent - rolled over five restrictions on international steel imports (see entry #14), the TRA had initially said it was no longer in the UK's economic interest to maintain the import restrictions on rebar. It said that high demand and an expected shortfall in international supply (driven by the likely significant drop in availability of rebar from Russia, Ukraine and Belarus) meant that continued restrictions on Chinese rebar would have a 'severe' economic impact, particularly on the construction sector. Yet it changed its advice in September, on the grounds that it 'has considered import data and economic forecasts which have become available since' as well as responses 'from case participants'. It said the new data 'indicated that the falling levels of imports from Russia and Belarus were being compensated for by rising imports from other countries' and that 'demand from the UK construction industry [is expected] to grow less rapidly'. The TRA is now receiving comments from interested parties before sending its final recommendation to the Secretary of State for International Trade, who will make a decision on whether or not to uphold the recommendation. The restrictions on rebar have been in place since 2016 and are not part of the wider package of anti-dumping measures which were rolled over in June. Whereas the UK and EU have maintained alignment by both continuing their wider restrictions on international steel imports, the EU allowed its restrictions on rebar to expire last July.	The TRA's initial recommendation to end Chinese rebar restrictions was criticised by UK Steel, on the grounds that it would 'actively act against the UK steel industry' while the Cardiff-based rebar manufacturer Celsa claimed it would likely lead to foreign rebar being dumped in the UK and 'very high' costs for the British steel industry. However, the TRA initially assessed that the negative impact on the UK's single rebar producer, with 700 employees, would be outweighed by the cost to the UK economy if import restrictions were maintained - in terms of higher prices in the manufacturing sector which employs an estimated 1.4-2.2m people. The Financial Times reports that the UK was the largest buyer of rebar before Brexit, and before duties were imposed in 2016 Chinese imports accounted for around 50% of the UK market. Thus, any removal of import restrictions could have had significantly recued rebar prices in the UK, and thus costs for industries which depend on it. Following the end of their own restrictions last year, EU markets have greater access to this Chinese rebar. Because of the threat it saw to British manufacturing, UK Steel called on the government to 'call in' the TRA's recommendation - effectively asking it to re-consider its advice. At the time the government said 'the international trade secretary will consider its final recommendation once submitted'. That final recommendation now appears set to advise continuing with restrictions. This is the second time (see also entry #14) that the TRA has reversed an initial recommendation on steel tariffs - albeit this time the change to the recommendation was made prior to it being submitted to government - which might raise question about its effectiveness and/or independence as an arm's length body. It was set up post-Brexit (the role was previously fulfilled by the EU Commission) to give informed advice to government on trade remedies policy, with limited political meddling.	The recommendation is out for comment by interested parties before a final recommendation is sent to the Secretary of State for International Trade

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16. CLIMATE & ENVIRONMENT **PASSIVE DIVERGENCE** *EU ban on the sale of new vehicles with internal combustion engines from 2035.*	In June 2022 the European Parliament voted to effectively ban the sale of combustion engine cars and vans by 2035. An intermediate target has been set for 2030, for car manufacturers to reduce emissions from new vehicles by 55%, and van manufacturers by 50%. This rises to 100% for both by 2035. German Finance Minister Christian Lindner said a full ban on sales by 2035 was 'the wrong decision' (Germany is the EU's largest car manufacturer) yet the Parliament rejected an amendment, from Italy and Slovenia, to lower the target to a 90% reduction in emissions by 2035. However, a German amendment was accepted which calls on the Commission to in time review whether 'e-fuels' (made by combining low-carbon electricity with captured carbon dioxide) may be permitted for use in internal combustion engines beyond 2035. An Italian amendment – known as the Ferrari amendment because of its benefit to luxury brands – was also approved. It allows 'niche' manufacturers (producing under 10,000 cars a year) meet the interim carbon emission targets by 2035, instead of 2030.	Environmental groups have criticised the carve-outs within the regulation, which they say will make it more difficult for the EU to reach its 55% emissions reduction target by 2030. In relation to the potential future use of 'e-fuels' they also point out that that the production process is energy- and cost-intensive and the fuels emit almost the same level of noxious gases as burning fossil fuels. The UK has more ambitious targets than the EU, with the sale of new petrol and diesel cars and vans banned from 2030, though plug-in hybrids and full hybrid cars will still be permitted for sale. From 2035, all new cars and vans sold must be fully zero emissions. This commitment applies to the whole of the UK and the government has committed £2.8bn to fund grants and infrastructure to support the transition, though devolved governments are taking their own additional steps. The high degree of alignment in UK and EU policies means there is likely to be little practical impact from these changes, though the UK may point to its earlier phase-out date as evidence of its climate leadership.	Emissions from new vehicles in the EU must be reduced by 50/55% by 2030 and 100% by 2035.

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17. CLIMATE & ENVIRONMENT / FINANCIAL **PASSIVE DIVERGENCE** *EU Taxonomy updated to include gas and nuclear as sustainable investments.*	In July 2022 the European Parliament approved the classification of gas and nuclear as sustainable energy sources within its EU Taxonomy. The taxonomy defines 'environmentally sustainable economic activities' in relation to financial investment. The ultimate purpose of this framework is to mobilise €1tn in green investment over the next decade, to support EU climate targets. There are constraints on the types of gas and nuclear energy which are considered sustainable: for example via limits on the life-cycle emissions which gas-fired power and heat assets can emit. Gas plants must also have plans to switch to renewables or lower-carbon gases by 2035. Nuclear investment must be in either 'Generation III' projects which are approved for construction until 2045, the extension of existing installations' lifetimes beyond 2040, or R&D promoting 'safe and minimal waste'.	The proposal has been met with major criticism from climate and environmental groups, which accuse the EU of diluting climate ambition. While gas emits less carbon than other fossil fuels like coal, it is not emissions-free. The World Wildlife Fund argues that defining gas and nuclear as sustainable 'could take away billions of euros of investments from renewable energy and green technologies'. Some politicians are also concerned that the decision will increase the EU's reliance upon Russian gas. It has also been argued that the risks around nuclear waste disposal jeopardise the taxonomy's objective of pollution prevention. The taxonomy includes a 'do no significant harm' principle which means that action on one objective (in this case climate change adaptation) cannot come at the expense of another. Greenpeace says it will take legal action against the decision and the environmental group ClientEarth is also assessing its options, while Austria and Luxembourg are planning to challenge the decision at the European Court of Justice. The decision could also damage to the EU's reputation as a global climate leader, with the E3G environmental think tank telling the Financial Times that the decision was 'a very clear blow to Europe's credibility and leadership. The EU was the pioneer of the whole taxonomy and others are doing a much better job'. The UK is planning to develop its own green taxonomy. This is currently under consultation with an update set for late 2022. A central question for the UK will be whether to align with the EU in classifying gas and nuclear as sustainable. Alignment may be seen as a preferable from a business perspective, as it allows them to invest 'sustainably' in a wider set of areas. Were the UK to have stricter criteria, this might deter investment. On the other hand, excluding gas and nuclear from a UK taxonomy would enhance the UK's credibility as an international leader on green finance (especially as many others have, like the EU, included fossil fuels in their taxonomies). This would support UK leadership efforts in wider climate discussions. Moreover, the global importance of London as a financial centre means there is a plausible case to be made that businesses would be prepared to adapt to a 'best-in-class' UK regime, allowing the UK to maintain the pre-eminence of its financial services sector while leading the 'race to the top' on green investment.	The Act will apply and enter into force as of 1 January 2023. An update on the UK's Green Finance Strategy is expected later in 2022.

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18. ENVIRONMENT **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *GB and EU plans to increase due diligence around deforestation in supply chains.*	The UK and EU have both developed plans to prevent practices linked to deforestation in supply chains. In June 2022 the Council of the EU adopted its negotiating position for a proposed measure obliging companies to prove that certain goods are not linked to deforestation or forest degradation, and are produced in line with local laws. The proposal would create new due diligence requirements on companies to trace the exact source of any palm oil, beef, timber, coffee, cocoa or soy used in a product placed on the EU market. It also applies to derived products such as leather, chocolate and furniture. It will become mandatory for 'operators' bringing a commodity or product onto the EU market for the first time to prove negligible risk that it has been produced on land subject to deforestation or degradation since 31 December 2020. This first requires them to collect the GPS coordinates of where their good was produced. A benchmarking system then assigns a level of deforestation risk (low, medium, high) based on the location, which determines the level of due diligence required and frequency of spot checks. Companies must use satellite images to check for evidence of deforestation, but may also be required to visit locations on the ground, digitally trace products 'from farm to factory' and put in place mitigation measures. Until a due diligence report is filed, the good will not be permissible on the EU market. 'Traders' who then sell these products also have obligations to keep a record of their suppliers for at least five years. This is estimated to be only a 'negligible cost' for SMEs but larger traders will also be subject to the same obligations as 'operators' who source the products – i.e submitting due diligence statements and being liable for a good's compliance with regulations.	The GB and EU plans are philosophically similar but there are important differences. GB regulation only applies to 'larger businesses', whereas the EU regulation covers all 'operators' and 'traders' (albeit with lighter-touch obligations for SME traders). While we do not have the full detail on the due diligence requirements of the GB regime, the EU obligations based on obtaining and assessing location data are very likely to be more stringent. Added together, these differences mean deforestation-linked goods impermissible in the EU could increasingly be dumped in the UK – in particular during any gap between the implementation of the new EU regime and the UK's (plans for which are less developed). Another impact for GB is that any British businesses involved in the importation of affected commodities into the EU market would have to conform with the EU's new and likely more onerous regulations. Should divergence prove more substantive – meaning different processes are required to comply with the GB regime compared to the EU's – there is also a risk that good disappear from the UK market because companies prioritise complying with EU regulations, as it is a bigger market. The EU proposals will override its Timber Regulation, which applies to Northern Ireland (NI) under the Protocol, meaning the new regulation will also apply at least in part to NI. This could necessitate new checks on goods moving from GB to NI, to ensure that goods covered by the EU deforestation regulation are compliant with EU standards before they can enter.	UK regulation relating to 'forest risk commodities' applies to all parts of the UK, but Northern Ireland is likely to be subject to at least part of the EU regulation. Defra is yet to bring forward secondary legislation.

	Defra has its own plans to tackle deforestation in supply chains, by making it illegal for 'larger businesses to use commodities whose production is associated with large-scale forest loss such as cocoa, beef, soy, coffee, maize and palm oil, where they have not been produced in line with relevant local laws.' Businesses will also have to carry out due diligence to prove they have taken the action necessary to ensure this, including annual reports. This was laid out in the Environment Act 2021 and will apply to England, Wales and Scotland, though the exact detail of the policy (for example which companies will be covered and the exact nature of due diligence requirements) depends on secondary legislation which is yet to be laid out. Defra has committed to doing so 'at the earliest opportunity' following the publication of its consultation response in June 2022.	Both GB and EU regimes focus on commodities which are produced 'illegally', which has drawn significant criticism. ClientEarth points out that a third of global tropical deforestation is technically legal under local laws, and the Brazilian government is also in the process of weakening protections for forests and Indigenous Peoples. However the law firm Freshfields deems the EU law to be appear wider in as it covers third parties' rights. Environmental groups have also criticised a change of the language in the Council's final negotiating position which defines 'forest degradation' as only relating to the 'conversion of primary forests [those untouched by humans] into plantation forests or other wooded land'. Sweden and Finland had pushed for this as they were concerned that a definition covering 'managed forests' would harm their logging industries. Industry groups, meanwhile, have criticised the EU proposal as excessively onerous. The palm oil industry in particular has complained of high costs and complications stemming from producers often using multiple sources of palm fruit in a single oil blend. The Colombian Federation of Palm Oil Producers estimates that a robust traceability system would cost €20-25 million to create.	

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19. MOBILITY & TRAVEL **PASSIVE DIVERGENCE** **INTERNAL IMPACT** *Updated timelines for EU's ETIAS and UK's ETA visa-waiver schemes.*	The EU has delayed the introduction of a €7 entry fee for British travellers until 2024 at the earliest. Known as ETIAS, the new EU system will require non-EU citizens from over 60 countries to pay a €7 visa-waiver before entry into the EU (including all member states not in the passport-free Schengen Area except Ireland.) The EU is introducing ETIAS to 'identify security, irregular migration or high epidemic risks posed by visa-exempt visitors travelling to the Schengen States'. The EU anticipates that in most cases authorisation for travel will be granted within minutes, but in cases where further checks are required it could take up to 30 days. It applies to everyone aged 18-70 and is valid for multiple visits over three years. The scheme was expected to become operational in 2022, before the date was pushed back to May 2023. The European Commission has now updated this to November 2023, without giving a reason. A subsequent six-month transition period means the requirement is now set to come into force for British travellers in 2024. The UK is developing a similar Electronic Travel Authorisation for entry into the UK, and a recent Home Office policy paper has confirmed that this is planned for 2023.	The ETIAS creates only minor new financial and administrative costs for UK travellers, but it could lead to them being turned away at EU borders if they are not aware of the need for the new authorisation. The six-month transition period will be an important period for preparing travellers for the upcoming changes. Regarding the ETA, as covered in a previous tracker, the UK government will require it for non-Irish or -British nationals resident in Ireland, without settled status or leave to remain in the UK, who cross the border into Northern Ireland. This will restrict the ability of certain communities in Ireland to freely cross the Irish border – a regular part of life, especially for those in Donegal, where Derry/Londonderry is the closest economic hub - as they will have to apply for an ETA and ensure they are correctly documented on each trip. Checks will not take place at the border, but the maximum penalty for non-compliance (which could easily occur inadvertently if an individual crosses without their ETA) is up to four years imprisonment under the UK Nationality and Border Act.	The ETIAS is now set to be required for travel to the EU from some time in 2024. The UK ETS system will begin in 2023.

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20. PROCUREMENT **PASSIVE DIVERGENCE** *EU International Procurement Instrument.*	In June 2022 the EU adopted its International Procurement Instrument (IPI) which limits non-EU companies' access to EU public procurement processes unless they offer reciprocal access to EU companies. The EU says that, while non-EU companies can compete on an equal footing in the EU procurement market, this is not always the case the other way around and the IPI aims to end that discrimination. The IPI will apply to 'works and concessions' tenders (e.g. construction projects) worth at least €15m and 'goods and services' tenders worth €5m. There is an exemption for contracting authorities (which could be governments or other public authorities) representing under 50,000 people; and bidders from the least developed countries. Companies will be denied access to relevant bidding processes if the EU Commission deems that the procurement market in their country of origin contains barriers against EU companies. The Commission will have discretion over the extent of retaliatory action, which can include a price penalty (up to a 100% increase in the procurement cost) or a reduced score (by up to 50%) for the bid. It will not stop such companies from bidding outright. It will also be mandatory for contracting authorities to consider social, environmental, and labour requirements when judging bids. This updates the existing EU system where equal treatment is generally given to bidders regardless of their origin. There were already some exceptions to this principle: for instance related to security and defence, and tenders in the utilities sector (water, energy, transport, postal services), which can be rejected if over half of the value of the product comes from third countries not covered by either the WTO's Government Procurement Agreement (GPA - covering 18 other countries) or a procurement element within a bilateral agreement with the EU.	The IPI will have the biggest impacts on countries which do not have a procurement chapter agreed with the EU and are not covered by the WTO's GPA - the EU picks out China and India as examples. Though procurement contracts are relatively rarely awarded to third countries in the EU, Chinese companies have successfully bid for a road bridge construction project in Croatia worth €345m and a water works construction project in Poland worth €53m. The EU further notes that, in addition to not being bound by international agreements, China has no transparent and comprehensive information on its procurement market, despite its estimated value being €1.4tn in 2013. Other notable awards have been to Turkish, Swiss and Norwegian bidders. It should not impact British companies, as the UK-EU Trade and Cooperation Agreement already sets out rules on competitive tendering, based on the WTO's GPA. There is nonetheless a dispute ongoing between the UK and EU over the UK's contracts for difference scheme for renewable energy, which the EU claims unfairly incentivises bidders to source content from the UK, violating WTO rules. The IPI also aims to boost international procurement opportunities for member states. The Commission estimates that in 2017 Germany was the EU state subject to the most discriminatory measures (402) followed by France and Italy (both 387) and the UK (385). As examples of discriminatory procurement policy, it points to countries such as India and Indonesia which require a significant proportion of a tender's value to originate locally; major projects in the US and China which were excluded from standard procurement rules; and preferential price schemes for local companies in Turkey and Russia. The EU hopes the IPI will incentivise such markets to open up more to EU bidders.	The regulation will shortly enter into force.

		Whether the IPI succeeds in this aim depends on how it is implemented in practice. The EU Parliament's Research Service says it is likely to be used 'sparingly and on specific sectoral grounds', hence the high tender value threshold. The administrative burden of applying it could be significant, especially in cases where the procurer needs to delineate the origins of goods integrated in global supply chains. It can also create complications for tenderers which may have to bid before they can clearly set out their sourcing strategy. The UK does not have an IPI or equivalent regime, but clause 82 of the draft Procurement Bill prevents discrimination against 'treaty state suppliers' only. In effect, this means suppliers from non-GPA countries without a bilateral treaty with the UK covering procurement do not have the same protections against discrimination. Pending amendments could make this stricter, proposing a default position that non-treaty state suppliers are effectively excluded from procurement procedures. Depending on the final form of the Bill, the UK could thus end up in a substantively similar position to the EU.	

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21. STATE AID & SUBSIDIES **PASSIVE DIVERGENCE** *EU regulation on foreign subsidies distorting the internal market.*	In June 2022 the Council of the EU and the European Parliament reached provisional agreement on a new regulation on 'foreign subsidies distorting the internal market'. The regulation gives the European Commission the power to investigate whether non-EU companies operating in the EU single market are in receipt of state subsidies. The EU's stated aim is to remedy competitive 'distortions' created by the fact that while the EU operates a number of state aid controls on its member states, there is no EU means to control subsidies granted by third countries, whose businesses may thus operate in the EU single market at a competitive advantage. The law firm Greenberg Traurig explains that the Commission will have powers to investigate any subsidy granted by a non-EU government or governmental authority, or public or private bodies with close links to a non-EU country. A distortion is considered to occur when such subsidies improve the competitive position of a company within the EU single market and where it actually or potentially has a negative effect on competition. The Commission will have three separate investigatory 'tools', with one focused on the largest mergers, a second on large-scale public procurement, and a third for general market investigation. The first tool applies to mergers which will generate a turnover within the EU of at least €500m and where the non-EU subsidy is worth at least €50m. The procurement tool applies to contracts worth at least €250m where non-EU contribution to the bid is worth at least €4m per country involved. Both tools require companies to notify the Commission before completing mergers or contract awards, which must then be cleared by the Commission. The Commission has the power to impose fines of up to 10% of worldwide turnover if it is not notified in advance of a merger or tendering process.	The regulation is another example (following the Data Act, Anti-Coercion Instrument and Digital Markets Act) of the EU taking heavily interventionist steps to protect EU companies from what it sees as unfair practices stemming from third-country companies. In each case it has significantly beefed up its regulatory power to investigate the practices of companies or impose new obligations upon them, with heavy fines for non-compliance. It will create significant new processes for state-backed non-EU businesses to comply with, if operating in the EU single market. Notifications will now have to be filed prior to the completion of mergers or contract awards, and further information will need to be submitted as part of any subsequent investigation. For EU companies, there will be a greater need to monitor the foreign subsidy status of any non-EU companies they plan to engage with, in order to anticipate the likelihood of being exposed to an investigation. This heightened risk might disincentivise EU companies from partnering with non-EU businesses (especially in cases of large mergers and contract awards), in order to minimise the risk of an investigation. This increased due diligence and risk of investigation could make British companies less attractive partners for major mergers and procurement awards within the EU. However, the similarities between UK and EU state aid regimes mean British companies should remain relatively low-risk partners. Chinese companies are widely seen to be those most likely to be affected, with some Chinese businesses already warning it may affect their confidence in the EU market and some US also reporting concern. The EU acknowledges that it lacks reliable data on third country subsidies, making it hard to know which countries' companies might be most affected.	The agreement is subject to approval by Coreper and will become applicable six months after its entry into force.

	The general market investigation tool will allow the Commission to investigate ‘all other’ market situations, mergers and public procurement procedures where it suspects foreign subsidies are creating market distortion. It may perform a ‘balancing test’ and if foreign subsidies exist and are found to have more ‘negative’ than ‘positive’ effects on competition, the Commission may take ‘redressive measures’ or demand commitments to remedy the distortion.		

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
22. TRADE **PASSIVE DIVERGENCE** *EU Single Market Emergency Instrument.*	In September 2022 the EU outlined its proposal for a 'Single Market Emergency Instrument' (SMEI). This introduces safeguards to guarantee the provision of vital goods within the EU single market during moments of crisis. A new mechanism will be created to monitor the single market for risks and coordinate responses where necessary. In practice this consists of four stages. • Contingency: the Commission and member states set up a network to coordinate on increased preparedness. • Vigilance: if a threat has been identified, member states and the Commission monitor relevant supply chains and the building up of strategic reserves. • Emergency: if a threat begins to have a wide-ranging impact, the Commission and Member States decide on a response. This can include the expansion or repurposing of production lines; increased production permits; and the distribution of emergency supplies built up in the vigilance stage. Last resort: in 'extraordinary' cases, once emergency mode has been activated, the Commission may – in order to bring vital goods to market – oblige companies to disclose information about stock and production capacities for 'crisis-relevant' goods. The Commission will also be able to make urgent orders for these goods, which companies must prioritise unless they give 'grave reasons justifying refusal'. A separate Regulation and Directive will also permit quicker testing and accreditation of goods during emergencies.	The EU says that the Instrument is a response to recent crisis, in particular the early stages of the Covid-19 pandemic, which 'fragmented' the single market, with the free circulation of goods, services and persons disrupted by travel and export restrictions within the EU. It aims to make the EU less 'ad hoc' in its response to future crisis, and to ensure that the single market remains operational at all times, hence tools which focus on pre-emptive action, at the collective level, and the provision of vital goods to all. The proposals have, however, caused concern among certain member states that this is a means for the Commission to augment its powers without due diligence, and that it could create a 'command economy' with new EU powers to stockpile goods and make priority orders. Brexit supporters may argue this is the sought of market intervention which they sought to avoid by leaving the EU. On the flipside, with the UK outside the single market it could make it harder to access certain EU-produced goods in times of crisis, if they are subject to emergency orders to prioritise provision within the single market. An early test case could be in the fertiliser market, where EU production has fallen by 70% as a result of higher gas prices driving up costs.	The proposals will be discussed by the European Parliament and Council of the European Union. The rules could be in place before spring 2024.

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23. TRADE / AGRICULTURE **PASSIVE DIVERGENCE** *EU-New Zealand trade agreement.*	In June 2022 the EU and New Zealand (NZ) concluded negotiations for a new free trade agreement. The EU says trade is expected to increase by 30% with €140m saved in duties. Duties will be removed on EU goods exports to New Zealand and there are also some easements around services trade and data flows. Tariffs will also be removed on most NZ goods exports to the EU, but there will be quotas on the volume of certain dairy products, beef and sheep meat, ethanol and sweetcorn which may be exported with zero or reduced tariffs. There is also a chapter on Sanitary and Phytosanitary (SPS) standards, with increased joint work on monitoring and intervention. It commits to the precautionary principle whereby 'public authorities have a legal right to act to protect human, animal or plant health, or the environment, in the face of a perceived risk even when scientific analysis is not conclusive.'	The Farmers Union of Wales believes the UK-NZ trade agreement compares unfavourably with the EU-NZ one, when it comes to protections for farmers. Under the UK-NZ deal, there are quotas on tariff-free imports of certain NZ meat and dairy goods to the UK, but these will be phased out completely over a fifteen year period. By contrast, the EU's import quotas for NZ beef and sheep meat will remain capped even after a seven-year phase-in (at 10,000 tonnes per year with a reduced duty of 7.5% for beef; and 38,000 tonnes per year duty-free for sheep meat). As a result, the Farmers Union of Wales estimates that, in year one of the two respective trade agreements, the increase in permitted tariff-free imports of NZ sheep meat will be 6.5 times higher into the UK than the EU - and 40 times higher per person. New Zealand's Meat Industry Association says it is 'extremely disappointed' by EU-NZ the agreement, especially in relation to beef. Zero- or lower-duty imports of NZ milk powders, butter and cheese into the EU will also be subject to quotas, though the UK dairy industry has nonetheless expressed concern that this increased market access for NZ products will reduce the competitiveness of British exporters into the EU. In particular, 25,000 tonnes of NZ cheese may be imported duty-free into the EU - increasing competition in the main export market for British cheese. Chris Southworth of the International Chamber of Commerce has suggested the more limited protections for UK farmers compared to EU ones could be down to the haste of the UK government to secure new trade agreements, but also the UK making a conscious decision to prioritise wider economic gains over the interests of farmers.	At EU level, draft texts are now subject to legal revision before being signed by the Council. The EU and NZ will then sign the agreement.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
24. DIGITAL & DATA **PROCEDURAL DIVERGENCE** *EU ceases official cooperation with UK on digital policy.*	In July 2022, Politico reported that the European Commission has stopped 'all official coordination and cooperation' with the UK on digital policy, due to the political impasse over the Northern Ireland Protocol. The EU later confirmed Politico's story that it had asked officials to cease sharing information with UK counterparts in areas such as online content moderation, personal data protection and addressing the dominance of big tech. Following Brexit, the UK and EU have pursued parallel antitrust regimes (which cover the role of big tech in digital markets) and developed similar but separate strategies for regulation in the tech sphere. Yet Politico was told by the outgoing chief of the UK Competition and Markets Authority that it had nonetheless been working with the EU Commission 'as closely as it can under the current institutional framework'. The outlet also reports that EU and UK officials have long cooperated on data, including after Brexit, and as recently as March 2022 their respective antitrust agencies 'announced coordinated investigations into potential illegal advertising practices by Meta and Alphabet, the parent companies of Facebook and Google'.	The EU and UK potentially have a lot to gain from cooperation in digital regulation. As outlined in the previous divergence tracker, the EU's Digital Services and Digital Markets Acts respectively aim to increase the social obligations and diminish the market dominance of big tech; and the UK has similar policy ambitions in its Online Safety Bill and planned digital markets regulation - which includes a new Digital Markets Unit to challenge the market dominance of big tech. Politico's story suggests that these shared policy objectives had been underpinned by a common commitment between regulators to work as closely as possible to coordinate action and share information. A lack of engagement in this sector could potentially diminish the effectiveness of both jurisdictions' regimes for regulating digital markets and online safety. The case also underlines the pervasive impact of the Northern Ireland Protocol dispute on relations and the inability of the UK to silo specific policy portfolios out from that dispute. The EU has explicitly said cooperation had ceased on tech because the general situation around the Protocol 'undermines the trust that is necessary for bilateral EU-U.K. cooperation'. The EU has taken a similar stance in refusing to finalise the UK's accession to Horizon Europe and other programmes (see entry #12) despite the significant potential mutual gains.	Cooperation has ceased.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
25. MOBILITY & TRAVEL **PROCEDURAL DIVERGENCE** *Delays at Port of Dover due to post-Brexit passport checks.*	Passengers travelling from Dover to Calais at the start of the summer holidays faced delays of up to six hours, due to post-Brexit passport checks. The new requirement to stamp British passports upon entry to the EU is estimated to almost double the amount of time each passenger spends at passport control in Dover. Although the new requirements have been in place since the start of 2021, the pandemic massively reduced passenger numbers meaning this was the first time systems had to manage at close to full capacity. Nine times more cars passed through the Port of Dover on the first Friday of the school summer holidays than the equivalent Friday in 2021; and numbers were five times higher on the Saturday and Sunday. By comparison, the Port of Dover increased the number of passport checking booths by 50% (from six to nine) in preparation for the weekend in question. The Port of Dover's chief executive said the more time-consuming post-Brexit checks were to blame, though he added that it was exacerbated by an initial shortage of French border staff (who carry out entry checks on the English side of the Channel). The Guardian notes that the Port of Dover requested £33m in 2020 to double the capacity for French passport checks but received £33,000.	This highlights how divergence produces ongoing procedural challenges, in terms of building and managing new systems to deal with the implications of regulatory changes. In this case, the infrastructure at Dover has not kept pace with the increased time required to check passports during the busiest periods (a 50% increase in passport booths while the average check time has increased by almost 100%). Continued difficulties at the border could also have implications for the UK-France relationship, with UK politicians quickly blaming France for the delays. Then-Brexit Opportunities Minister Jacob Rees-Mogg said delays at Dover were 'French-created' because 'they decided not to allow British people to pass through freely' (doing so would have meant France ignoring EU rules on how to process arrivals from non-EU countries). He added that Britons might prefer to travel to Portugal because the 'French are being difficult' and 'don't want us'. Then-Foreign Secretary Liz Truss said the delays were 'entirely avoidable' and that France needed to build up its border capacity. French authorities said they were operating at maximum staff levels, although a 'technical incident' had delayed their arrival by an hour on the Friday morning, and other sources at the Port say the French were entirely cooperative. The President of the Ports of Calais and Boulogne has also raised concerns about French ports being 'held hostage' by a parallel shortage of British border force capacity in future.	Incidents have occurred specifically at the GB-EU border in Dover. The UK ETA is expected in 2023 with the EU ETIAS fully operational from 2024. The EU Entry/Exit system is expected to become operational in 2023.

		Further systemic changes in the pipeline could exacerbate border issues in future. The EU is planning to introduce an electronic Entry/Exit system for third country nationals, which will require fingerprint or iris scans. Set to be operational in May 2023, Peter Foster reports in the Financial Times that these new biometric checks will significantly increase the average passenger processing time at Dover and Folkestone. That issue, plus the lack of necessary equipment at Dover, mean officials expect its implementation to be delayed. While the UK has a separate system which captures the necessary data, EU law requires it is done by an EU official at the border. Foster points out that a 'political agreement' to find a more flexible, risk-based approach to biometric checks could in theory be found, but it relies upon a level of cooperation and trust in the UK-EU relationship which has been lacking of late. Separately, the introduction of the EU ETIAS and UK ETA visa waiver systems (see entry #19), could have either positive or negative effects. They will automate some of the security verification process prior to travel, but at the same time border officials may be newly tasked with checking that travellers have an ETIAS or ETA at the border.	

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
26. TRADE & CUSTOMS / AGRICULTURE **PROCEDURAL DIVERGENCE** **INTERNAL IMPACT** *British livestock exporters unable to access EU market due to absence of border control posts.*	In August 2022 it was reported that British farmers are unable to export livestock to the EU because the necessary infrastructure for checks has not been built. Under the Trade and Cooperation Agreement (TCA), live animal exports from Great Britain to the EU must be checked by vets at specialised 'Border Control Posts' (BCPs). Yet the Guardian reports that no such facilities exist because no French companies have been willing to make the multi-million euro investment needed to set them up. The National Farmers Union (NFU) is set to ask farmers if they will fund them themselves. The NFU points out that British livestock exporters specialise in prize-winning pedigree stock: 'These are high-value, highly sought-after, high-health animals… They travel in better conditions than you or I would do on a ferry or in the tunnel'. It argues that a 'modest investment' would help restart a mutually beneficial trade for British and EU livestock producers.	As with the travel delays at the Port Dover (see entry #25), this case highlights the ongoing procedural challenges of divergence. BCPs have been necessary for importing live animals into the EU from Great Britain (GB) since January 2021, yet none have so far been built at EU ports. This means there have been no direct live animal exports from GB to the EU since the TCA came into effect. UK government support for affected industries has been limited. The NFU's chief livestock adviser wrote to EU ports in 2019 asking them to set up facilities before eventually finding a small French company, called Qualivia, which was willing. The NFU is now helping Qualivia finance the process, including by appealing to British businesses for support. The NFU stated: 'Because of Brexit we are having to fund our own facilities in France to get our animals to European customers' and added that there has been 'no help from government. None at all.' Defra said: 'It is the responsibility of EU countries and authorities to approve the designation and operation of these facilities.' The inability to export to the EU is damaging British livestock businesses which typically export 500 consignments a year. The Guardian reports that one firm has lost £150,000 through unfulfilled deliveries over the past two years. Live animals exported from the EU to GB are not required to undergo checks at BCPs because the UK government has repeatedly delayed their introduction. This creates a trade asymmetry where EU livestock producers can access the GB market but not vice-versa, putting GB producers at a disadvantage. Exports from Northern Ireland (NI) to the EU are unaffected because NI remains aligned to EU SPS standards. However, live animal exports from GB to NI are subject to the full range of EU checks and paperwork, which the NFU says are 'very costly and difficult'. A Defra committee report highlighted that these checks are a 'significant threat' to NI livestock farms, which tend to be small and focused on pedigree breeding. They are thus dependent on imports from GB – which have declined due to the new checks – to maintain their genetic integrity.	There is no set date for the introduction of BCPs at EU ports, nor for the introduction of reciprocal checks on EU livestock imports to GB. NI is subject to EU SPS rules, meaning there are checks on livestock imports from GB, but not on exports to the EU.

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
27. ENVIRONMENT LEGAL ACTION *EU considers legal action against UK over dumping of sewage in the Channel and North Sea.*	The European Commission told the European Parliament in September 2022 that the growing levels of raw sewage in British waters could amount to a breach of the Trade and Cooperation Agreement (TCA). At one point in August there were over 40 locations in England and Wales with warnings in place due to the presence of untreated sewage in swimming waters. Heavy rainfall led to water companies dumping sewage directly into the sea to stop the overflowing of drainage systems. The UK does not have to follow EU environmental regulations after Brexit but the TCA commits both sides to not lowering their pre-existing environmental protections in a way that distorts trade or investment. The Commission has said it will continue to monitor the situation to determine whether it amounts to a breach of the TCA. In late August three French MEPs urged the Commission to take legal action against the UK for damaging the marine environment of the Channel and the North Sea by treating them as 'dumping grounds'.	If the EU pursues legal action this would be the second formal dispute related to the TCA, following the UK's decision to launch proceedings against the EU for blocking its access to Horizon Europe and other research programmes (see entry #12). UK sewage dumping is not a direct consequence of Brexit and has long been a concern for the EU, which twice took legal action against the UK as an EU member over the poor quality of infrastructure which was not able to cope 'even during moderate rainfall'. However, it reflects how such disputes must now be managed through the architecture of the TCA, rather than internal EU legal proceedings. Defra points out that it has developed plans to reduce overflows post-Brexit, yet the Environment Agency (EA) nonetheless called the performance of England's water and sewerage companies in 2021 'shocking' and 'the worst we have seen for years', with the highest number of serious pollution incidents since 2013. It called for much higher fines to be imposed by courts and prison sentences for Chief Executives and Board members whose companies are responsible for the most serious incidents. In 2020 the UK had the lowest proportion of 'excellent quality' beaches in Europe. This underlines that regulation after Brexit is not only about the rules in place, but also the systems for enforcing them. Though the UK is actively seeking to upgrade its sewage management regulations, its capacity to enforce such regulations appears to be diminishing. For example, the monitoring systems in 24% of overflow pipes are either faulty or non-existent and budgets have been repeatedly cut over the past decade. The EA makes clear that water companies are repeatedly failing to adhere to existing regulations 'because they can' – i.e. penalties are not 'painful' enough to deter violations. It remains to be seen whether and how government will ensure the EA has the power to adequately enforce the stricter aims of its new policies.	The sewage dumping in question relates to England and Wales. Environmental regulation is a devolved competency but the water regulator Ofwat covers England and Wales.

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