House of Commons

European Scrutiny Committee

Twentieth Report of Session 2022–23

Documents considered by the Committee on 21 June 2023

Report, together with formal minutes

Ordered by The House of Commons to be printed 21 June 2023

HC 119-xviii
Published on 27 June 2023
by authority of the House of Commons

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee’s own reference numbers.

Numbers in the form “5467/05” are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an “unnumbered Explanatory Memorandum” discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in “Remaining Business”: www.parliament.uk/escom. The website also contains the Committee’s Reports.

*Explanatory Memoranda (EMs) can be downloaded from GOV.UK: https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—https://webarchive.nationalarchives.gov.uk/search/—by restricting searches to https://europeanmemoranda.cabinetoffice.gov.uk/

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Contents

1 Windsor Framework: fertilising products[1]

These EU documents are politically important because:

- they apply in Northern Ireland (NI) and form part of a larger set of new fertiliser rules applicable in NI, but not Great Britain (GB); and
- the policy area is subject to review in GB, with responsibility devolved to the UK's constituent nations, and so there is uncertainty around the emerging level of divergence across the UK.

Action

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Overview

1.1 Fertilisers are everyday products used in agriculture and horticulture to improve plant growth and yields. They can be either inorganic (man-made) or organic (derived from plant or animal). Given the increasing number of organic fertilisers on the market, the EU has updated its rules on fertilisers to ensure that they cover both inorganic and organic fertilisers. These new rules, set out in the EU Fertilising Products Regulation (FPR)[2] came into effect in the EU on 16 July 2022 and apply also in NI under the terms of the Windsor Framework.

1.2 Previously, virtually all product types carrying the 'EC fertiliser' designation were conventional inorganic fertilisers, whilst those produced from organic materials or recycled bio-waste were excluded. The EU FPR establishes conditions with which all 'CE' marked fertiliser products—including those made from recycled or organic materials—must comply in order to move freely on the internal market. These include limits on the presence of heavy metals, such as Cadmium, and contaminants in fertilising products. Organic fertilisers have historically been regulated at national level, making it difficult to

1 (a) COMMISSION DELEGATED REGULATION (EU) …/… of 14.3.2022 supplementing Regulation (EU) 2019/1009 of the European Parliament and of the Council by laying down criteria on agronomic efficiency and safety for the use of byproducts in EU fertilising products (b) COMMISSION DELEGATED REGULATION (EU) …/… of 22.3.2022 amending Annexes II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding recovered high purity materials as a component material category in EU fertilising products; (c) COMMISSION DELEGATED REGULATION (EU) …/… of 5.5.2022 amending Regulation (EU) 2019/1009 of the European Parliament and of the Council as regards the requirements applicable to EU fertilising products containing inhibiting compounds and the post processing of digestate; Reference numbers: (a) C(2022) 1437 (b) C(2022) 1422 (c) C(2022) 2882; Legal base: (a) -, (b) -, (c) Regulation (EU) 2019/1009; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC numbers: (a) 42063 (b) 42065 (c) 42066.

2 Regulation (EU) 2019/1009 of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003

operate an effective internal market for such goods. The EU FPR also introduces a new system of conformity assessment for manufacturers to demonstrate that their products meet the conditions before they are placed on the market.

1.3 The European Commission prepared three separate Delegated Regulations setting out additional details concerning the products covered by the EU FPR.

1.4 We reported[3] on the Delegated Regulations following our meeting of 18 July 2022 and wrote to the then Minister (Steve Double MP) on 18 July, expressing concern about the impact of divergent rules in NI and GB.

1.5 In his reply of 11 October 2022, the Minister for Food and Farming (Rt Hon. Mark Spencer MP) explained that there are three valid routes to market if a supplier wishes to sell regulated fertiliser products into NI. First, NI has its own domestic fertiliser regulation (The Fertilisers Regulations (Northern Ireland) 1992), originally derived from EU legislation. Second, Regulation (EC) No 2003/2003 as retained across the UK continues to apply to NI as well[4] (known as the 'UK fertiliser' regime). Third the EU FPR applies in NI and provides a route to market for those fertilisers not already covered by existing rules.

1.6 Due to these multiple routes to market, the Government is not concerned about there being any regulatory-created disruption to actual fertiliser supply in NI (both GB-NI and *vice versa*). The Minister explained that the 1992 Regulations and the 'UK Fertiliser' regime are already familiar to companies supplying fertiliser to NI and will remain in force.

1.7 Turning to the review of the domestic regulatory regime, the Minister noted that the current regime is in need of modernisation. Leaving the EU, he said, provides the opportunity to carry out a full review of domestic regulations and develop a new framework which reflects factors and requirements specific to GB.

1.8 The Minister said that the Government is committed to maintaining regulatory alignment in fertilisers across the UK. With the Fertilisers Common Framework (published February 2022) as a structure, the Government is working closely with the devolved nations and aims to conduct a UK-wide consultation on fertiliser regulatory reform in due course. This, says the Minister, will inform the shape and scope of a revised and streamlined regulatory landscape in the UK. As well as embedding strong environmental protections, the Government also aims to expand the scope to bring in new and innovative products, such as biostimulants, soil improvers and fertilisers made from nutrients recovered from waste. These have the potential to be used as less harmful alternatives to traditional mineral fertilisers, alongside farm wastes and organic fertilisers as part of a circular economy.

Our assessment

1.9 We were concerned that the Government had under-estimated the potential impact of NI's alignment with the EU FPR. Following the Minister's letter, we now understand that existing routes to market from GB to NI remain in place for conventional fertilisers.

3 European Scrutiny Committee, Sixth report (2022–23) HC 119–v, chapter 2 (18 July 2022)
4 The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

Nevertheless, the fertiliser regime in place across GB is now outdated compared to that applying in the EU and Northern Ireland. We welcome the Government's commitment to review it.

Action

1.10 We are reporting the Minister's letter to the House as politically important. We require no further correspondence.

1.11 For policy reasons and devolution considerations, we are drawing these documents and our letter to the attention of the Environment, Food and Rural Affairs Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

2 Windsor Framework: substances of human origin[5]

This EU document is politically important because:

- it applies to Northern Ireland (NI) under the terms of the Windsor Framework and has implications for Great Britain (GB);
- any divergence between GB and NI as well as the EU could have implications for patients in NI reliant on GB, and patients in GB reliant on the EU in some circumstances; and
- the Government is considering whether to introduce similar changes, subject to ongoing analysis and discussion with the UK's devolved governments under the relevant Common Frameworks.

Action

- Write to the Minister seeking a further update.
- Draw to the attention of the Health and Social Care Committee, the Northern Ireland Affairs Committee, the Welsh Affairs Committee and the Scottish Affairs Committee.

Overview

2.1 The EU has legislation[6] in place setting minimum safety requirements for blood, tissues and cells (the EU 'BTC Directives'). As they are over twenty years old, the European Commission has proposed to update them through a replacement draft Regulation which will apply to NI under the terms of the Windsor Framework. It will have implications for NI directly but also for the rest of GB, as NI is heavily reliant on GB for the supply of these products and some are sourced from the EU to treat GB patients.

2.2 The Commission proposed broadening the coverage to include all 'Substances of Human Origin' (SoHO),[7] therefore including previously-excluded types (such as human breast milk and intestinal microbiota). The draft Regulation provides measures to ensure safety and quality for patients treated with SoHO therapies and fully protect them from avoidable risks. We set out further details of the draft Regulation in our Report of 26 October 2022.

2.3 We wrote to the Government on 26 October 2022, raising a number of queries. First, we asked the Government to set out their plans for retained EU law[8] affecting SoHO, noting the provisions of the Retained EU Law (Revocation and Review) Bill. Second, we asked about elements of the draft Regulation which may not be relevant to the UK as a

5 Proposal for a Regulation on Standards of Quality and Safety for Substances of Human Origin Intended for Human Application and Repealing Directives 2002/98/EC AND 2004/23/EC; COM (2022) 338; Legal base: -; Department: Health and Social Care; Devolved Administrations: Consulted; ESC number: 42110.

6 Directive 2002/98/EC ('Blood Directive') and Directive 2004/23/EC ('Tissues and Cells Directive')

7 Any substance collected from the human body in whatever manner, excluding organs.

8 EU law retained in domestic law following the UK's withdrawal from the EU.

third country, including the possibility that delegations of inspectors from EU Member States would have the right to inspect Northern Irish SoHO establishments. Third, we noted the broader scope of the draft Regulation compared to the BTC Directives and asked whether the entirety of the draft Regulation should apply automatically in NI. Finally, we requested information on intra-UK discussions about the policy implications of the draft Regulation.

2.4 The Minister of State (Will Quince MP) replied to us on 7 December 2022. Our consideration of the Minister's letter was delayed pending our scrutiny of the Windsor Framework agreement. In his letter (see below for more details), the Minister confirmed that the SoHO legislation was part of the review of retained EU law being undertaken and that maintaining patient safety and public health would remain paramount during that process. The Minister also confirmed that delegations of EU Member State officials would be able to inspect Northern Irish SoHO establishments, but he noted that this was already permissible under the terms of the Windsor Framework. Northern Ireland should have access to the coordination mechanisms set up under the draft Regulation, said the Minister. Finally, the Minister confirmed that the implications of the draft Regulation across the UK were being discussed among the four nations.

2.5 We have responded to the Minister welcoming the Government's overall approach, which prioritises patient safety across the UK and requesting information on the outcome of the UK-wide assessment in due course.

UK Government position

Retained EU Law

2.6 The Minister noted that the Retained EU Law (Revocation and Reform) Bill would, subject to Parliamentary approval, "enable the Government to realise the benefits of Brexit by adopting a regulatory approach which best meets the UK's interests." The Government, he said, was reviewing how best to use the powers provided by the Bill, including which instances of retained EU law should be repealed, reformed or preserved. This included considering the SoHO legislation[9] that is retained EU law and relevant separation agreement law, for the purposes of implementing the Windsor Framework.

2.7 Maintaining high quality and safety standards and maximising patient access to substances of human origin (SoHO) is, said the Minister, a priority. As such, any reforms would not come at the expense of the UK's already high standards. Maintaining patient safety and public health would remain paramount when reforming retained EU law and the Government would continue to work with a wide range of organisations and stakeholders to ensure the best possible outcome.

9 The Blood Safety and Quality Regulations 2005/50; The Quality and Safety of Organs Intended for Transplantation Regulations 2012/1501; The Human Tissue (Quality and Safety for Human Application) Regulations 2007/1523; and The quality and safety provisions in the Human Fertilisation and Embryology Act 1990.

Windsor Framework

2.8 The Minister confirmed that, under the Windsor Framework,[10] the draft Regulation will become directly applicable in NI. Secondary legislation will need to be made under the European Union (Withdrawal) Act 2018 to revoke the existing legislation implementing the BTC Directives in NI, as well as to deal with enforcement of the draft Regulation. The Government was working on the basis that the full scope of the draft Regulation will be applicable in NI.

2.9 The Minister confirmed that inspections of SoHO establishments (those processing and storing SoHO) and SoHO entities (those doing other SoHO activities), as well as third country suppliers must take place. These could take place jointly at the request of one or more Competent Authorities (CAs), and the Member State (or NI) must make reasonable efforts to enable this. The Minister noted that similar requirements were already in place in relation to inspections of tissue establishments, so this was not a new concept.

2.10 Additionally, said the Minister, Article 12(2) of the Windsor Framework already allows for EU representatives to have the right to be present when the UK is implementing and applying the Windsor Framework, and the UK must facilitate access.

2.11 Concerning access to the SoHO Platform and membership of the SoHO Coordination Board, the Minister said that the draft Regulation allows for Member State and the Council of Europe's European Directorate for the Quality of Medicines & HealthCare (EDQM) experts to be on the Board. He considered that experts from NI may be able to apply to be a member of the SoHO Coordination Board, given their vast expertise in transfusion and transplantation. United Kingdom EDQM members may also be invited to participate. Once the draft Regulation's final text is agreed and adopted, the Government would be writing to the Commission to confirm if this is the case. NI may also have access to the EU SoHO platform, he said, as this is needed to fulfil their legal obligations.

Implications for Great Britain

2.12 The Minister said that the Government was reviewing the draft Regulation and, following stakeholder consultation and an options analysis, decisions would be made as to whether to introduce similar changes in GB. Decisions would take into account a number of factors including: patient safety; intra-UK and UK-EU supply of SoHO; innovation within the sector; and health disparities. The Government would provide a summary of the outcome of its assessment in due course.

2.13 The Minister noted that legislative competence for the donation, processing and use in treatment of human reproductive cells remains reserved to Westminster while competence in respect of all other human tissues and cells, blood and organs is devolved. The two SoHO Common Frameworks cover the areas of devolved competence. However, close working continues between the UK Government and the devolved governments on reserved and excepted matters that impact significantly on devolved responsibilities.

2.14 The Common Frameworks in this area aim to maintain a compatible minimum set of safety and quality standards between the UK Government, Scottish Government, Welsh

10 The Minister's letter refers to the "Ireland/Northern Ireland Protocol" but, since then, the EU and UK have agreed to refer to the Protocol as the 'Windsor Framework'. The amendments made to the original Protocol by the Windsor Framework agreement do not affect application of this draft Regulation to NI.

Government and the NI Executive and make it easier for blood, organs, tissues and cells to continue to be shared across the UK. The underlying principle, explained the Minister, is that administrations agree not to introduce changes to safety and quality standards legislation without first discussing proposals with each other and allowing sufficient scope for UK-wide discussion and decision making.

2.15 Finally, noted the Minister, under the SoHO Frameworks process, officials (across the four governments) were continuing to meet regularly to discuss policies that may impact each other, including the EU SoHO Regulation. As the Regulation progresses through the EU processes, further discussions and stakeholder consultation would take place to fully consider the impact on the existing safety and quality standards in this area.

Our assessment

2.16 We have expressed concerns about amendments made to the Retained EU Law (Revocation and Reform) Bill during its passage through Parliament. These changes, we have said, fundamentally undermine the purpose of the Bill. That said, we have always recognised that some EU measures retained in the UK post-Brexit are valuable. Measures such as the BTC Directives are good examples of this, although these measures as retained in the UK merit some reform, just as the European Commission has reviewed the original EU Directives and tabled its draft replacement Regulation. The Retained EU Law (Revocation and Reform) Bill will allow relevant changes to be made, which we welcome.

2.17 Like the Government, we agree that maintaining patient safety must be the paramount objective. We welcome the intra-UK work that is ongoing around the draft Regulation, based on the view that a similar approach should be taken across the UK. Given that NI must maintain alignment with EU law in this area, that means that the draft Regulation will be the basis for developments across the UK. As a consequence, we take a particular interest in both EU-level discussions on the Regulation and in intra-UK discussions.

2.18 Since the Minister wrote, the UK and EU agreed a revised approach to implementing what was formerly known as the Ireland/Northern Ireland Protocol and is now known as the Windsor Framework. While the agreement has no impact on the application of this legislation in NI, nor its potential implications for the rest of the UK, it does strengthen consultation arrangements. The Windsor Framework allows for the creation of structured expert groups to allow detailed UK-EU discussion of new rules applied under the Windsor Framework across the full range of issues. A new emergency brake mechanism, known as the 'Stormont Brake' was also introduced to be used in exceptional circumstances to prevent the automatic alignment of NI's law with changes to certain EU laws. We set out more details about the Windsor Framework in our Report of 24 May 2023.

2.19 Deliberations are ongoing in the EU institutions on this draft Regulation, with few concrete developments expected for several months. We will request an update by mid-October 2023 on those developments and on engagement between the UK and EU, particularly following the adoption of enhanced arrangements under the Windsor Framework agreement.

Action

2.20 We have written to the Minister of State as set out below.

2.21 We are reporting this document to the House as politically important and we draw it to the attention of the Health and Social Care Committee, the Northern Ireland Affairs Committee, the Welsh Affairs Committee and the Scottish Affairs Committee.

Letter from the Chair to the Minister of State (Will Quince MP)

We considered your letter of 7 December 2022 on the above draft Regulation at our meeting of 21 June 2023. Our consideration was delayed pending our scrutiny of the Windsor Framework agreement.

Since you wrote, there have been a number of important developments salient to this draft Regulation, including amendments to the Retained EU Law (Revocation and Review) Bill as well as the adoption of the Windsor Framework agreement, further to which the Government signalled that the NI Protocol Bill would not be enacted.

Like you, we agree that maintaining patient safety must be the paramount objective behind policy in this area. We welcome the intra-UK work that is ongoing around the draft Regulation, based on the view that a consistent approach should be applied across the UK. Given that NI must maintain alignment with EU law in this area, the effect is that the draft Regulation will be the basis for policy developments across the UK. As a consequence, we take a particular interest in both EU-level discussions on the Regulation and in intra-UK discussions.

We would welcome an update on the progress of both EU level and intra-UK discussions by 16 October 2023. We also look forward to receiving the outcome of the Government's UK-wide assessment, to which you referred. Noting the enhanced arrangements agreed under the Windsor Framework for UK-EU cooperation on draft EU legislation, it would also be helpful if you could set out how you are engaging with the EU on this draft Regulation.

3 Windsor Framework: the Horizontal Excise Directive on alcohol, tobacco and fuel duty[11]

These EU documents are legally important because:

- they update EU rules on transporting excise goods like alcohol, cigarettes and fuel that aim to prevent tax evasion, which continue to apply in Northern Ireland (NI); and
- the Government previously refused to apply some of these new rules in NI because of concerns about how they would work in the context of goods moved between NI and the rest of the UK (the Government has now confirmed that it has implemented the changes following the Windsor Framework agreement on the operation of the Protocol).

Overview

3.1 In February 2023, a new EU Directive on the movement of so-called "excise goods"—alcohol, tobacco and fuel—took effect. One of the changes made by the new 'Horizontal Excise Directive' (HED) is to align EU excise and customs rules more closely, to fix certain known loopholes for duty evasion where these goods are imported into or exported from the EU.[12]

3.2 Under Article 8 of the Northern Ireland Protocol (the 'Protocol') agreed between the UK and the EU in 2020, and as amended in 2023 under the Windsor Framework, NI continues to be bound by EU excise legislation.[13] The Government previously declined the new HED under the Protocol however, because of concerns over how it would operate in relation to excise goods moved between Great Britain and NI. Following the

11 (a) Council Directive 2020/262 laying down the general arrangements for excise duty (recast); COM number: COM(2018) 346; Legal base: Article 113 TFEU; Department: HM Revenue & Customs; Devolved Administrations: Consulted; ESC number: 39854; (b) Proposal for a COUNCIL REGULATION amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes; COM number: COM(2022) 539; Legal base: Article 113 TFEU; Department: HM Revenue & Customs; Devolved Administrations: Consulted; ESC number: 42132; (c) Commission Delegated Regulation (EU) 2022/1636 of 5.7.2022 supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing a threshold for the losses due to the nature of the goods; COM number: C(2022) 4494; Legal base: Articles 6(10), 29(1) and 43(1) of Council Directive (EU) 2020/262; Department: HM Revenue & Customs; Devolved Administrations: Consulted; ESC number: 42114' (d) Commission Implementing Regulation (EU) 2022/1637 of 5.7.2022 laying down the rules for the application of Council Directive (EU) 2020/262 as regards the use of documents in the context of movement of excise goods under a duty suspension arrangement and of movement of excise goods after release for consumption, and establishing the form to be used for the exemption certificate; COM number: C(2022) 4497; Legal base: Articles 12(3), 29(2) and 43(2) of Council Directive (EU) 2020/262; Department: HM Revenue & Customs; Devolved Administrations: Consulted; ESC number: 42115.

12 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast).

13 While the Windsor Framework introduced several exemptions from EU excise legislation for Northern Ireland in relation to alcohol duty specifically, these are not relevant to the policy issues discussed in this chapter. See for more information European Scrutiny Committee, 18th Report (2022–23) HC 119–xvi, chapter 1 (30 May 2023).

Windsor Framework agreement reached between the UK and the EU on the operation of the Protocol earlier this year, we have revisited our scrutiny of the new Directive in the Northern Irish context.

The new EU Horizontal Excise Directive

3.3 Within the EU, there is an extensive legal framework on excise duty requiring Member States to levy a consumption tax on the sale of alcoholic, tobacco and energy products.[14] As excise often constitutes a significant proportion of the retail price of goods like spirits and cigarettes,[15] there is a strong incentive for fraud and evasion by selling them on the black market instead.[16] As a result, a major focus of the EU legislation in this area is to allow for the real-time tracking of excise goods, to combat duty evasion. For example, under the Horizontal Excise Directive,[17] traders typically have to report transporting alcohol, tobacco and fuel through EU's 'Excise Movement & Control System' (EMCS).[18]

3.4 In 2018, the European Commission proposed a number of changes to the HED that governs movements of alcohol, tobacco and fuel within the EU, and between the EU and NI. The major focus of the reforms of the HED was to expand the use of the EMCS to track movements of excise goods between EU countries where duty has already been paid up front, and to set common rules on duty waivers for losses of excise goods that occur during transport.[19] A third area of reform concerned several highly technical amendments on closer alignment of EU excise and customs rules. These aimed to close certain loopholes for duty evasion, while also reducing administrative barriers for shipments of excise goods that are imported into, or exported from, the EU under "duty suspension".[20] We covered the proposals in reports in 2018 and 2019.[21]

14 In particular, EU law specifies the minimum duty rates that must be applied to many excise products. However, these have not been updated since the early 1990s and most Member States exceed the thresholds by substantial margins.

15 For example, the Scotch Whisky Association says that on average, 53% of the retail price of a bottle of whisky in the UK is made up of excise tax (alcohol duty).

16 Excise duties are of significant fiscal importance. In the UK alone, they raised revenue of £44 billion for the Treasury last year. See HM Revenue and Customs, 'HMRC tax receipts and National Insurance contributions for the UK' (21 March 2023). Excise duty receipts were £23.2 billion for energy products; £9.2 billion for tobacco products; and £11.6 billion for alcohol products.

17 So named because it applies to all three types of excise products.

18 An excise duty charge legally arises at the point of the goods being produced in, or imported into, the EU. However, payment of the excise duty can be delayed until the goods reach their final destination (a mechanism known as 'duty suspension'). While this improves cash flow for traders, to offset the risk of tax evasion they are required to use the EU's 'Excise Movement & Control System' (EMCS) to report movements of excise goods. Duty suspension' accounts for the vast majority, over 95%, of intra-EU excise transports.

19 For example, the natural evaporation of alcohol products as a result of which the total volume decreases in transit.

20 For example, the new Horizontal Excise Directive requires customs authorities in the EU to cross-check import and export declarations with excise documentation more systematically, to ensure imported excise goods actually enter a tracked movement under the EMCS after arriving in the EU and exported excise goods actually leave the EU (rather than being diverted onto the black market to be sold duty-free).

21 European Scrutiny Committee, Thirty-Third Report (2017–19) HC 301–xxxii, chapter 5 (3 July 2018) and Fiftieth Report of Session (2017–19) HC 301–xlix, chapter 9 (15 January 2019).

3.5 The new Directive was formally agreed by EU Finance Ministers in the Council of Ministers in December 2019, and took effect on 13 February 2023.[22] From July 2022 to January 2023, the European Commission also adopted three technical supplementary pieces of legislation to facilitate smooth implementation.[23]

The application of the Horizontal Excise Directive in Northern Ireland

3.6 As noted, under the Protocol agreed with the EU in 2020, NI continues to be bound by EU excise legislation.[24] This is because EU law created the mechanisms for tracking goods that underpinned the removal of customs infrastructure on the UK-Ireland land border in the 1990s, which could be used previously to check goods crossing the border for excise duty liability. Accordingly, the UK and EU agreed to continued alignment with that legal framework as a way of enabling the absence of a 'hard border' with respect to excise duties after Brexit. As a result, transports of alcohol, tobacco and fuel products to, from or through NI are treated as if they occur within the EU, while certain excise-related customs formalities now apply when such goods are shipped from Great Britain to NI that did not apply before the Protocol took effect.[25]

3.7 After the new HED was adopted by the EU, the customs-related changes triggered a dispute between the UK and the European Commission. Under Article 8 of the Protocol, the Government was required to give effect to the new Directive in NI from February 2023, as well as an obligation to notify the European Commission of the relevant domestic legislation to achieve this by 31 December 2021.[26] However, the Government decided not to proceed with transposition under the Protocol ahead of the specified date.[27] The Financial Secretary to the Treasury (Victoria Atkins MP) told the House of Lords European Affairs Committee in November 2022 that transposition had been put on ice, primarily because of the potential impact of the customs-related provisions on movements of alcohol, tobacco and fuel between NI and the rest of the UK.[28] These, she said, could not be implemented yet "due to [their] dependence on settlement of the future application of customs legislation in respect of NI" as part of any new UK-EU agreement on the Protocol. She noted in particular the Directive "envisages closer comparison of excise and customs data, not all of which may be available for movements between GB and NI".[29]

22 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast).

23 Namely Commission Implementing Regulation (EU) 2022/1637, Commission Delegated Regulation (EU) 2022/1636 and Council Regulation (EU) 2023/246.

24 While the Windsor Framework introduced several exemptions from EU excise legislation for NI in relation to alcohol duty specifically, these are not relevant to the policy issues discussed in this chapter. For further information see European Scrutiny Committee, Eighteenth Report (2022–23) HC 1109–xvi, chapter 1 (30 May 2023).

25 HM Revenue and Customs, 'Policy paper: Moving excise goods as freight under the Northern Ireland Protocol from 1 January 2021' (14 April 2023).

26 Article 55 of Directive (EU) 2020/262.

27 This was part of the Government's wider approach to the Protocol, whose operation it was seeking to change because of concerns about the economic and political disruption it was causing (in particular through the application of EU customs formalities to trade between NI and the rest of the UK). See HM Government, 'Northern Ireland Protocol: the way forward' CP 502 (July 2021).

28 Letter from Victoria Atkins MP to Baron Jay of Ewelme, dated 8 December 2022.

29 In addition, the Minister said transposition could not occur "until a number of technical issues, including IT development, [had] been resolved".

3.8 In July 2022, the European Commission formally initiated an "infringement procedure" against the UK for failure to notify it of the domestic legislation implementing the new HED in NI.[30] This was one of several such procedures against the UK in relation to application of EU law under the Protocol.[31]

3.9 Subsequently however, the Government and the European Commission announced a deal on changes to the operation of the Protocol. In a Joint Declaration, they said this agreement, known as the Windsor Framework, "address[es], in a definitive way, unforeseen circumstances or deficiencies that have emerged".[32] With respect to excise, the UK and EU agreed a number of binding exemptions from EU legislation on alcohol duty for NI, which were inserted into the text of the Protocol itself.[33] However, these changes do not relate to the HED. As part of the Windsor Framework, a new customs 'Green Lane' will also be introduced for certain goods transported from GB to NI.[34]

3.10 It was therefore initially unclear if the Government had agreed to proceed with implementation of the HED—including the provisions relating to alignment of EU excise and customs law—to trade in excise goods between NI and the rest of the UK, and if so how its concerns about the Directive—that were previously sufficient for it to refuse to implement it—have been addressed.

3.11 However, the Financial Secretary to the Treasury (Victoria Atkins MP) confirmed on 25 May that the Government had transposed the Directive, including transitional arrangements "agreed with the EU" to give HMRC additional time for the completion of the necessary IT infrastructure by December 2023.[35] In fact, the regulations implementing the new rules were made before the Windsor Framework itself was announced, to allow the majority of the changes to take effect on 13 February 2023, as required by EU law. Despite its earlier concerns, the Government now says the new rules are "expected to have a negligible impact on an estimated 200 businesses moving excise goods between the EU and Northern Ireland".[36] The materials published by HM Revenue and Customs when the legislative changes were announced in January 2023 do not refer to the Government's previous decision not to transpose the Directive, or the link to the then-ongoing talks around the Northern Ireland Protocol.[37]

30 European Commission, 'Questions and Answers: Commission launches four new infringement procedures against the UK' (22 July 2022).

31 In this specific case, the Commission argued that the refusal to implement the new Directive "pose[d] a fiscal risk for the EU" because of the risk of incorrect levels of excise duties being charged on goods being moved to, from or through NI.

32 Political Declaration by the European Commission and the Government of the United Kingdom (27 February 2023).

33 See European Scrutiny Committee, Eighteenth Report (2022–23) HC 119–xvi, chapter 1 (30 May 2023).

34 As the relevant legal text has not yet been made publicly available as of 9 June 2023, it has not been possible to assess to what extent this will affect any excise-related customs formalities on intra-UK trade. The easements of the customs Green Lane under the Windsor Framework are set out in a European Commission Delegated Act under the EU Customs Code. While this Act has been submitted for scrutiny by the European Parliament and the Council of the EU, it has not been made publicly available yet.

35 Letter from Victoria Atkins MP to Lord Jay of Ewelme (25 May 2023). The new HED was transposed by means of the Excise Duties and Value Added tax (Northern Ireland) (Miscellaneous Modifications and Amendments) Regulation 2023, which were in fact made before the Windsor Framework itself was announced.

36 HMRC has said that "one-off costs will include familiarisation with the new requirements and could also include updating software". See: HM Revenue & Customs, "Policy paper: The Excise Duties and Value Added Tax (Northern Ireland) (Miscellaneous Modifications and Amendments) Regulations 2023" (1 February 2023).

37 HM Revenue & Customs, "Policy paper: The Excise Duties and Value Added Tax (Northern Ireland) (Miscellaneous Modifications and Amendments) Regulations 2023" (1 February 2023).

3.12 Given the Government's actions, the European Commission has discontinued its pending infringement procedure against the UK relating to the new Horizontal Excise Directive.

Conclusions and action

3.13 The Government previously took the view that no final decision on implementation of the EU HED in NI could be taken until there was a "settlement of the future application of customs legislation in respect of NI". Following the agreement on the Windsor Framework, as far as the Government is concerned, such a 'settlement' has now been reached. The Minister has now confirmed the Government has implemented the new rules, subject to transitional arrangements agreed with the EU. Given the previous decision not to apply the new Directive in Northern Ireland because of concerns for intra-UK trade, which the Government has now assessed as having been resolved, we consider these developments are of sufficient political and legal importance to be reported formally to the House.

4 Windsor Framework: the EU's 'VAT in the Digital Age' package[38]

These EU documents are politically important because:

- they aim to make significant changes to the way in which businesses within the EU account for VAT, especially on cross-border transactions. As EU laws on VAT on goods continue to apply in Northern Ireland under the Windsor Framework, businesses there—as well as HMRC—may also face new administrative changes and costs as a result.

Action

- Write to the Financial Secretary to the Treasury (Victoria Atkins MP) to request more information about the impact of the proposals for the UK.
- Draw the EU proposals to the attention of the Northern Ireland Affairs Committee.

Overview

4.1 In December 2022, the European Commission tabled new draft legislation on 'VAT in the Digital Age' (VIDA). The principal aim is to reduce evasion of VAT on cross-border transactions within the EU through new reporting requirements on businesses, and to make certain "platform economy" companies like Uber and Airbnb responsible for collecting VAT on sales of services they facilitate. The draft laws also seek to make it easier for companies in one EU country to sell into another without the need for multiple national VAT registrations, to reduce the compliance costs of cross-border trade within the EU.

4.2 The EU's VIDA proposals are still relevant for the UK after Brexit. In particular, the Northern Ireland Protocol—as amended by the 'Windsor Framework' in March 2023—continues to require the application of many elements of current and future EU VAT rules "concerning goods" in Northern Ireland by default, to avoid the need for any VAT-related customs formalities on goods that cross the land border with Ireland.[39] According to the Treasury, the VIDA proposals could therefore require changes to the administration of the VAT system in Northern Ireland, which would impact on both businesses and HMRC.[40]

38 (a) Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age; COM number: COM(2022) 701; Legal base: Article 113 TFEU; Department: HM Treasury; Devolved Administrations: Not consulted; ESC number: 42153; (b) Proposal for a COUNCIL REGULATION amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age; COM number: COM(2022) 702; Legal base: Article 113 TFEU; Department: HM Treasury; Devolved Administrations: Not consulted; ESC number: 42155; (c) Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes; COM number: COM(2022) 704; Legal base: Article 397 of Council Directive 2006/112/EC; Department: HM Treasury; Devolved Administrations: Not consulted; ESC number: 42156.

39 See Article 8 and Annex 3 of the Protocol.

40 HM Treasury, Explanatory Memorandum on the EU's 'VAT in the Digital Age' proposals (18 January 2023).

4.3 Given their relevance to the UK, we have considered the substance and implications of the Commission proposals for EU VAT reform further below.

Background: EU VAT policy and the Windsor Framework

4.4 Value Added Tax (VAT) is a consumption tax levied on the sale of most goods and services in many jurisdictions including the UK and the EU.[41] While it imposes significant administrative overheads on businesses, in particular in terms of record-keeping, it has become a major source of public revenue. In the UK, it is now the third-largest tax by revenue, delivering £143 billion for the Exchequer in 2021–2022.[42] Changes to VAT law can therefore have a significant impact on governments and businesses alike.

4.5 For the 27 Member States of the European Union, many aspects of the administration of VAT are regulated through European legislation as part of the Single Market. For example, EU law sets restrictions on minimum VAT rates,[43] as well as requirements for businesses' tax records. It also provides the basis for the electronic exchange of data on commercial cross-border transactions between two different Member States via the 'VAT Information Exchange System' (VIES), which aims to help detect VAT fraud and evasion on cross-border trade to compensate for the absence of physical customs controls between EU countries.[44] Even so, EU law still leaves countries with significant discretion over many aspects of their national VAT systems. For example, despite some EU-wide simplification schemes, companies that sell goods or services from one EU country into another[45] may still need to register for VAT. This involves compliance with relevant administrative formalities under the domestic law of more than one Member State, with associated costs.[46]

The EU's 'VAT in the Digital Age' package

4.6 The European Commission has undertaken significant efforts in recent years to persuade the EU's Member States to reform the bloc's VAT system, which we have reported to the House on a number of occasions.[47] As the most recent step of this process, in December 2022, the Commission tabled new draft legislation to introduce more

41 Typically, VAT has to be charged by a business making a relevant sale (whether to another business or to a consumer), and the proceeds of the tax are remitted to the exchequer in the country where consumption takes place. Although this means the tax is charged along the entire supply chain, Value Added Tax should ultimately be paid only by the final consumer. To achieve this, companies can have VAT they have paid on commercial inputs refunded by the tax authorities.

42 House of Commons Library, 'Tax statistics: an overview' (16 January 2023), p. 6.

43 The VAT Directive imposes certain restrictions on Member States' ability to set reduced or zero rates of VAT for specific goods or services (although these were loosened significantly in 2022).

44 Even so, avoidance of VAT on cross-border trade in the EU is estimated to cost billions of Euros each year. See Europol, 'MTIC (Missing Trader Intra Community) fraud' [accessed 23 March 2023].

45 Notably, the EU's 'One Stop Shop' (OSS) mechanism has from 2015 onwards reduced, but not eliminated, the need for VAT registrations in multiple EU countries for many cross-border business-to-consumer sales. See European Commission. Impact Assessment SWD(2022) 393 (8 December 2022), p. 23.

46 According to the Commission, the minimum one-off cost for a business of obtaining a VAT registration in another EU Member State is €1,200, combined with an on-going annual compliance cost of €8,000 for an average business and €2,400 for SMEs. See European Commission, Impact Assessment SWD(2022) 393 (8 December 2022), p. 21.

47 The Commission's proposals have covered, for example, VAT rates (agreed as Directive 2022/542 in December 2022) and a "definitive system" for tax is accounted for on trade between EU countries, which has stalled due to political opposition among Member States. See European Scrutiny Committee Report, "Value Added Tax: EU proposals for reform and the implications of Brexit" (HC 301–xxii, 3 April 2018).

digital tools in the VAT system and clarify how rules in this area apply to the online 'platform economy' (digital intermediaries like Amazon or Uber that connect businesses to consumers). The main changes the VIDA package would make are outlined below.

Digital transaction reporting requirements

4.7 First, to help improve the collection of VAT on cross-border transactions, VIDA would introduce a new mandatory 'Digital Reporting Requirement' (DRR) for business-to-business (B2B) sales between two EU Member States. In practice, this means EU businesses would have to report all such B2B transactions individually to their national tax authority,[48] on the basis of electronically issued invoices specifically structured for that purpose.[49] Furthermore, where EU countries decide to operate national DRR systems covering domestic transactions (which some of them have already done), these would have to be made interoperable with the EU's cross-border DRR to mitigate the risk of businesses having to use separate reporting systems for different types of transactions.[50]

4.8 A consequential proposal to update VIES, the IT system used by EU Member States to facilitate data exchange and analysis on intra-EU B2B sales, is due to follow later in 2023 to adapt it to this new form of data collection and improve detection of VAT avoidance.

Reducing multiple VAT registrations for cross-border sales

4.9 The VIDA package also contains a number of proposals to reduce the need for companies with operations in more than one EU country from having to register for VAT (and submit VAT returns) in multiple jurisdictions.

4.10 In particular, the existing digital 'One Stop Shop' (OSS), which allows EU-based companies to use their domestic VAT registration to sell certain goods and services to consumers in any EU Member State, would be expanded to cover certain business-to-consumer (B2C) transactions that are currently excluded (such as sales of second-hand goods, works of art and antiques).[51] In addition, an existing domestic "reverse charge" mechanism for B2B sales made by a non-resident supplier would be made mandatory.[52] This means in such cases the company purchasing the goods or services would have to account for the VAT due. This reverses the normal process, where the seller charges VAT

48 The European Commission has proposed this reporting should occur within two days of the invoice being issued, but it seems likely a longer period will be introduced instead during the legislative process. The DRR would replace the current monthly or quarterly current 'European Sales List'.

49 These e-invoices would need to be structured so that they contain the relevant data either in a common European standard for e-invoices, or a national standard that is interoperable with it. This would exclude, for example, PDF versions of paper invoices counting as an e-invoice.

50 Any Digital Reporting Requirement in place under domestic law covering intra-EU transactions, as has been proposed in France for example, would be replaced with the new EU-level system. See European Commission, Impact Assessment SWD(2022) 393 (8 December 2022), p. 36.

51 Similarly, businesses would also be able to account for VAT through the OSS when they move their own stock from one EU country to another, again allowing them to avoid needing a VAT registration in the latter. However, a company moving capital goods that they use in their manufacturing or production processes from one EU country to another would still need to account for VAT on these directly in the latter.

52 Currently, this domestic "reverse charge" arrangement is optional, leaving it to the discretion of individual EU countries whether they apply it, and under which conditions. It might be used, for example, where a business imports goods from a third country into an EU Member State where it is not established, and the goods are subsequently sold on to a business in the Member State of importation. See European Commission, Supporting study on VAT in the Digital Age, 'Volume 3, Single place of VAT registration and import one stop shop' (March 2022), p. 24.

on the sale and passes the revenue on to the Exchequer in the EU country where the buyer is based. As a result of this change, the supplier would avoid the need of having to register for VAT in the country of their customer in such cases.

VAT and the platform economy

4.11 For the VAT on the sale of short-term accommodation[53] and passenger transport services via online platforms (for example, through Airbnb or Uber), an EU-wide "deemed supplier" model would be introduced. This means that, where the underlying supplier does not have to charge VAT (for example because they are a small company that is exempted from having to do so), the platform will instead have to charge VAT on the transaction. The aim is to address the fact that often this type of service provision can currently be provided free of VAT through the platform economy, whereas 'traditional' suppliers of taxi and hotel services have to charge VAT and are therefore at a competitive price disadvantage.[54]

4.12 Similarly, internet shopping platforms that facilitate online sales of goods between sellers and customers within the EU would by default become the deemed supplier for all such transactions. As a result, the platform would be responsible for collecting any VAT due, rather than—as is often the case at present—the company actually selling the product.[55] Separately, the Commission has also recently proposed changes to the way businesses selling goods from outside the EU via the internet to consumers within the bloc can account for VAT.[56] We intend to consider that proposal and its implications for the UK separately in due course.

The EU legislative process

4.13 The VIDA proposals are not definitive: they can only become binding EU law with the approval of the Council of Ministers, where the national governments of the bloc's 27 Member States are represented. As part of that process, substantive amendments can be—and are likely to be—made. Draft EU tax laws require unanimity in the Council before they can take effect, giving each country a veto until it is content with the proposed

53 The Commission proposals defines short-term rentals as those offered for an uninterrupted period not exceeding 45 days.

54 In particular, typically the online platforms facilitate the sale of services by small firms and sole traders. The latter are, individually, often exempted from having to charge VAT on services they sell.

55 Currently, the deemed supplier model for goods bought via online platforms applies only, broadly speaking, where the goods are imported into the EU from outside the bloc or where the supplier making the sale via the platform is based outside the EU.

56 European Commission, 'Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT' (COM(2023) 262 (17 May 2023).

changes. The Commission's consultation on its proposals revealed a number of stakeholder concerns,[57] which are likely to be discussed during the legislative process and could result in changes.[58]

4.14 At present, the timetable for the legislative negotiations between Member States, and by extension the entry into force of any of the changes to the EU VAT rules as described above, is not known but many of the changes are unlikely to take effect, if at all, by the end of the decade.[59]

Potential implications of the EU VAT reforms for the UK

VIDA and the Northern Ireland Protocol: the Government's position

4.15 EU VAT law "concerning goods", including future amendments, continues to apply in Northern Ireland under the Northern Ireland Protocol in the Withdrawal Agreement. This governs the UK's exit from the EU and was recently amended by the Windsor Framework.[60]

4.16 After the European Commission published its VIDA package, the Financial Secretary to the Treasury (Victoria Atkins MP) submitted an Explanatory Memorandum (EM) to in January 2023 with an initial assessment of their implications under the Protocol. This made clear that many of the elements of the Commission's proposals, if adopted, "are likely to require action in Northern Ireland" unless the EU and UK in due course reach an agreement otherwise. According to the EM, some of the key elements of the package for Northern Ireland under the Protocol are the following:

- the introduction of a mandatory new Digital Reporting Requirement for B2B transactions within the EU, based on structured e-invoices. This might apply to transactions in goods between a business in Northern Ireland and one in the EU, meaning businesses in Northern Ireland would have to implement new invoicing and transaction reporting systems. HMRC might also be required to invest in an updated version of the VIES system in Northern Ireland to be able to exchange information from those transactions reports with tax authorities in the EU;[61]

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57 European Commission, 'Summary Report: Public consultation on the VAT in the Digital Age initiative' Ares(2022)4489043 (17 June 2022). In its Impact Assessment, the Commission says the proposed reforms are "expected to bring between €172 billion and €214 billion" (£152 to £189 billion) in benefits in monetary terms across the EU between 2023 and 2032. That figure is net of the estimated implementation and administration costs for both governments and businesses combined, which the Commission expects to total €13.5 billion (£11.9 billion).

58 VATCalc, 'ViDA reforms early feedback ahead of 24 October 2023 ECOFIN vote by member states' [accessed 23 April 2023].

59 See Article 5 of the European Commission proposal to amend the 2006 VAT Directive. This foresees implementation of the changes from 2024 to 2028.

60 As a result, for example, EU law restricts what reduced VAT rates the Government could theoretically apply to goods sold in Northern Ireland. Conversely, Northern Irish businesses retain access to certain facilitations that reduce VAT-related formalities when trading with the EU, whereas companies in Great Britain do not.

61 The reporting requirement, and the VIES system, would not apply to goods moved between Great Britain and Northern Ireland, nor to exports from Great Britain to the EU. The UK would not be under an obligation to introduce a digital reporting requirement for transactions within the UK itself, but if it did introduce one on a domestic basis it is unclear to what extent, in Northern Ireland, it would have to comply with the requirements set out in the Commission proposal for such domestic systems.

- Northern Irish businesses that trade in goods could have access to the new easements allowing them to use only their UK VAT registration when they sell goods in, or move stock into, the EU (including Ireland). Conversely, that would mean the UK could be required to accept that businesses in the EU could do the same in Northern Ireland on a reciprocal basis; and

- online platforms which facilitate internet shopping between sellers and customers in the EU and Northern Ireland may become subject to the expanded deemed supplier rule, meaning they would be required to account for VAT on any such sales (including purely domestic transactions where the buyer is in Northern Ireland), rather than the supplier of the product.

4.17 While acknowledging the potential impact of the proposals for Northern Ireland, the Minister does not, however, offer a substantive assessment of the costs and benefits of the draft EU legislation. She notes that "there is no certainty that the changes will be implemented, and they are likely to be subject to change", referring to the discussions between the EU's Member States in the Council of Ministers. Her EM adds that the UK Government intends to "thoroughly review the finalised set of proposals and look to negotiate changes to any aspects which could negatively impact Northern Ireland" and is "committed to seeking resolutions with the EU where required so that any changes do not impact Northern Ireland's position within the UK internal market" (without indicating if the Government had already identified any issues in the proposals in that respect).[62]

The VIDA package and the Windsor Framework

4.18 It should be noted that the Minister's EM on the VIDA proposals predated the announcement of the UK/EU Windsor Framework agreement on 27 February 2023, as a result of which the operation of the Protocol has been altered in a number of ways.[63] The EM therefore logically did not provide an assessment of the VIDA proposals in the context of those changes. However, while the Framework introduced a number of exemptions for Northern Ireland from EU VAT law, these do not appear to pre-emptively preclude the VIDA package from applying in Northern Ireland as described above.[64]

4.19 We have also considered the VIDA proposals in the context of the 'Stormont Brake'. This is the new mechanism under the Windsor Framework which gives the UK Government the ability to veto the application in Northern Ireland of certain amendments to EU law which would otherwise apply there automatically under the Protocol. However, the Brake does *not* extend to new EU VAT laws.[65] As such, any changes that result from the VIDA proposals that have to be implemented in Northern Ireland under the Protocol cannot be prevented from taking effect in Northern Ireland using this mechanism.

4.20 Under the Windsor Framework, the UK and EU have also established a new 'Enhanced Coordination Mechanism' (ECM) on VAT and excise. This is a forum for officials from

62 The EM also notes that VAT laws are a reserved matter under the UK's devolution settlements and as such "the devolved administrations have therefore not been consulted in the preparation of this [EM]" although it adds that it had been "reviewed by NI officials".

63 HM Government, 'The Windsor Framework: a new way forward' CP 806 (27 February 2023).

64 See for more information European Scrutiny Committee, [18th] Report (2022–23) HC-(119–xvi), chapter 1 (30 May 2023).

65 This is because the Stormont Brake applies only to amendments or replacements of EU laws applicable in Northern Ireland as listed in a number of headings in Annex 2 to the Protocol. The EU VAT laws that continue to apply are set out in Annex 3, and as such outside the scope of the Brake.

both sides to discuss "future [UK and EU] VAT and excise legislation" with an impact on trade in goods in Northern Ireland. The exchanges held through the ECM *could* form the basis for additional exemptions from EU VAT law for Northern Ireland.[66] To be given legal effect, these would require a further formal Decision of the EU/UK Joint Committee under the Withdrawal Agreement, giving both sides a veto.[67] The ECM met for the first time on 15 June 2023, but no information on the outcome of that meeting appears to have been published to date.

Implications of the EU VAT reforms for businesses in Great Britain

4.21 Since VAT is also charged by the EU on imports of goods and services, changes to EU rules in this area can directly affect British trade with the Single Market (which accounted for over 40% of UK goods exports in 2022).[68] However, the Commission's VIDA proposals for the most part only relate to how VAT is levied on goods or services traded wholly within the EU, meaning there should be minimal impact from VIDA on companies in Great Britain selling goods or services into the bloc.[69] More recently, in May 2023, the Commission also proposed changes to how import taxes are accounted for on consumer goods imported into the EU from outside it, which *is* likely to affect British exporters. We consider this separately in [chapter three] of this Report.

Conclusions and action

4.22 We note the Government's interest in monitoring the development of the EU's VIDA proposals, particularly in the context of their potential applicability in Northern Ireland under the Windsor Framework While we appreciate the likelihood of further changes to the relevant EU legal texts before they are adopted and take effect, we believe some initial clarifications from the Treasury about its assessment of the potential impact for the UK, and its approach to engagement with the EU (in particular through the Windsor Framework's Enhanced Coordination Mechanism) would be helpful. We have therefore written to the Financial Secretary with a number of questions, and a copy of that letter is included at the end of this chapter.

4.23 In anticipation of the Minister's reply, we draw the EU's VIDA proposals to the attention of the Northern Ireland Affairs Committee.

Letter from the Chair to the Financial Secretary to the Treasury (Victoria Atkins MP)

Thank you for your Explanatory Memorandum of 18 January 2023 on the potential implications of the EU's 'VAT in the digital age' (VIDA) proposals under the Northern

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66 ibid, section 3.

67 In correspondence with the House of Lords European Affairs Committee in March 2023, the Financial Secretary to the Treasury referenced the new ECM as the forum for the Government to "discuss the impacts of these [VIDA] proposals with the EU and agree binding solutions where necessary". See Letter from Victoria Atkins MP to Baron Jay of Ewelme, dated 6 March 2023.

68 Office for National Statistics, 'UK trade: January 2023' (10 March 2023).

69 There could also be some administrative implications for British businesses offering rental properties within the UK to EU-based customers via platforms like Airbnb. The EU proposals on collecting VAT from online platforms through a deemed supplier model is potentially of interest to the UK, given 2021 High Court ruling that Uber was responsible for collecting VAT on rides it facilitated. The Treasury consulted on 'VAT and the sharing economy' in 2020 and published a summary document in July 2021.

Ireland Protocol. Given that changes to EU VAT law 'concerning goods' will continue to apply automatically in Northern Ireland under the Protocol even as amended by the Windsor Framework, we considered the proposals in the context of your acknowledgement that these new EU law "are likely to require action in Northern Ireland" in due course, with potential impacts on the administration of the VAT system there for both businesses and HMRC. We note in particular the suggestion that businesses covered by the law would have to submit detailed information on cross-border transactions individually to their tax authority, in addition to their normal VAT returns.

While we accept the EU legal texts are likely to undergo changes before they are formally adopted, you will appreciate that it is important for businesses in Northern Ireland in particular to have clarity at the earliest opportunity about the extent to which they might be affected by these proposals. With that in mind, we would be grateful if you could write to us with your assessment to date of this draft EU legislation, and any specific issues of concern that have been identified. In particular:

are there particular aspects of the VIDA proposals that would be a priority for the Government in terms of securing further exemptions for Northern Ireland through the consultative processes agreed under the Windsor Framework?

- what is the Government's view on the merits of the proposed Digital Reporting Requirement of individual business-to-business (B2B) transactions to help improve VAT collection? Is the Government considering any domestic version of the Digital Reporting Requirement for individual B2B transactions under UK law?
- what is the Government's view on the proposal for a potential mandatory reverse charge for non-resident domestic B2B supplies of goods? Are there any risks to VAT collection if this had to be introduced in Northern Ireland?
- to what extent do the "deemed supplier" models proposed by the Commission to require online platforms in the sharing economy to collect VAT mirror how it is accounted for on such transactions under UK law?
- what is the timetable for initial discussions with the EU on the VIDA proposals through the new Enhanced Coordination Mechanism?

We look forward to receiving your reply before the summer recess.

5 Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation[70]

This proposed 'Prüm II' Regulation is legally and politically important because:

- it would amend the current framework for cross-border police cooperation and data exchanges ('Prüm I') within the EU and include new categories of data, such as digital facial images;
- the UK/EU Trade and Cooperation Agreement (TCA) establishes a new legal framework for law enforcement cooperation between the UK and the EU post-Brexit which broadly replicates the Prüm I rules; and
- if the changes in the proposed Prüm II Regulation are agreed, the corresponding provisions in the TCA may also need to be amended to ensure that UK law enforcement authorities can continue to exchange biometric information (DNA profiles, fingerprints and, in the future, facial images) and additional categories of data with EU counterparts.

Action

- We have written to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) reiterating our continued interest in the proposed changes to Prüm, their implications for cross-border police cooperation and data exchanges under the TCA, and the importance of Parliamentary scrutiny before the Government agrees to any changes to the TCA.
- We have drawn this chapter to the attention of the Home Affairs Committee and the Justice Committee.

Overview

5.1 During its membership of the European Union, the UK participated in the so-called 'Prüm framework' ('Prüm I')—a set of EU rules on cross-border police cooperation and data exchanges which are intended to support the work of law enforcement authorities investigating crimes with an international dimension. The rules make it possible to access anonymised biometric information (DNA profiles and fingerprints) held in the national police databases of other EU countries to see if there is a 'hit' or match that could help to identify a criminal suspect.

70 Proposal for a Regulation on automated data exchange for police cooperation ("Prüm II") amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2109/818; COM(21) 784; Legal base—Articles 16(2), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV; Home Office; Devolved Administrations "will be consulted regarding implications for law enforcement in their jurisdictions once the proposals are finalised"; 41968.

5.2 Although the UK is no longer bound by EU law following its exit from the EU, the EU rules underpinning the Prüm framework are largely replicated in the UK/EU Trade and Cooperation Agreement (TCA) which governs the post-Brexit relationship between the UK and EU.[71] As a result, the exchange of DNA profiles and fingerprint data between UK law enforcement authorities and their counterparts in the EU has continued post-exit.[72] The Government has told us that the Prüm framework is "a vital investigative tool for law enforcement".[73]

5.3 In December 2021, the European Commission proposed a package of measures to strengthen cross-border operational police cooperation within the EU and the exchange of law enforcement information, including a proposed Regulation ('Prüm II') which would build on and make substantial changes to the current Prüm framework.[74] The proposal would:

- provide for the automated searching of digital facial images (in addition to fingerprints and DNA profiles) held in national police databases;
- establish a new central 'router', connected to national police databases, to exchange biometric information more efficiently;[75]
- set a 24-hour deadline for exchanging specific "core data"[76] when a match has been confirmed;
- allow automated searches via the Prüm framework for missing persons or to identify human remains;
- include Europol—the EU's crime-fighting agency—and its databases in the Prüm system, enabling EU Member States to check biometric data shared with Europol by third countries (such as the UK) and Europol to check the same data received from these third countries against Member States' national databases;[77] and
- task Europol with developing a separate European Police Records Index System ('EPRIS') (a central infrastructure which would be used to carry out automated searches of national police databases to obtain information on convicted criminals or criminal suspects).[78] Participation in the exchange of police records would be voluntary.[79]

71 See Title II of Part Three of the Agreement on exchanges of DNA, fingerprints and vehicle registration data.

72 The Prüm I rules and the TCA also provide for automated searches of national vehicle registration databases but the exchange of vehicle registration data between the UK and EU Member States has not yet begun.

73 See the Explanatory Memorandum of 2 February 2023 submitted by the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) on the proposed revision of the Prüm rules.

74 See our Sixteenth report (2022–23) HC 119–xiv, chapter 3 (29 March 2023).

75 The central router would be developed and maintained by the EU's justice and home affairs IT agency, 'eu-LISA'. It would not store any data. Member States would retain ownership and control of their data.

76 Name; date, place and country of birth; nationality; gender.

77 Europol would also have access to vehicle registration data held in national databases and to police records in those Member States that allow access.

78 This does not include the exchange of criminal record information which is covered by separate provisions in the TCA (Articles 643 to 651).

79 A law enforcement authority would only be able to query police records databases in other EU Member States if its own database could be similarly searched.

5.4 The European Commission envisages that the development of a new central router for Prüm II and a separate EPRIS should be completed in 2026, with both systems becoming operational in 2027. They would be interoperable with other EU justice and home affairs databases so that relevant data available to law enforcement authorities in one EU country could be accessed by their counterparts in another EU country.

5.5 The EU Council agreed its general approach on the proposed Prüm II Regulation in June 2022. The Council text would also allow for automated searches of driving licence data.[80] The European Parliament has not yet agreed its negotiating position, so trilogue discussions with the EU Council and European Commission to agree a final compromise text have not yet begun.

5.6 The TCA anticipates that its provisions may need to be updated if the EU laws underpinning Prüm cooperation are "substantially" amended or are "in the process of being amended substantially".[81] The onus is on the EU to notify the UK that it wishes to agree a formal amendment of the relevant TCA provisions and to initiate a period of consultations. Failure to reach an agreement could lead to the suspension and eventual termination of Prüm cooperation. Prüm and all other forms of law enforcement cooperation under the TCA are also conditional on the UK and EU Member States continuing to adhere to the European Convention on Human Rights and ensuring a high level of protection of personal data, with fundamental rights and data protection safeguards given effect in domestic law.[82]

5.7 In his Explanatory Memorandum (submitted in February 2023), the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) told us that the proposed Prüm II Regulation would introduce more advanced technical infrastructure for exchanging information and that the UK would not be able to participate indefinitely in Prüm data exchanges using the existing infrastructure and processes. He anticipated that detailed discussions with the EU on changes to the TCA would begin when negotiations within the EU on the proposed Regulation neared completion. Before agreeing to any revision of the TCA the Government would "consult widely to determine the scale of change and potential benefits to the UK in participating", including seeking the views of law enforcement partners, biometrics practitioners, the Forensic and Information Database Services Board, the Forensic Science Regulator and Information Commissioner, and the devolved governments.

5.8 As noted in our earlier Report on the proposed Regulation, the European Data Protection Supervisor ('EDPS') issued an Opinion[83] in March 2022 questioning the necessity and proportionality of the changes proposed to the Prüm framework, stating that "with stronger powers should always come stronger oversight".[84] Non-governmental organisations have expressed similar concerns, with the European Digital Rights (EDRi) network suggesting that the proposed Regulation "fails to demonstrate the necessity and proportionality of its measures, in particular its vastly expanded categories of personal data".[85]

80 Automated searching of driving licence data would be via the European Vehicle and Driving Licence Information System (Eucaris).

81 Article 541 of the TCA.

82 See Articles 524 and 525 of the TCA.

83 Opinion 4/2022 on the proposal for a Regulation on automated data exchange for police cooperation ('Prüm II').

84 See our Sixteenth report (2022–23) HC 119–xiv, chapter 3 (29 March 2023).

85 EDRi position paper on the EU's proposed Regulation on automated data exchange for police cooperation ("Prüm II"), published 7 September 2022.

5.9 Given the scale of the changes envisaged, we wrote to the Security Minister on 29 March 2023 asking him to confirm our understanding that simply sticking with the *status quo*, as currently set out in the TCA, would not be an option if the proposed Prüm II Regulation were to be adopted by the EU; the UK would either have to agree to a formal amendment of the relevant TCA provisions or lose the cooperation that it currently enjoys.

5.10 We also asked the Minister to clarify the process for agreeing any formal amendment of the TCA, including:

- how the Government intends to ensure that Parliament is informed of the progress of consultations between the EU and the UK on the terms of a possible revision of the TCA; and

- whether the Government agreed with us that any decision amending the TCA should be taken by the Ministerial EU/UK Partnership Council rather than the official-led Specialised Committee on Law Enforcement and Judicial Cooperation to ensure proper accountability to Parliament, given that the amendments would affect the rights of individuals and the safeguarding of their personal data.

5.11 Finally, we noted that the Government had published a detailed Business and Implementation Case on Prüm followed by a Command Paper in 2015 before asking Parliament to debate and vote on UK participation.[86] As the proposed Prüm II changes would increase the amount of personal data that could be searched by automated means and shared with the UK's law enforcement counterparts in the EU and with Europol, we sought an assurance that the Government would publish a full impact assessment setting out the benefits and costs of UK participation in any enhanced Prüm arrangements, with sufficient time for interested stakeholders and Parliament to consider and comment on the assessment before the Government reaches a decision on participation.

The Minister's response

5.12 In his letter dated 12 May 2023 the Security Minister acknowledges that partial UK participation in Prüm based on the current provisions in the TCA may be "impracticable" if the technical infrastructure underpinning Prüm is "substantially overhauled" as a result of the changes set out in the proposed Regulation, adding:

> Until the proposals are finalised by the EU, it is difficult to assess the scale of technical changes which would be required under Prüm II and whether therefore the systems could operate in parallel.

5.13 The Minister notes that the process for engaging with the EU on any proposed revision of the TCA is set out in Article 541 of the Agreement. He continues:

> Pending the start of that process, we continue to have ongoing dialogue with the European Commission on relevant developments, including via Specialised Committee structures. It is our expectation that there will be a substantial implementation period to allow EU countries the necessary time to make relevant technical changes, and the consultation period provided for in the TCA will allow for detailed discussion between the UK and EU about our participation.

86 HM Government, 'Prüm Business and Implementation Case' CP 9149 (November 2015).

5.14 The Minister does not make a commitment to publish a full impact assessment setting out the benefits and costs of UK participation in any enhanced Prüm arrangements. As the UK has been operating Prüm exchanges since 2019, he says "we now better understand how the mechanisms work in practice" and will be consulting technical experts, law enforcement agencies and the Forensic Information Database Strategy (FINDS) Board when preparing advice on UK participation in any enhanced Prüm II arrangements.

5.15 The Minister reiterates that Prüm exchanges provide "an important capability in an increasingly international crime context". He recognises that "Parliament will have views on the UK's future participation in Prüm II" and undertakes to update us on the Government's plans "once the proposals are closer to adoption within the EU and their substance is better understood". He continues:

> Officials are engaging with the European Commission on this issue with a view to ensuring we have a shared understanding of the TCA procedures to be applied once the internal EU processes for Prüm II have been completed, and I would expect both the Specialised Committee and the Partnership Council to have a role.

5.16 The Minister anticipates that negotiations within the EU on the proposed Prüm II Regulation may conclude before the end of 2023 but could "slip into 2024". He says he will deposit the final text once it has been formally adopted by the EU along with a fresh Explanatory Memorandum.

Action

5.17 We have written to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) to underline our continued interest in the proposed changes to Prüm, their implications for cross-border police cooperation and data exchanges under the TCA, and the importance of Parliamentary scrutiny before the Government agrees to any changes to the TCA.

Letter from the Chair to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP)

Thank you for your letter of 12 May 2023 concerning an EU proposal to update the current framework for the automated exchange of DNA profiles, fingerprint and vehicle registration data between law enforcement authorities within the EU ('Prüm I').

We appreciate that it will only be possible to fully ascertain the scale of the changes set out in the proposed Prüm II Regulation to the existing infrastructure for exchanging information, as well as the categories of data that will be within the scope of the updated system, once a final text has been agreed by the Council and European Parliament. We therefore welcome your undertaking to deposit the final text with an Explanatory Memorandum setting out the Government's position on the possible revision of the corresponding provisions in the UK/EU Trade and Cooperation Agreement and ask you to do so at the earliest opportunity.

We note that you intend to consult a range of technical experts and law enforcement agencies to assist you in providing advice on UK participation in Prüm II. We reiterate our request for a full impact assessment setting out the benefits and costs of UK participation in any enhanced Prüm arrangements so that other interested stakeholders and Parliament will be able to consider and comment on the assessment before the Government reaches a decision on participation.

6 Documents not considered to be legally and/or politically important

Department for Environment, Food and Rural Affairs

(42170) — C(2022) 9120	Communication from the Commission: Guidelines for state aid in the agricultural and forestry sectors and in rural areas.
(42171) — C(2022) 9131	Commission Regulation (EU) 2022/2472 of 14.12.2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union
(42172) — C(2022) 8995	Commission Communication: Approval of the content of a draft for a Communication from the Commission on the Guidelines for State aid in the fishery and aquaculture sector
(42173) — C(2022) 9139	Commission Regulation (EU) 2022/2473 of 14.12.2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union)
(42176) — C(2022) 8457	Commission Regulation (EU) 2023/361 of 28.11.2022 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council as regards rules for the use of certain veterinary medicinal products for the purpose of prevention and control of certain listed diseases

Department of Health and Social Care

(42167) — C(2022)8592	Commission Regulation (EU) 2022/2340 of 30.11.2022 amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards green tea extracts containing (-)-epigallocatechin-3-gallate

Home Office

(42178) — COM(23) 56	Proposed Council Decision on the position to be taken by the EU in the TCA Specialised Committee on Law Enforcement and Judicial Cooperation: establishing a standard form for mutual assistance requests

Department for Work and Pensions

(42209) 9013/23 + Add 1 —	Proposed Council Decision on the position to be taken by the EU in the Specialised Committee on Social Security Coordination established by the UK/EU Trade and Cooperation Agreement

Annex

Documents drawn to the attention of select committees:

('SNC' indicates that scrutiny (of the document) is not completed'; 'SC' indicates that scrutiny of the document is completed)

Environment, Food and Rural Affairs Committee: Windsor Framework: Fertilising products [Commission Delegated Regulations][SC]

Health and Social Care Committee: Windsor Framework: Substances of Human Origin [Proposed Regulation][SNC]

Home Affairs Committee: Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation [Proposed Regulation][SNC]

Justice Committee: Trade and Cooperation Agreement: possible amendment to reflect changes to the 'Prüm' rules on cross-border police cooperation [Proposed Regulation][SNC]

Northern Ireland Affairs Committee: Windsor Framework: Fertilising products [Commission Delegated Regulations][SC]; Windsor Framework: Substances of Human Origin [Proposed Regulation][SNC]; Windsor Framework: the EU's "VAT in the Digital Age" package [(a) Proposed Directive, (b) Proposed Regulation, (c) Proposed Regulation][SNC]

Scottish Affairs Committee: Windsor Framework: Fertilising products [Commission Delegated Regulations][SC]; Windsor Framework: Substances of Human Origin [Proposed Regulation][SNC]

Welsh Affairs Committee: Windsor Framework: Fertilising products [Commission Delegated Regulations][SC]; Windsor Framework: Substances of Human Origin [Proposed Regulation][SNC]

Formal Minutes

Wednesday 21 June 2023

Members present:

Mr David Jones, in the Chair

Mr Marcus Fysh

Craig Mackinlay

Gavin Robinson

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 6 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Twentieth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 28 June 2023 at 1.45 pm

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers—

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)

Tahir Ali MP (Labour, Birmingham, Hall Green)

John Baron MP (*Conservative, Basildon and Billericay*)

Jon Cruddas MP (*Labour, Dagenham and Rainham*)

Geraint Davies MP (*Labour, Swansea West*)

Allan Dorans MP (*Scottish National Party, Ayr Carrick and Cumnock*)

Richard Drax MP (*Conservative, South Dorset*)

Margaret Ferrier MP (*Independent, Rutherglen and Hamilton West*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

Dame Margaret Hodge MP *(Labour, Barking*)

Adam Holloway MP (*Conservative, Gravesham*)

Mr David Jones MP (*Conservative, Clwyd West*)

Stephen Kinnock MP (*Labour, Aberavon*)

Craig Mackinlay MP (*Conservative, South Thanet*)

Gavin Robinson MP (*Democratic Unionist Party, Belfast East*)

Greg Smith MP (*Conservative, Buckingham*)