



House of Commons
European Scrutiny Committee

**Fifth Report of Session
2023–24**

Documents considered by the Committee on 7 February 2024

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 7 February 2024*

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/>

Primary briefs are documents that are detailed as chapters, secondary briefs are listed in the final chapter of the report.

Staff

The staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Hannah Barlow (Committee Specialist), Joanne Dee (Deputy Counsel for European and International Law), Nat Ireton (Committee Operations Officer), Danniella Kinder (Committee Specialist), Daniel Moeller (Committee Operations Manager), Indira Rao MBE (Counsel for European and International Law), Ann-Kristin Stelter (Committee Researcher), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk).

Contacts

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1 Windsor Framework: Formaldehyde and changes to EU REACH legislation¹

Overview

1.1 The European Union has tightened rules on formaldehyde and formaldehyde ‘releasers’ used and placed on the market within the EU.

1.2 By way of background, formaldehyde is a corrosive and flammable gas.² It has a wide range of uses, although it is primarily used as a chemical intermediate to produce other chemicals, such as formaldehyde-based resin and thermoplastics. Formaldehyde-based resins are used as adhesives and binders in a variety of products including wood products, plastics, wallpapers, foams, synthetic fibres and parts for road vehicles and aircraft.³ Formaldehyde is a restricted substance due to its hazardous properties. Under Classification, Labelling and Packaging Regulations, formaldehyde is classified as an acute toxicant category 3, mutagen category 2, carcinogen category 1B, skin corrosive category 1B and skin sensitiser category 1 in both the UK and the EU. However, formaldehyde occurs naturally in the environment and low-level exposure is not expected to cause adverse health effects.⁴

1.3 The Commission [Regulation](#) has changed the EU’s Regulation on the [Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\)](#). REACH restrictions apply to the manufacture, placing on the market and use of certain chemicals in the EU, with the aim of mitigating “unacceptable” risks to human health or the environment.⁵ The EU REACH Regulation is listed in Annex 2 of the Windsor Framework, meaning that Northern Ireland (NI) must comply with its provisions and updates to the parent Regulation. The law would have fallen under the Stormont Brake; however, the time period for this to be used has now passed. The change aims to reduce the health risks associated with the use of formaldehyde in indoor air and road vehicle interiors by setting limits on the levels of formaldehyde for furniture, wood-based articles, and the interior of road vehicles. If articles exceed the new limits, they will not be able to be placed on the EU market from 6 August 2026 (a 36-month deferral) and 6 August 2027 (a 48-month deferral) for road vehicles.

1.4 Certain items are excluded from the restrictions. This includes articles: exclusively for outdoor use; those used in constructions outside the building shell and vapour barrier that do not emit formaldehyde into indoor air; articles/road vehicles that do not lead to exposure of the general public that are used exclusively for industrial or professional use;

1 [Commission Regulation \(EU\) 2023/1464 of 14 July 2023 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council as regards formaldehyde and formaldehyde releasers](#); Com number: C/2023/4687; Legal base: Article 68 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC; Dept. Department for Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 42234.

2 Public Health England, [Formaldehyde: general information](#), accessed 30 January 2024

3 Department for Environment, Food and Rural Affairs, [Explanatory Memorandum on 42234](#), 11 January 2024

4 *ibid.*

5 Department for Environment, Food and Rural Affairs, [Explanatory Memorandum on 42234](#), 11 January 2024

second hand articles/road vehicles; articles where the formaldehyde present is exclusively naturally present in the production materials; and products already subject to other rules limiting formaldehyde.⁶

1.5 Formaldehyde is subject to regulation in the UK, including under UK REACH and a specific workplace exposure limit (WEL).⁷ UK REACH covers most chemical substances manufactured or imported into Great Britain (GB). Under the European Union (Withdrawal) Act 2018, the EU’s REACH Regulation was brought onto the UK statute book on 1 January 2021 as retained EU law and is known as UK REACH.⁸ The UK kept existing EUWELs and now takes a “blended approach” to controlling exposures, including by communicating control measures and introducing new WELs.⁹ This change to EU REACH means there is divergence between REACH in NI and REACH in GB.

The Government’s Position

1.6 The Secretary of State for Environment, Food and Rural Affairs has responsibility for this policy area. Consent from Welsh and Scottish Ministers is required for the introduction of equivalent measures in GB. In his [Explanatory Memorandum](#) on the proposed Regulation, the Minister for Water and Rural Affairs (Robbie Moore MP) states that:

Officials across the UK (including those from Devolved Governments) are currently not aware of any negative impact this EU legislation may have on NI-GB Trade. Widespread voluntary compliance with the new legislation already appears to be in place across UK business.”¹⁰

1.7 Under the UK REACH Work Programme 2022/23, the Health and Safety Executive (HSE) has initiated a Regulatory Management Options Analysis (RMOA).¹¹ This analysis will assess the risks formaldehyde poses to the general public, as well as identifying regulatory measures to address any uncontrolled risks under UK REACH. This analysis is expected to be completed in early 2024.

1.8 As part of the RMOA, the HSE issued a call for evidence that lasted 60 days. It received only one response from a GB-based company, which did not identify any concern about trade with NI or potential UK-EU divergence. The HSE also emailed around 30 stakeholders to invite their participation in the call for evidence. The Department for Environment, Food and Rural Affairs (DEFRA) has stated that no further information was obtained. DEFRA also invited chemical trade association representatives to comment on the impact of the EU amendment. Only one response was received, which stated that the sector anticipates no impacts from the new EU restrictions.

6 *ibid.*

7 Health and Safety Executive, [Restrictions](#), accessed 31 January 2024

8 Health and Safety Executive, [UK REACH Explained](#), accessed 31 January 2024

9 Health and Safety Executive, [Workplace exposure limits](#), accessed 1 February 2024

10 Department for Environment, Food and Rural Affairs, [Explanatory Memorandum on 42234](#), 11 January 2024

11 Health and Safety Executive, [UK REACH — RMOA for formaldehyde and formaldehyde releasers](#), accessed 31 January 2024

The Committee's Position

1.9 We note that the findings of the HSE's consultation have not yet been published. We therefore look forward to further information in due course, particularly around HSE's consultation on the risks of formaldehyde to the public and any regulatory measures to address uncontrolled risk. We also look forward to hearing how any subsequent measures will affect the UK's internal market.

Actions

1.10 We are reporting this document to the House as politically important. We have also written to the Minister requesting further information.

Letter from the Chair to the Minister for Rural Affairs and Water (Robbie Moore MP)

We considered your Explanatory Memorandum (EM) on the above proposals at our meeting of 7 February 2024. Following the outcome of the UK REACH consultation on the usage of formaldehyde, we ask that we are updated on yours, particularly with reference to any divergence between the EU and UK on the use of formaldehyde and formaldehyde releasers.

We also request answers to the following questions:

- Are voluntary schemes for restricting formaldehyde more or less restrictive than: (a) UK REACH and (b) EU REACH?
- Is there any evidence that amendments to EU REACH have led to a de facto change in the use of formaldehyde and formaldehyde releasers in GB, in order that GB-based users comply with EU legislation?

We look forward to further information from you as your assessment evolves, notably around the implications for divergence between GB and NI.

We ask that you respond to us within four months.

2 Trade and Cooperation Agreement: Electric accumulators and electrified vehicles¹²

Overview

2.1 The UK/EU Trade and Cooperation Agreement includes rules of origin that specify when a product can be considered as originating from the EU or the UK for UK/EU trade purposes. Specified requirements determine where products originate from, rather than where they are shipped from, so that lower tariffs are correctly applied to the UK/EU for eligible products.

2.2 The [proposal](#) under scrutiny, which has since been adopted, sought a Decision from the Council of the EU on the position to be adopted on behalf of the EU in the Trade and Cooperation Agreement (TCA) Partnership Council. The proposal, when adopted, allowed the EU to agree in the TCA Partnership Council that the transitional product-specific rules of origin for electric accumulators and electrified vehicles be extended to 31 December 2026. This was done by replacing the original Annex 5 of the TCA with a new annex — this new annex removes the originally-foreseen end date of the transitional rules of 31 December 2023, replacing it with the 31 December 2026 date.

Article 68 of the TCA was also amended to remove the ability of the Partnership Council to further amend the TCA’s rules of origin in respect of electric vehicles and batteries until 1 January 2032, except where technical amendments are required to reflect updates to the World Customs Organisation’s Harmonised System.

2.3 The ultimate objective of the TCA’s rules of origin on accumulators and electric vehicles is to incentivise the investment in battery manufacturing capacity in the EU and the UK. Therefore, from 1 January 2027 the product-specific rules of origin specified in Annex 3 to the Trade and Cooperation Agreement will apply, as originally envisaged.

2.4 The Decision of the Partnership Council removed the possibility to extend, through the same procedure, the interim product-specific rules of origin. It also removed the possibility to change the substance of the product-specific rules for electric accumulators and electrified vehicles until 1 January 2032.

2.5 The Foreign Secretary (Rt Hon Lord Cameron) brought these changes to our attention on 21 December 2023 through [correspondence](#). He warned that without the continuation of the transitional rules, consumers in the UK and EU would be hit with £2–4bn of tariffs (on average adding over £3,000 to the price of an electric vehicle).

12 Proposal for a Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the transitional product-specific rules for electric accumulators and electrified vehicles; Council and COM number; Partnership Council COM(2023) 950 Legal base; Article 218(9) TFEU; Dept. Foreign, Commonwealth and Development Office; Devolved Administrations; Consulted ESC number 42248

2.6 The impending changes to rules of origin requirements were a cause for concern, particularly as the EU were at first reluctant to agree to extend the transitional period. The European Commission's [March 2023 report on the TCA](#) stated that it:

[did] not intend to revisit product specific rules beyond technical adaptations. The Commission considers that these rules strike a fair balance while contributing to the Union's overarching objective of achieving strategic autonomy in essential sectors.

2.7 In May 2023, Secretary of State for Business and Trade, Rt Hon Kemi Badenoch MP, responded to an [oral question](#) relating to the impending rules of origin change. She said:

[W]e are actively working on the issue, and we are not the only country impacted by it. Just yesterday, officials from Germany were talking about how they needed to look into it. It is due to the rising cost of components, which we will look at as part of our trade and co-operation agreement, but it is something that both sides are interested in resolving, so I assure the hon. Lady that we are actively working on it.

2.8 The Business and Trade Committee reported in November 2023 on '[Batteries for electric vehicle manufacturing](#)' recommending that the UK and the EU agree at least a three-year extension of the current rules of origin requirements to allow more time for a supply chain in Europe to develop. They concluded that the UK and EU were at risk of losing market share to cheaper electric vehicles imported from China.

The Government's Position

2.9 In his [Explanatory Memorandum](#) (EM) on the proposal, the Minister for Europe, Leo Docherty MP, explains that the initial approach on rules of origin requirements for electric vehicles in the TCA was designed to reflect industry capability at the time and incentivise investment in domestic battery production.

2.10 He argues that the Council Decision, and subsequent UK-EU agreement to amend Article 68 and Annex 5 of the TCA by a Decision of the Partnership Council, recognises the disruption to the global supply chain caused by the C-19 pandemic and Russia's illegal invasion of Ukraine.

2.11 The Minister reveals that the agreement facilitates UK-EU tariff-free trade in electric vehicles and has prevented 10% tariffs being levied on this trade from January, which industry expects will save car manufacturers and consumers up to £4.3 billion in additional costs and provide long term certainty to the sector.

2.12 He further argues that the removal of the Partnership Council's ability to further amend the TCA rules of origin in respect of electric vehicles and their batteries until 1 January 2032 reflects the UK and EU's shared commitment to develop domestic electric vehicle battery capacity.

2.13 Finally, the Minister reveals that there has been no external consultation as it was not deemed necessary and there are no financial implications for the UK.

The Committee's Position

2.14 In 20 April 2021, the Committee [considered](#) relevant EU proposals on electric vehicles and electric accumulators. We raised concerns relating to the upcoming changes to rules of origin requirements, which would necessitate the swift development of domestic markets. We noted the potential risk that the EU's establishment of a full life-cycle regulatory framework may encourage investment in Europe rather than in the UK, if similar proposals were not brought forward here. We asked whether the UK's domestic regulatory considerations might be accelerated in response. The Government told us they would analyse the EU's proposals.

2.15 The extension of the current rules of origin requirements postpones the Committee's original concerns. However, the decision to prevent the Partnership Council from further extending the rule of origin requirements in relation to electric vehicles and electric accumulators begs the question of what will happen at the end of 2026.

2.16 In a [written question and answer](#), the Minister of State for Business and Trade, Nusrat Ghani MP, said that the Government announced £2bn of new capital and R&D funding to 2030 as part of the Advanced Manufacturing Plan, boosting the UK's competitiveness. She adds that the Government engages closely with industry and automotive manufacturers to understand the impact of European competition and opportunities, including on consumers. However, the Business and Trade Committee highlighted that at best, current plans for UK battery manufacturing satisfy a little over half the capacity the nation needs by 2030. Furthermore, the UK has a limited window in the next three years to attract further investment in this sector. We query what the Government's plan is to boost the UK's domestic manufacturing capacity and how they are going to ensure we have the relevant resources and are competitive when the new UK/EU rules of origin apply at the end of 2026.

Actions

2.17 We are reporting these documents to the House as politically important.

2.18 We have written to the Minister requesting further information.

Letter from the Chair to the Minister for Europe (Leo Docherty MP)

We considered your Explanatory Memorandum on the above document at our meeting on 7 February 2024. We look forward to further information from you regarding what is going to happen when the new rules of origin requirements are implemented at the end of 2026. We note that the TCA Partnership Decision relating to the document under scrutiny prevents a further extension by the Partnership Council until 1 January 2032.

When you next write to us, we ask that you update us on the Government's plans for boosting the UK's manufacturing capacity to ensure that we continue to benefit from tariff-free trade when the new rule of origin requirements are implemented at the end of 2026. Currently, the UK is only on target to satisfy a little over half the capacity the nation needs by 2030. We ask for a thorough assessment of how the UK are going to increase this capacity in three years' time.

We are also interested in how the UK are going to attract further investment in this sector, which will ultimately boost the likelihood of meeting the new rules of origin requirements.

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

Department for Environment, Food and Rural Affairs

(42253) Commission Delegated Directive (EU) .../... of 25.10.2023 amending Directive 2011/65EU of the European Parliament and of the Council as regards exemption for cadmium and lead in plastic profiles in electrical windows and doors containing recovered rigid polyvinyl chloride.
—
C (2023) 7088

Department for Transport

(42237) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 and Regulation (EU) No 1379/2013 of the European Parliament and of the Council as regards certain reporting requirements.
—
COM(2023) 643

Formal Minutes

Wednesday 7 February 2024

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Mr Marcus Fysh

Mr David Jones

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.

Paragraph 1.1 to 3 read and agreed to.

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

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

Adjournment

Adjourned till Wednesday 21 January 2024 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*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Geraint Davies MP](#) (*Independent, Swansea West*)

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

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Adam Holloway MP](#) (*Conservative, Gravesham*)

[Dame Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[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*)