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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) and letters issued by the Ministers can be downloaded from the Cabinet Office website: http://europeanmemoranda.cabinetoffice.gov.uk/.

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Contents

1 Offshore renewable energy[1]

These EU documents are politically important because:

- they relate to future cooperation between the EU and UK in the deployment of offshore renewable energy in order to attain climate change goals, as provided for in the Trade and Cooperation Agreement.

Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee and the Environmental Audit Committee.

Overview

1.1 In its Communication on offshore renewable energy (document(a)), the Commission believes that the scaling-up of offshore renewable energy is a core component of the EU's ambition to cut greenhouse gas emissions by at least 55% by 2030 compared to 1990. This endeavour will primarily involve offshore wind, with some contribution from ocean energy, such as wave and tidal. It is directly relevant to the United Kingdom due to the high potential of the North Sea, in particular, for offshore wind energy. The Commission notes that the North Sea is already the world's leading region for deployed capacity and expertise in offshore wind.

1.2 In a separate proposal (document(b)), the Commission suggests changes to the EU Regulation on guidelines for trans-European energy infrastructure (the "TEN-E Regulation"), which introduced rules for identifying and developing Projects of Common Interest (PCIs), in order to improve the functioning and security of supply of the internal energy market and support the integration of renewable energy. Notably for the UK, the Commission suggests a new category of "projects of mutual interest" between at least one EU country and at least one third country. Such cooperation will require that the third country or countries involved have a high level of regulatory alignment or convergence to support the overall policy objectives of the EU, and an energy system which is on a trajectory towards decarbonisation.

1.3 Since the Commission published its Communication and proposal, the EU and UK have concluded a Trade and Cooperation Agreement (TCA), which explicitly provides—among a number of other provisions to ensure continued energy cooperation and trade—for cooperation in the development of offshore renewable energy, particularly in the North Sea. This should include at least:

- hybrid and joint projects;
- maritime spatial planning;

1 (a) Commission Communication: An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future (b) Proposal for a Regulation on guidelines for trans-European energy infrastructure and repealing Regulation (EU) No 347/2013; (a) 12950/20 COM(20) 741, (b) COM(20) 824; Legal base: (a)—(b) Article 172 TFEU, QMV, Ordinary legislative procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC numbers: (a) 41672 (b) 41742.

- support framework and finance;
- best practices on respective onshore and offshore grid planning;
- the sharing of information on new technologies; and
- the exchange of best practices in relation to the relevant rules, regulations and technical standards.

1.4 To a degree, the areas of cooperation in the TCA reflect the Commission's proposed approach to scaling-up offshore renewable energy, which includes several strands:

- a "meshed" approach to building grid infrastructure;
- a clearer EU regulatory framework for offshore renewable energy;
- maritime spatial planning;
- use of EU funding to mobilise private-sector investment;
- research and innovation; and
- a stronger supply and value chain.

1.5 Among those strands, the most fundamental change suggested is the approach to grid infrastructure, along with the associated regulatory framework. Most existing offshore wind farms have been deployed as national projects connected directly to the shore via "radial" links. The Commission suggests that, to step up offshore renewable energy deployment in a cost efficient and sustainable way, "a more rational grid planning and the development of a meshed grid is key." The Commission describes a "hybrid" model whereby one or more offshore wind installations might be connected to an interconnector between two countries. This has a dual functionality combining electricity interconnection between two or more countries, and transportation of offshore renewable energy to its sites of consumption. Ultimately, a meshed grid would involve the linking of a network of offshore wind installations to several different countries. The Commission notes that the development and planning for an offshore grid needs to go beyond national borders and cover the whole sea basin and thus requires cooperation between Member States.

1.6 It is also the case, says the Commission, that some fresh thinking is required to consider how any such meshed or hybrid arrangements are managed to ensure fair trading arrangements and incentives for all participants. The Commission contends that existing legislation provides the flexibility to introduce "offshore bidding zones", and points to the example of the all-island Irish Single Energy Market as a useful model for the necessary cooperation between national regulatory authorities.

1.7 Pilot projects of this hybrid model may well be the type of "project of mutual interest" with third countries (such as the UK) which might be supported under the revised TEN-E Regulation. The main condition to note is that the third country or countries involved must have a high level of regulatory alignment or convergence to support the overall policy objectives of the EU, and an energy system which is on a trajectory towards decarbonisation. While projects of mutual interest will be eligible for EU financial assistance, only the investments located on the territory of the EU will be eligible for such

financial support. Support for projects of mutual interest and for (EU-only) Projects of Common Interest will be based on strategic energy system planning, including specific offshore grid planning.

The Government's position

1.8 In his Explanatory Memorandum (EM) on the Communication, the then Minister for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP), indicated the Government's understanding that any EU regulatory changes impacting on wholesale electricity markets would have potential implications for Northern Ireland under the terms of the Northern Ireland Protocol, as regards maintaining the functioning of the Single Energy Market. New or revised regulations would need to be considered on a case-by-case basis as they were published.

1.9 Concerning the EU-UK future relationship, the Minister said at the time: "The UK is currently negotiating a trade agreement with the EU which will include arrangements for efficient trading over UK EU interconnectors as well as broader energy cooperation, carbon pricing and climate change. "

1.10 Outside of the EU, said the Minister, the UK has world-leading strengths in offshore renewable energy and is well-placed to lead and prosper as these markets grow both internationally and at home. The UK's Offshore Transmission Review will consider the role of multi-purpose interconnectors in meeting net zero through combining offshore wind connections with links to neighbouring markets. This is an area, said the Minister, where it will be to the mutual benefit of the UK and the EU to work together to share knowledge and expertise.

1.11 In his EM on the revision to the TEN-E Regulation, the Minister welcomed the Commission's suggested approach which, he said, provides a means to facilitate the development of mutually beneficial joint projects in the future.

Our assessment

1.12 The commitments made by the EU and UK to cooperate in the development of offshore renewable energy are welcome. Clearly, it is now important that the commitment is delivered. In that light, we agree with the then Minister that the Commission's proposed change to the TEN-E Regulation to introduce "Projects of Mutual Interest" is a helpful development, which should assist both the EU and UK.

1.13 We note that the Commission's proposal to amend the TEN-E Regulation is rather more far-reaching than explained by the Minister. In particular, it covers matters such as grid-planning for offshore grids, which also forms part of the commitments made in the TCA. For offshore generation, relevant Member States around a sea basin must decide on the amount of renewable generation to be deployed within each sea basin by 2050, with intermediate steps in 2030 and 2014. It is then the role of the European Network of Transmission Systems Operators for Electricity (ENTSO-E) to develop and publish integrated offshore network development plans starting from the 2050 objectives, with intermediate steps for 2030 and 2040, for each sea-basin. These must be compatible with the wider ten-Year Network Development Plans in order to ensure coherent development of onshore and offshore grid planning.

1.14 We note the role of ENTSO-E in grid-planning and note too that the EU-UK TCA provides for frameworks to be established between ENTSO-E and the National Grid with a view to cooperation on matters including offshore energy and infrastructure planning. Given ENTSO-E's important role, it seems to us imperative that the necessary structures for cooperation between ENTSO-E and National Grid are put in place as quickly as possible so that the UK can be engaged in relevant offshore grid planning.

1.15 The then Minister's EM on the Commission's Communication was submitted before the TCA was agreed. We will therefore request an update from his successor (Rt Hon. Anne-Marie Trevelyan MP) in the light of the TCA, and notably how she considers that work in this important area will now be taken forward. We note, for example, that the TCA provides for a Specialised Committee on Energy, which will have several duties. Among those is a role in supporting the establishment of cooperation between relevant UK organisations and those in the EU. That includes cooperation between the respective transmission operators (National Grid and ENTSO-E) as well as cooperation between the respective regulators (the UK's Ofgem and the EU's ACER—the Agency for the Cooperation of Energy Regulators). It would be helpful, therefore, to understand when the Specialised Committee on Energy is expected to meet and when cooperation between EU and UK bodies is likely to start.

1.16 Concerning the revision of the TEN-E Regulation, we note the Government's support for the proposal and will clarify whether the Government is content for UK projects to be involved even if it requires that the UK must have a high level of regulatory alignment or convergence to support the overall policy objectives of the EU, as well as an energy system which is on a trajectory towards decarbonisation. Following from that, we will seek clarification on whether the UK has had any discussions with the Commission about possible projects involving the UK. We accept that it may be premature, given that the Regulation is yet to be agreed by the Council and European Parliament, but clarity on whether any approach has been made would be helpful.

Action

1.17 We have written to the Minister as set out below and we draw these documents and our letter to the attention of the Business, Energy and Industrial Strategy Committee and the Environmental Audit Committee.

Letter from the Chair to the Minister for Business, Energy and Clean Growth (Rt Hon. Anne-Marie Trevelyan MP)

We considered your predecessor's Explanatory Memoranda (EMs) on the above documents at our meeting of 3 February 2020, having delayed consideration of the Commission's Communication on Offshore Renewables until negotiations on the future relationship between the UK and EU had concluded.

Now that a Trade and Cooperation Agreement (TCA) has been concluded, featuring provisions on offshore energy cooperation specifically, it would be helpful if you could update your analysis. We ask that your analysis include at least the following information:

- the expected next steps to taking forward the joint EU-UK commitment in the TCA "to cooperate in the development of offshore renewable energy by sharing best practices and, where appropriate, by facilitating the development of specific projects"; and
- when the Specialised Committee on Energy is likely to meet to adopt guidance allowing for cooperation to begin between relevant UK and EU organisations, notably between National Grid and ENTSO-E (the European Network of Electricity Transmission System Operators), bearing in mind the important role of ENTSO-E in offshore grid planning.

Concerning the revised trans-European energy infrastructure (TEN-E) Regulation, we note the Government's support for the proposal. Please confirm whether the Government is content for UK projects to be involved even if it requires that the UK must have both a high level of regulatory alignment or convergence to support the overall policy objectives of the EU and an energy system which is on a trajectory towards decarbonisation. While the UK's energy market rules are still closely aligned with those of the EU, it is clearly possible that EU rules will evolve over time, perhaps as part of a new regulatory approach to support energy transmission and trading over "meshed" grids. Is it the case that the Government is content to maintain that high level of regulatory alignment and convergence, even as EU law changes without UK involvement?

In the light of the provisions in the TCA, and your support for the revised TEN-E Regulation, have there yet been any discussions between the Commission and the UK about possible projects involving the UK? We accept that it may be premature, given that the Regulation is yet to be agreed by the Council and European Parliament, but clarity on whether any approach has been made would be helpful.

We ask for a response to this letter within ten working days.

2 Northern Ireland Protocol: application of tariff rate quotas[2]

The proposed Regulation is legally and politically important because:

- it determines how EU tariff rate quotas (TRQs) and other import quotas operate under the Protocol on Ireland/Northern Ireland from 1 January 2021; and
- it has already given rise to concerns that importers of certain steel products in Northern Ireland may face a new 25% tariff.

Action

- Draw to the attention of the Northern Ireland Affairs Committee in the expectation that it may wish to press the Government: (i) for an assessment of the costs to business in Northern Ireland resulting from the loss of EU TRQs and the impact on the competitiveness (and viability) of supply chains operating between Ireland and Northern Ireland, and (ii) for further information on the implementation of the Withdrawal Agreement Joint Committee Decision on "at risk" goods, how it is affecting the movement/export to Northern Ireland of steel products which are subject to EU safeguard measures, and what steps the Government is taking to mitigate the (potentially substantial) cost to business.
- Draw to the attention of the International Trade Committee given its interest in TRQs under the UK's WTO Goods Schedule and trade agreements trade and in the UK's trade remedies policy.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee to inform its inquiry on Businesses and Brexit preparedness.

Overview

2.1 The Regulation (adopted on 16 December 2020)[3] concerns the treatment of EU tariff rate quotas (TRQs) and other import quotas under the Protocol on Ireland/Northern Ireland. Its purpose is to resolve possible ambiguities in the interpretation and application of the Protocol arising from the fact that Northern Ireland remains part of the UK's customs territory but, unlike the rest of the UK, is obliged to apply EU customs laws as if it were part of the EU's customs territory from 1 January 2021 (after the expiry of the post-exit transition period provided for in the EU/UK Withdrawal Agreement).[4]

2 Proposal for a Regulation on the application of Union tariff rate quotas and other import quotas; Council number:—; COM(20) 375; Legal base—Article 207(2) TFEU, ordinary legislative procedure, QMV; Dept—International Trade; Devolved Administrations—consulted; ESC number 41467.

3 Regulation (EU) 2020/2170 on the application of Union tariff rate quotas and other import quotas.

4 Treaty Series No.3 (2020), Command Paper 219. Article 4 of the Northern Ireland Protocol states that Northern Ireland is part of the customs territory of the United Kingdom. Article 5(3) of the Protocol provides that EU customs laws apply "to and in the United Kingdom in respect of Northern Ireland".

2.2 As we explained in our earlier Reports,[5] under World Trade Organisation (WTO) rules, each WTO member (or, in the case of the 27 EU Member States, the EU) has its own set of legally binding tariffs and market access commitments which are set out in its Schedule of Goods agreed under the General Agreement on Tariffs and Trade (GATT). The Schedule includes import tariffs and quotas, as well as TRQs for certain goods. Goods which are within their specified TRQ quota may enter the market at a lower than normal tariff or at a zero tariff (duty-free). The EU's preferential trade agreements with third countries may include additional TRQs and the EU may also grant TRQs autonomously in the absence of a bilateral arrangement. Moreover, TRQs are one of the tools that the EU may deploy when applying trade defence measures. For example, in 2019 the EU introduced TRQs for 26 categories of steel products which threatened to cause serious injury to the EU steel industry if allowed tariff and quota free access to the EU market.[6] These safeguard measures applied a 25% tariff to "above quota" imports to discourage over-supply.

2.3 The EU's WTO Schedules, preferential trade agreements, autonomous TRQs and trade defence measures ceased to apply to the UK from 11pm on 31 December 2020.[7] In keeping with Article 4 of the Protocol on Ireland/Northern Ireland, Northern Ireland is included in the UK's Schedules of Concessions under GATT and in the UK's trade agreements with third countries, subject to the proviso that the agreements "do not prejudice" the application of the Protocol. Article 5 of the Protocol, however, provides that EU customs laws will continue to apply in Northern Ireland after transition.

2.4 The arrangements set out in the Protocol operate bilaterally between the EU and the UK—they do not give rise to rights and obligations for third countries.[8] The Regulation therefore clarifies what constitutes EU customs territory when applying EU TRQs. It says that, for these purposes, EU TRQs (and other import quotas) apply only to goods released into free circulation in the territory of the EU's 27 Member States, *not* Northern Ireland. Northern Ireland cannot therefore make use of EU TRQs when importing goods from outside the EU. The Commission considers that the clarification provided by the Regulation is necessary to counter the risk that goods might be routed through Northern Ireland for free circulation within the EU Single Market without counting towards the fulfilment of the EU's quotas.

2.5 In correspondence, the Minister for International Trade (Ranil Jayawardena MP) told us that the full implications of the (then proposed) Regulation for UK trade depended on wider negotiations taking place in the Withdrawal Agreement Joint Committee on the criteria for determining which goods entering Northern Ireland from outside the EU were "at risk of subsequently being moved" into the EU Single Market and thus subject to EU customs duties.[9] We pressed the Minister for further details, since the provisions cited in the Regulation as the basis for it to apply "to and in the United Kingdom in respect of Northern Ireland"—Article 5(3) and (4) and Article 13(3)—were not a matter for negotiation within the Withdrawal Agreement Joint Committee.

5 See our Twenty-second Report HC 229–xviii (2019–21), chapter 3 (24 September 2020), Twenty-sixth Report HC 229–xxii (2019–21), chapter 2 (21 October 2020) and Thirty-first Report HC 229–xxvii (2019–21), chapter 3 (3 December 2020).

6 See Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products.

7 See the Government's communication to the WTO Secretariat on the UK's Withdrawal from the EU.

8 See recital (6) of the proposed Regulation.

9 See Article 5(2) of the Protocol on Ireland/Northern Ireland.

2.6 In his response of 9 November 2020, the Minister made clear that Northern Ireland would benefit from Free Trade Agreements concluded by the UK, including any TRQs agreed by the UK for imports from third countries.[10] He added that the Government had also been clear from the outset that "the implementation of the Northern Ireland Protocol must seek to minimise any additional burdens as much as possible on the people of, and businesses in, Northern Ireland". The Regulation gave rise to "a potential difficulty" as it would mean that goods entering Northern Ireland from outside the UK or the EU which were considered to be "at risk" of onward movement to the EU would not be eligible for a lower EU tariff under an EU TRQ. He continued:

> We do think this consequence is unfortunate and aim to offset this through the Withdrawal Agreement Joint Committee negotiations on 'at risk' goods.
>
> In these discussions, we are actively seeking to ensure the EU respects the unique circumstances on the island of Ireland, including in respect of supply chains operating between Northern Ireland and Ireland.

2.7 In our letter of 3 December 2020, we asked the Minister to confirm that the Government's objection to the Regulation was based on the potential negative effect it might have on the competitiveness of supply chains operating in the island of Ireland and to share with us his assessment of the potential costs for businesses in Northern Ireland. We also asked whether the Government's objective had been for Northern Ireland to benefit both from the UK's *and* the EU's TRQs and whether such an outcome was legally possible.

2.8 The Minister notes in his response of 18 December 2020 that "all outstanding matters related to the implementation of the Protocol" were agreed by the Withdrawal Agreement Joint Committee (and formally adopted on 17 December) and that, as a consequence, Northern Ireland's place within the UK's customs territory is assured while the Government also secured "the flexibilities and adaptations required to support Northern Irish businesses and people". Despite this, the Decision adopted by the Joint Committee on the determination of goods not at risk does not, it seems, provide any flexibilities or make any adaptations to assist Northern Irish businesses that might have benefited from the continued application of EU TRQs.[11] The position remains as set out in the Regulation: goods imported into Northern Ireland from non-EU countries will *not* qualify for a lower tariff under the EU's TRQs (where applicable), even if their intended destination is the EU and they meet the criteria agreed by the Joint Committee for "at risk" goods.

2.9 Commenting on the Joint Committee Decision, the Minister says he is confident that "a significant majority of internal UK trade will be able to move [from Great Britain to Northern Ireland] without being subject to tariffs". Similarly, "there is provision for the much smaller number of direct cargo shipments into Belfast from the rest of the world" to benefit from the "not at risk" status if they remain within the UK's customs territory and tariff levels offer an advantage.

2.10 The Minister does not, however, address the potential costs for Northern Ireland businesses that are unable, because of the Regulation, to take advantage of EU TRQs. Nor does he explain how any additional cost resulting from differences in the EU and UK

10 The Minister's response takes the form of a covering letter and an Annex.

11 Decision No 4/2020 of the Joint Committee on the determination of goods not at risk, 17 December 2020.

preferential tariff quotas might affect the competitiveness (and viability) of supply chains operating between Ireland and Northern Ireland. The Government must have anticipated that there would be a negative effect on these supply chains since this was the basis of its objection to the Regulation.

2.11 Since the Minister wrote to us, further evidence has emerged of the very practical implications that the Regulation and the Withdrawal Agreement Joint Committee Decision alluded to in his letter have had since both took effect on 1 January 2021. The UK, as a third country, now has its own TRQs for the 26 steel products subject to EU safeguard measures. If these quotas are reached any additional exports of these steel products to the EU will be subject to 25% tariffs. The Joint Committee Decision provides that goods entering Northern Ireland from outside the EU (including from the rest of the UK) which are subject to EU trade defence measures must be considered as "at risk" of subsequent movement to the EU and, as such, be treated as if they were exports to the EU. As a result, trade between Great Britain and Northern Ireland in the 26 steel products subject to EU safeguard measures will count towards the UK's TRQ for exports to the EU, meaning that the quota may be exhausted sooner (depending on how much headroom there is in the quota) and that more of these products may be liable to attract a 25% tariff on entering Northern Ireland. The same steel products brought into Northern Ireland from the Rest of the World (RoW)[12] may face immediate 25% tariffs. To add to the complexity, it seems that there is no system yet in place to register UK or Rest of the World steel imports brought into Northern Ireland against either an EU or a UK tariff rate quota, creating further uncertainty for importers. To be sure of tariff-free entry, there must therefore be spare quota capacity under both the EU's and the UK's tariff rate quota.[13]

Action

2.12 We draw this chapter to the attention of the Northern Ireland Affairs Committee in the expectation that it may wish to:

- press the Minister for an assessment of the costs to businesses in Northern Ireland stemming from the loss of EU tariff rate quotas or other import quotas (where more favourable than the UK's) and the impact on the competitiveness (and viability) of supply chains operating between Ireland and Northern Ireland; and
- ask the Minister to provide further information on the implementation of the Withdrawal Agreement Joint Committee Decision on at risk goods, how it is affecting the movement/export to Northern Ireland of steel products which are subject to EU safeguard measures, and what steps the Government is taking to mitigate the (potentially substantial) cost to business.

12 Rest of the World imports are those brought into Northern Ireland from countries other than the UK or the EU/EEA.

13 See the guidance on UK Steel—Exporting into EU Steel Safeguards, published by MAKEuk on 22 January 2021 and the RTE news piece by their Europe Editor (Tony Connelly), Factory closure warning over NI steel import tariffs, published on 15 January 2021.

2.13 We also draw this chapter to the attention of:

- the International Trade Committee given its interest in tariff rate quotas negotiated as part of the UK's Goods Schedule in the WTO and as part of the UK's bilateral trade agreements with third countries, as well as its interest in UK trade remedies policy; and
- the Business, Energy and Industrial Strategy Committee to inform its inquiry on Businesses and Brexit preparedness.

3 EU Magnitsky Act: sanctions regime for human rights abuses[14]

These EU documents are politically important because:

- they contain the legal framework for the EU's "Magnitsky Act", a sanctions framework targeted at perpetrators of human rights abuses worldwide, that mirrors a similar regime already implemented by countries including the US, the UK and Canada. Although the UK no longer participates in the EU's foreign policy sanctions, where both the UK and EU Member States impose similar sanctions this could amplify their cumulative effect.

Action

- Draw the EU Magnitsky Act to the attention of the International Development Committee and the Foreign Affairs Committee.

Overview

3.1 On 7 December 2020, the Foreign Affairs Ministers of the 27 EU Member States agreed on a new sanctions regime under the EU's Common Foreign & Security Policy (CFSP) allowing the European Union to collectively impose restrictive measures against "individuals, entities and bodies […] responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred". This is, in essence, the EU's version of a "Magnitsky Act",[15] the umbrella term for legislation allowing the imposition of sanctions by one jurisdiction against individuals held responsible for human rights abuses in another part of the world.[16]

3.2 Where an individual or entity is listed as being subject to the regime, they have their assets held within the European Union frozen and are (for individuals) banned from travelling through any EU Member State. The EU followed the lead of others, with countries including the US, Canada and EU Member State Lithuania having already adopted their own Magnitsky Acts between 2012 and 2017, which all primarily target Russian individuals. In the UK, Parliament also included "gross human rights violations" as a reason for imposing sanctions on a person or an entity under the new Sanctions and Anti-Money Laundering Act 2018.[17] The Government used this power in July 2020 to

14 (a) Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses; Legal base: Article 29 TEU; unanimity; Department: Foreign, Commonwealth and Development Office; Devolved Administrations: Not consulted; ESC number: 41711.
(b) Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses; Legal base: Article 215 TFEU; Qualified Majority Voting; Foreign, Commonwealth and Development Office; Devolved Administrations: Not consulted; ESC number: 41710.

15 It is named after the Russian lawyer Sergei Magnitsky who died from maltreatment in a Moscow prison after having uncovered large-scale tax fraud involving government officials, and whose case inspired the US Congress to pass the first such Act in 2012. See for more information: House of Commons Library Briefing Paper 8374, "Magnitsky legislation" (20 July 2020).

16 The "Magnitsky Act" is also part of a broader trend under the CFSP to apply a "thematic" approach to restrictive measures, rather than tying sanctions specifically to a country or geographic area. In recent years, EU Foreign Ministers have also established EU-level sanctions regimes relating to cyber-attacks on the EU or its allies, and—partially in response to the 2017 Novichok attack in Salisbury—to chemical attacks.

17 In addition, the Criminal Finances Act 2017 amended the Proceeds of Crime Act 2002 to expand the definition of 'unlawful conduct' to include gross human rights abuses or violations.

issue the Global Human Rights Sanctions Regulations 2020, which in a sense constitutes the UK "Magnitsky Act", and immediately designated multiple Russian, Saudi, Burmese and North Korean individuals under it.[18]

3.3 Magnitsky Acts as implemented by individual jurisdictions like the UK and the EU constitute a so-called autonomous sanctions regime, in other words not one required by a Resolution of the UN Security Council. As such, the individuals subject to such sanctions will vary by each issuing jurisdiction, although the consequences of listing—an asset freeze and travel ban—are broadly similar. As is customary when the EU agrees on the legal framework for a new sanctions regime, no individuals or organisations were listed under its Magnitsky Act at the time of its approval in December 2020, and as such it does not yet 'bite' on anyone. Any listing of individual persons or entities requires the unanimity of all 27 Member States.[19] It has been reported that the EU may use the framework to impose sanctions against certain Russian individuals following the politically motivated arrest of opposition leader Alexei Navalny in Moscow in January 2021.[20]

Implications for the UK

3.4 The UK of course left the European Union on 31 January 2020. Under the terms of the post-Brexit transitional arrangement set out in its Withdrawal Agreement, EU law—including foreign policy sanctions—were only binding on the UK until 31 December 2020. From 1 January 2021, the UK has been able to determine its own autonomous sanctions policy completely independently under the terms set out in the Sanctions and Anti-Money Laundering Act 2018.

3.5 Ahead of the end of the post-Brexit transition period, the Government passed a number of regulations under the 2018 Act to carry over existing EU sanctions from 1 January 2021, but it can on a case-by-case basis decide whether to maintain, vary or abolish them. As a result, the list of individuals subject under UK law has already begun to diverge from to the EU's. For example, while the UK has carried over the legal framework for EU sanctions against Turkey in response to the latter's unlawful hydrocarbon exploration in parts of the Mediterranean under Cypriot sovereignty, Ministers have declined to list the two officials of the Turkish Petroleum Corporation which are subject to sanctions in the EU (meaning the UK regime is not currently applicable to anyone). The reverse can also apply: as noted, the Government established the UK's "Magnitsky" sanctions regime unilaterally in summer 2020 and has listed specific persons under it, whereas the EU has only a legal framework but no listings.

3.6 Given the UK is no longer bound by EU sanctions policy, as and when the Foreign Affairs Ministers of the remaining 27 Member States list anyone under the EU Magnitsky Act, there UK Government will be under no legal obligation to follow suit. At the Government's insistence, there is also no formal framework for cooperation on foreign policy matters such as sanctions in the new UK/EU Trade & Cooperation Agreement, which the UK ratified in December 2020.

18 Under the Sanctions and Anti-Money Laundering Act 2018, the Government can establish frameworks to impose sanctions on individuals for entities for specific reasons—such as human rights abuses—by means of regulations, subject to the relevant procedure for parliamentary approval of such delegated legislation as specified in the Act. The designation of particular individuals or entities is done by ministerial direction, i.e. without parliamentary involvement.

19 Article 5 of the Council Decision establishing the sanctions regime.

20 Euractiv, "Navalny arrest could prompt inauguration of EU Magnitsky-style sanctions regime" (19 January 2021).

3.7 As such, there are no direct legal or policy implications for the UK that flow from the EU's "Magnitsky Act".[21] However, the EU's approach to restrictive measures in its foreign policy is likely to remain of wider geopolitical interest and relevance. In particular, as the Committee noted in its Thirtieth Report of 25 November 2020, in which we reported to the House on developments in EU sanctions against Russia, Belarus and Turkey:

> Questions about alignment of the UK's and EU's restrictive measures—or lack thereof—against particular countries or individuals in response to geopolitical events will remain relevant and, at times, controversial. For example, the effect of asset freezes against those held responsible for human rights abuses is more effective if the UK, with its large financial sector, also imposes them. Conversely, trade sanctions and arms embargoes will carry greater weight where they are given effect not just by the UK, but also by the entire European Union.

3.8 While the UK can now impose sanctions more flexibly, it has lost the ability to formally shape the EU's collective approach in this area (and the Common Foreign & Security Policy more broadly) and, of course, can no longer veto EU foreign policy measures. The UK's absence from the EU's deliberations may have implications for the substance of the latter's sanctions. The House of Commons Library has suggested, for example, that it may lead to a softening of EU sanctions against Russia while the UK was still in the EU, because Brexit "could shift the balance in favour of those in the EU who want better relations with Russia". Without UK participation, given its intelligence capabilities, EU sanctions could also "be made on a thinner evidence base", which could dissuade the EU from imposing restrictive measures on specific individuals in the first place, or make such measures easier to challenge in court.[22]

3.9 In any event, we would expect the Government to engage with the EU on a case-by-case basis where alignment of sanctions is in the UK's wider interests. As such, we consider that it is in Parliament's interest to remain aware of changes in the EU's sanctions policy, and our intention is to continue monitoring developments in this area and draw them to the attention of the Foreign Affairs Committee, where appropriate.

Action

3.10 In light of the broader political relevance of the EU's approach to sanctions under its Common Foreign & Security Policy for the UK, we draw the adoption of the EU Magnitsky Act to the attention of the International Development Committee and the Foreign Affairs Committee in particular. We may consider any specific listings made by the EU under this regime, to impose sanctions against individual human rights violators, in due course.

21 On 23 December, the Minister of State at the Foreign, Commonwealth and Development Office (Nigel Adams MP) submitted a Memorandum on the EU's sanctions regime to Parliament. This summarises the EU legal act but does not make any assessment of any broader geopolitical relevance for the UK.

22 House of Commons Library briefing 9117, "End of Brexit transition: implications for defence and foreign policy cooperation" (19 January 2021).

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

Department for Transport

(41673)
—
Report from the Commission to the European Parliament and the Council—Quality of petrol and diesel fuel used for road transport in the European Union (Reporting year 2018).

COM(20) 742

(41761)
—
—
Council Recommendation (EU) 2020/2169 of 17 December 2020 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction.

(41764)
—
—
Commission Recommendation (EU) 2020/2243 of 22 December 2020 on a coordinated approach to travel and transport in response to the SARS-COV-2 variant observed in the United Kingdom.

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)

Business, Energy and Industrial Strategy Committee: Northern Ireland Protocol: application of tariff rate quotas [Proposed Regulation (SC)]; Offshore renewable energy [Commission Communication (SNC)]

Environmental Audit Committee: Offshore renewable energy [Commission Communication (SNC)]

Foreign Affairs Committee: EU Magnitsky Act: sanctions regime for human rights abuses [(a) Council Decision, (b) Council Regulation (SC)]

International Development Committee: EU Magnitsky Act: sanctions regime for human rights abuses [(a) Council Decision, (b) Council Regulation (SC)]

International Trade Committee: Northern Ireland Protocol: application of tariff rate quotas [Proposed Regulation (SC)]

Northern Ireland Affairs Committee: Northern Ireland Protocol: application of tariff rate quotas [Proposed Regulation (SC)]

Formal Minutes

Wednesday 3 February 2021

Members present:

Sir William Cash, in the Chair

Jon Cruddas	Craig Mackinlay
Allan Dorans	Anne Marie Morris
Mrs Andrea Jenkyns	Greg Smith
Mr David Jones	

Scrutiny Report

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 4 read and agreed to.

Resolved, That the Report be the Thirty-fifth Report of the Committee to the House.

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

[Adjourned till Monday 8 February at 2.00 p.m.

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.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

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

Tahir Ali MP (*Labour, Birmingham, Hall Green*)

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

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

Richard Drax MP (*Conservative, South Dorset*)

Margaret Ferrier MP (*Scottish National Party, Rutherglen and Hamilton West*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

Mrs Andrea Jenkyns MP (*Conservative, Morley and Outwood*)

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

Stephen Kinnock MP (*Labour, Aberavon*)

Mr David Lammy MP (*Labour, Tottenham*)

Marco Longhi MP (*Conservative, Dudley North*)

Craig Mackinley MP (*Conservative, South Thanet*)

Ann Marie Morris MP (*Conservative, Newton Abbot*)

Charlotte Nichols MP (*Labour, Warrington North*)

Greg Smith MP (*Conservative, Buckingham*)