



House of Commons  
European Scrutiny Committee

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**Forty-third Report of  
Session 2019–21**

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Documents considered by the Committee on 14 April 2021

*Report, together with formal minutes*

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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](http://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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# 1 EU Structural Funds: Covid-19 Response<sup>1</sup>

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**These EU documents are politically important because they:**

- have allowed authorities across the UK to re-purpose at least £412 million of unused EU funding to help respond to the Covid-19 pandemic.

## Action

- Report to the House.
- Draw to the attention of the Housing, Communities and Local Government Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Welsh Affairs Committee and the Work and Pensions Committee.

## Overview

1.1 To help EU Member States and the UK respond to the Covid-19 pandemic, the Commission proposed last year to mobilise available cash reserves under the EU Structural and Investment (ESI) Funds.<sup>2</sup> This Coronavirus Response Investment Initiative (CRII and CRII Plus) applied retrospectively in order to cover expenditure from 1 February 2020. It is relevant to the UK as the UK fully participated in EU programmes funded through the 2014–20 Multiannual Financial Framework, including all ESI Funds. Funding will continue for agreed projects until closure of the programmes in December 2023.

1.2 We set out further detail on the plans in our [Report](#) of 7 May 2020 and sought further information from the Minister on use in the UK of the agreed flexibility, a request which we reiterated on 18 June 2020.<sup>3</sup>

1.3 In his [letter](#) of 30 January 2021, the Minister for Climate Change and Corporate Responsibility (Lord Callanan) updated us on progress in the UK. He reported that approximately £412m of re-purposed funds from the ESI Funds programmes 2014–20 had been identified and committed to CRII projects across the UK which address the economic and health care impacts of Covid-19. This was not, he said, additional funding, but the repurposing of any uncommitted funds or reallocated funds from existing commitments within the current ESI Funds programmes 2014–20.

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1 (a) Proposal for a Regulation amending Regulation (EU) No 1303/2013, Regulation (EU) No 1301/2013 and Regulation (EU) No 508/2014 as regards specific measures to mobilise investments in the health care systems of the Member States and in other sectors of their economies in response to the COVID-19 outbreak, (b) Proposal for a Regulation amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak; (a) Council document [6816/20](#), COM(20) 113, (b) Council document [7154/20](#), COM(20) 138; Legal base: (a) Articles 43(2), 177 and 178 TFEU (b) Articles 177, 178 and 322(1)(a) TFEU, QMV, Ordinary Legislative Procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC numbers: (a) 41137, (b) 41176.

2 The European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

3 See our Seventh Report HC 229–iv (2019–21), [chapter 1](#) (7 May 2020) and Thirteenth Report HC 229–ix (2019–21), [chapter 2](#) (18 June 2020).

1.4 The Minister explained that management of the ESI Funds programmes is a matter for the Managing Authorities in England and the Devolved Administrations of the UK. The funding identified from ESI Funds by UK Managing Authorities is alongside the UK Government’s and devolved Governments’ economic support packages and the EU’s Temporary State Aid Framework. He noted that the UK’s Managing Authorities are ensuring that there is no duplication between their activities to meet Covid-19 challenges and the UK and devolved Governments’ latest business and health support measures.

1.5 The Minister went on to break down the spending across Funds and across the UK.

1.6 The England ERDF (European Regional Development Fund) Managing Authority (Ministry for Housing, Communities and Local Government), had identified about £81m of ERDF that had been used for: the Reopening High Streets Safely Fund; Growth Hubs support to the wider economy to support SME resilience and survival; and to provide support to the visitor economy delivered also via Growth Hubs.

1.7 The England European Social Fund (ESF) Managing Authority (Department for Work and Pensions—DWP) had used CRII flexibilities to move a significant amount of funding from the “More Developed” Category of Region to the “Transition” Category of Region.<sup>4</sup> The additional money would be used to directly fund employment, social inclusion and skills support needs caused by the pandemic and help address local areas’ Covid-19 recovery plans. DWP had awarded over £132m of funding to projects focussed on assisting the economic recovery of local areas and further opportunities may be awarded in future. DWP had also launched specific activity seeking to address digital poverty to help support people and provide internet access. These projects include: the loan of digital devices to ESF participants to allow internet access; the provision of data, enabling access to the internet; and human resource to assist participants to set up the equipment and understand basic functions.

1.8 In Wales, about £166.5m had been reallocated from existing commitments in ERDF (£56.5m) and ESF (£110m). ERDF funds had primarily been used for business finance and support, with a smaller amount of their research and innovation portfolio used for the Covid-19 response. Their new ESF priority for health and social care “Containing Covid-19 through Capacity” would be used to help reinforce the capacity of health and social care services during the crisis.

1.9 In Scotland, about £19m ERDF and £11m ESF had been identified for CRII projects. These funds would be used to support the Scottish Government’s response to the pandemic, specifically supporting the healthcare response and business support.

1.10 The Marine Management Organisation had identified about £2.5m from the European Maritime and Fisheries Fund across the UK for CRII projects. England utilised their re-purposed funding of about £0.7m towards applications for grants to help ports or harbours impacted by the Covid-19 pandemic and to provide health and safety equipment for fishing vessel owners. Northern Ireland utilised their funding of about £0.85m towards temporary cessation of fishing activities providing financial support to fishers who ceased

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4 More developed regions: GDP above 90% of average. Transition regions: GDP between 75% and 90% of average.

activity for a defined period. Scotland identified their CRII funding of about £0.95m for public health funding towards aquaculture businesses whose markets are closed and/or are placing more production into cold storage.

### **Action**

1.11 The Minister's letter provides helpful information on how authorities across the UK have re-purposed EU funding towards their Covid-19 response. We require no further information.

1.12 We are reporting the Minister's letter to the House as politically important and draw it to the attention of the Housing, Communities and Local Government Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Welsh Affairs Committee and the Work and Pensions Committee.

## 2 Establishing adequate minimum wages in the EU: Brexit implications<sup>5</sup>

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**This proposal for an EU Directive is politically important because:**

- it is the first legally binding EU-level initiative concerned with the setting of minimum wages;
- it is part of a wider agenda to strengthen the EU’s social dimension and rulebook through improvements to living and working conditions;
- the Directive, if it becomes EU law, will not apply to the UK but may have implications for the UK under the “level playing field” provisions in the EU-UK Trade and Cooperation Agreement; and
- these provisions include a commitment to maintain existing labour and social standards (in place by 31 December 2020) and a mechanism to counter significant divergences in these standards in the future which materially affect trade and investment.

### Action

- No further action; monitor developments.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee, the Treasury Committee, the Women and Equalities Committee and the Joint Committee on Human Rights.

### Overview

2.1 In her September 2020 State of the Union speech, European Commission President Ursula von der Leyen stated: “Everyone must have access to minimum wages either through collective agreements or through statutory minimum wages.”<sup>6</sup> The Commission’s [proposal for a legally binding Directive](#) seeks to fulfil this commitment. It would require EU Member States to establish a secure and predictable framework at national level for setting adequate minimum wages, increase access to minimum wage protection, and improve monitoring and enforcement mechanisms. The proposed Directive will only become EU law if it is agreed by the Council and the European Parliament. The outcome of their negotiations is far from certain. Some Member States have questioned whether the EU has the necessary powers to adopt a law on minimum wages and, if it has, whether action at EU rather than national level is justified.

2.2 The Directive will not apply in the UK if it does become EU law. It may nevertheless have implications for the UK under the “level playing field provisions” of the EU/UK Trade and Cooperation Agreement.<sup>7</sup> These are intended to ensure that trade and investment

<sup>5</sup> Proposal for a Directive on adequate minimum wages in the European Union; COM(20) 682; Legal base: Article 153(1)(b) and 153(2) TFEU, ordinary legislative procedure, QMV; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Not consulted; ESC number 41621.

<sup>6</sup> [State of the Union speech](#), 16 September 2020.

<sup>7</sup> See Part Two, Title XI, chapter one of the Agreement. The level playing field provisions cover competition policy, State subsidies, taxation, labour and social standards, and the environment and climate.



between the EU and the UK are based on open and fair competition and a shared commitment to “maintain and improve” high standards in all level playing field areas, including labour and social standards. While there is no expectation or requirement that the UK keep pace with changes to EU law, the EU and the UK have both agreed that there should be no backsliding in the standards that were in place when the post-exit transition period ended on 31 December 2020. This is the principle of “non-regression”. In addition, a separate “rebalancing” mechanism is intended to future-proof the Agreement if unilateral changes to the standards underpinning the level playing field are made after 31 December 2020 and have a material impact on trade or investment, thereby giving the EU or the UK an unfair competitive advantage.

2.3 There is little to indicate that the different thresholds for triggering the non-regression and the rebalancing provisions of the Trade and Cooperation Agreement are likely to be met in relation to the frameworks for setting national minimum wages in the UK and the EU. Even if it were to become EU law, the Directive would only set minimum requirements which are unlikely to diverge significantly from those already in place in the UK. The policies and priorities of the EU and the UK in this area appear to be converging rather diverging, making it far less likely that either party will have cause to invoke the non-regression or rebalancing provisions in the near future.

## The proposed Directive

2.4 The Treaty on the Functioning of the European Union allows the EU to adopt laws (“directives”) setting minimum standards on working conditions but also specifies that this power does not extend to pay.<sup>8</sup> The proposed Directive would not, therefore, establish a minimum EU-wide wage. It seeks instead to ensure that all Member States have in place a transparent system for setting an adequate minimum wage with a view to achieving decent working and living conditions. The European Commission considers that a minimum wage guarantee “is a pivotal element of adequate working conditions” and essential to advance the EU’s development as a “highly competitive social market economy”.<sup>9</sup> It says that minimum wage protection will also help to sustain domestic demand, strengthen incentives to work, reduce in-work poverty and inequality, and tackle the gender pay gap as more women than men are in low wage jobs.<sup>10</sup>

2.5 All EU Member States have some form of minimum wage protection based on a statutory minimum wage (as in the UK), collective bargaining between employers and organisations representing workers, or a combination of the two. Most—21 of the 27 EU Member States—have a national statutory minimum wage. The proposed Directive would require these Member States to:

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8 See Article 153 TFEU.

9 See Article 3 of the Treaty on European Union (TEU) and p.6 of the Commission’s explanatory memorandum accompanying the proposed Directive.

10 For further information on the proposed Directive, see the [European Commission’s Questions and Answers](#) and factsheet on adequate minimum wages.

- set out clear criteria for ensuring an adequate minimum wage which must include purchasing power and other commonly used international indicators for assessing adequacy in relation to the wages of other workers;<sup>11</sup>
- establish their own consultative bodies which include worker and employer representatives to advise on all aspects of the statutory minimum wage, including the criteria used to set it and the updating of minimum wage rates;
- limit variations in the minimum wage rate for different groups of workers and any permitted deductions; and
- enhance access to and effective enforcement of the statutory minimum wage.

2.6 The proposed Directive would require all Member States, including the remaining six in which minimum wage protection is provided exclusively by collective agreements, to promote collective bargaining on wage setting and to work with social partners (bodies representing employers and workers) to extend its coverage. Those in which collective bargaining covers fewer than 70% of workers would also have to publish an action plan to demonstrate how they intend to achieve this. The European Commission considers that collective bargaining has “a strong effect” even in countries where minimum wages are determined by statute, citing evidence which indicates that countries with high collective bargaining coverage tend to have fewer low wage workers, higher minimum wages relative to the wages of other workers, and less wage inequality. The proposed Directive also includes monitoring and reporting requirements to ensure effective minimum wage protection for workers as well as provisions guaranteeing access to an impartial dispute resolution mechanism, a right of redress, protection against adverse treatment for individuals pursuing a complaint, and effective and dissuasive sanctions against employers.

2.7 The proposed Directive is intended to give effect to the principles set out in the [European Pillar of Social Rights](#)—specifically principle 6 which says that workers have the right to fair wages that provide for a decent standard of living.<sup>12</sup> The European Pillar of Social Rights is a non-binding statement of principles which was proclaimed by the Presidents of the European Parliament, Council and European Commission in November 2017 and reflects their vision of “principles and rights essential for fair and well-functioning labour markets and welfare systems in 21st century Europe”. The forthcoming Porto Social Summit in May 2021 is expected to give renewed impetus to the implementation of the Social Pillar within the EU.<sup>13</sup>

2.8 The proposed Directive also has a wider economic purpose. The European Commission suggests that some Member States are reluctant to improve their minimum wage rates or extend their coverage because they fear it may affect their competitiveness, creating “important discrepancies” in the operation of the EU’s Single Market. It considers

11 In its accompanying explanatory memorandum, the European Commission refers to the Kaitz index (which compares the minimum wage to the median wage or the average wage), the standard of decent living defined by the Council of Europe (which compares the net minimum wage to the net average wage) and comparisons based on the minimum wage and the at-risk-of-poverty rate.

12 Principle 6 also provides: “Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented. All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.”

13 See the [European Pillar of Social Rights Action Plan](#) which constitutes the Commission’s contribution to the Porto Social Summit.

that an EU-wide framework establishing minimum requirements for adequate national minimum wages is needed to ensure “a level playing field” based on high social standards, innovation and productivity developments.<sup>14</sup>

2.9 The outcome of negotiations on the proposed Directive is uncertain. Two EU Member States, Malta and Sweden, have issued Reasoned Opinions questioning the need for action at EU level and there is unease in others that the proposal may interfere with long-standing national systems for collective wage bargaining.<sup>15</sup> Even if the European Parliament and the Council agree a compromise text, the proposal envisages a two-year period from its formal adoption for Member States to implement its provisions, meaning that it is unlikely to create EU-wide legally binding obligations for the setting of adequate minimum wages until late 2023 at the earliest.

### The UK’s National Minimum Wage Framework

2.10 The UK’s [National Minimum Wage Act 1998](#) introduced a statutory national minimum wage and established an independent [Low Pay Commission](#) to advise the Government on national minimum wage levels. The Act is supplemented by Regulations (Statutory Instruments) which contain detailed rules on implementing the national minimum wage and set the applicable rates. The UK’s national minimum wage includes a national living wage which, from April 2021, must be paid to workers aged 23 or over, as well as lower minimum hourly pay rates for workers in three different age groups (21–22, 18–20, and 16–17) and for apprentices.<sup>16</sup> The Low Pay Commission also monitors enforcement of the national minimum wage. It reported (in May 2020) that year-on-year increases in the national minimum wage since 2016 had been accompanied by an increase in underpayments, even though the resources and staff dedicated to minimum wage enforcement had never been greater, and made recommendations to close the enforcement gap.<sup>17</sup>

### The EU-UK Trade and Cooperation Agreement

2.11 The Trade and Cooperation Agreement (which applies provisionally in the EU and the UK pending final ratification) affirms the right of the EU and the UK to set their own labour and social standards and methods of enforcement. Both have agreed that they will not weaken or reduce the levels of protection that were in place before the Agreement took effect, on 1 January 2021, or fail to enforce their labour and social standards in a way that would affect trade or investment between the EU and the UK. To comply with these “non-regression” provisions, the EU and UK must both have effective enforcement systems, including labour inspections and mechanisms to remedy and sanction violations of labour laws and social standards.

14 See recitals (6) and (29) of the proposed Directive.

15 See the [Reasoned Opinion of the Maltese House of Representatives](#) and the [Reasoned Opinion of the Swedish Riksdag](#). See also the [Nordic Labour Journal, EU minimum wage Directive: last stand for the Nordics](#), published on 22 January 2021.

16 See the [Low Pay Commission Report 2020](#).

17 See the [Low Pay Commission’s report: Non-compliance and enforcement of the National Minimum Wage, May 2020](#). The Commission estimated that over 420,000 workers were receiving less than the minimum wage they were entitled to in April 2019.

2.12 The Trade and Cooperation Agreement also includes “rebalancing provisions”. These provisions concern future laws and policies developed after the end of the post-exit transition period. Their purpose is to correct any imbalances in the conditions underpinning trade and investment in the EU and the UK which are the result of “significant divergences” in labour and social standards (or policies on the environment, climate and subsidy control) and have a material impact on trade or investment.

### ***Non-regression and the national minimum wage***

2.13 The UK’s statutory framework for setting and reviewing the national minimum wage was in place long before the end of the post-exit transition period and is therefore likely to be within the scope of the Trade and Cooperation Agreement provisions on non-regression relating to fair working conditions and employment standards.<sup>18</sup> While the EU and the UK have agreed to “continue to strive to increase their respective labour and social levels of protection”, the Agreement does not require any alignment of laws or impose any obligation on the UK to apply or replicate the system for setting adequate minimum wages proposed in the Directive, should it become law in the EU. The UK will, nonetheless, need to be vigilant in ensuring that any changes to its own minimum pay framework, or deficiencies in its enforcement, do not trigger the non-regression provisions. These provisions will only apply if the effect of any changes (or inadequate enforcement) is to reduce or weaken the levels of protection in place before 1 January 2021 to a degree that impacts trade or investment between the EU and the UK.

2.14 As for the EU, the non-regression provisions in the Trade and Cooperation Agreement only bite on labour and social standards set by the EU which were in place at the end of the post-exit transition period. The UK will not therefore be able to rely on the non-regression principle if it considers that EU Member States are backsliding on their minimum wage commitments, given that these are set out in their own national frameworks and, at the relevant time (end of transition), were not part of EU law.

### ***The rebalancing mechanism***

2.15 There is a higher threshold for triggering the rebalancing mechanism as it allows swifter action to counteract future (post-transition) divergences in EU and UK regulatory standards. The divergence must be “significant” and it must have a material impact on trade and investment which can be substantiated by “reliable evidence” (not mere conjecture or a remote possibility).

2.16 The proposed Directive is not yet EU law. Until it is, there is no relevant EU-wide standard on minimum wage protection that can be used to establish a “significant divergence” with the UK’s existing standard. Nor, it seems, could the UK use the rebalancing mechanism if the EU fails to agree the European Commission proposal, on the basis that the lack of an EU-wide framework places the UK at a significant competitive disadvantage.

2.17 If the Directive becomes EU law, there appears little prospect of EU standards outpacing those that apply in the UK as it will only establish minimum requirements. Conceivably, the UK could invoke the rebalancing mechanism if it considers that the

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<sup>18</sup> See Article 6.2: Non-regression from levels of protection, Part Two of the TCA, Title XI, chapter six.

difference between its own and the EU’s framework for setting an adequate minimum wage is so significant as to materially affect trade or investment in the UK. This seems unlikely, given the apparent similarity in the EU and UK approaches.

## The Government’s position

2.18 In his [Explanatory Memorandum](#) (submitted before negotiations on the Trade and Cooperation Agreement had concluded), the Minister for Small Business, Consumers and Labour Markets (Paul Scully MP) described the Commission proposal as “very prescriptive” while also recognising that it would “bring greater transparency and scope for scrutiny to the process of minimum wage setting”. He anticipated that around half of the EU’s Member States would need to produce a collective bargaining action plan as fewer than 70% of their workers were covered by collective wage agreements.

2.19 The Minister noted that the proposed Directive (if adopted) would not form part of EU law applicable in Northern Ireland under the Protocol on Ireland/Northern Ireland and indicated that it would have no wider legal, policy or financial implications for the UK.

## Our assessment

2.20 There is no indication that the Government intends to weaken the current statutory framework for setting the national minimum wage and national living wage—its aim is for the national living wage to reach two-thirds of median earnings by 2024, and for it to apply to workers aged 21 and over by the same date. This aspiration is in line with the reference values used at international level to guide assessments of the adequacy of minimum wages which are cited by the European Commission.<sup>19</sup> The Minister’s Explanatory Memorandum noted the similarity between the UK’s system and the framework envisaged by the European Commission. This suggests that the policies and priorities of the EU and the UK in this area are converging rather diverging, making it far less likely that either party will have cause to invoke the non-regression or rebalancing provisions in the Trade and Cooperation Agreement.

2.21 Separately, the Secretary of State for Business, Energy and Industrial Strategy (Rt Hon. Kwasi Kwarteng MP) has sought to dampen speculation that Brexit would lead to a weakening of employment rights and protection, assuring the House in January that the Government would not use its new-found regulatory freedom to reduce workers’ rights and announcing that a planned post-Brexit review of employment laws would not go ahead.<sup>20</sup>

2.22 While major reform of existing UK employment laws therefore seems unlikely for the time being, changes to the way in which these laws operate or are enforced could still trigger the non-regression and rebalancing provisions of the Agreement if their effect is to give the UK an unfair competitive advantage by drawing investment away from the EU. This could result, for example, from serious shortcomings in the UK’s system of labour

19 See p.13 of the Commission’s explanatory memorandum accompanying the proposed Directive. The European Trade Union Confederation has proposed to set the minimum wage at either 60% of the median or 50% of the average wage in each EU country. See the International Monetary Fund’s [Working Paper No. 20/59](#), A European Minimum Wage: Implications for Poverty and Macroeconomic Imbalances.

20 See [Hansard](#), vol. 688, col. 86–87, 25 January 2021; see also the [BBC News report](#), Employment rights review scrapped by business secretary (28 January 2021).

inspections or from measures (such as the reintroduction of Employment Tribunal fees) which make it more difficult to detect and sanction rogue employers or to obtain an effective remedy for breaches of the UK's national minimum wage regulations.

2.23 The provisions in the Trade and Cooperation Agreement for resolving disputes concerning labour and social standards are complex and favour consultation over more formal methods of dispute settlement involving an independent panel of experts or arbitration.<sup>21</sup> This complexity, and the potential sanctions (such as tariffs or suspension of cooperation under parts of the Agreement) that may be applied during and at the end of the formal dispute settlement procedures, may also be a factor informing future policy choices and changes to domestic law which risk falling foul of the non-regression or rebalancing provisions.

## Action

2.24 Labour and social standards are a core part of the level playing field conditions underpinning the Trade and Cooperation Agreement. While the proposed Directive will not apply to the UK if it becomes EU law, legal and policy developments at EU level and domestically which affect the level playing field conditions may have important consequences for the stability and predictability of the EU/UK trading relationship under the Trade and Cooperation Agreement. We therefore intend to monitor developments but propose no further action at this stage.

2.25 As the proposed Directive concerns labour market regulation and enforcement and seeks, in part, to support wider efforts to close the gender pay gap, we draw it to the attention of the Business, Energy and Industrial Strategy Committee, the Treasury Committee, the Women and Equalities Committee and the Joint Committee on Human Rights.

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21 For an overview of the dispute settlement provisions, see the [House of Commons Library Briefing Paper Number 09139](#) on The UK-EU Trade and Cooperation Agreement: governance and dispute settlement, published on 19 February 2021.

## 3 Northern Ireland Protocol: Illegal timber arrangements<sup>22</sup>

These EU documents are legally and politically important because:

- they cover an area with which Northern Ireland must maintain regulatory alignment after the end of the post-Brexit Transition Period, but the UK and EU have disagreed on how the legality of timber imports into Northern Ireland from certain countries should be guaranteed.

### Action

- Report to the House.
- Draw to the attention of the Northern Ireland Affairs Committee.

### Overview

3.1 The EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan encouraged trade in timber that is harvested legally and verified as such by partner countries. This system is governed by Voluntary Partnership Agreements (VPAs) between the EU and partner countries. Once a VPA has been agreed, partner countries can issue FLEGT licences to verify the legality of timber harvest.

3.2 Under the terms of the Ireland/Northern Ireland Protocol annexed to the EU-UK Withdrawal Agreement, Northern Ireland must continue to apply both the EU's FLEGT Licensing Regulation<sup>23</sup> and the EU Timber Regulation.<sup>24</sup> These laws set the framework for tackling illegal logging and, specifically, for the licensing arrangements.

3.3 When we first considered these documents on the conclusion, and signature, of a VPA between the EU and Honduras, we noted a difference of opinion between the EU and the UK as to whether Northern Ireland should be covered by UK VPAs or by EU VPAs. We set out detail of the issue in our [Report](#) of 16 September 2020.<sup>25</sup>

3.4 The Minister of State (Rt Hon. The Lord Goldsmith of Richmond Park) has since provided a further [update](#) to us,<sup>26</sup> confirming the position that Northern Ireland will be covered by UK VPAs. This is necessary, he explains, because a VPA is a Treaty and can only be entered into by the UK. Northern Ireland cannot do so as a separate entity.

22 (a) Proposal for a Council Decision on the conclusion of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU (b) Proposal for a Council Decision on the signing, on behalf of the Union, of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU; (a) [COM\(20\) 340](#), (b) [COM\(20\) 341](#); Legal base: (a) Articles 207(3), 207(4), 218(6)(a)(v) and 218(7) TFEU, QMV (b) Articles 207(4) and 218(5) TFEU. QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; (a) 41439 (b) 41440.

23 [Council Regulation \(EC\) No 2173/2005](#) of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

24 [Regulation \(EU\) No 995/2010](#) of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

25 Twenty-first Report HC 229–xvii (2019–21), [chapter 3](#) (16 September 2020).

26 Letter from Rt Hon. The Lord Goldsmith of Richmond Park to Sir William Cash MP, 25 January 2021.

3.5 The effect is that, while Northern Ireland will apply the EU Timber Regulation and the EU FLEGT Regulation, the implementation of the FLEGT licensing scheme in Northern Ireland will take place under the auspices of the UK's VPAs with timber-producing countries.

3.6 The UK has given effect to this approach under the [UK-Indonesia VPA](#) which provisionally entered into force on 5 January 2021, mirroring the existing [EU-Indonesia VPA](#). Since the terms of both the EU's and UK's VPAs are the same, says the Minister, licences issued under the UK VPA are *de facto* issued in accordance with the terms of the EU VPA.

3.7 The Minister concludes with reference to the EU-UK Trade and Cooperation Agreement, which provides for continued co-operation on trade-related aspects of sustainable forest management, the conservation of forest cover and illegal logging. The Government, he says, will work to ensure the smooth operation of the FLEGT system in relation to Northern Ireland following the end of the transition period.

## Assessment

3.8 We note that the EU-Honduras VPA has now been signed,<sup>27</sup> although we understand that it will likely be several years before the licensing system comes into effect, and the UK will wait for further progress in that regard before preparing a UK-Honduras VPA.

3.9 This strand of correspondence has highlighted an area of uncertainty, where Northern Ireland's legal obligations under the Northern Ireland Protocol intersect with related international agreements. We note that the Minister does not confirm that the EU is satisfied with the UK's approach and therefore that there may still be a difference of opinion. At this stage, though, we see no merit in pursuing this strand of inquiry. We will monitor developments with interest in this policy area and others where similar issues arise.

## Action

3.10 We are satisfied with the material provided by the Minister and require no further information.

3.11 We are reporting the Minister's recent letter to the House for information and drawing it to the attention of the Northern Ireland Affairs Committee.

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27 ["EU and Honduras sign agreement to reduce illegal timber logging"](#), Council of the European Union, 23 February 2021.



## 4 Northern Ireland Protocol: Batteries Regulation and Electric Vehicles<sup>28</sup>

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### This EU document is politically important because:

- it will apply in Northern Ireland under the terms of the Northern Ireland Protocol;
- it has implications for UK-wide batteries and electric vehicle policy as legislative divergence between Great Britain and Northern Ireland could affect the UK internal market; and
- it is a potentially significant step towards attracting investment in the EU’s electric vehicle battery industry, which is important because—under the terms of the EU-UK Trade and Cooperation Agreement—rules of origin requirements mean in practice that batteries for electric vehicles will need to be sourced from the EU or UK from 2027 in order to benefit from tariff-free trade between the EU and UK.

### Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee.

### Overview

4.1 In December 2020, the European Commission proposed a wide-ranging new Regulation to promote the development, and sustainability, of batteries, notably for use in electric vehicles. Once in force, the Regulation will apply in Northern Ireland as it replaces the existing EU Batteries Directive, with which Northern Ireland is already required to remain aligned. The Regulation could affect the UK as a whole both because of the impact of Northern Ireland’s alignment on the UK internal market but also because of the provisions in the EU-UK Trade and Cooperation Agreement limiting how much of an electric car may contain materials not sourced from either the UK or the EU.

4.2 In summary, the draft Regulation seeks to ensure that: battery raw materials are supplied sustainably and responsibly; battery cells, modules and packs are manufactured using clean energy, contain low amounts of hazardous substances, are energy efficient and designed to last for a long time; and that batteries are properly collected, recycled or repurposed so that the materials they contain feed back into the economy. Further information on the content of the draft Regulation, and the Government’s initial response, was set out in our [Report](#)<sup>29</sup> of 20 January 2021.

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28 Proposal for a Regulation concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020; [13944/20](#) + ADDs 1–4, COM(20) 798; Legal base Article 114 TFEU, QMV, Ordinary legislative procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41721.

29 Thirty-fourth Report HC 229–xxx (2019–21) [chapter 3](#) (20 January 2021).

4.3 After considering the proposal and the Government's position, we [wrote](#) to the Parliamentary Under-Secretary of State (Rebecca Pow MP) requesting further analysis of the proposal, including implications for Northern Ireland and for the UK internal market. We also asked how the Government intended to address any identified concerns to the EU institutions. Finally, we drew attention to the relevance of the EU-UK Trade and Cooperation Agreement provisions concerning rules of origin for batteries and electrified vehicles (EVs). In practice, the Agreement means that EV batteries will need to be sourced from either the UK or the EU by 2027 in order to secure tariff-free trade, thus requiring the swift development of domestic markets. Noting the potential risk that the EU's establishment of a full life-cycle regulatory framework may encourage investment there rather than in the UK, we asked whether the UK's domestic regulatory considerations might be accelerated in response.

### The Government's position

4.4 In her [reply](#) of 1 February 2021, the Parliamentary Under-Secretary of State (Rebecca Pow MP) committed to ensuring that the UK's statute book is fully functioning with respect to the EU law applicable in Northern Ireland (NI) under the Protocol, such as the draft batteries legislation in question.

4.5 Concerning the impact of the EU legislation on the UK internal market, the Minister recalled that, under the terms of the UK Internal Market Act 2020, NI batteries produced under the new EU legislation would be able to be placed on the Great Britain (GB) market without additional requirements. GB batteries would, however, need to meet EU requirements in order to be placed on the NI market. The Minister acknowledged that there would inevitably be additional processes and costs for GB battery producers in meeting those requirements. The Government's intention was to minimise the impacts in NI and GB, as far as it is possible to do so.

4.6 When assessing the impact of the proposal on the UK internal market, the impacts which would be considered, said the Minister, cover the economic effects specified in the United Kingdom Internal Market Act 2020 for the Office for the Internal Market to consider. These include the indirect and cumulative effects, distortion of competition or trade and the impact on prices, quality and choice for consumers. A range of options for limiting these impacts can then be considered.

4.7 The Minister noted that the proposal could broadly be broken down into those matters relating to criteria and standards for placing batteries on the market, which are reserved, and those relating to waste matters, which are devolved. It would be for Northern Ireland, she said, to determine its approach in respect of the waste matters. In a subsequent [letter](#) to the then House of Lords EU Committee, the Minister clarified this, noting that the UK Government and Northern Ireland Executive were working closely together on the proposals and to establish who would be responsible for bringing forward legislation to implement various aspects of the proposals.

4.8 While the Minister did not yet have an initial analysis to share with the Committee, she confirmed that the Government was working with other Government Departments, Northern Ireland, the other devolved administrations, regulators and industry to analyse the EU proposals and the UK's policy approach, together with what this means for the

ongoing review of domestic batteries legislation. That domestic review was scheduled to lead to a consultation in the fourth quarter of this year. The Minister will share the analysis of the EU proposals as soon as it is available.

4.9 The Minister indicated that any UK concerns with the legislation would be addressed to the EU institutions through the Joint Consultative Working Group (JCWG) established under the Northern Ireland Protocol. In her letter to the House of Lords, the Minister noted that the JCWG met to agree its Rules of Procedure on 29 January 2021 and the dates of subsequent meetings would be a matter for the co-chairs.

4.10 Concerning the bespoke rules of origin for batteries and electrified vehicles agreed as part of the EU-UK Trade and Cooperation Agreement (TCA), the Minister noted that the Government had received positive feedback from stakeholders on the outcome of the negotiations in that regard and would continue to work closely with car and battery manufacturers across the UK to accelerate plans for a UK electric vehicle (EV) supply chain. She said that the Government had announced up to £1bn funding to develop UK supply chains for the large-scale production of EVs and for further research and development. It would accelerate mass production of key technologies in the UK through major investments, including in the manufacturing of batteries, along with their component and materials supply chains.

### **Our assessment**

4.11 We welcome the further information provided by the Minister and look forward to pursuing this matter with her once the Government has completed its analysis of the proposals.

### **Action**

4.12 We have written to the Minister as set out below.

4.13 We are reporting the Minister's response to the House as politically important and drawing it to the attention of the Northern Ireland Affairs Committee.

### ***Letter from the Chair to the Parliamentary Under-Secretary of State at the Department for Environment Food and Rural Affairs (Rebecca Pow MP)***

We considered your letter of 1 February 2021 at our meeting of 14 April 2021.

We welcome the further information that you provided and look forward to pursuing this matter with you once you have completed your analysis of the proposals, in cooperation with the Northern Ireland Executive and stakeholders.

We would welcome an update from you as soon as you have completed your analysis.

## 5 Documents not considered to be legally and/or politically important

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### Department for Business, Energy and Industrial Strategy

(41692) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the first short-term review of the Geo-blocking Regulation.  
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COM(20) 766

### Department for Work and Pensions

(41702) Commission Staff Working Document Evaluation of the European Disability Strategy 2010–20.  
13209/20

SWD(20) 289

# Annex

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## *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:** Establishing adequate minimum wages in the EU: Brexit implications [Proposed Directive (SC)]

**Housing, Communities and Local Government Committee:** EU Structural Funds: Covid-19 Response [Proposed Regulations (SC)]

**Joint Committee on Human Rights:** Establishing adequate minimum wages in the EU: Brexit implications [Proposed Directive (SC)]

**Northern Ireland Affairs Committee:** EU Structural Funds: Covid-19 Response [Proposed Regulations (SC)]; Northern Ireland Protocol: Batteries Regulation and Electric Vehicles [Proposed Regulation (SNC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Decisions (SC)]

**Scottish Affairs Committee:** EU Structural Funds: Covid-19 Response [Proposed Regulations (SC)]

**Treasury Committee:** Establishing adequate minimum wages in the EU: Brexit implications [Proposed Directive (SC)]

**Welsh Affairs Committee:** EU Structural Funds: Covid-19 Response [Proposed Regulations (SC)]

**Women and Equalities Committee:** Establishing adequate minimum wages in the EU: Brexit implications [Proposed Directive (SC)]

**Work and Pensions Committee:** EU Structural Funds: Covid-19 Response [Proposed Regulations (SC)]

# Formal Minutes

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**Wednesday 14 April 2021**

Members present:

Sir William Cash, in the Chair

Allan Dorans                      Mr David Jones

Margaret Ferrier                Greg Smith

Mrs Andrea Jenkyns

## **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 5 read and agreed to.

*Resolved*, That the Report be the Forty-third Report of the Committee to the House.

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

[Adjourned till Wednesday 21 April at 1.45 p.m.]

## Standing Order and membership

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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](http://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*)