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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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1 The EU's new General Product Safety Regulation[1]

This EU document is legally and politically important because:

- it seeks to amend EU product safety rules for consumer goods which continue to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland, with possible impact on the whole UK market for such goods because of "unfettered access" for Northern Irish goods under the Internal Market Act 2020; and
- it will also affect the significant number of British businesses exporting consumer goods to the EU, whose exports will need to comply with the new rules even if they do not apply directly in Great Britain.

Action

- Write to the Minister for Small Business, Consumers and Labour Markets (Paul Scully MP) to seek further information on the Government's views on the implications of the proposed EU Regulation for the UK, in particular Northern Ireland.
- Draw the proposal to the attention of the Business, Energy and Industrial Strategy Committee, the International Trade Committee and the Northern Ireland Committee.

Overview

1.1 Within the EU's Single Market for goods, products can circulate freely between its Member States without customs controls at national borders. For goods where the EU has not set harmonised product standards,[2] such as furniture, textiles, and bicycles, free movement is achieved through the principle of "mutual recognition": this means a Member State must normally accept the sale of "non-harmonised" goods, legally on the market in another EU country, even if it does not meet its own domestic rules.

1.2 To mitigate safety risks associated with common consumer goods like furniture and clothing that are not subject to product-specific harmonised European rules, the EU has put in place a 'General Product Safety Directive' (GPSD).[3] This imposes a general obligation on manufacturers to only place consumer goods on the EU market if they are

1 Proposal for a Regulation on general product safety; Council and COM number: 10381/21 + ADDs 1–3, COM(21) 346; Legal base: Article 114 TFEU; ordinary legislative procedure; QMV; Department: Business, Energy and Industrial Strategy; Devolved Administrations: consulted; ESC number: 41874.

2 For so-called 'harmonised goods', there are binding common product rules under EU law to guarantee goods meet particular safety standards. This is typically the case for products with the highest risk of consumer harms, like food, chemicals and pharmaceuticals. For these, there are product-specific safety rules under EU legislation, so that there is confidence that goods meet the same standards irrespective of which EU Member State they originate in or are imported into.

3 Directive 2001/95/EC, as amended.

safe, and establishes how that safety requirement can be met. In June 2021, the European Commission proposed a substantive overhaul of the GPSD. This draft new 'General Product Safety Regulation' (GPSR) would, for example:

- update the nature of risk assessments for electronic consumer goods to take into account new technologies such as Artificial Intelligence and software updates;
- create new product safety obligations for online market places like eBay;
- set stricter requirements for manufacturers relating to the traceability and recall systems for defective or dangerous goods; and
- require non-EU businesses exporting consumer goods into the EU to appoint a legal representative within the European Union with responsibility for compliance with its product safety rules.

1.3 The proposed Regulation is now with the European Parliament and the EU Member States in the Council of Ministers, which must agree on its legal text before it can become EU law. The timetable for amendments and approval is not yet clear at this stage, but the GPSR is unlikely to take effect before 2023 at the earliest.

1.4 Although the UK has now of course left the EU, the proposed General Product Safety Regulation may still have implications for British consumers and businesses, as noted in an Explanatory Memorandum on the proposal submitted by the Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Paul Scully MP) on 21 September 2021.

1.5 In particular, under the Northern Ireland Protocol—which the Government is currently seeking to renegotiate[4]—EU rules on goods remain in force in Northern Ireland for the time being. This means that the EU's proposed new General Product Safety Regulation may apply there directly in due course. In turn, that could also have ramifications for the market in consumer goods in England, Wales and Scotland: under the Internal Market Act 2020, goods that are lawfully on the market in Northern Ireland also have "unfettered access" to the market in the rest of the UK. That currently includes products imported into Northern Ireland from the EU, made to meet EU safety standards.[5] As such the current Protocol and the Internal Market Act combined amount to the UK's de facto unilateral recognition of the safety standards of goods in the EU without any border controls or formalities, provided such products are brought into Great Britain via Northern Ireland.[6] By contrast, goods brought into England, Wales or Scotland directly from the EU *are* subject to border controls, including product safety formalities.[7]

4 See HM Government, "Northern Ireland Protocol: the way forward" Command Paper 502 (July 2021). The European Commission made its own set of proposals to change the implementation of the Protocol on 12 October 2021. Talks between the Government and the EU on their respective proposals are on-going.

5 Under current UK law, only 'qualifying Northern Ireland goods' have unfettered access to the market for goods in Great Britain. However, such 'qualifying goods' are currently defined very broadly.

6 The Explanatory Memorandum submitted by the Department for Business, Energy and Industrial Strategy (BEIS) states as much, noting: "Qualifying NI goods would be subject to unfettered access to the GB market meaning qualifying NI goods covered by this change [in EU rules] that meet the requirements to be placed on the market in NI will still be able to be placed on the GB market."

7 Under the Government's revised 'Border Operating Model', full customs and import controls on EU goods entering Great Britain are being gradually introduced into 2022.

1.6 In addition, the Government has noted that businesses in Great Britain exporting consumer goods to the EU will, in due course, also need to comply with the requirements set out in the new EU GPSR even though they are not directly bound by it.[8] That could mean, in particular, the need to appoint a legal representative in the EU where they sell goods directly to EU consumers via the internet, and implementing more costly traceability and recall systems in case of defective goods. This could increase the administrative overheads for such exports, especially for smaller companies. While exact statistics of British exports of consumer goods are difficult to come by (because the General Product Safety Directive applies to such an undefined but wide range of goods), the value of UK textile and clothing exports to the EU *alone*—which are subject to the GPSD—amounted to £6.7 billion in 2016. The volume of British exports potentially affected by this new Regulation is therefore significant.

1.7 On 3 November 2021, we took evidence from the Minister responsible for product safety at the Department for Business, Energy and Industrial Strategy (Paul Scully MP) about the general implications of changes to EU product safety rules for the UK. The Minister confirmed that the draft GPSR would apply in Northern Ireland under the Protocol as currently worded. He also referred to the possibility of goods made to EU standards entering Great Britain via Northern Ireland, and the economic importance of the new Regulation for British businesses exporting goods to the EU. However, his evidence also made clear that the Government is reluctant to engage on the precise implications of the proposed Regulation for the UK while negotiations on potential changes to the implementation of the Protocol are on-going.

1.8 In light of this, we have considered the context and substance of the proposed new EU General Product Safety Regulation in more detail in the remainder of this chapter. We have also written to the Minister to further clarify the Government's view on the potential implications of the EU proposal for the UK, and may invite him back to give further evidence on the interaction between the UK and EU's product safety regimes in due course.

Product safety regulation in the EU

1.9 Within the EU's Single Market, there is free movement of goods. This means that—broadly speaking—it is not normally permitted for one EU country to ban from its market a product that is legally for sale elsewhere in the EU, and there are no systematic customs controls or checks at national borders when goods are moved between EU Member States.[9]

1.10 To foster the necessary trust among Member States that goods lawfully for sale across the Single Market are safe, the EU has developed an extensive body of law related to the safety of products that all EU countries must abide by. In particular, for a number of categories of goods that are deemed the most likely to pose potential risks if not regulated adequately, the EU has established sector-specific rules, known as "harmonised legislation". In most cases, these EU-wide rules set basic "health, safety, and environmental protection requirements" derived from international standards, but they sometimes go beyond this and establish detailed "technical specifications" that particular goods must meet before

8 Oral evidence by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q15.

9 Certain exceptions to the principle of free movement of goods are permitted, within the confines of EU law.

they can be sold within the EU, enforced by the relevant public authorities of individual Member States. Sectors subject to harmonising EU legislation notably include foodstuffs,[10] chemicals,[11] pharmaceuticals,[12] vehicles[13] and machinery.[14]

1.11 Nevertheless, many different types of products—especially every-day, non-electronic consumer items, such as furniture, clothing and bicycles—are not subject to harmonising EU rules.[15] These "non-harmonised" goods still benefit from free movement across EU borders on the basis of the "mutual recognition" principle, which means that products lawfully marketed in one Member State on the basis of its national rules can—as a rule—also be sold throughout the EU (regardless of whether they comply or not with the domestic legislation of other Member States).[16] However, the trading standards authorities of EU countries are in certain cases permitted to prevent the sale of specific products that would otherwise be allowed on the basis of intra-EU mutual recognition that contravene their local rules, for example for reasons of public safety, public health or environmental protection.

1.12 In addition, for "non-harmonised" consumer goods specifically, the EU has also established a generic set of rules meant to ensure they do not pose unacceptable risks to their users. This 'safety net' is currently set out in the 2001 General Product Safety Directive (GPSD).[17] For covered consumer goods,[18] the GPSD sets a general obligation for manufacturers and importers to "only place on the market products that are safe", requiring the risks associated with the product to be considered throughout the design stage and, where necessary, communicated to buyers at the point of sale. Given the wide range of goods it still covers, the GPSD does not itself set specific safety requirements for specific products. Instead, a product is deemed to be 'safe' if, "under normal or reasonably foreseeable conditions of use, it does not present a risk" or such risk is minimised "consistent with a high level of protection". However, there is no common benchmark on what constitutes a "safe" product. Instead, the Commission can request European Standardisation Organisations[19] to develop a safety standard for a specific type of product, which—if approved by the EU—replace any previous national standards in all

10 See for example Regulation (EU) 178/2002 on general food law, as amended.

11 Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

12 The legal framework of pharmacovigilance for medicines marketed within the EU is provided for in Regulation (EC) No 726/2004 and in Directive 2001/83/EC. The European Commission has announced a significant overhaul of this framework in its 2021 Pharmaceutical Strategy.

13 Regulation (EU) 2019/2144 on type-approval requirements for motor vehicles as regards their general safety.

14 Directive 2006/42/EC on machinery. The European Commission has recently proposed a substantial overhaul of the EU's safety requirement for machinery items like chainsaws, cranes and motorised lawn-mowers. We reported this proposal, and its potential implications for the UK, to the House in June 2021.

15 The principle of mutual recognition is based on Articles 34 to 36 of the Treaty on the Functioning of the European Union, supplemented by Regulation (EU) 2019/515 on mutual recognition.

16 Directive 2001/95/EC.

17 Recital 5 of the Directive notes: "It is very difficult to adopt [EU] legislation for every product which exists or which may be developed; there is a need for a broad-based, legislative framework of a horizontal nature to deal with such products, and also to cover lacunae […] with a view to ensuring a high level of protection of safety and health of consumers".

18 Food, pharmaceuticals and medical devices are excluded from the Directive's scope because they are subject to separate harmonised EU rules. The GPSD does apply, in part, to other consumer goods that are subject to harmonised EU rules but where these do not fully cover all relevant safety risks. For example, until fairly recently, the EU's specific legislation for vehicle safety did not make provision for recall of defective cars. Until amendments to that effect were introduced, the general recall provisions of the General Product Safety Directive applied to cars.

19 The ESOs are CEN, CENELEC and ETSI.

Member States.[20] Consumer goods are presumed safe if they conform to such standards as transposed into national law of an EU country. If no relevant and comprehensive European standards or national rules exist, the safety assessment must be based on other factors, such as guidelines issued by the European Commission or best practice in the sector concerned.

1.13 The current list of approved European standards for consumer goods under the GPSD is extremely broad, including for example gym equipment, garden furniture, lighters and cameras.[21] As noted, EU law also gives individual Member States some flexibility to restrict the sale of products even if they otherwise benefit from the mutual recognition principle. In particular, under Article 8 of the GPSD, EU countries can "prevent or restrict the marketing or use of a consumer product"—that would otherwise be legal for sale because of mutual recognition—"by reason of the risk it poses to the health and safety of consumers".[22] In those cases, the product in question can be sold in the relevant EU country only if it complies with the applicable domestic rules, even if it already meets the standards of another Member State.

1.14 The Directive also requires producers to maintain systems allowing their goods to be linked to the manufacturer, and take action to withdraw from sale or recall a product if a serious safety risk is identified.[23] The trading standards authorities of the individual EU Member States have a legal responsibility to ensure that the requirements of the Directive are enforced ('market surveillance'), including by the removal of unsafe goods from the market. In exceptional circumstances, the European Commission can adopt temporary, EU-wide measures to address serious safety risks associated with a specific product.[24] The Directive also established the EU's Rapid Alert System for non-food consumer products (the 'Safety Gate', previously known as RAPEX),[25] which enables businesses, the Commission and EU countries to exchange information on dangerous products and measures taken to address them.[26] This system can be used to warn consumers about defective or dangerous goods.

20 The first step in the standardisation process under the Directive is a Commission Decision to set the so-called 'safety requirements' to be met by the standards. The second step is the issuance of a formal standardisation request (the 'mandate') to the European Standardisation Organisations to develop standards compliant with those requirements. After the European standardisation organisation has developed the standard, the Commission adopts—with the support of the EU's Member States—a Commission Decision to publish the reference to this standard in the EU's Official Journal.

21 The GPSD does not require the affixing the well-known 'CE' mark on consumer goods, which is typically reserved for harmonised goods.

22 Measures permitted under Article 8 of the GPSD include for example a temporary ban on a product's supply while safety evaluations are carried out; a ban on the marketing of products found to be dangerous, and the withdrawal and recall of items already stocked or sold; a requirement that a product posing serious risks carry warnings. In addition, the Mutual Recognition Regulation sets out the procedure for restrictions on market access for goods covered by the GPSD for reasons other than "a risk to the health and safety of consumers". That might be the case, for example, "when a product is not allowed to be marketed for reasons based on the denomination, size, composition or packaging, or for environmental reasons".

23 See Article 5 of the Directive. Distributors have a less far-reaching duty of care obligation to ensure compliance with the applicable safety requirements for goods they distribute that are covered by the Directive.

24 See Article 13 of the Directive.

25 Separate EU arrangements for the exchange of information on unsafe products are in place for food, pharmaceuticals and medical devices.

26 RAPEX can also be used to exchange information on goods which pose "less than a serious risk", but this currently accounts for less than 1% of all notifications through the system. There is also a separate network of EU national authorities with the aim of further enhancing administrative cooperation on matters of product safety (the 'Consumer Safety Network').

1.15 In addition to the GPSD, the EU also has another piece of general legislation relating to the safety of consumer goods: the Food-Imitating Products Directive (FIPD). This law, un-amended since 1987, restricts the sale of non-food products that may be mistaken for edible goods, to prevent people—especially children—from attempting to eat them. To that end, it requires all EU countries to "prohibit the marketing, import and either manufacture or export" of non-food products that "possess a form, odour, colour, appearance, packaging, labelling, volume or size" which makes it "likely that consumers […] will confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them".

1.16 The GPSD and FIPD do not govern the legal consequences if an unsafe product causes actual harm to a consumer or their property, for example the need to pay damages. Those civil liability rules are set out in Member States' national legislation and the EU's overarching Product Liability Directive,[27] last amended in 1999, which specifies that "the producer shall be liable for damage caused by a defect in his product".

Evaluation of the General Product Safety Directive

1.17 The General Product Safety Directive has been in force throughout the EU since 2004.[28] However, it has been acknowledged for many years that its provisions would benefit from amendment, especially in light of the switch to online shopping (which was, for obvious reasons, not a prominent feature of the market for consumer goods when the legislation was agreed twenty years ago). For example, the European Commission held an initial consultation on the implementation of the Directives from 2009 to 2011,[29] after which it concluded that a revision of the GPSD would be necessary to make sure that "consumers [can] be confident that the goods they buy are reliable, irrespective of the place of production".

1.18 As part of a subsequent EU "action plan on safer and compliant products", the Commission in 2013 introduced draft legislation to replace the Directive with a putative General Product Safety Regulation that would—in the words of our predecessor Committee—"update the rules and align these as far as possible" with those applicable for goods subject to harmonising EU legislation. However, the EU's Member States disagreed over the substance of the draft Regulation, in particular with respect to the proposed introduction of a mandatory labelling of origin on certain manufactured products (known as the 'Made In' provision). Negotiations stalled because of this issue in 2016, and the proposal was formally withdrawn in 2020 without becoming law.[30] However, in its Work Programme for that year, the European Commission committed to a *new* proposal to "update the general legal framework on product safety".

1.19 Following a fresh evaluation of the GPSD (and FIPD), the Commission concluded in 2020 that the EU rulebook in this area had five key areas where amendments should be considered: the risks and challenges posed by the rise in online shopping, which

27 Council Directive 85/734/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended.

28 In the UK, as a Member State, the Directive was given effect through the General Product Safety Regulations 2006. The Food Imitating Products Directive has been in force since 1989.

29 As referenced in Commission document COM(2013) 78 (13 February 2013), p. 3.

30 A separate piece of legislation to upgrade the EU's legal framework for market surveillance was agreed in 2019, as part of the so-called 'Goods Package' of EU rules, aiming to "strengthen product compliance and enforcement of EU harmonisation legislation on products".

in some cases allows the EU's product safety framework to be circumvented; the need for the safety requirements for goods to take into account the increased use of internet connectivity and Artificial Intelligence in consumer goods, which may alter the risks to users over the lifetime of the product; the out-dated provisions on market surveillance and enforcement by trading standards authorities; the lack of stringent procedures for the recall of defective goods; and divergent interpretation of each EU country's obligations to address risks associated with food-imitating products.

1.20 To address these shortcomings, the European Commission on 30 June 2021 published a proposal for a new EU General Product Safety Regulation that would replace both the General Product Safety Directive and the Food-Imitating Products Directive. This is draft legislation only: to become EU law, it needs to be approved by the European Parliament and a qualified majority of EU Member States in the Council of Ministers, which can make changes to the legal text as part of the EU's legislative process.

The proposal for a new EU General Product Safety Regulation

1.21 The Commission says the proposed General Product Safety Regulation would improve the application of relevant safety rules for all consumer goods. The draft legislation would maintain the scope of the current Directive, namely applying to consumer goods that are not fully covered by harmonising EU rules.[31] Similarly, there would still be a "presumption of safety" if a product complies with relevant approved European standards or, in the absence thereof, the applicable domestic rules of individual EU countries.[32] Rules on civil liability for goods that cause damage to people or property would also remain unchanged (although the Commission is separately preparing amendments to the EU's Product Liability Directive, which it is due to present in 2022).[33]

1.22 However, the proposal would also make a number of substantive and significant changes to the safety rules currently set out in the GPSD and FIPD. In summary, and subject to any amendments made by the European Parliament and the Council of Ministers in the course of the legislative process, the draft legislation aims to address the following issues in EU's current legal framework for consumer product safety:

- **The legislation is out-dated because it does not take into account the explosive growth in e-commerce since the early 2000s**. Although the GPSD applies to all consumer products irrespective of the sales channel, it does not explicitly set out obligations for online market places like Amazon or eBay with respect to the safety of products that consumers buy through these platforms.[34] This could affect both consumer safety and competition between companies using 'online'

31 As such, items including foodstuffs, chemical products and pharmaceuticals are excluded from the scope of the draft Regulation.

32 Article 27 of the proposed Regulation provides that if one EU country decides that a product is not safe, it must also be presumed dangerous by all other EU countries. However, if Member States arrive at a different conclusion based on their own investigation and risk assessment, the European Commission can arbitrate between them in a bid to identify a common approach.

33 Article 39 of the draft General Product Safety Regulation states that it "shall not affect the assessment of the liability of the party concerned, in the light of the national law applying in the case in question […] [nor] affect Council Directive 85/374/EEC [the Product Liability Directive]".

34 In particular, the legal obligations on online marketplaces are ambiguous under the current Directive except where they already qualify as a producer, importer or distributor.

and 'offline' sales channels.[35] The new Regulation therefore includes a new section specifically on the obligations of online market places.[36] This would require them to provide consumers with safety and traceability information on products they can buy through their platforms, as provided by the seller.[37] However, platforms would not be required to verify the accuracy of that information, which would remain the responsibility of the seller.[38]

- **In a linked development, the Commission has also identified potential safety issues when it comes to the large volume of goods bought by EU consumers online from outside the EU, in particular from China**.[39] This is problematic because for such 'direct imports' to the consumer there is no business within the EU with an obligation to ensure the GPSD is complied with, which creates safety risks[40] and potential distortion of competition.[41] Therefore, the new Regulation would make it illegal for a product to be "placed on the market in the EU"—including via online sales direct to consumers[42]—unless there is a company based within the EU that is legally responsible for the safety of the product,[43] and would also revise the rules that facilitate traceability of specific products back to their manufacturer.[44]

- **The "market surveillance" provisions of the General Product Safety Directive are much less evolved than those that apply to products subject to harmonised EU rules, such as machinery, lifts and toys, for which the EU legal framework was updated by means of the Market Surveillance Regulation in 2019.**[45] Market surveillance encompasses the activities by relevant authorities

35 While the EU in 2018 established a voluntary 'Product Safety Pledge' for online market places to improve the safety of products sold online, as a non-binding instrument, any infringements are not subject to penalties; monitoring its effectiveness is difficult; and the Pledge has not been signed by all relevant operators. The proposed Regulation would, in essence, turn the Pledge into legally-binding commitments.

36 The draft Regulation defines an online marketplace as "a provider of an intermediary service using software, including a website, part of a website or an application, operated by or on behalf of a trader, which allows consumers to conclude distance contracts with other traders or consumers for the sale of products covered by this Regulation".

37 Chapter IV of the draft General Product Safety Regulation.

38 The Commission's proposal for a Digital Services Act, which we considered in more detail in our Report of 21 April 2021, also aims to partly tackle these issues by introducing the 'Know-Your-Business-Customer' principle (KYBC) and traceability provisions when it comes to online sales via the largest online marketplaces.

39 According to the Commission, purchases from outside the EU accounted for 27% of EU online purchases in 2019, with more than 150,000 parcels arriving into the EU each day from China alone in 2017.

40 About half of the product safety alerts issued through the EU's RAPEX system identify China as the dangerous product's country of origin.

41 The difficulty in enforcing the GPSD against goods bought online from outside the EU may have 'level playing field' implications because it causes an imbalance between EU companies and their overseas competitors, as the latter may circumvent the GPSD's obligations and associated costs and administration.

42 Article 4 of the proposed General Product Safety Regulation.

43 A similar obligation for third country-sellers to appoint a responsible 'economic operator' within the EU already applies to the sale of certain goods subject to harmonising EU rules under Regulation 2019/1020 on market surveillance, including construction products, machinery, toys and pyrotechnics.

44 As noted, online marketplaces would also be required to collect and display information on the manufacturer (and therefore its EU-based representative) when facilitating the sale of consumer goods from outside the EU. More generally, the proposed new Regulation also contains more detailed provision on traceability of goods (i.e. the obligation for relevant companies to enable defective products to be withdrawn from the market or recalled from consumers). In particular, the Commission would be empowered to impose "more stringent" systems of traceability for companies responsible for the manufacture or distribution of "products susceptible to pose a serious risk to people's health and safety". The Impact Assessment cites the example of "chemicals in childcare articles".

45 Regulation (EU) 2019/1020.

('MSAs')[46] to ensure that products on the market meet applicable health and safety requirements and are removed if not. Under the GPSD, these authorities have fewer powers to intervene for the protection of product users than they do for goods covered by other EU rules.[47] The new GPSR would therefore align the market surveillance framework for 'non-harmonised' consumer goods with the 2019 Regulation, for example as regards legal powers for relevant authorities to "block websites proposing dangerous products" or to order online market places to remove such goods from sale.

- **The use of new technologies in consumer goods is not adequately covered by the risk-mitigating requirements of the GPSD, because it was drafted before these technologies were a consideration.** In particular, the Commission is concerned that the current Directive does not adequately cover the risks posed by software updates,[48] Artificial Intelligence (AI)[49] and inadequate cyber-security of electronic goods.[50] The new Regulation therefore states the manufacturer's risk assessment of a good will need to cover any relevant "cyber-security features" and its "evolving, learning and predictive functionalities" as a result of software updates or AI after the product has been sold.[51]

- **With respect to recalls of defective or potentially dangerous goods, return rates by consumers remain generally low and the GPSD does not substantively regulate how recalls should be organised.** The Commission proposes to address this by creating more detailed provisions on recalls in the new Regulation. These would create a mandatory template for recall notices to make them more effective,[52] and provide an explicit legal basis for companies to use customer data to communicate such notices (to override any data protection concerns).[53]

46 In the UK, Market Surveillance Authorities include the Health & Safety Executive, local authorities' trading standards departments, the Office for Product Safety and Standards and the Vehicle Certification Agency.

47 The Commission notes, for example, that a Market Surveillance Authority in the EU "could be entitled to take more effective actions online against a toy bed (a toy being a harmonised product) as opposed to a baby's crib, which falls under the GPSD".

48 The Commission has separately proposed to address some of these risk for particular products—in particular software updates to radio equipment and machinery—through new harmonising EU legislation, but argues "in view of the highly innovative potential of the new technology sector, it is difficult to foresee the safety features and risks of these new technology products" and therefore an amendment to the general product safety rules is in order to make sure that these risks are assessed.

49 The EU's new Artificial Intelligence Act, which we considered in more detail in our Report of 23 June 2021, would set new standards for AI systems used as safety components in physical products but only for specific categories of goods subject to harmonising EU legislation (and therefore not, as a rule, goods covered by the General Product Safety Directive).

50 The Commission cites the example of a passenger car with insufficient cyber-security protection, allowing third parties to hack into its software and remotely access the vehicle's control systems, or smart watches that might permit third parties to surreptitiously identify the location of specific individuals (including children).

51 See Article 12 of the draft General Product Safety Regulation. In addition, the relevant company would become explicitly legally responsible for mitigating any safety risks associated with a "substantial modification" of a product after its sale, in particular by means of a post-sale software update.

52 With respect to product recalls, the proposed Regulation would also prohibit the use of "terms decreasing the perception of risk" in recall notices, such as 'voluntary', 'precautionary', 'discretionary' and 'in rare/specific situations', because this might lead consumers to ignore the recall. The draft Regulation would also require that businesses disseminate recall announcements via different communication channels "to ensure the widest possible reach".

53 The proposal also foresees the possibility of mandatory registration of newly-purchased goods by the consumer with the manufacturer for "products or specific categories of products", to ensure that users can be contacted in case of recalls or safety warnings. This would be done by means of an Implementing Act, a type of EU Statutory Instrument. Businesses that already offer product registration systems or loyalty programmes would be required to "offer consumers the possibility to register their contact details specifically to receive safety notifications".

The proposal would also give consumers a right to an "effective, cost-free and timely remedy" for the recalled product.[54] In addition, the existing informal EU Consumer Safety Network of national product safety authorities would be placed on a statutory footing.[55]

- **Finally, the EU's restrictions on potentially dangerous food-imitating products "are currently not enforced in a harmonised manner" among Member States.** The Commission proposal would end the status of the Food Imitating Products Directive (FIDP) as a stand-alone piece of legislation. Instead, as part of the risk assessment for goods covered by the new General Product Safety Regulation, companies will need to take into account any "food-imitating aspect" that could put consumers' health in danger.

1.23 The Commission has chosen to present its draft legislation on product safety in the form of a Regulation, rather than a Directive as is currently the case. This would leave less discretion for individual EU countries when implementing the new rules, because a Regulation unlike a Directive is directly applicable and binding, without requiring implementing legislation in each Member State to have effect. This change, the Commission argues in its Impact Assessment, "would facilitate consistent enforcement and [a] level-playing field" within the EU's Single Market by "streamlining […] terminology" that defines the scope of the legislation and "thereby reducing administrative burdens and legal ambiguities".[56] This also has implications for the possible application of the EU's new General Product Safety Regulation in Northern Ireland, which we explore in more detail in paragraphs 28 to 39.

1.24 As noted, the Commission proposal is now with the European Parliament and the EU's Council of Ministers for consideration. These institutions can make amendments to the legal text of the General Product Safety Regulation, and the new rules can only become EU law once the Parliament and Council are agreed on the legislation. The timetable for the legislative process and adoption of the new Regulation, and by extension its entry into force, is not yet clear at this stage. While the Commission proposal does not contain any provisions for origin labelling of consumer goods, after the issue sank the previous attempt to revise the General Product Safety Directive six years ago, it is possible that 'Made In' signs could resurface during the negotiations and complicate the legislative process.[57]

Implications of the draft EU General Product Safety Regulation for the UK

1.25 The UK of course left the European Union on 31 January 2020 and EU law, including the General Product Safety Directive, ceased to apply—generally speaking—when the

54 In particular, the draft Regulation says consumers should not incur any "costs of shipping or otherwise returning the product". For products that "by their nature are not portable", the business recalling the goods would have to "arrange for the collection of the product".

55 Pre-Brexit, the UK's Office for Product Safety and Standards (OPSS) was a member of the EU CSN.

56 European Commission Impact Assessment SWD(2021) 168, p. 69.

57 The European Commission's Impact Assessment for the General Product Safety Regulation states that the possibility of "mandatory country of origin labelling for products" was "disregarded at an early stage" on the basis of a 2015 technical study. That study concluded that there was "little evidence of possible positive impacts of this clause on product traceability and safety for any of the product groups" analysed.

post-Brexit transition period ended on 31 December last year. However, for several reasons both the existing Directive and the proposed new General Product Safety Regulation remain directly relevant to the UK.

1.26 First, under the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, the GPSD "as amended or replaced" remains in effect in Northern Ireland, despite Brexit (although the Government is actively seeking to reduce the scope of EU law applicable in Northern Ireland). Second, the Directive—and, in the future, the new Regulation—may affect the conditions for exports of consumer goods from the UK to the EU, which are economically significant. These two factors may also, in combination, affect the benefits of divergence from the EU's approach with respect to the regulation of safety standards for consumer goods put on the market in England, Wales and Scotland. Against this background, the Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Paul Scully MP), as the Minister responsible for product safety policy, submitted an Explanatory Memorandum setting out the Government's position on the new EU Product Safety Regulation in September 2021. He also provided oral evidence to this Committee on 3 November 2021.[58] Based on the information provided by the Minister, we have explored how the EU proposal might impact the UK in more detail below.

EU product safety rules under the Northern Ireland Protocol

1.27 The UK, Northern Ireland included, left the EU's Customs Union and Single Market on 31 December 2020. In principle, that means that goods moved from the UK to the EU are now subject to controls at the border to verify compliance with, for example, the EU's product safety standards and customs rules.[59] However, to avoid the need for any infrastructure on the land border on the island of Ireland, for example to undertake customs controls, the UK and EU agreed a special "Protocol on Ireland/Northern Ireland" in the Withdrawal Agreement (that set the terms of the UK's exit from the European Union). While the Government has recently proposed significant changes to the Protocol, the legal arrangement as it stands requires Northern Ireland to remain aligned to a long list of EU rules related to the production of industrial and agricultural goods until at least the end of 2026.[60] The Directives on general product safety and on food-imitating products are both listed in the Protocol, and as such remain in effect in Northern Ireland even though they no longer apply as a matter of EU law in the rest of the UK.

1.28 Under the Protocol, goods on the market in Northern Ireland can be moved into Ireland—and, hence, the entire EU Single Market—without physical controls at the land border, and benefit from the principle of mutual recognition as described in paragraph 12.[61] Similarly, goods on the market in the EU—including in Ireland—can also be sold freely in Northern Ireland. However, the UK in respect of Northern Ireland can still block the sale of particular consumer goods from the EU based on the derogations from

58 Oral evidence by Paul Scully MP to the European Scrutiny Committee, 3 November 2021.

59 The UK has largely deferred the imposition of controls on goods coming in from the EU until early 2022.

60 The provisions of the Protocol that require Northern Ireland to remain aligned with EU law on goods are subject to the periodic democratic consent of the members of the Northern Ireland Assembly under Article 18 of the Protocol. They are due to vote on whether to keep those provisions in effect for the first time no later than the end of 2024, and if they reject them that element of the Protocol will become inoperative after a two-year period, i.e. from the end of 2026.

61 Article 5(4) and Annex 2 of the Protocol.

mutual recognition (as set out in Article 8 of the General Product Safety Directive).[62] This is permitted, in particular, if there are serious concerns about the safety of a particular product. The Protocol also means that consumer goods brought into Northern Ireland from Great Britain need to meet EU safety standards.[63]

1.29 The Protocol provides that references in it to EU rules "shall be read as referring to [them] as amended or replaced". This means, in this particular case, that the new EU General Product Safety Regulation would automatically become applicable in Northern Ireland instead of the GPSD and FIDP if the Protocol's alignment provisions are still in operation when these new EU rules take effect.[64] As the Minister acknowledges in his Explanatory Memorandum, changes to EU product safety rules would in that case apply to businesses in Northern Ireland manufacturing relevant consumer goods, or importing them from somewhere outside the EU (including the rest of the UK).[65] This may create a risk that businesses in Great Britain producing or selling consumer goods may avoid the Northern Irish market if the sale of such products there is subject to additional rules and requirements that do not apply in England, Wales and Scotland. For example, under the new EU Regulation, the sale of goods from Great Britain to a Northern Irish consumer via the internet may require the business to have a legal representative in Northern Ireland (or the EU). In addition, companies selling consumer goods in Northern Ireland might face more costly administrative overheads because of the proposed stricter requirements relating to traceability and recall of defective products within the EU.[66]

1.30 Unfortunately, the Minister's Explanatory Memorandum does not provide a substantive assessment of the extent to which the Commission proposal would require changes in the application of product safety rules to consumer goods in Northern Ireland. We have written to the Minister seeking further information on this point, as set out in the Annex to this chapter.

1.31 The situation is complicated further by the Government's proposed renegotiation of the Protocol, to which we have already referred and which the Minister referenced extensively when he gave evidence to us in early November. In particular, he argued that the current requirement for products to meet EU rules if they are to be placed on the market in Northern Ireland "ha[s] already caused difficulties for businesses" and could lead to "significant risks that many businesses in Great Britain simply give up trying to produce goods for the Northern Ireland market" because of the formalities and checks

62 While within the EU countries can suspend the principle of mutual recognition for consumer goods under the GPSD to ban or restrict the sale of dangerous products, the Internal Market Act 2020 provides for a much narrower range of exceptions to that principle as it applies between the UK's constituent nations. More specifically, at present, this option is available only when there are certain risks related to food and feed, chemicals, and fertilisers. These are not risks typically relevant to goods covered by the EU's General Product Safety Directive. However, the Government can—by means of regulations—amend the list of "exclusions from the market access principles" under the Internal Market Act in the future. See Section 10 of the Internal Market Act 2020.

63 The Government is seeking a new "dual regulation" approach, where goods would be permitted for sale in Northern Ireland if they meet either EU or UK product standards.

64 Article 13(3) of the Protocol.

65 There is a reservation under Schedule 3 of the Northern Ireland Act 1998 that reserves the right to legislate with respect to all technical standards in products relating to EU obligations to Westminster. The Department for Business, Energy and Industrial Strategy has noted that the Government "may need to lay a statutory instrument to ensure that enforcement provisions are properly implemented" as and when the General Product Safety Regulation is approved at EU-level.

66 In addition, the proposed new EU Regulation would substantively alter the powers of market surveillance authorities, including those in Northern Ireland, by aligning them with the EU's 2019 Market Surveillance Regulation.

involved. To address this, the Government has proposed a "full dual regulatory regime" under which goods would "be able to circulate within Northern Ireland if they meet either UK or EU rules".[67] Under this arrangement, the Minister says in his Memorandum, the new EU GPSR "would apply only [to goods placed on the market in Northern Ireland] if manufacturers wished to [...] access the EU as well as the NI market". However, compliance with EU product safety rules would not be necessary for consumer goods destined solely for Northern Ireland. If the negotiations with the EU do not lead to the desired changes to the Protocol, the Government has repeatedly suggested it may have recourse to the 'safeguard measures' set out in Article 16 of the Protocol. This could involve the unilateral suspension of the UK's legal obligation to apply EU law—including on consumer product safety—in Northern Ireland.

1.32 The outcome of the Government's engagement with the EU, and any potential changes to the legal provisions of the Protocol as a result, are not yet known at this point. As such, we are unable to assess the alternative implications of the draft General Product Safety Regulation for Northern Ireland under any potentially revised version of the Protocol.

Movement of consumer goods into Great Britain via Northern Ireland

1.33 The EU legal principle of mutual recognition and free movement of goods no longer applies to trade between Great Britain and the EU. Goods imported into England, Scotland and Wales from the EU must meet the applicable product standards in those jurisdictions, which can now diverge from the EU's product safety rules. Indeed, the Government is currently undertaking a Product Safety Review to inform "any prospective reform" of the UK rulebook in this area.

1.34 Due to the Protocol, products for sale in Northern Ireland are, by definition, currently subject to EU rather than UK rules. However, the principle of 'mutual recognition' under the Internal Market Act 2020 means that goods (including consumer items) that are on the market in Northern Ireland can also easily, and in most cases lawfully, be sold into Great Britain without the need to demonstrate compliance with any different product standards applicable in England, Wales or Scotland.[68] This is linked to the Government's commitment that Northern Irish businesses will retain 'unfettered access' to the entire UK market, under which "there should be no additional process or paperwork and there will be no restrictions on Northern Ireland goods arriving in the rest of the UK". As such, goods sent from Northern Ireland to Great Britain therefore do not routinely face customs paperwork or border controls. Since goods that meet EU standards can circulate freely in Northern Ireland under the Protocol (even under the Government's latest proposals), and goods that are legal for sale in Northern Ireland can be lawfully sold into the rest of the UK under the Internal Market Act, it follows that goods that meet EU product safety

67 The EU's concerns about non-compliant goods entering Ireland (and therefore its Single Market) from Great Britain without border controls via Northern Ireland would be addressed through "stronger arrangements for enforcement, including clearer rules for product labelling, extensive reciprocal data-sharing arrangements with the EU and Ireland, enhanced forums for cooperating on market surveillance and calibrating it to specific levels of risk, and awareness work with traders", as well as legislation "to provide for penalties for UK traders seeking to place non-compliant goods on the EU market".

68 The Act states that, under mutual recognition, "a good that can be lawfully sold in the part of the UK in which it has been produced or imported into may be sold in any other part of the UK without needing to comply with any relevant requirements applying to the sale in that other part".

standards—for example under the GPSD or any future replacement—could easily be sold from the EU into Great Britain via Northern Ireland, even if they are not compliant with post-Brexit UK standards or labelling requirements.

1.35 In recognition of the potential for goods from the EU to circumvent the UK's customs perimeter by being moved into Great Britain through Northern Ireland (since there are no customs controls on the land border with Ireland, nor any customs formalities on goods moved from Northern Ireland to the rest of the UK), the Government has legislated for 'anti-avoidance' measures that make it illegal to move goods from the EU through Northern Ireland "to avoid the UK tariff or import processes". However, this anti-avoidance system for goods that do *not* qualify for unfettered access into the UK market from Northern Ireland seems targeted only at businesses directly moving wares from Ireland (or the wider EU) into Great Britain via Northern Ireland. Moreover, it appears to be aimed primarily at deterring avoidance of any import duties that might otherwise be applicable (had the goods been brought into Great Britain directly from the EU),[14] rather than any circumvention of UK product safety standards. A planned tightening of the definition of 'qualifying goods', to ensure that goods moving from Ireland or the EU via Northern Ireland "are subject to full third-country checks and controls" at the border as if they had entered Great Britain directly from the EU, was delayed in August 2021.[16]

1.36 These anti-avoidance measures are meant to stop EU exporters from taking advantage of the lack of customs controls on goods moved into Great Britain from the EU via Northern Ireland. However, it appears that businesses established in Northern Ireland itself could lawfully buy goods from the EU—which, under the Protocol, would not require any customs formalities nor incur any import duties—for the sole purpose of selling them on into Great Britain, again without any systematic border controls related to customs or product standards. The commercial incentives for doing so may increase as and when product safety rules in England, Scotland and Wales diverge from those in force in the EU (and Northern Ireland). After such divergence, it might allow Northern Irish traders to—lawfully—avoid the need for goods to meet, or be tested for, compliance with UK safety requirements when selling them into Great Britain, instead continuing to rely on the EU's product safety framework.[17] In any event, since there are no systematic documentary or physical checks at ports and airports on goods being moved from Northern Ireland to Great Britain, the Government's enforcement of the anti-avoidance rules seemingly depends largely on market surveillance activity when products moved from Northern Ireland have already entered circulation in England, Wales and Scotland.[15]

1.37 We have therefore raised concerns previously that the interaction between the Protocol and the Internal Market Act could harm the integrity of the UK's own, post-Brexit product safety regime as and when there is substantive divergence from EU rules in this area (for example when the new EU GPSR takes effect).[18] The Government has said that the risk that "goods made to EU rules [are] move[d] to the market in Great Britain" is "manageable and acceptable, given existing strong market surveillance".[19] However, this appears to refer only to instances where goods are moved directly from the EU into Great Britain via Northern Ireland for an "avoidance purpose" related to the UK's customs perimeter. As discussed above, we would question whether it would amount to an "avoidance purpose", if a business in Northern Ireland buys goods from the EU for specific onward sale into the rest of the UK, and in doing so avoid the need to comply with any customs formalities or GB-specific product safety requirements. In either scenario, the risks related to goods

that meet EU but not British product safety requirements entering the British market via Northern Ireland may evolve over time, as and when the EU and UK approaches in that field diverge (as implied, for example, by the EU's draft new General Product Safety Regulation or possibly the Government's own product safety review).

1.38 We put these matters to the Minister with responsibility for product safety, Paul Scully MP, when we took evidence from him on 3 November 2021. While the Minister did not deny that the current legal arrangement could allow EU goods that do not meet UK safety standards to enter Great Britain via Northern Ireland, he emphasised that the Government's ability to give definitive answers as to the actual risk would depend on both the extent of UK-EU regulatory divergence and the outcome of the process of renegotiating the Protocol with the EU. Graham Russell, Chief Executive Officer of the Office for Product Safety and Standards, noted that the Government's ability to stop such goods would depend on "arrangements that have not yet been made" with the EU as regards "requirements […] for traceability, for labelling, for online requirements, for market surveillance [and] for risk measurement". With respect to the possibility that Northern Ireland might become a 'hub' for the sale of goods made to EU standards into Great Britain (without an assessment of their compliance with UK standards), the Minister offered little comfort, stating that he was "not sure if it is likely" but that the Government could "put measures in place to tackle this".

UK exports of consumer goods to the EU

1.39 Setting aside the questions around the continued applicability of EU safety standards for consumer goods in Northern Ireland and the implications under the Internal Market Act, the new EU General Product Safety Regulation is also likely to have economic implications for businesses in Great Britain that sell such goods, or their components, into the EU.

1.40 Before the UK left the Single Market at the end of 2020, the GPSD was applicable to all relevant products manufactured in or imported into the UK, and as such they could generally speaking be sold freely throughout the EU. Following the end of the post-Brexit transition period, British exports of consumer goods to the EU still need to meet the latter's health and safety requirements. Similarly, those British businesses supplying components to manufacturers of such products in (or for export to) the EU will still need to make sure that these do not jeopardise the safety assessment of the final product. The relevant conditions will, in the future, be set out in the EU's new General Product Safety Regulation. This means, for example that British exporters of consumer goods to the EU will need to expand their safety assessment to include, where relevant, the risks associated with Artificial Intelligence or software updates. They will also need to comply with the new administrative requirements proposed by the Commission relating to the sale of consumer goods into the EU, in particular the appointment of a representative within the EU with legal responsibility for compliance with product safety rules (a requirement which, obviously, will not apply to their competitors based within the EU itself and may therefore put British businesses at a competitive disadvantage). There may also be additional costs associated with the proposed new procedures around recall of potentially unsafe goods, and the traceability mechanisms that underpin the EU's approach to market surveillance and enforcement of product safety rules.

1.41 Given the purpose of the GPSD and its proposed successor as a legislative 'safety net' for all consumer goods not covered by sector-specific EU rules, the range of British exports potentially affected by these new EU rules is extremely broad. However, it also means it is difficult to arrive at a comprehensive estimate of the relevant trade flows. Nevertheless, the export of finished consumer goods from the UK to the EU appears significant. For example, according to the Fashion & Textile Association, UK exports to the EU of clothes and textiles (which are covered by the GPSD) were worth £6.7 billion in 2016. The sector, it says, "is dominated by SMEs and micro businesses" which may find it more difficult to comply with any new administrative requirements when selling into the EU. The Federation for Small Businesses (FSB) has also warned the European Commission that "substantial new restrictions" on trade—such as those envisaged by the draft General Product Safety Regulation—could "harm trade and those businesses complying with fair and proportionate rules".

1.42 The Minister's Explanatory Memorandum did not explore the potential impact of new EU product safety rules on export of relevant goods from Great Britain to the EU, particularly in the case of regulatory divergence. In his evidence to us on 3 November, he told us that the new Regulation "is something that businesses that are currently exporting to the EU from GB are interested in" but that the Government "would not necessarily comment on the EU's process now we are a sovereign country again, but it is very much for businesses that export to the EU".[69]

Exchange of product safety information between the UK and the EU

1.43 In addition to the implications of the proposed new GPSR for Northern Ireland and for relevant businesses in the rest of the UK, there are also potential ramifications for cooperation between market surveillance authorities in the UK and the EU to identify and remove unsafe consumer goods from the market. Given the geographic proximity and economic interconnectedness between the UK and the EU, flows of consumer goods between the two are likely to remain substantial. This also means the two sides have an interest in exchanging information about potentially defective or dangerous goods identified by market surveillance authorities.

1.44 However, Brexit fundamentally affected arrangements for cooperation on market surveillance issues. When the UK left the EU's Single Market on 31 December 2020 and EU law ceased to apply, it also automatically lost access to the EU's Safety Gate, where information on defective non-food products is exchanged.[70] The Government's Office for Product Safety and Standards (OPSS) has instead established the UK Product Safety

69 Oral evidence by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q15.

70 However, Article 43 of the Withdrawal Agreement does require the UK and the EU to continue exchanging information—especially about serious product safety risks—in relation to goods placed on the market before the UK left the EU's Single Market on 1 January 2021. This does not entitle the UK to access the Safety Gate directly, as it could do prior to the end of the post-Brexit transition period.

Database.[71] The Government in February 2020 said it would seek a "risk-based approach to market surveillance and establish mechanisms for cooperation and data-exchange" in any new trade deal between the UK and the EU.[72]

1.45 The new UK/EU Trade and Cooperation Agreement (TCA) that the Government negotiated with the EU does contain a section on 'market surveillance and non-food product safety and compliance'. However, the Government did not secure a system for exchange of market surveillance information in the deal itself. Rather, Article 96 of the Agreement foresees the possibility of a supplementary arrangement between the Government and the EU on the 'regular exchange of information' between the EU's Safety Gate and its new national equivalent in the UK "in relation to the safety of non-food products and related preventive, restrictive and corrective measures". This can be established—with the agreement of both sides—by means of a formal Decision of the UK/EU TCA Partnership Council, the body tasked with overseeing the implementation of the new bilateral relationship. While the TCA set a "best endeavours" ambition of establishing this new arrangement "as soon as possible and preferably within six months" of its entry into force, a deadline that arguably passed at the end of June 2021, no announcement has been made on whether linking the EU and UK 'Safety Gates' is close.[73]

1.46 This was discussed between the Government and the European Commission at the inaugural meeting of the UK/EU Trade Specialised Committee on 'Technical Barriers to Trade' on 15 October, but no formal decision was taken to connect the UK and EU databases at that stage. On 3 November, the Minister told us that the delay was essentially due to the EU, because it wanted to understand "the use of these systems in Northern Ireland" (while the Government was "absolutely ready to agree the legal text that is needed to provide the gateways for exchanging and using that data"). The delay therefore appears to be down to a reluctance on the EU side to establish closer cooperation with the UK while the talks on the Northern Ireland Protocol remain unresolved.[74] While the Minister told us that progress had been good with respect to the UK's own product safety database, he also said that "it [would] be far better to have reciprocal arrangements" with the EU.[75]

1.47 The proposed new General Product Safety Regulation is also relevant in this respect, insofar as it is intended to both widen the scope of risk assessments carried out on consumer goods sold in the EU (for example to cover the impact of new technologies) and to improve the enforcement of the EU's product safety rules against such goods bought from overseas jurisdictions like China. The intended effect is to improve the quality and

71 Under the Northern Ireland Protocol, the UK's market surveillance authorities operating in respect of Northern Ireland are also required to continue reporting product safety risks to the European Commission under the Northern Ireland Protocol (with this information then made accessible to EU Member States via the Safety Gate). However, the list of EU databases to which the UK has been granted full or partial access under the Protocol does not include the Safety Gate. This, presumably, is linked to the fact that it is not possible to limit the use of such information to Northern Ireland only and therefore the EU has chosen not to give the UK access at all on the basis of the Protocol.

72 While this would undoubtedly be mutually advantageous, its benefit is likely to be asymmetrical: the UK, as a smaller market, would benefit more from information on unsafe products collected in the much larger European Union than vice versa.

73 Article 96 of the TCA also provides the legal basis for the UK and the EU, within the Partnership Council, to "establish […] an arrangement on the regular exchange of information […] regarding measures taken on non-compliant non-food products" by other means.

74 Oral evidence by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q42.

75 In particular, the Minister noted that "over 5,200 products ha[d] been notified" since November 2019, compared to "2,217 on the [EU] RAPEX database", which he described as a "600% increase in notifications".

quantity of information available on product safety risks within the EU Safety Gate. As the Government is seeking access to this information, it would indirectly also benefit the UK's market surveillance operations and, by extension, levels of consumer protection.

Conclusions and action

1.48 It is clear from our own assessment and from the Minister's Explanatory Memorandum that the EU's draft new legal framework on the safety of consumer goods could have significant ramifications for the UK, and in particular for Northern Ireland. We have recently written to the Government separately with respect to the implications of other proposed changes to the EU rulebook on product safety—in relation to machinery items and the use of Artificial Intelligence in goods—for the UK, which raise similar issues. However, we believe the proposed General Product Safety Regulation raises a number of specific issues which the Minister's Explanatory Memorandum does not address but which deserve further attention.

1.49 In particular, we are concerned ambiguities remain about the application of the EU's mutual recognition principle for consumer goods under the Protocol, and how such goods from the EU might lawfully enter the entire UK market through Northern Ireland because of its "unfettered access" even if they do not meet independent British safety requirements when these diverge from the EU's. While this risk might currently be low, it appears to us undesirable to only consider how such goods might be stopped effectively from entering the GB market when such divergence has already taken place. The evidence provided by the Minister when he appeared before the Committee on 3 November 2021 has not fully assuaged our concerns. While we await clarifications from the Minister about some the issues raised in evidence, we also have further questions around the implications of the draft EU GPSR specifically. These are set out in the letter reproduced in the Annex to this chapter. In anticipation of the Minister's reply, we draw the EU's product safety proposals to the attention of the Business, Energy and Industrial Strategy Committee, the Northern Ireland Affairs Committee and, given its potential impact on trade with the EU, the International Trade Committee.

Letter from the Chair to the Minister for Small Business, Consumers and Labour Markets (Paul Scully MP)

Thank you for your Explanatory Memorandum (EM) of 21 September 2021 on the recent EU proposal for a new General Product Safety Regulation, as well as your subsequent appearance before us on 3 November.[76] As you acknowledged in your EM, and as was clear from your evidence, these draft EU rules on the safety of consumer goods such as furniture, clothing and bicycles could still have ramifications for the UK despite its withdrawal from the EU in 2020.

We are of course aware of the Government's efforts to renegotiate the Protocol to reduce the extent to which goods in Northern Ireland must comply exclusively with EU product rules (and noting the suggestions that the Government may have recourse to Article 16 safeguard measures to address the fall in trade in goods from GB to NI since the Protocol took effect).

76 European Commission document COM(2021) 346, (41874).

However, under the Protocol as currently worded—as your own EM notes—this new EU Regulation may apply directly in Northern Ireland because it replaces the General Product Safety Directive and the Food-Imitating Products Directive, both of which are listed in the Protocol and as such remain in effect in Northern Ireland. Moreover, as you confirmed to us in your evidence on 3 November, products legally for sale in the EU can lawfully be marketed in Northern Ireland under the 'mutual recognition' principle under EU law, and goods in free circulation in Northern Ireland have "unfettered access" to the rest of the UK. As such, it appears consumer goods made to EU safety standards—for example consumer goods compliant with this new EU Regulation, when it takes effect—could also be placed lawfully on the market in England, Wales and Scotland via Northern Ireland, with potential implications for the integrity of the UK's independent, post-Brexit product safety regime. When pressed on this, you did not deny that this would remain the case even if the EU accepted the Government's proposals for reform of the Northern Ireland Protocol in full.

In addition, we note that any new EU safety requirements for the sale of consumer goods would also affect companies in Great Britain that export such products to the EU, since they would have to meet the new obligations—for example in relation to the appointment of a legal representative in the EU, or the new traceability and recall systems—when selling their wares to EU wholesale or retail customers. You told us that while the new Regulation "is something that businesses that are currently exporting to the EU from GB are interested in", the Government "would not necessarily comment on the EU's process now we are a sovereign country again".[77] However, given the trade flows involved, it might be helpful for the Government to engage with the EU to ensure that the final Regulation hinders such exports as little as possible.

In light of this, it would be helpful if you could clarify:

- Whether the Government has any specific concerns about the substance of the Commission proposal as it stands, in light of the potential implications for the safety of consumer goods sold in Northern Ireland (and, from there, into the rest of the UK), and to what extent the proposed changes are consistent with your Department's own product safety review.

- What support you are giving to British businesses that export goods covered by the proposed Regulation to the EU, to amplify where necessary their views and concerns to EU policy-makers and avoid to the extent possible any new barriers such exports might face under the new EU legislation.

We look forward to receiving your reply before the Christmas recess. We would also be interested to receive an update from you in due course when there are any developments to report in the Government's discussions with the EU on the connection of the latter's 'Safety Gate' and the UK's new Product Safety Database for information on defective and dangerous consumer goods, as envisaged by Article 96 of the Trade and Cooperation Agreement.

77 Oral evidence by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q15.

2 Livestock movements to Northern Ireland[78]

This EU document is politically important because:

- it concerns contentious arrangements for the labelling of livestock in Northern Ireland and for the movement of livestock from Great Britain to Northern Ireland.

Action

- Write to the Minister, requesting an update.
- Draw to the attention of the Northern Ireland Affairs Committee and the Environment, Food and Rural Affairs Committee.

Overview

2.1 Livestock must be identified with a unique code, normally tagged to at least one ear. This amending Regulation requires that, with effect from 1 July 2021, Northern Ireland (NI) livestock must be identified with a NI-specific two letter country identification code XI or numeric equivalent (899), rather than a UK country identification code. The change was made in order to differentiate NI from Great Britain (GB) livestock because EU animal health law continues to apply to NI under the terms of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement, whereas GB is treated as a third country. The XI code was allocated by the International Standards Organisation and has previously been used in other sectors to differentiate NI from GB.

2.2 Livestock which do not already have EU-compliant ID and which are moved into NI from third countries, including GB, need to be re-tagged in accordance with EU rules. This means that livestock moved into NI from GB (other than direct to slaughter) need to be re-tagged with an XI code on first arrival in NI but not on later arrivals if an animal makes multiple journeys between GB and NI. The change was one of several easements[79] made by the European Commission during the summer to address concerns about how the Northern Ireland Protocol was working.

2.3 In his Explanatory Memorandum, the Minister for Rural Affairs and Biosecurity (Lord Benyon) says that NI Ministers are dissatisfied with the requirement to use XI as an identification code for NI livestock and believe the use of XI creates further separation between NI and the rest of the UK. The Northern Ireland Executive is therefore not presently implementing this Regulation. NI Ministers consider that, under the amended Regulation, livestock born and reared in Northern Ireland lack an obvious visual identifier

78 Commission Implementing Regulation (EU) 2021/1064 of 28 June 2021 amending Implementing Regulation (EU) 2021/520 with regard to the configuration of the animal identification code for the traceability of certain kept terrestrial animals for the United Kingdom in respect of Northern Ireland; Legal base: Regulation (EU) 2016/429 ('Animal Health Law'); Department for Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41921.

79 European Commission, 'EU-UK Relations: Solutions found to help implementation of the Protocol on Ireland and Northern Ireland' (30 June 2021).

showing that they originated in the UK. They consider it imperative that NI livestock continue to be identified in a way which is instantly recognisable and connects animals in an unambiguous manner with the UK-wide traceability regime.

2.4 The Minister notes that the existing unique UK animal identification numbers begin with digits representing regional codes and considers that this is sufficient to identify NI livestock, which begin with 9 for cattle and 17 for sheep. The existing system, therefore, he believes, already enables the identification of NI livestock and resolves traceability concerns.

2.5 The Minister says that the matter was discussed with the European Commission on 20 July 2021. The UK is continuing discussions with the EU to find a solution that recognises NI's place in the UK and facilitates intra-UK movements. These discussions are now taking place within the context of wider negotiations concerning the functioning of the Protocol.

Action

2.6 We report this document to the House as politically important and have written to the Minister as set out below.

2.7 We are drawing the document and our letter to the attention of the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister for Rural Affairs and Biosecurity (Lord Benyon)

We considered your Explanatory Memorandum on the above document at our meeting of 17 November 2021.

We note your view that the existing system of regional codes already enables the identification of NI livestock and therefore that there is no need to apply the new XI code or numeric equivalent. We trust that the Government is raising this issue in the current discussions with the Commission concerning the operation of the Northern Ireland Protocol.

We look forward to an update on this matter as soon as you have progress to report.

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

Department for Environment, Food and Rural Affairs

(41924) — C(21) 6651	Commission Regulation (EU) 2021/1531 of 17 September 2021 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aclonifen, acrinathrin, Bacillus pumilus QST 2808, ethirimol, penthiopyrad, picloram and Pseudomonas sp. strain DSMZ 13134 in or on certain products.

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: The EU's new General Product Safety Regulation [Proposed Regulation] [SNC]

Environment Food and Rural Affairs Committee: Livestock movements to Northern Ireland [Commission Implementing Regulation] [SNC]

International Trade Committee: The EU's new General Product Safety Regulation [Proposed Regulation] [SNC]

Northern Ireland Committee: Livestock movements to Northern Ireland [Commission Implementing Regulation] [SNC]; The EU's new General Product Safety Regulation [Proposed Regulation] [SNC]

Formal Minutes

Wednesday 17 November 2021

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Marco Longhi

Anne Marie Morris

Greg Smith

Document scrutiny

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

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

Paragraphs 1.1 to 3 agreed to.

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

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

Adjournment

Adjourned till Wednesday 24 November 2021 at 1.45 pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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*)

Dame Margaret Hodge MP (*Labour, Barking*)

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*)

Greg Smith MP (*Conservative, Buckingham*)