



House of Commons  
European Scrutiny Committee

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# Nineteenth Report of Session 2021–22

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Documents considered by the Committee on 9 March 2022

*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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# Contents

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## Documents to be reported to the House as legally and/or politically important

1	CO	Commission Work Programme: The Northern Ireland Protocol angle	3
2	DHSC	Supply of medicines from Great Britain to Northern Ireland	18
3	DIT	EU trade preferences for developing countries	23

		<b>Annex</b>	<b>30</b>
--	--	--------------	-----------

		<b>Formal Minutes</b>	<b>31</b>
--	--	-----------------------	-----------

		<b>Standing Order and membership</b>	<b>33</b>
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# 1 Commission Work Programme: The Northern Ireland Protocol angle<sup>1</sup>

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**This EU document is politically important because:**

- the European Commission’s 2022 Work Programme (CWP) sets out the most important actions the EU intends to take in the year ahead; and
- this year’s CWP details new EU legislative proposals that, if adopted, may apply in Northern Ireland as per the terms of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement.

**Action:**

- Draw this Communication to the attention of: the Business, Energy and Industrial Strategy Committee; the Digital, Culture, Media and Sport Committee; the Environment, Food and Rural Affairs Committee; the Environmental Audit Committee; the Foreign Affairs Committee; the Health and Social Care Committee; the International Trade Committee; the Northern Ireland Affairs Committee; and the Treasury Committee.

## Overview

1.1 The UK withdrew from the European Union on 31 January 2020. However, as the EU remains a close neighbour and an important strategic partner for the UK, developments in EU policy and legislation remain relevant to UK interests because of geography, politics and economics. Some new EU laws will also apply directly in the UK under the Northern Ireland Protocol to the Withdrawal Agreement.

1.2 A key document for identifying the EU’s plans for the forthcoming year is the European Commission’s Work Programme. As the driver of new EU legislation, the Commission publishes an annual overview of its political priorities for the year ahead, covering both existing proposals which are still being discussed in Brussels, as well as new initiatives that it intends to publish over the course of the year.

1.3 The Commission’s [2022 Work Programme](#) (CWP) sets out the most important actions it will take in the year ahead, and informs EU residents, and the other institutions, of the Commission’s political commitments to present new initiatives, withdraw pending proposals and review existing EU legislation.

1.4 The CWP contains 42 new policy initiatives across all six headline ambitions of President von der Leyen’s [Political Guidelines](#) and builds on the EU Commission President’s [State of Union](#) speech.

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<sup>1</sup> A Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2022: Making Europe stronger together; Council and COM number: 13003/21 and COM(21) 645; Legal base: Article 17 TEU and the Interinstitutional Agreement on Better Lawmaking 2016 (IIA); Department: Cabinet Office; Devolved Administrations: Consulted; ESC number: 41940.

1.5 The Commission is almost at the midpoint of its 5-year cycle, so its focus is likely to be split between driving new proposals and pushing through existing initiatives.

1.6 The headline figures in the CWP are:

- 44 new policy objectives;
- 14 existing proposals to be withdrawn;
- 50 ongoing priority files; and
- 41 initiatives for regulatory simplification.

1.7 The Commission announced that it will adopt the ‘one-in, one-out’ approach with this Work Programme, seeking to ensure that when introducing unavoidable new burdens, it will systematically and proactively reduce burdens linked to existing EU legislation in the same policy area. Expected costs of complying with EU legislation will be quantified more transparently, and systematically presented in impact assessments, while administrative costs will be offset. The Commission notes that it will aim to support sustainability and digital transformation, by focusing on the ‘do no significant harm’ and ‘digital-by-default’ principles.

1.8 A number of new or existing EU policies and legislative reforms set out in the Programme are still relevant to the UK because they could have implications for British businesses and individuals, given the UK’s status as a non-EU ‘third country’, and affect the UK’s wider strategic interests. This chapter, however, mainly focusses on those EU proposals that potentially apply in Northern Ireland under the Protocol on Ireland/Northern Ireland (part of the UK/EU Withdrawal Agreement).<sup>2</sup>

## UK Government approach

1.9 In its [Explanatory Memorandum](#), the Government states that it is committed to continuing to submit EMs on EU proposals which amend or replace existing EU legislation that fall under scope of the NIP (including EU tertiary legislation) and new EU proposals within scope of the NIP when agreed by the Withdrawal Agreement Joint Committee.

1.10 The Government also notes that it is presently engaged in negotiations with the EU to seek changes to the current NIP, as set out in last year’s [Command Paper](#).<sup>3</sup> While these discussions are ongoing, the Government believes it is too early to be definitive about which new and ‘Refit’ initiatives in the CWP may apply to NI under the Protocol, however it is possible that a number of the proposals would apply under the NIP as it stands, in particular, those that concern regulation and standards for goods. Among others, the Government lists proposals on hazardous substances in electronics, detergents, the type approval of motor vehicles, and proposals relating to pharmaceutical and medicines legislation, as well as EU customs, VAT and excise legislation concerning goods as potential examples.

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2 The EU and UK are currently negotiating on how the functioning of the Protocol could be improved. While this may affect the extent of EU law applicable in Northern Ireland, this chapter is based on the original text of the Protocol as currently in effect.

3 UK Government, Command Paper, [Northern Ireland Protocol: the way forward](#), July 2021

1.11 It is clear that this list is non-exhaustive and can only be an initial assessment as current negotiations on the NIP are ongoing. Furthermore, important information on the details of the Commission proposals will become clearer as they are published and interinstitutional negotiations take place with the Council and European Parliament.

## CWP initiatives applicable in Northern Ireland

### Environment

1.12 The ‘[European Green Deal](#)’ is at the core of this Commission’s mandate. This year will see a ratcheting up of legislative action to deliver on that priority, with action foreseen in areas such as: integrated water management, ambient air quality, plastics pollution, chemicals regulation, and climate change. The EU’s actions in this area matter to the UK in part because some of the laws being amended or adopted will—or may in some instances—apply in Northern Ireland but they also matter strategically because the UK is similarly ambitious in seeking to protect the environment and make its economy more resource-efficient. The UK and EU will be mindful of their respective plans given that divergent approaches to delivering similar objectives may impose costs on economic operators.

1.13 The coming year looks likely to be a big year for EU chemicals regulation, with the Commission intending to revise legislation on classification, labelling and packaging of chemicals and work further towards a targeted revision of the overarching ‘REACH’ Regulation<sup>4</sup> to better protect human health and nature. This revision could increase the likelihood of divergence between Great Britain and the EU/NI in chemicals regulation.

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Revision of Chemicals Packaging Regulation</a>	Changes to better protect human health and nature from chemical products	Legislative proposal due in July 2022	✓ The current Regulation continues to apply in NI
<a href="#">Reduce the release of micro-plastics into the environment</a>	The initiative aims to cut micro-plastics pollution via products such as fertilisers, detergents, and paints	Legislative proposal due in late 2022	Potentially The EU may ask for the legislation to be applied in NI
<a href="#">Sustainable use of pesticides</a>	This initiative will aim to reduce pesticide use and their potential risks to human health and the environment	Legislative proposal due in March 2022	✓ NI must comply with rules concerning the placing of sustainable pesticides on the EU market

4 European Commission, [Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\)](#), December 2006

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Revision of Hazardous Substances in electronics</a>	The aim is to simplify and increase the efficiency of the current rules and improve their enforcement	Legislative proposal due in mid 2022	✓ The current Directive continues to apply in NI
<a href="#">Ecodesign Directive</a>	An overhaul of the Ecodesign Directive, which governs sustainability requirements for a range of consumer and industrial goods	Legislative proposal expected in March 2022	✓ The current Directive continues to apply in NI
<a href="#">Waste Shipments Regulation</a>	Tighten up the rules on exporting waste from the EU to third countries	Published—subject to negotiation in 2022	✓ The current Regulation continues to apply in NI
<a href="#">Revision of Detergents Regulation</a>	The legislation will be updated to reflect recent developments, such as the refill sale of detergents	Legislative proposal due in late 2022	✓ The current Regulation continues to apply in NI
<a href="#">Use of forest risk commodities in the supply chain</a>	To impose new due diligence requirements related to deforestation on imports of palm oil, soy, cocoa, timber, cattle, coffee into the EU	Draft legislation published, subject to negotiations during 2022	Potentially The draft replaces the EU Timber Regulation (EUTR), which continues to apply in NI, but the scope of the draft is considerably broader
<a href="#">Design and disposal of motor vehicles</a>	Merger of two separate Directives, covering the whole lifecycle of a vehicle from design to end of life	Legislative proposal due in late 2022	✓ Likely to apply as one of the two current Directives being merged applies in Northern Ireland
<a href="#">Revision of plant &amp; forest reproductive material legislation</a>	To support technical developments, sustainable and climate-resilient agri-food systems & forests, and conserve biodiversity and plant & forest genetic resources	Legislative proposal due in late 2022	✓ The current Regulation continues to apply in NI

### **Climate and Energy**

1.14 The Commission published a legislative package in July 2021, designed to support the EU's agreed targets of 55% emissions reduction by 2030, and net zero by 2050. They cover, for example, a new Carbon Border Adjustment Mechanism to tax polluting imports,

revising the EU’s emissions trading system and updating fuel duty rules. Making progress with these will be a priority of the French Presidency of the EU in the first half of 2022 and will be an important backdrop to the UK’s continued Presidency of international climate change negotiations until November 2022.

1.15 The package as a whole is of strategic relevance to the UK given its shared ambition in the area of climate change and its particular leadership role this year. In some instances, though, legislation either applies, or is likely to apply, under the Northern Ireland Protocol and some of the legislation will have direct impacts on the UK as a third country. That is the case, for instance, where regulatory changes will affect air and sea trips between the EU and UK. Elements also touch on commitments set out in the UK-EU Trade and Cooperation Agreement, such as on linking the respective emissions trading systems and on cooperating on the development of offshore renewable energy in the North Sea.

1.16 A further series of [draft laws](#) appeared in December 2021 concerning decarbonisation of the gas market, the promotion of hydrogen and the reduction of methane emissions. These will have a direct impact due to the UK’s gas interconnection with the EU and are also of strategic relevance to the UK. Strategically, they are in line with the UK’s climate objectives but they also reflect a desire from the EU to reduce its reliance on Russian gas (in line with its upcoming Strategy on international energy engagement, explained in the Foreign Affairs and Defence section below) and so has wider geopolitical relevance.

1.17 More draft legislation will follow in 2022, including a regulatory framework for the certification of carbon removals and a review of EU rules on fluorinated greenhouse gases to further reduce their emissions and ensure compliance with international commitments. In addition, the EU is seeking to use transport policy as part of its broader approach to reducing greenhouse gas emissions. Notably, the European Commission is preparing amendments to the CO<sub>2</sub> emissions standards for heavy-duty vehicles, as well as drafting new legislation on the measurement of emissions from the transport and logistics sectors to ensure they play their part in achieving ‘zero emission mobility’.

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Review of rules on fluorinated greenhouse gases ('F-gases')</a>	To further reduce emissions and ensure compliance with international commitments on F-gases	Legislative proposal due in April 2022	✓ The reviewed legislation will apply in NI
<a href="#">Revision of the EU Emissions Trading System</a>	Strengthens the ambition of the EU ETS and expands it to include maritime transport, road transport and buildings	Proposal published. Negotiations to continue in 2022	✓ Northern Ireland’s five electricity generators remain within the EU ETS under the Protocol

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Carbon Border Adjustment Mechanism</a>	Applies similar costs to imports of carbon-intensive goods as those applied to such goods produced domestically	Proposal published. Negotiations to continue in 2022	<b>Potentially</b> The EU has already signalled its intention to propose adding CBAM to the Protocol, but this is not automatic: it would require the UK's consent
<a href="#">Energy Taxation Directive</a>	To bring minimum fuel duty rates in line with EU climate change policies	Proposal published. Negotiations to continue in 2022	✓ EU fuel duty rules continue to apply in NI

### *International Trade and Customs*

1.18 The EU's future trade policy is being built on the concept of [open strategic autonomy](#), with the EU attempting to use its economic and geopolitical position to shape global economic governance (notably in the World Trade Organisation) and develop bilateral relations, while also stepping up efforts to protect its Member States from unfair or abusive trading practices.

1.19 The Commission proposed a controversial new anti-coercion law in December 2021. This proposal is intended to give the EU the legal tools to deter acts of economic intimidation by third countries, for example China's restrictions on imports from Lithuania in retaliation for forging closer links with Taiwan. The new law would allow the EU to choose from a wide range of what are effectively trade sanctions against companies from the target country, including restrictions on imports of goods, until the coercive action is ended. The anti-coercion law will be supplemented in 2022 by changes to the EU's so-called 'blocking statute' (discussed further in the section of this note on Foreign Affairs and Defence). Both proposals illustrate a more assertive EU approach towards its trading partners and a willingness to act autonomously where EU interests are affected.

1.20 In 2022, the European Commission is due to publish draft amendments to the EU Customs Code, focussing in particular on ensuring tariffs are paid and product safety checks carried out on the growing volume of goods bought by consumers via the internet. Further negotiations are also expected on the EU's 'Single Customs Window', an initiative to create an electronic system linking EU customs authorities to other authorities for trade in goods, for example those that carry out food safety controls. All these changes in the operation of the EU's customs rulebook are relevant for the UK: they will not only affect British companies exporting goods to Europe, but also—because of the Northern Ireland Protocol—Northern Ireland's customs border with the rest of the UK.

1.21 The Commission has also put forward a new proposal to fine-tune the EU's current system of tariff preferences for developing countries (the Generalised Scheme of Preferences or 'GSP') which will expire at the end of 2023.

1.22 Since the UK's withdrawal from the EU, the Government has actively pursued the creation of free ports at various places in the UK. Although free ports are not banned under EU law, the European Commission will publish in 2022 a study on their operation, amid concerns that they may be used for money-laundering and tax evasion. Whether

these reviews may lead to any further proposals to restrict the use of free ports within the EU, or measures to deter trade between EU countries and free ports in non-EU countries like the UK, is unclear at this point.

Proposal	Purpose	Timing	Potentially applicable in NI
<a href="#">Revision of EU's Generalised Scheme of Tariff Preferences (GSP)</a>	To update EU rules on tariff preferences for goods originating in developing countries	Legislative proposal published. Negotiations to continue in 2022	✓ Replaces a measure listed in the Protocol
<a href="#">Protection against economic coercion</a>	To allow the EU to deter and respond to acts of economic intimidation against the EU or an EU Member State	Proposal for a legally binding Regulation published in December 2021	<b>Potentially</b> EU trade defence instruments apply to NI under the Protocol. The UK would need to agree to it being added to the Protocol
<a href="#">Revision of the Union Customs Code</a>	To amend how the EU operates customs formalities on trade in goods with non-EU countries	A White Paper is due in early 2022, with a legislative proposal to follow in Q4 2022	✓ EU customs rules apply to and in NI
<a href="#">Single Customs Window</a>	To connect different EU border controls relating to goods via a single electronic interface	Proposal published in 2021	✓ EU customs rules apply to and in NI
<a href="#">Evaluation of free ports</a>	To study how free ports facilitate money-laundering and tax evasion	A report is due in mid-2022	<b>Potentially</b> Depends on whether changes to EU customs law on free ports follow

### **Industrial Policy and Product Standards**

1.23 In 2022, the EU is likely to pursue various strands of the Industrial Strategy set out by the European Commission in 2020. In particular, there are various pieces of draft EU legislation relating to product standards and safety for various types of goods, either already published or due to be published in 2022. They cover machinery, consumer goods, toys, detergents and construction products. In addition, the Commission is due to publish

its delayed ‘Standardisation Strategy’, including new standards for business services and a general review of its product safety framework, which will set out how the EU wants to set standards for products and services and aim to have these adopted by its trading partners.

1.24 Developments in EU product standards are relevant for the UK for two key reasons: first, goods exported from Great Britain to the EU will need to meet any new requirements even if the same changes are not made under UK law. Divergence between UK and EU product standards could therefore impact trade flows. Secondly, Northern Ireland has to apply new EU product rules under the Protocol in the UK/EU Withdrawal Agreement. Changes to EU law could therefore potentially create new barriers to the movement of goods from Great Britain to Northern Ireland.<sup>5</sup>

1.25 In addition, goods that meet EU but not UK product standards can also, by and large, be sold freely into the rest of the UK from Northern Ireland. Divergence of EU and UK product rules could therefore leave the UK’s new post-Brexit approach vulnerable to a ‘backdoor’ via Northern Ireland. The possibility that EU goods do not meet higher, post-Brexit UK standards may be especially sensitive in the case of construction products, in the context of the cladding scandal on high-rise buildings following the Grenfell disaster.

1.26 The Commission has published its long-anticipated and controversial proposal on corporate sustainability and due diligence. Its purpose is to require companies to take more responsibility for their global supply chains with a view to identifying and ending adverse impacts on the environment and on human rights. It builds on an existing proposal that would seek to prevent goods whose production have contributed to deforestation from entering the EU market (discussed in the Environment section). This could affect UK companies with operations in or exports to the EU.

1.27 Finally, the European Commission is also working on a ‘Single Market Emergency Instrument’, drawing on lessons learned during the Covid-19 pandemic, to “aim to ensure the free movement of goods, services and people” during times of crisis. While the exact substance of this piece of legislation is unclear at this stage, to the extent that it could lead to reconfiguration of supply chains in and through the EU during difficult times, for example through export restrictions.<sup>6</sup>

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Single Market Emergency Instrument</a>	The aim is to create a statutory framework to ensure the “free movement of goods, services and people” within the EU during times of crisis	Legislative proposal due in Q1 2022	<b>Potentially</b> The proposal may be applicable under the Protocol

5 For example, under the proposed General Product Safety Regulation the European Commission has proposed that any business sending consumer goods into the Single Market for goods (including Northern Ireland) would need to have a legal representative established in the EU who assumes liability if product safety standards are not met. It is not necessary for a business in Great Britain to have such a representative in Northern Ireland before selling goods there.

6 The implications of the Instrument in the context of the Northern Ireland Protocol will also require further assessment.

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Supply Chain Due Diligence</a>	The legislation will require companies to address issues such as child labour or pollution in their supply chains	Proposal published in February 2022	<b>Potentially</b> Unclear how this may interact with goods entering Northern Ireland
<a href="#">Revision of the Construction Products Regulation</a>	The proposal will contain amendments to existing EU rules on safety of construction materials	Legislative proposal due in 2022	✓ EU rules on construction product safety continue apply in NI
<a href="#">Machinery Regulation</a>	The proposal would update the EU's existing rules on product safety for machinery items	Legislative proposal published in 2021	✓ EU rules on machinery continue to apply in NI
<a href="#">General Product Safety Regulation</a>	The proposal aims to update EU rules on the safety requirements for consumer goods	Legislative proposal published in 2021	✓ EU rules on product safety apply in NI
<a href="#">Revision of the Toys Directive</a>	The initiative will seek to update existing EU rules on toy safety, especially as regards chemicals	Legislative proposal due in Q4 2022	✓ EU rules on toy safety apply in NI
<a href="#">Cosmetics Regulation</a>	The proposal will update the EU's existing product safety standards for cosmetic products	Legislative proposal due in 2022	✓ EU rules on cosmetics safety apply in NI
<a href="#">Product Liability for goods using Artificial Intelligence</a>	The aim is to update EU rules on producers' liability for damage caused by their products to the increased use of Artificial Intelligence in consumer goods.	Legislative proposal due in Q4 2022	✓ EU rules on product liability apply in NI
<a href="#">Protection of geographic indications for non-food product</a>	A new EU legal framework to introduce protection of geographic indications for non-food products from specific regions	Legislative proposal expected in Q1 2022	<b>Potentially</b> As the initiative concerns trade in goods, it is unclear if it may apply in NI

### Competition and Subsidy Control

1.28 Legal restrictions on government subsidies and anti-competitive practices between businesses are a key part of the EU's Single Market. Amid concern that companies subsidised from outside the EU, notably by China, are unfairly undercutting EU competitors, draft

legislation is under consideration that would give the European Commission the power to investigate subsidies granted by non-EU countries which benefit companies engaging in an economic activity in the EU. This could lead to restrictions on their EU operations, including bans on acquisitions or bidding for public procurement tenders. While this clearly raises questions as to such activities carried out by UK companies in the EU, the Government has to date insisted the practical implications for UK business are expected to be limited.

1.29 In addition, the Commission has issued new guidelines on how EU governments can provide subsidies to support important industrial sectors, known as ‘Projects of Common European Interest’ (PCEI). This could have strategic implications for the UK if it allows more interventionist support within the EU for sectors also economically important to the UK, such as hydrogen, batteries and semiconductors. Similarly, the EU has updated its rules on ‘State aid’ for the roll-out of broadband in areas lacking digital connectivity; any success in widening high-speed internet access could have longer-term competitive implications for the UK.

1.30 Finally, the Commission is also undertaking a wide-ranging review of EU competition policy and what practices commercial enterprises can engage in without damaging free and fair competition. To that end, it is reviewing the EU’s approach to mergers of large companies, the permissibility of ‘vertical agreements’ between companies in different stages of a supply chain, and coordination between different businesses for research and development purposes. These developments could affect UK businesses with current or planned EU operations, as well as potentially having a competitive impact if they render the EU’s regulatory environment more conducive to business.

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Proposal for a Regulation on foreign subsidies distorting the EU’s internal market</a>	Identify and address potential negative effects of subsidies provided by countries outside the EU to companies with EU operations	Proposal published. Negotiations on-going during 2022	<b>Potentially</b>  Unclear if the EU may want to apply the new Regulation to firms with operations in NI
<a href="#">Subsidy rules on common European projects</a>	These guidelines frame how EU countries can use subsidies to support “Projects of Common European Interest” (PCEI) in key industrial sectors	Guidelines published in 2021	✓  EU State aid rules continue to apply in NI insofar as UK subsidies could affect trade in goods between NI and the EU
<a href="#">Revision of the State Aid guidelines for broadband networks</a>	Update State aid rules to permit government-sponsored broadband roll-out in the EU	Policy paper due in Q2 2022	✓

## Taxation and Duties

1.31 In the field of duties and taxation, the European Commission is expected to push for an EU-wide approach to the implementation of the recent OECD deal on the minimum corporation tax rates for large multinationals, as well as allocation of taxing rights on the profits of such companies between countries. In the same field, in late 2021 it also published draft new rules to combat the use of shell entities for tax avoidance purposes. Work is also underway on a revision of the EU’s ‘Code of Conduct’ on how it engages with—or sanctions—non-EU countries whose corporate tax regimes it considers harmful. These initiatives are likely to affect UK businesses with operations in the EU, and provide an interesting comparison for the Government’s own approach to the OECD deal (a focal point of recent UK international tax policy) and corporate transparency more generally.

1.32 There are also a significant number of reforms of EU sales taxes (VAT and excise duties). Besides the more general impact of these reforms on the export of goods and services from the UK to the EU, Northern Ireland remains bound by EU VAT and excise rules ‘concerning goods’ under the Protocol in the UK/EU Withdrawal Agreement. The UK would therefore also have to implement any resulting changes in EU law in this area. This could create discrepancies in VAT and duty rates between Northern Ireland and Great Britain, as well as other administrative barriers to intra-UK trade.<sup>7</sup>

1.33 More specifically, negotiations are set to continue in Brussels on a package of VAT reforms that include new rules on minimum VAT rates for different products. In addition, further draft EU legislation is expected in 2022 on ‘VAT in the digital age’. Its aim will be to regulate how VAT is levied in the gig economy, as well as introducing administrative simplifications for businesses (similar to the UK’s ‘Making Tax Digital’ initiative). The EU is also reviewing its approach to taxation of alcohol, tobacco and fuel (the so-called ‘excise duties’ on polluting or unhealthy products). Draft EU legislation on fuel duty has already been published as part of the European Commission’s wider package of measures to combat climate change, aiming to ensure that more sustainable energy sources are taxed less heavily than fossil fuels. Further proposals to reform tax rates for alcohol and tobacco are expected to follow in 2022.

Proposal	Purpose	Timing	Applicable in NI
<a href="#">Proposal on minimum VAT rates</a>	To give EU countries more flexibility to determine VAT rates applicable to goods and services	Proposal under consideration since 2018	✓ EU VAT rules concerning goods continue to apply in NI
<a href="#">VAT administration on intra-EU cross-border sales</a>	To update how businesses account for VAT on cross-border sales of goods and services between EU Member States	Proposal under consideration since 2018	✓ EU VAT rules concerning goods continue to apply in NI

<sup>7</sup> The Government is seeking changes to the Protocol to reduce the extent of Northern Ireland’s alignment with EU VAT and excise legislation, but the outcome of those negotiations is unclear at this stage.

Proposal	Purpose	Timing	Applicable in NI
<a href="#">VAT in the digital age</a>	To adapt EU VAT rules to the digital economy, and to reduce administrative burdens on businesses	Legislative proposal due in Q3 2022	✓ EU VAT rules concerning goods continue to apply in NI
<a href="#">Taxation of fuel, alcohol and tobacco</a>	To amend the rates and structures of duty on fuel, alcohol and tobacco that must be applied throughout the EU	Legislative proposal on fuel duty published in 2021. <sup>23</sup> Further proposals on alcohol and tobacco duty to follow in 2022	✓ EU excise duty rules continue to apply in NI

### ***Digital Policy and Telecommunications***

1.34 The Commission is placing a high priority on its ‘Digital Europe’ agenda and has prepared or is proposing new EU rules in many key areas where the UK is separately also developing policies. First, given the vital role played by semi-conductors in the provision of digital services, the EU has proposed a ‘Chips Act’ to bring more semi-conductor production capacity within the EU, reduce dependency on Asia, and ensure more security of supply. This may affect the UK’s own access to and production of a ready supply of semi-conductors, a key strategic priority.

1.35 In addition, the EU is also looking to regulate the provision of digital services themselves. Negotiations are on-going on an EU Digital Market Act (DMA) which aims to prevent large digital platforms engaging in unfair competition and restricting choice for consumers. The big platforms that qualify as gatekeepers would have additional obligations, or face sanctions if they fail to comply. Separately, the EU is also considering a Digital Services Act (DSA) that aims to regulate illegal and online content, much as the Online Safety Bill would in the UK. Both the DMA and the DSA will have implications for UK businesses that wish to provide services within the EU, and divergence in regulation between the UK and the EU could lead to legal complexity for digital service providers.

1.36 The Commission is seeking to make progress on a proposed Artificial Intelligence Act, a new EU Regulation to harmonise rules on Artificial Intelligence (AI). This would restrict certain uses of AI and set EU-wide product standards for AI applications considered ‘high-risk’. Any exports of high-risk AI software to the EU—a market segment the Government is keen to develop—would have to meet requirements under the AIA. It is also possible that the elements of the AIA related to the use of AI safety components in certain industrial and consumer goods may in due course become directly applicable in Northern Ireland, because of the Protocol. Separately, it will publish draft EU legislation—a ‘Data Act’<sup>8</sup>—on the use, and sharing of, non-personal data by businesses and public authorities, including a review of the EU Database Directive.

1.37 Finally, the Commission will publish a strategy for ‘space traffic management’ to position itself favourably as competition increases for the use of space by satellites that underpin global digital connectivity.

8 European Commission, [Proposal for a Regulation of the European Parliament and of the Council on European data governance \(Data Governance Act\)](#), November 2020

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">European Cyber-Resilience Act</a>	To establish common EU standards for products with cyber-security features	Legislative proposal due in mid-2022	<b>Potentially</b>  The NIP includes product standards for goods
<a href="#">EU Chips Act</a>	To improve the EU's production capacity for semi-conductors, and provide a framework for international co-operation	Legislative proposal due in mid-2022	<b>Potentially</b>  The NIP covers trade in goods between the EU and NI
<a href="#">EU Artificial Intelligence Act</a>	Ensure safe AI systems respect fundamental rights, ensure legal certainty, enhance governance and effective enforcement of law on fundamental rights, facilitate a single market for lawful, safe and trustworthy AI	Proposal published. Negotiations ongoing in 2022	<b>Potentially</b>  The EU may ask that the legislation be added to the Protocol due to its impact on the trade of physical goods that incorporate AI features

### **Health and Social Care**

1.38 In her 2021 'State of Union' speech, in which European Commission President Ursula von der Leyen set out her policy agenda for the year ahead, she referred to the impact of the Covid-19 pandemic, how it affected the health of many, what was needed to continue to manage the EU's response, and what lessons could be learned for the future. She talked of a stronger European Health Union and the need to better protect the health of citizens, equip the EU and its Member States to better prevent and address future pandemics, and improve the resilience of health systems. As the quarrel between the UK and the EU over vaccine supplies in 2021 showed, developments in the EU to protect its ability to produce, or secure supply of, medicines and medical products could impact upon the UK.

1.39 For 2022, the Commission has announced proposals for the evaluation and revision of the EU's general legislation on pharmaceuticals, including medicines for children and rare diseases, and to reinforce the powers of the European Medicines Agency and the European Centre for Disease Prevention and Control (ECDC).

1.40 Proposals relating to legislation on pharmaceuticals and medical products are likely to be of considerable interest in relation to Northern Ireland—given they are covered by the Protocol and the ongoing discussions on authorisations for certain drugs to be available in NI (in relation to which the EU made specific proposals in December 2021).

EU Proposal	Purpose	Timing	Applicable in NI
<a href="#">Revision of the pharmaceutical legislation</a>	Evaluate and revise the EU's general legislation on medicines, to enhance security of supply	Proposal expected in Q4 2022	✓
<a href="#">Rules on the supply of medicines to Northern Ireland</a>	Based on discussion with the UK, these proposed changes to EU law aim to protect the supply of medicines from GB to NI	Proposal published Negotiations ongoing during 2022	✓
<a href="#">Revision of the EU legislation on medicines for children and rare diseases</a>	Support development of pharmaceutical products where high unmet needs persist	Legislative proposal expected late 2022	✓

### Foreign Affairs and Defence

1.41 While the new UK-EU Trade and Cooperation Agreement does not include dedicated sections covering formal cooperation in the areas of foreign policy and defence, EU actions in those areas remain relevant for the UK (not least given the ambitions articulated in the Government's [Integrated Review of Security, Defence, Development and Foreign Policy](#),<sup>9</sup> published last year). A key development will be the adoption of the EU's 'Strategic Compass'. In essence, the EU's version of the UK's 'Integrated Review', it will contain an assessment of the various security threats facing the EU and attempt to articulate a 'strategic vision' for the future of the EU's Common Security & Defence Policy to address these.

1.42 In the field of sanctions, the Commission will introduce draft legislation to reinforce the EU's [Blocking Statute Regulation](#).<sup>10</sup> This is a piece of legislation aimed at better protecting EU companies from any extra-territorial application of sanctions by third countries (in particular the US). It will also seek to push for implementation of the EU's new 'Global Gateway' initiative, announced in late 2021, under which it wants to compete with China's 'Belt and Road Initiative' by unlocking investment of up to €300 billion in the economies of partner countries.

1.43 The Commission will also work on a new EU-NATO Joint Declaration and accelerate work on a European Defence Union where the EU's national defence policies are more closely coordinated. A new EU strategy on security and defence technologies is due, exploring ways to boost military technology development and reduce the EU's strategic dependencies on third countries in that area (a key objective of the new European Defence Fund). In the same vein, the Commission will also propose a legal framework for a new EU space-based global secure communication system. This would provide its Member States with secure and independent channels of communications between one another. Whether the UK would derive any benefits from this new system, or has any intention of seeking to be involved in it, is unclear at this stage.

9 UK Government, Policy Paper, [Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy](#), July 2021

10 European Commission, [Blocking Statute: Protecting EU operators, reinforcing European strategic economy](#), December 2021

1.44 The Commission is also due to publish a new EU strategy for relations with the Gulf countries, which are of course also key foreign policy interlocutors for the UK, as well as separate policy papers on how the EU should engage with international partners on ocean governance and energy supply chains. Depending on how these affect the EU's approach to these matters, there could be strategic implications for the UK in the longer term.

## Conclusions and recommendations

1.45 We have significant concerns regarding the amount of EU legislation—detailed in this year's Commission Work Programme—which, once adopted at EU-level, will or could be applicable in Northern Ireland under the Protocol.

1.46 Our analysis shows that for this year alone, as a consequence of the Protocol, at least 29 EU legislative proposals could eventually have to be given effect to in Northern Ireland. Other proposals in this year's Commission Work programme may also have to be implemented in NI depending on the final form of the legal acts in question, and UK/EU discussions on their applicability. These proposals cover multiple policy areas and, in some cases, are not merely technical changes to existing EU legislation but are new or significant revisions of EU law and policy.

1.47 This situation is untenable and is a stark illustration of the damage that the Protocol is having on democracy in the UK: as an avenue for the continued applicability of EU law in Northern Ireland that, unless repaired, replaced or removed, could develop into a motorway. All without the meaningful input—or final say on individual pieces of legislation—of the people of Northern Ireland. This cannot continue.

1.48 We call on the Government to carefully consider our analysis and caution that unless meaningful outcomes are secured in talks with the EU on the future of the Protocol, its operation will only grow more problematic.

## Action

1.49 We draw this Report chapter to the attention of: the Business, Energy and Industrial Strategy Committee; the Digital, Culture, Media and Sport Committee; the Environment, Food and Rural Affairs Committee; the Environmental Audit Committee; the Foreign Affairs Committee; the Health and Social Care Committee; the International Trade Committee; the Northern Ireland Affairs Committee; and the Treasury Committee.

## 2 Supply of medicines from Great Britain to Northern Ireland<sup>11</sup>

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### These EU documents are politically important because:

- they aim to ensure the continued long-term supply of medicines from Great Britain to Northern Ireland following difficulties encountered as a result of obligations set out in the Ireland/Northern Ireland Protocol; and
- they contain provisions which could lead to future divergence between medicines available in Great Britain and Northern Ireland and provisions which may constrain some of Great Britain's regulatory autonomy over rules governing medicines.

### Action

- Write to the Minister.
- Draw to the attention of the Health and Social Care Committee and the Northern Ireland Affairs Committee.

### Overview

2.1 The Protocol on Ireland/Northern Ireland ('the Protocol') annexed to the Withdrawal Agreement requires that Northern Ireland (NI) remain aligned with EU medicines rules but NI's historical reliance on medicinal products from, or through, Great Britain (GB) has made that requirement difficult to comply with in practice. On 17 December 2021, the

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11 (a) Proposal for a Directive amending Directives 2001/20/EC and 2001/83/EC as regards derogations from certain obligations concerning certain medicinal products for human use made available in the United Kingdom in respect of Northern Ireland, as well as in Cyprus, Ireland and Malta (b) Proposal for a Regulation amending Regulation (EU) No 536/2014 as regards a derogation from certain obligations concerning investigational medicinal products made available in the United Kingdom with respect to Northern Ireland as well as in Cyprus, Ireland and Malta (c) Commission Communication: Approval of the content of a draft Commission Notice on the application of the Union's pharmaceutical acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than Northern Ireland (d) Commission Delegated Regulation (EU) .../... of 17.12.2021 amending Delegated Regulation (EU) 2016/161 as regards the derogation from the obligation of wholesalers to decommission the unique identifier of medicinal products exported to the United Kingdom; COM numbers: (a) [COM\(2021\) 997](#), (b) [COM\(2021\) 998](#), (c) [C\(2021\) 9668](#) (d) [C\(2021\) 9700](#); Legal base: (a) Article 114 TFEU (b) Articles 114, 168(4)(c) TFEU (c) Not applicable (d) Directive 2001/83/EC; Department: Health and Social Care; Devolved Administrations: NI consulted; ESC numbers: 41987, 41988, 42010, 42011.

European Commission [put forward proposals](#)<sup>12</sup> to ensure the continued long-term supply of medicines from GB to NI. This means that the same medicines will continue to be available in NI at the same time as in the rest of the UK, while specific conditions ensure that UK-authorized medicines do not enter the Single Market.

2.2 The Government has said that it is still scrutinising the proposals to determine the extent to which they address the concerns that industry stakeholders have raised, but it has already said that the time-limited derogation in respect of falsified medicines does not provide the required long-term certainty.

## The proposals

2.3 A Commission [Notice](#),<sup>13</sup> published on 22 December 2021, extends a grace period on certain EU rules on both veterinary and human medicines (which was initially applied by way of a Commission Notice dated 25 January 2021) until 31 December 2022. These rules are in respect of specific importation requirements for medicines moving from GB to NI and requirements under falsified medicines legislation for unique barcodes on medicines packaging in GB. In addition, the Commission notice also recognises that licence holders and their compliance functions may be located in GB for national licences granted for NI medicines.

2.4 The EU is also proposing to amend its own legislation on medicines to ensure that:

- generic medicines (such as paracetamol) can be authorised under national UK procedures, in compliance with EU rules on medicines, so that Northern Irish citizens will have access to these medicines at the same time as people in the rest of the UK;
- Northern Irish citizens will have access to new medicines at the same time as any other person in the UK, although this is subject to caveats set out below;
- all regulatory functions can remain in the UK if they are currently located there;
- for medicines brought into NI from the rest of the UK, batch testing does not need to be repeated if it has already been carried out in GB or the EU;
- no manufacturing authorisation or import licenses are needed for medicines supplied from GB to NI, subject to certain conditions;

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12 (a) Proposal for a Directive amending Directives 2001/20/EC and 2001/83/EC as regards derogations from certain obligations concerning certain medicinal products for human use made available in the United Kingdom in respect of Northern Ireland, as well as in Cyprus, Ireland and Malta (b) Proposal for a Regulation amending Regulation (EU) No 536/2014 as regards a derogation from certain obligations concerning investigational medicinal products made available in the United Kingdom with respect to Northern Ireland as well as in Cyprus, Ireland and Malta (c) Commission Communication: Approval of the content of a draft Commission Notice on the application of the Union's pharmaceutical acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than Northern Ireland (d) Commission Delegated Regulation (EU) .../... of 17.12.2021 amending Delegated Regulation (EU) 2016/161 as regards the derogation from the obligation of wholesalers to decommission the unique identifier of medicinal products exported to the United Kingdom; COM numbers: (a) [COM\(2021\) 997](#), (b) [COM\(2021\) 998](#), (c) [C\(2021\) 9668](#) (d) [C\(2021\) 9700](#); Legal base: (a) Article 114 TFEU (b) Articles 114, 168(4)(c) TFEU (c) Not applicable (d) Directive 2001/83/EC; Department: Health and Social Care; Devolved Administrations: NI consulted; ESC numbers: 41987, 41988, 42010, 42011.

13 Commission Notice: Application of the Union's pharmaceutical acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than Northern Ireland, [C\(2021\) 9866](#).

- authorisation by the UK regulator can allow companies located in GB to use a single pack and leaflet when supplying markets in GB and NI; and
- in respect of falsified medicine requirements, for a period of three years EU medicine unique identifiers won't have to be removed from products transiting through GB to NI and then reattached when entering NI.

2.5 A 'bridging solution' will allow any novel medicine authorised in the UK (but not in the EU) to be supplied to NI for a period of up to six months, until the relevant authorisation is also given in the EU. This 'bridging solution' is in addition to the existing compassionate and emergency use mechanisms under EU law.

2.6 The proposals also require the UK to respect certain conditions: packaging requirements to ensure that UK-authorized medicines do not enter the EU Single Market; and the UK's laws on the production, distribution and use of medicines should guarantee a level of public health protection that remains "essentially equivalent" to that provided by EU law. If the Commission considers that the UK's laws no longer provide an equivalent level of protection, or if the Commission has insufficient information to make that assessment, it reserves the right to suspend some or all the provisions following a process of engagement.

## UK Government position

2.7 For its part, the UK has [introduced](#)<sup>14</sup> a mechanism, known as NIMAR (Northern Ireland Medicines and Healthcare products Regulatory Agency Authorised Route), to allow the supply of GB-authorized medicines into NI where those are not already authorised for use in NI and where there is no licensed clinical alternative.

2.8 The Minister of State for Health (Edward Argar MP) submitted an [Explanatory Memorandum](#) setting out the Government's views on the EU proposals on 24 February 2022. He notes that the UK Government's preferred approach to medicines supply issues is to remove medicines entirely from the Protocol so that only UK rules apply. While the Government met with the Commission throughout 2021 to seek to resolve these issues, the draft EU legislation was not jointly agreed with the Government and is, says the Minister, being progressed unilaterally by the European Commission.

2.9 While the Government is still scrutinising the proposals to determine the extent to which they address the concerns that industry stakeholders have raised, the Government considers that the time-limited derogation in respect of falsified medicines does not provide the required long-term certainty. On the other hand, the Minister appears sympathetic to other elements, such as:

- permanent removal of import requirements;
- the option for companies to choose whether to use an EU process or a UK national process to licence established ('generic') medicines for NI as long as the UK approach to quality, safety and efficacy is "substantively equivalent" to the EU's—the MHRA (Medicines and Healthcare Regulatory Agency) could thus issue one licence for a medicine which covered the whole of the UK; and

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14 Written Statement by the Minister of State for Health (Edward Argar MP), 16 December 2021, HCWS507.

- a mechanism to accelerate the speed of licencing novel medicines for use in NI compared to GB.

## Our assessment

2.10 We note the Commission’s proposals to ensure the continued long-term supply of medicines from GB to NI, but we find two elements troubling.

2.11 The first is the provision that, if the EU does not grant an authorisation after six months, the medicine could no longer be used in NI even if still authorised for use in GB. It seems to us that there remains a risk that the same medicines are not available in both GB and NI in the event that EU and GB regulators take different views.

2.12 Second, the whole package is based on the level of public health protection afforded by UK laws in this area remaining “essentially equivalent” to that provided by the EU’s laws (although the Minister incorrectly describes the requirement as “substantively equivalent”). While we consider it unlikely that UK law in the area of medicines will be amended to reduce the level of public health protection that is currently guaranteed, we are alert to the Commission’s intentions to amend its body of legislation in this area as foreseen in the Commission’s Work Programme for 2022.<sup>15</sup> It does mean, therefore, that UK laws will need to be re-assessed following any changes to EU law that increase the level of public health protection. At the very least, the UK will need to be mindful of EU law when exercising regulatory autonomy in this area and will need to recognise that it may need to adapt policy to maintain equivalence.

2.13 We will seek clarity from the Minister to establish if the Government shares our interpretation or, alternatively, is able to assuage our concerns. We will also clarify whether his use of the term “substantively equivalent” rather than “essentially equivalent” was intentional.

## Action

2.14 Write to the Minister requesting further information.

2.15 Draw to the attention of the Health and Social Care Committee and the Northern Ireland Affairs Committee.

## ***Letter from the Chair to the Minister of State for Health (Edward Argar MP)***

We considered your Explanatory Memorandum (EM) on the Northern Ireland (NI) medicines package at our meeting of 9 March 2022.

We note the Commission’s proposals to ensure the continued long-term supply of medicines from Great Britain (GB) to Northern Ireland (NI) and would welcome your views on two specific elements.

The first is the provision that, if the EU does not grant an authorisation for a novel medicine after six months, the medicine could no longer be used in NI even if still authorised for use

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15 Commission Work Programme 2022, European Commission, 19 October 2021, [COM\(2021\) 645](#) and [Annexes 1–5](#).

in GB. It seems to us that there remains a risk that the same medicines are not available in both GB and NI in the event that EU and GB regulators take different views. Is this an accurate interpretation?

Second, the whole package appears to be based on the level of public health protection afforded by GB laws in this area remaining “essentially equivalent” to that provided by the EU’s laws. While we consider it unlikely that GB law in the area of medicines will be amended to reduce the level of public health protection that is currently guaranteed, the Commission indicated in its Work Programme for 2022 that it will propose revisions later this year to the EU’s body of legislation in this area. At the very least, it seems to us, the UK will need to be mindful of EU law when exercising regulatory autonomy in this area and will need to recognise that it may need to adapt policy to maintain equivalence. Do you accept that this element of the proposal places constraints on the UK’s regulatory autonomy? Would you anticipate working with the Commission to develop a clear understanding of what constitutes “essentially equivalent”?

Your EM used the term “substantively equivalent” rather than “essentially equivalent”. Could you explain this apparent discrepancy?

You noted in your EM that you were still analysing the proposals. We ask that, in your reply, you set out the results of that further analysis.

We look forward to a reply to this letter by 30 March 2022.

## 3 EU trade preferences for developing countries<sup>16</sup>

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### The proposed EU Regulation is legally and politically important because:

- the changes it proposes to the EU’s scheme of tariff preferences for developing countries will apply to Northern Ireland under the Protocol on Ireland/Northern Ireland;
- the UK’s post-Brexit scheme of tariff preferences for developing countries is based on the EU’s current scheme;
- the Government intends to introduce a new Developing Countries Trading Scheme in 2022; and
- differences in the schemes applied in the EU and in the UK could mean that access to trade preferences and tariffs due could vary depending on whether goods are brought into Northern Ireland or into the UK mainland.

### Action

- Write to the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP) requesting further information once the Government has launched its Developing Countries Trading Scheme and published its related ‘tax and information note’ in the Spring.
- Draw to the attention of the International Development Committee, the International Trade Committee and the Northern Ireland Affairs Committee.

### Overview

3.1 The EU’s Generalised Scheme of Preferences (‘EU GSP’) enables developing countries to export most of their products to the EU tariff-free or at a reduced tariff.<sup>17</sup> Since leaving the EU, the UK has applied its own [UK Generalised Scheme of Preferences](#) (‘UK GSP’) for developing countries which replicates the EU’s [current GSP regime](#) and offers the same preferential market access terms.<sup>18</sup> The EU regime for all but the least developed countries will expire at the end of 2023.<sup>19</sup> The European Commission has [proposed a successor regime](#) to take its place with effect from 1 January 2024. It is intended to “fine-tune” the

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16 [Proposal for a Regulation on applying a generalised scheme of tariff preferences and repealing Regulation \(EU\) No 978/2012](#); Council document 12184/21 + [Annexes 1–8](#), COM(21) 579; Legal base Article 207 TFEU, ordinary legislative procedure, QMV; Department: International Trade; Devolved Administrations ‘sighted’ on the Government’s Explanatory Memorandum; ESC number 41939.

17 See the European Commission’s [GSP Hub webpage](#).

18 See the [Trade Preference Scheme \(EU Exit\) Regulations 2020](#).

19 See [Regulation \(EU\) 978/2012](#) applying a scheme of generalised tariff preferences.

way the existing EU scheme works rather than pursue far-reaching reform.<sup>20</sup> Meanwhile, the Government intends to launch a new UK Developing Countries Trading Scheme in 2022 which will “look to further improve preferential access for developing countries”.<sup>21</sup>

3.2 While the UK is free to diverge from the EU’s GSP regime, this is not the case for Northern Ireland. The EU’s current GSP Regulation is one of the trade instruments that continues to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland (a part of the EU/UK Withdrawal Agreement). Any changes made to it will also apply in Northern Ireland. The Government has not told us whether the UK’s new Developing Countries Trading Scheme will be more far-reaching than the ‘fine-tuning’ envisaged for the revised EU scheme. Differences in the EU and UK GSP schemes may affect the terms on which goods originating in developing countries can enter the UK market, with different requirements for tariff-free or reduced tariff access depending on whether goods are brought into Northern Ireland or into the UK mainland.

3.3 In the background section below, we set out how the current EU GSP scheme operates and how it would change under the proposals published by the European Commission. We also explain how preferential tariffs operate under the Northern Ireland Protocol.

3.4 We [wrote](#) to the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP) on 8 December 2021 requesting further information on the UK’s Developing Countries Trading Scheme and how she expected it to differ from and improve on the EU’s current GSP scheme and the revised EU scheme set out in the latest Commission proposals. We expressed particular interest in any changes to:

- product coverage, tariff rates, rules of origin and cumulation;
- the list of international conventions underpinning the UK scheme and the systems for monitoring their effective implementation; and
- the criteria and procedures for suspending or withdrawing tariff preferences.

3.5 We noted that the European Commission had proposed “more active use of conditionality” and included inadequate cooperation on readmission as a new ground for withdrawing tariff preferences.<sup>22</sup> We asked whether the Government supported this development and intended to include a similar ground in the new UK scheme.

3.6 Turning to the implications of the Northern Ireland Protocol, we noted that traders importing goods originating in GSP countries directly into Northern Ireland or via Great Britain would need to be aware of two sets of rule changes to ensure that they applied the correct tariff—the changes to the UK scheme which would take effect in 2022 and the changes to the EU scheme which would take effect in 2024. Significant differences between the EU and UK GSP regimes—for example in the products they covered, the applicable tariff rates, and the rules of origin which determine whether a product is eligible for preferential treatment—could increase the burdens for business and potentially create a risk of trade diversion to secure the most favourable market access terms. We asked what assessment the Government had made of the implications for Northern Ireland businesses

20 See our Fourteenth Report HC 121–xiii (2021–22), [chapter 2](#) (8 December 2021).

21 See the Government’s [Statement of Direction](#) published in July 2021: Designing a new UK trade preferences scheme to take effect in 2022.

22 Article 19(1)(c) of the proposed Regulation.

in formulating its new Developing Countries Trading Scheme. We also asked how the significant changes to the Northern Ireland Protocol envisaged in the Government’s July 2021 [Command Paper](#) would affect this assessment.<sup>23</sup>

3.7 In her [response dated 3 February 2022](#), the Minister says the Government will publish a summary of responses to its public consultation on the UK’s unilateral preferences scheme and announce details of the new Developing Countries Trading Scheme “in Spring 2022”, adding that “this will give businesses and stakeholders notice of potential changes before they take effect later in the calendar year”.<sup>24</sup> She confirms that least developed countries (those covered by the EU’s ‘Everything but Arms’ arrangements—see below) will continue to receive duty and quota free access to the UK market under the new scheme. The Government is also considering a revision of rules of origin requirements for the most vulnerable developing countries. Possible changes include a new list of product-specific rules and more generous rules on cumulation to make it easier for goods imported from these countries to qualify for zero tariffs.

3.8 Possible changes for countries classified as low and lower-middle income by the World Bank (those covered by the EU’s standard GSP scheme and its GSP+ special incentive arrangements) include a reduction in tariffs and an expansion in the goods eligible for these reduced tariffs. The Minister makes no new commitments on conditionality, stating only that the suspension of trade preferences will be used “as a measure of last resort” and that the Government is considering how the conditions and reporting requirements for countries eligible for the enhanced (GSP+) scheme can be simplified.

3.9 She assures us that in designing the new UK Developing Countries Trading Scheme the Government has taken into account the impact on businesses and consumers in Northern Ireland and in Great Britain, adding: “[the] Government will specifically consider the overall impact of any divergence in tariff rates and rules of origin requirements with the EU GSP scheme.” She adds that the Government will publish a tax and information impact note when it is ready to launch the new scheme which will assess how it affects businesses and consumers “across the UK”.

3.10 The Minister notes that negotiations with the EU to “find a new balance” in operating the Northern Ireland Protocol are ongoing. She reiterates the Government’s aim of ensuring that there are “no checks or documentation for goods moving from GB to Northern Ireland” and her expectation that “the vast majority (99%) of imports from GSP countries” under the new UK scheme will (as now) enter the United Kingdom via a port in Great Britain.

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23 Northern Ireland Protocol: the way forward, CP 502, July 2021.

24 Letter dated 3 February 2022 from the Minister for Trade Policy (Rt Hon Penny Mordaunt MP) to the Chair of the European Scrutiny Committee.

## Background

### *The current EU GSP scheme*

3.11 The current EU GSP scheme for developing countries operates on three levels, each offering a different degree of access to the EU market.<sup>25</sup>

Type of GSP arrangement	Eligibility	Benefits	Number of current beneficiaries
Standard GSP	Low and lower-middle income countries <sup>26</sup> which do not benefit from another arrangement (such as a free trade agreement) granting them more favourable preferential access to the EU market	Tariff-free access to the EU market for ‘non-sensitive’ products and tariff reductions for ‘sensitive’ products, together accounting for around two thirds of product lines	14 countries
GSP+ special incentive arrangement	Low and lower-middle income countries considered to be vulnerable (because of a lack of diversification) <i>and</i> committed to sustainable development and good governance (through the ratification and effective implementation of ‘core’ UN and ILO conventions on human and labour rights, and international conventions on climate, the environment, and good governance)	Tariff-free access to the EU market for around two thirds of product lines	8 countries
Everything but Arms (EBA) arrangement	Least developed countries (LDCs) as defined by the UN	Duty and quota free access to the EU market for all products except arms and ammunition	48 countries

### *Proposed changes to the EU GSP scheme*

3.12 The proposals published by the European Commission in September 2021 are intended to “fine-tune” the way the existing EU scheme works rather than pursue far-reaching reform. The three-tiered structure would remain the same as now but with some adjustments designed to make the scheme more effective and more responsive to evolving standards on the environment and on good governance. The new EU GSP scheme would include stronger conditionality by:

- expanding the list of ‘core’ international conventions concerning human and labour rights, climate, the environment and good governance that underpin it;

25 For further information on the current EU GSP scheme, see our Third Report HC 229–i (2019–21), [chapter 7](#) (26 March 2020).

26 Based on a World Bank classification.

- requiring beneficiaries of GSP+ arrangements to submit a ‘plan of action’ setting out how they intend to implement these conventions;
- introducing a swifter procedure for withdrawing preferences in the event of exceptionally grave violations which call for a rapid response; and
- improving transparency in the monitoring and implementation of GSP+ commitments by enhancing the opportunities for civil society involvement and encouraging the use of the European Commission’s new complaints mechanism (‘the Single Entry Point’) to report possible breaches.<sup>27</sup>

3.13 The new EU GSP scheme would also permit tariff preferences to be withdrawn if a GSP beneficiary country is in breach of its obligation to readmit its own nationals.

### ***Preferential tariffs under the Northern Ireland Protocol***

3.14 Under the current Protocol arrangements, the EU’s preferential tariffs apply to goods entering Northern Ireland that are “at risk” of onward movement to the EU Single Market, based on the criteria set out in a [Decision agreed by the EU/UK Withdrawal Agreement Joint Committee in December 2020](#). The UK’s preferential tariffs apply to goods deemed “not at risk” of entering the EU market. In [earlier correspondence with the Committee](#), the Government explained how the “at risk” criteria affects imports of goods from GSP countries. In summary:

- The vast majority (99%) of imports from GSP countries enter the UK via a GB port and will pay the UK’s preferential tariff. If (following customs clearance in GB) the goods subsequently move from GB to Northern Ireland, no additional tariffs will be payable if the goods have been brought in by an authorised trader (under the UK Trader Scheme) or if any EU tariff applicable to those goods is zero. In both cases the goods can be declared “not at risk” provided also that they are not subject to commercial processing in Northern Ireland.
- Almost all goods entering Northern Ireland directly from GSP countries which qualify for the UK’s “least developed” or “enhanced” frameworks (equivalent to the EU’s Everything But Arms and GSP+ arrangements) will be treated as “not at risk” goods. This is because the EU and the UK both apply a zero tariff. Even under the UK’s ‘general’ framework (where reduced tariffs apply), the Minister estimates that at least 90% of the UK’s tariffs are within three percentage points of the EU’s tariffs, meaning that the goods would still be treated as “not at risk” if the trader bringing the goods into Northern Ireland is authorised under the UK Trader Scheme. As is the case for goods moving from GB to Northern Ireland, the trader must also establish that the goods are not subject to commercial processing in Northern Ireland.
- For goods to be eligible for preferential tariffs (and to determine the applicable tariffs under the EU and UK GSP schemes), traders will need to consider whether their goods comply with EU and UK Rules of Origin—the documentation needed to prove origin for the EU’s GSP and the UK’s GSP is different.

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27 For a more detailed overview of the proposed changes, see our Fourteenth Report HC 121–xiii (2021–22), [chapter 2](#) (8 December 2021) and the [European Commission’s fact sheet](#), Towards a stronger EU generalised scheme of preferences for a useful summary of the proposed changes.

- The Government would seek to mitigate any adverse effects for traders moving GSP goods into Northern Ireland under the EU’s GSP rules through tariff waivers or the reimbursement of tariffs paid on goods which can subsequently be shown to have remained in Northern Ireland—both forms of mitigation are foreseen in the Protocol on Ireland/Northern Ireland.<sup>28</sup>

## Our analysis

3.15 The EU’s current GSP regime has provided the baseline for the UK’s own system of preferential tariffs for developing countries since leaving the EU. That is now set to change, with a new UK Developing Countries Trading Scheme due to be launched in 2022 and a revision of the EU scheme to take effect in 2024. This means that the EU and UK schemes are likely to diverge, though the extent of the divergence and what it might mean in practice for UK businesses importing goods from developing countries under either scheme remains unclear. We expect the Government to provide a more thorough assessment of the practical implications when it officially launches the UK’s Developing Countries Trading Scheme in the coming weeks.

## Action

3.16 We have written again to the Minister asking her to provide a more detailed response to the questions we raised in our earlier correspondence once the Government has officially launched the UK’s Developing Countries Trading Scheme and published its “tax and information note”.

### ***Letter to the Minister for Trade Policy (Rt Hon. Penny Mordaunt MP)***

Thank you for [your letter of 3 February 2022](#) concerning [proposed changes](#) to the EU’s tariff preference scheme for developing countries (which will take effect in 2024) and the planned introduction of the UK’s own Developing Countries Trading Scheme later this year. The EU proposal is within the scope of the Protocol on Ireland/Northern Ireland so any changes agreed will apply in Northern Ireland. The UK’s Developing Countries Trading Scheme will apply in the rest of the UK.

As I explained in [my letter of 8 December 2021](#), differences in the way that the EU and UK schemes operate in the future and in the tariff preferences that they offer would mean that traders importing goods originating in developing countries into Northern Ireland, either directly or via Great Britain, would need to be aware of both sets of rule changes in order to determine whether the goods in question qualify for a zero tariff and, if not, which tariff rate (the EU’s or the UK’s) applies. I therefore asked you to indicate how the UK scheme would differ from, and improve on, the EU’s current GSP scheme and its proposed successor from 2024, highlighting the following areas:

- product coverage, tariff rates, rules of origin and cumulation;
- the international conventions underpinning the UK scheme and the systems for monitoring their effective implementation; and

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28 See [our letter of 25 November 2020](#) to the Minister for International Trade (Ranil Jayawardena MP) and the [letter dated 18 March 2021](#) from the then Minister of State (Rt Hon. Greg Hands MP) at the Department for International Trade.

- the criteria and procedures for suspending or withdrawing tariff preferences.

Your response does not address these areas in any detail, though you note that the Government will publish “a tax and information impact note” assessing how the UK’s Developing Countries Trading Scheme will affect businesses and consumers across the UK once it is launched in Spring this year. I therefore ask you to return to our questions and provide a fuller response when the Scheme has been launched and the impact note published.

I also ask you to update us on any progress made in negotiations with the EU on the Northern Ireland Protocol to the extent that it may affect how the UK’s Developing Countries Trading Scheme will operate in Northern Ireland.

## 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:** European Commission Work Programme 2022 [Commission Communication][SC]

**Digital, Culture, Media and Sport Committee:** European Commission Work Programme 2022 [Commission Communication][SC]

**Environment, Food and Rural Affairs Committee:** European Commission Work Programme 2022 [Commission Communication][SC]

**Environmental Audit Committee:** European Commission Work Programme 2022 [Commission Communication][SC]

**Foreign Affairs Committee:** European Commission Work Programme 2022 [Commission Communication][SC]

**Health and Social Care Committee:** European Commission Work Programme 2022 [Commission Communication][SC]; EU trade preferences for developing countries [Proposed Regulation][SNC]

**International Trade Committee:** European Commission Work Programme 2022 [Commission Communication][SC]; Supply of medicines from Great Britain to Northern Ireland [Proposed Directives][SNC]

**International Development Committee:** Supply of medicines from Great Britain to Northern Ireland [Proposed Directives][SNC]

**Northern Ireland Affairs Committee:** European Commission Work Programme 2022 [Commission Communication][SC]; EU trade preferences for developing countries [Proposed Regulation][SNC]; Supply of medicines from Great Britain to Northern Ireland [Proposed Directives][SNC]

**Treasury Committee:** European Commission Work Programme 2022 [Commission Communication][SC]

# Formal Minutes

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**Wednesday 9 March 2022**

## Members present:

Sir William Cash, in the Chair

Jon Cruddas

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.

Paragraph 1.1 to 1.46 read and agreed to.

Paragraph 1.47 read.

Motion made, and Question put, to leave out paragraph 1.47.—(Jon Cruddas).

The Committee divided.

**Ayes, 1**

**Noes, 6**

Jon Cruddas

Mr Marcus Fysh

Marco Longhi

Mr David Jones

Anne Marie Morris

Greg Smith

Question accordingly negatived.

Paragraph 1.47 agreed to.

Paragraphs 1.48 to 3 read and agreed to.

*Resolved*, That the Report be the Nineteenth Report of the Committee to the House.

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

## **Adjournment**

Adjourned till Wednesday 16 March 2022 at 1.45 pm

## 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](#) (*Independent, 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](#) (*Independent, Newton Abbot*)

[Greg Smith MP](#) (*Conservative, Buckingham*)