



House of Commons
European Scrutiny Committee

Twentieth Report of Session 2021–22

Documents considered by the Committee on 30 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. 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 (update)¹

This EU document is legally and politically important because:

- it seeks to amend EU product safety rules for a wide range of consumer goods, which continue to apply in Northern Ireland under the Protocol on Ireland/Northern Ireland. Goods made to these new EU standards that are for sale in Northern Ireland will also typically benefit from ‘unfettered access’ to the wider UK market, even if they do not meet UK product safety standards as they develop separately post-Brexit;
- the new EU General Product Safety Regulation will also affect the significant number of British businesses in the supply chain for consumer goods destined for the EU market, whose exports will need to comply with the new rules even if they do not apply directly in Great Britain; and
- in February 2022, the Minister for Small Business, Consumers and Labour Markets (Paul Scully MP) wrote to us saying that the Government has no immediate concerns about the proposed changes to the EU’s product safety rules, but that it will continue to monitor for developments in the EU legislative process closely.

Action

- Keep a watching brief on developments relating to this draft EU legislation in the context of the Northern Ireland Protocol and the position of British exporters, and draw the Minister’s latest update on the UK implications of the proposal to the attention of the Business, Energy and Industrial Strategy Committee, the International Trade Committee and the Northern Ireland Affairs Committee.

Overview

1.1 Within the EU’s Single Market for goods, products can circulate freely between its Member States without systematic customs or safety controls at national borders. For goods where the EU has not (yet) legislated for harmonised product standards across its Single Market,² which it has not for many common consumer goods such as furniture, textiles, and bicycles, free movement is usually achieved through the principle of ‘mutual recognition’: this means one EU country must normally accept the sale of ‘non-harmonised’ goods, legally on the market in another EU country, even if it does not meet

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.

its own domestic rules.³ However, to mitigate safety risks associated with goods that are *not* subject to product-specific harmonised European rules, the EU has put in place a ‘[General Product Safety Directive](#)’ (GPSD).⁴

1.2 The GPSD sets a general obligation for manufacturers and importers to “only place on the market products that are safe”. Given the wide range of goods it covers, the Directive does not itself set product-specific safety requirements.⁵ Since there is no common benchmark on what constitutes a ‘safe’ product, instead the European Commission can request one of the three European Standardisation Organisations to develop a safety standard for a specific type of product,⁶ which—if approved by the EU—replaces any previous national standards in all Member States.⁷ The Directive also requires producers to maintain systems allowing their goods to be traced and withdrawn if a serious safety risk is identified,⁸ and established the EU’s Rapid Alert System for non-food consumer products (the ‘[Safety Gate](#)’, previously known as RAPEX)⁹ to facilitate the exchange of information on dangerous products and measures taken to address them.¹⁰ There is also a separate EU [Food-Imitating Products Directive](#) (FIPD), which restricts the sale of non-food products that may be mistaken for edible goods.¹¹

3 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.

4 [Directive 2001/95/EC](#), as amended.

5 Under the GPSD, a product is normally 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”.

6 The ESOs are CEN, CENELEC and ETSI. 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. 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.

7 In the context of the crucial role played by the European Standardisation Organisations in setting safety standards for consumer goods under EU law (as well as for a [wide variety of other products](#) such as machinery, medical devices and in the future [certain Artificial Intelligence systems](#)), we also note that the European Commission in February 2022 published a [proposal](#) to reduce the influence of non-EU stakeholders including, crucially, the British Standards Institute (BSI) within their governance structures. We intend to consider the implications of that proposal separately in more detail in the near future.

8 See Article 5 of the [General Product Safety 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. Ultimately, it is the responsibility of trading standards authorities in the individual EU Member States to ensure that the requirements of the Directive are enforced (‘market surveillance’), including by the removal of unsafe goods from the market.

9 Separate EU arrangements for the exchange of information on unsafe products are in place for [food](#), [pharmaceuticals](#) and [medical devices](#).

10 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](#), last amended in 1999, which specifies that “the producer shall be liable for damage caused by a defect in his product”.

11 Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers

1.3 In June 2021, following a detailed evaluation of the implementation of the current Directive,¹² the European Commission [proposed a substantive overhaul](#) of the GPSD.¹³ This draft new ‘General Product Safety Regulation’ (GPSR), which we discussed in more detail in our [Twelfth Report of Session 2021–22](#),¹⁴ would in particular:

- update the nature of risk assessments for electronic consumer goods to take into account new technologies such as Artificial Intelligence and software updates,¹⁵ as well as any risks related to the resemblance of a good to an edible product;¹⁶
- create new product safety obligations for online market places like eBay,¹⁷ as well as requiring 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;¹⁸

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- 12 As part of the evaluation, 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 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.
- 13 The European Commission has previously, in 2013, [introduced draft legislation](#) to replace the GPSD with a putative General Product Safety Regulation. 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.
- 14 European Scrutiny Committee, [Twelfth Report of the Session 2021–22](#) (HC 121–xi, 17 November 2021).
- 15 The evaluation concluded that 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, Artificial Intelligence (AI) and inadequate cyber-security of electronic goods. 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.
- 16 In essence, the Commission found that the EU’s restrictions on potentially dangerous food-imitating products “are currently not enforced in a harmonised manner” among Member States. The proposal would therefore 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 would need to take into account any “food-imitating aspect” that could put consumers’ health in danger.
- 17 According to the European Commission, the GPSD 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. It has concerns this could affect both consumer safety and competition between companies using ‘online’ and ‘offline’ sales channels. The new Regulation therefore includes a new section specifically on the obligations of online market places. 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. However, platforms would not be required to verify the accuracy of that information, which would remain the responsibility of the seller.
- 18 The Commission’s evaluation 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. 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 and potential distortion of competition. 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 unless there is a company based within the EU that is legally responsible for the safety of the product and would also revise the rules that facilitate traceability of specific products back to their manufacturer. As we discuss elsewhere in this chapter, this requirement may have particular significance for the UK in the context of the continued application of EU product safety rules in Northern Ireland, including to goods coming in from the rest of the UK.

- update the ‘market surveillance’ for goods covered by the general product safety rules, in particular to give trading standards authorities the power to “block websites proposing dangerous products” or to order online market places to remove such goods from sale;¹⁹ and
- set stricter requirements for manufacturers relating to the traceability and recall systems for defective or dangerous goods.²⁰

1.4 The proposed General Product Safety Regulation is now being considered by the European Parliament and the EU Member States in the Council of Ministers, which must jointly agree on its legal text before it can become EU law (meaning amendments to the European Commission proposal are possible and, indeed, likely). The timetable for final approval of the new legislation is not yet clear at this stage, although the European Parliament is tentatively scheduled to have a first vote on the Regulation in June 2022 ahead of talks with the Member States on the final legislative text. Given the need for any changes agreed to be implemented by both businesses and trading standards authorities, the GPSR is likely to take effect in late 2023 at the earliest.²¹

Potential implications of the new EU General Product Safety Regulation for the UK

1.5 When we first [assessed the implications](#) of the new EU General Product Safety Regulation for the UK in November 2021, we concluded that—despite the UK’s withdrawal from the EU in 2020—the legislation may still have implications for British consumers and businesses. The potential implications of the EU proposal can be broadly grouped into three categories: the continued application of EU product safety law in Northern Ireland; the need for British businesses that supply the EU market to comply with its product safety rules; and the impact on UK-EU cooperation on product safety matters. We discussed these in some detail in [our previous Report](#), based in part on an [Explanatory Memorandum](#) signed by the Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Paul Scully MP) dated September 2021 and [oral evidence](#) provided by the Minister on 3 November 2021,²² recently supplemented by a letter dated 22 February 2022.²³

19 Market surveillance encompasses the activities by relevant authorities (‘MSAs’) to ensure that products on the market meet applicable health and safety requirements and are removed if not. 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. The new GPSR would therefore align the market surveillance framework for ‘non-harmonised’ consumer goods with the 2019 Regulation.

20 With respect to recalls of defective or potentially dangerous goods, return rates by consumers remain generally low in the EU 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 and provide an explicit legal basis for companies to use customer data to communicate such notices (to override any data protection concerns). The proposal would also give consumers a right to an “effective, cost-free and timely remedy” for the recalled product. In addition, the existing informal EU [Consumer Safety Network](#) of national product safety authorities would be placed on a statutory footing.

21 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]”. The EU’s rules on civil liability for goods that cause damage to people or property would remain unchanged for now (although the Commission is separately [preparing amendments](#) to the EU’s Product Liability Directive, which it is due to present in 2022).

22 [Oral evidence](#) by Paul Scully MP to the European Scrutiny Committee, 3 November 2021.

23 Letter from Paul Scully to Sir William Cash (22 February 2022).

1.6 To contextualise the latest information we have recently received from the Government, we have briefly summarised the ways in which the EU General Product Safety Regulation may remain relevant for the UK below.

Impact under the Northern Ireland Protocol and the UK Internal Market Act 2020

1.7 First, under the Northern Ireland Protocol in the Withdrawal Agreement—which the Government is [currently seeking to renegotiate](#)²⁴—EU rules on goods remain in force in Northern Ireland for the time being, to avoid the need for a ‘hard’ customs and regulatory border with EU Member State Ireland. This means that the EU’s proposed new General Product Safety Regulation may apply in Northern Ireland directly in due course.²⁵ That means that goods covered by the Regulation placed on the market in Northern Ireland would have to meet the new requirements as described in paragraph 4 above.

1.8 In turn, this 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 for sale in Northern Ireland—which, under the Protocol, must comply with EU rules—broadly speaking also have “unfettered access” to the market in the rest of the UK, where different standards may apply now that product safety rules for Great Britain are developed separately from the EU post-Brexit.²⁶ 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, provided such products are brought into Great Britain via Northern Ireland.²⁷ By contrast, goods brought into England, Wales or Scotland directly from the EU *are* [subject to border controls and checks](#), including those designed to ensure

24 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.

25 Article 13 of 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. It is also relevant in this context that 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—and the UK in respect of Northern Ireland—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.

26 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](#).

27 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.” 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, 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 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.

these imports meet British product safety rules.²⁸ As things stand therefore, consumer goods that meet EU requirements—including, in the future, those under the new General Product Safety Regulation—but not UK standards can still be put lawfully onto the British market, via Northern Ireland.

1.9 The application of the proposed EU GPSR in Northern Ireland under the Protocol could also 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 when they sell goods in England, Wales and Scotland.²⁹ For example, under the new EU Regulation, the sale of goods by a business in Great Britain to a Northern Irish consumer via the internet could require that business to have a legal representative in Northern Ireland (or the EU), because the UK other than Northern Ireland is considered a ‘third country’ vis-à-vis the EU’s Single Market. 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.³⁰

1.10 Assessing the potential ramifications of the new EU product safety rules for Northern Ireland and the rest of the UK 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 November 2021. In particular, 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”.³¹ Under this arrangement, 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.³² As of March 2022, the outcome

28 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, 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”. 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. In any event, 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).

29 The Minister referenced this possibility when he gave evidence to us in November 2021. 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 involved.

30 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.

31 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”.

32 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.

of the Government’s talks with the EU to secure such a change to the operation of the Protocol is not yet known. It should be noted that the potential for goods that meet EU, but not UK, safety standards to lawfully be marketed in Great Britain if they are brought in from Northern Ireland would still persist even under the changes proposed by the Government.³³

Export of consumer goods or components from Great Britain to the EU

1.11 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. In particular, British companies in the supply chain for consumer goods destined for the EU market 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.³⁴ 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.

1.12 A further complicating factor is that the UK’s own product safety framework, as it applies in Great Britain (and Northern Ireland, insofar consistent with EU law under the Protocol), is [currently under review](#). A consultation on the Government’s proposals for reform in this area is due before the end of 2022, presumably with draft legislation to follow at a later stage. As this review is well behind the European Commission’s efforts to revise the General Product Safety Directive, it is not known to what extent any changes to the UK framework may mirror the changes proposed under the draft EU Regulation (and therefore mitigate the implications of regulatory divergence between the EU and Northern Ireland on the one hand, and Great Britain on the other).

Exchange of product safety information between the UK and the EU

1.13 Finally, the new EU GPSR also has potential ramifications for cooperation between market surveillance authorities in the UK and the EU to identify and remove unsafe consumer goods from the market. Following Brexit, the UK automatically left the EU’s ‘Safety Gate’ for exchange of information on potentially dangerous products. However, both sides have a continued interest in exchanging information about potentially defective or dangerous goods identified by market surveillance authorities.³⁵

1.14 The UK/EU Trade and Cooperation Agreement (TCA) therefore foresees the possibility of a new arrangement between the Government and the EU on the ‘regular

33 Indeed, under the Government’s proposals, goods that meet UK but not EU standards could enter the EU Single Market more easily because border formalities on goods entering Northern Ireland from Great Britain would be significantly reduced compared to what the Northern Ireland Protocol currently requires.

34 [Oral evidence](#) by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q15.

35 The Government’s Office for Product Safety and Standards (OPSS) instead established the [UK Product Safety Database](#).

exchange of information’ “in relation to the safety of non-food products and related preventive, restrictive and corrective measures”. The EU’s new General Product Safety Regulation is 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. One of the intended effects is to improve the quality and 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. However, the EU has so far refused to formally agree to systematic exchange of information with the UK, apparently linked to the on-going talks over the Northern Ireland Protocol.³⁶

The Government’s position on the implications of the EU General Product Safety Regulation

1.15 As the new EU General Product Safety Regulation may apply directly in Northern Ireland under the Protocol in the Withdrawal Agreement, the Department for Business, Energy and Industrial Strategy (BEIS) submitted an [Explanatory Memorandum](#) on the proposal in September 2021.

1.16 However, the Memorandum did 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 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.³⁷ 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”.³⁸

36 The matter 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 2021, but no formal decision was taken to connect the UK and EU databases at that stage. On 3 November, the Minister [told us](#) in oral evidence 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. 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.

37 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”.

38 The Government had already [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”.

1.17 The Government’s original Explanatory Memorandum also 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, the Minister 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”.³⁹

1.18 It was on the basis of the Explanatory Memorandum and the Minister’s oral evidence, and our own analysis, that we published our initial Report chapter on the potential ramifications of the EU General Product Safety Regulation for the UK in November 2021. At that point, we also wrote to the Minister to share our assessment and [reiterate our concerns](#) in relation to the impact of the proposal for Northern Ireland and for British exporters.¹⁸ In [his reply](#), dated 23 February 2022, the Minister notes it “is still too early to determine what the full practical impact of [the EU General Product Safety Regulation] would be, as the Regulation is still subject to negotiation within the EU institutions and may yet change”.⁴⁰ However, in general, the Government “are reassured by the EU’s aim to ensure that only safe products are placed on the market” and consider “that the proposed changes would not be to the detriment of consumer safety in Northern Ireland” under the Protocol. However, recognising the potential implications of the legislation, he offered reassurance that the Government “will be monitoring developments closely as the Regulation progresses”.⁴¹

1.19 In relation to the impact of the proposed EU GPSR on British businesses in the supply chain for consumer goods destined for the EU market, the Minister states that “as an independent trading partner of the EU, the UK’s ability to influence EU policymaking is limited”. He does refer to the EU/UK Trade and Cooperation Agreement (TCA), saying it “contains support for businesses that export goods covered by the proposed Regulation”, including a commitment to “facilitate trade by avoiding unnecessary regulatory barriers”, to observe “good regulatory practices”, and provides “clear channels” for the Government “to communicate any concerns our businesses may have with EU policy”. However, these generalised principles and structures are unlikely to prevent the EU from legislating in a way that could make it more costly for British business to export to the Single Market, for example the proposed new requirement for appointing a legal representative within the EU to ensure compliance with the product safety rules.

1.20 As regards the potential exchange of information between the EU’s RAPEX database and the UK’s Product Safety Database (PSD), the Ministers notes only that there have been “discussions with the European Commission”, with a commitment to “update the

39 [Oral evidence](#) by Paul Scully MP to the European Scrutiny Committee, 3 November 2021, Q15.

40 [Letter](#) from Paul Scully to Sir William Cash (23 February 2022).

41 Referring to the Government’s own product safety review, the Minister notes that elements of particular interest are “the changing nature of supply chains, in particular product sales through online platforms and how the framework takes account of product innovation”, which are—as described above—also issues being discussed in the context of the EU proposal. The Government intends to publish a consultation on an “ambitious and multi-faceted reform programme” on product safety in the UK “later this year”. The Minister also notes that “in relation to some products”, not specified in his letter, the UK has “justifiably more stringent rules than EU member States” which “displace the mutual recognition principle” (meaning EU businesses must meet these rules before they can place the product on any part of the UK market, including Northern Ireland).

Committee on future developments for the exchange between the databases in due course”. This suggests a formal agreement on exchange of product safety is still on hold due to the EU’s position on linking the matter to the talks on the Northern Ireland Protocol.

Conclusions and action

1.21 It has been clear from our own previous assessment—as well as from the various statements made by the Minister in his Explanatory Memorandum, his oral evidence and his most recent letter—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 and for British exporters.

1.22 We are grateful for the Minister’s latest letter, and in particular his reassurances that no current adverse impact of the proposal on the UK has been identified, including under the Northern Ireland Protocol. However, it would seem prudent for the Government to engage proactively with the EU institutions while the Regulation is still in draft form to ensure the UK’s interests are taken into account to the extent necessary, given the relevance of the proposal for both Northern Ireland and exporting British businesses. We also remain concerned that the interaction between the Protocol and the Internal Market Act could over the longer term, 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). In particular, there is a risk—mostly hypothetical at present—that future UK-specific safety standards in Great Britain, for example resulting from the Government’s Product Safety Review, could be circumvented lawfully by traders bringing in goods that only meet EU standards via Northern Ireland. The commercial incentives for doing so are likely to be most attractive where there is the greatest future divergence between UK and EU product standards, in particular if they were to require separate manufacturing processes.

1.23 In this context, we welcome the Minister’s reference to the Government using the new Specialised Committee structure of the EU/UK Trade and Cooperation Agreement to discuss EU regulatory changes and their impact on the UK. However, in cases of particular interest (especially where the UK’s legal obligations under the Protocol are potentially engaged), the Government’s discussions with the EU may need to go beyond only exchanges of information at such meetings. We would also question whether the high-level principles on regulatory issues as set out in the UK/EU trade agreement amount to what the Minister describes as “support for businesses” to trade with the EU, since they are not intended to prevent regulatory divergence and do not in themselves prevent the EU from legislating in a way that makes it more costly for non-EU companies to supply its market. With that in mind, we will—like the Government—retain a close interest in the discussions in Brussels on the new EU General Product Safety Regulation as its legal text evolves.

1.24 We intend to ask the Minister for a more detailed assessment of its implications for the UK when there is more clarity about the final substance of the EU GPSR, and what steps Ministers took to influence the discussions in Brussels. Naturally, we will at that stage also take into account the state of play in the Government’s talks with the EU about the operation of the Northern Ireland Protocol. In the meantime, we draw the Minister’s latest update about the UK implications of 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.

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

(42013) Proposal for a Council Implementing Regulation amending Implementing
5394/22 Regulation (EU) No 282/2011 as regards the update of the VAT and/or
excise duty exemption certificate

COM(22) 8

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 (update) [Proposed Regulation][SNC]

International Trade Committee: The EU’s new General Product Safety Regulation (update) [Proposed Regulation][SNC]

Northern Ireland Affairs Committee: The EU’s new General Product Safety Regulation (update) [Proposed Regulation][SNC]

Formal Minutes

Wednesday 30 March 2022

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Mr Marcus Fysh

Mr David Jones

Craig Mackinlay

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 2 agreed to.

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

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

Adjournment

Adjourned till Wednesday 20 April 2022 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](#) (*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*)