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European Scrutiny Committee

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Documents considered by the Committee on 24 February 2021

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. 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 Methane Strategy¹

This EU document is politically important because:

- it relates to reducing greenhouse gas emissions, which is a matter of strategic importance to the United Kingdom; and
- it includes actions which engage EU programmes in which the UK intends to participate in the future, specifically on research and on satellite monitoring.

Action

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

Overview

1.1 Methane is a powerful greenhouse gas, second only to carbon dioxide in its overall contribution to climate change. The Commission’s Strategy sets out measures to cut methane emissions in Europe and internationally and presents legislative and non-legislative actions in the energy, agriculture and waste sectors. It is relevant to the UK in the light of commitments within the UK-EU Trade and Cooperation Agreement to maintain, and cooperate on, ambitious climate change policies and in view of the UK’s participation in both the EU’s research programme “Horizon Europe” and the EU satellite earth observation programme “Copernicus”.

The Commission’s Strategy

1.2 One of the priorities under the Strategy is to improve measurement and reporting of methane emissions across Member States and the international community. In addition to compulsory EU measurement, reporting and verification at company-level for all energy-related methane emissions (building on the international Oil and Gas Methane Partnership methodology), the Commission will support the establishment of an international methane emission observatory and improve satellite surveillance via the Copernicus satellite programme.

1.3 To reduce methane emissions in the energy sector, the Commission will propose an obligation to improve detection and repair of leaks in fossil gas infrastructure and will consider legislation to prohibit routine flaring and venting practices. The Commission will also explore possible standards, targets or incentives for fossil energy consumed and imported into the EU in the absence of significant commitments from international partners. Remedial work to eliminate methane emissions from the EU’s active or unused coalmines will be encouraged.

¹ Commission Communication: EU Strategy to reduce Methane; Council and COM number: [11856/20](#), COM(20) 663; Legal base:-; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41593.

1.4 The Strategy also notes that the Commission will review relevant EU environmental and climate legislation, such as the greenhouse gas “Effort Sharing Regulation”² and the Industrial Emissions Directive,³ which might be expanded to cover methane-emitting sectors not yet included in its scope.

1.5 On agriculture, the Commission will improve reporting of emissions through better data collection, including use of earth observation and will promote opportunities to reduce emissions with support from the Common Agricultural Policy. Under the Horizon Europe research programme, the Commission will also consider proposing targeted research on the different factors that effectively lead to methane emission reductions in agriculture, focusing on technology and nature-based solutions as well as on the factors leading to dietary shift.

1.6 In the waste sector, the Commission will consider further action to improve the management of landfill gas and will review the relevant legislation on landfill in 2024. Minimising the disposal of biodegradable waste in landfills is crucial to avoid methane formation. Under the Horizon Europe research programme, the Commission will also consider proposing further research on waste to biomethane technologies.

1.7 Finally, the Commission will engage with international partners in order to reduce emissions globally. The Commission, for example, will support engagement with the Global Methane Initiative, the World Bank’s Global Gas Flaring Reduction initiative, and the World Bank’s initiative on Zero Routine Flaring by 2030, as well as the International Energy Agency.

EU-UK Trade and Cooperation Agreement

1.8 The EU and UK are now provisionally applying a “Trade and Cooperation Agreement” (TCA) setting out the terms of their future relationship. With regard to climate change, the TCA includes the following salient elements:

- the “fight against climate change” is one of the five “essential” elements of the TCA, meaning that failure by either party to meet its international commitments in this area—notably compliance with the terms of the Paris Agreement on Climate Change—can be a basis for termination or suspension of the whole Agreement;
- a reaffirmation of a commitment by both the UK and EU to achieving economy-wide climate neutrality by 2050;
- a commitment to non-regression from the levels of protection in place at the end of the Transition Period, in a manner that would affect trade or investment between the UK and EU;
- systems of carbon pricing must be in place, covering greenhouse gas emissions from electricity generation, heat generation, industry and aviation, and the UK and EU should consider linking their carbon pricing systems;

2 [Regulation \(EU\) 2018/842](#) on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013.

3 [Directive 2010/75/EU](#) on industrial emissions (integrated pollution prevention and control).

- effective implementation of the UN Framework Convention on Climate Change (UNFCCC), including its Paris Agreement, which seeks to hold the increase in global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels;
- the EU and UK must promote the mutual supportiveness of trade and climate policies and measures and must work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora; and
- the EU and UK must facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy, energy efficient products and services, for instance through addressing tariff and non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of the best available solutions.

1.9 The EU and UK also agreed in principle⁴ on continued UK participation in certain EU funding schemes, including most of the Horizon Europe research programme and the Copernicus satellite earth observation programme, part of the EU space programme. Participation is granted in return for a financial contribution from the UK. The TCA contains a detailed methodology to establish how much the UK needs to pay to the EU in return for its participation, and sets out rules on how the parameters of UK participation can be altered.

The Government's position

1.10 In his [Explanatory Memorandum](#), submitted prior to the provisional application of the TCA, the then Minister of State for Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP) observed that the UK was negotiating a future energy agreement with the EU, which would dictate the UK's future energy and climate relationship with the EU. He added that there may be implications for Northern Ireland, under the terms of the Protocol annexed to the Withdrawal Agreement, if the EU proposed legislation in relation to the Strategy. Specifically, changes might be made to the scope of the Industrial Emissions Directive,⁵ although those changes would only apply to Northern Ireland if they affected the electricity market.

1.11 The Minister welcomed the EU's efforts to tackle methane emissions. He considered that, in order to limit global mean temperature rise to 1.5°C, international action to tackle emissions of warming chemicals such as methane, as well as carbon dioxide, is required.

1.12 On monitoring, reporting and verification, the Minister agreed that improving the quality of methane emissions data and company reporting worldwide has an important role to play in enabling the reduction of overall greenhouse gas emissions. As a State partner of the Climate and Clean Air Coalition the UK Government has been following the work of international organisations such as the Oil and Gas Methane Partnership.

4 [Joint Declaration on participation in Union programmes and access to programme services](#)

5 [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance

As the COP26 (international climate negotiations later this year) Presidency, the UK is keen to encourage and harness the innovation and commitment of all to move the global economy to net zero emissions. The UK wants businesses to set net zero targets and credible short-term action plans (i.e. Science Based Targets or equivalent).

1.13 UK expertise, said the Minister, provides world-leading satellite Earth Observation capability, from building missions to managing and exploiting data and creating trusted applications and services, including those that verify reductions of methane emissions in support of UNFCCC targets.

1.14 The Minister went on to set out the action that the UK is already taking not only to detect and repair leaks in fossil gas infrastructure but to upgrade the gas network from iron pipes to plastic pipes. The UK also has measures in place to reduce flared and vented gases from oil and gas operations on the UK Continental Shelf (UKCS), explained the Minister.

1.15 Concerning methane emissions from closed coal mines, the Minister indicated that the Coal Authority will be assessing opportunities to reduce any emissions from closed mines where possible and where solutions are technically feasible and cost effective. Initially, this will include the monitoring, collection and baselining of all information on methane emissions relating to past and present coal mining operations.

1.16 The Minister acknowledged the methane contribution from agriculture. The sector accounts for around 10% of the UK's total greenhouse gas emissions, of which around two thirds arise in the form of methane from livestock and their manures. The Government is looking at ways to reduce such measures, including improvements in on-farm efficiency.

1.17 Commenting on the contribution from waste management, the Minister said that the Government's approach to addressing methane emissions from waste looks at reducing emissions from future waste deposits through a combination of waste prevention, increased recycling and diversion of biodegradable waste streams to alternative waste treatments, as well as developing passive technologies to reduce emissions from legacy landfills.

Our assessment

1.18 Much attention has been focused on cutting carbon dioxide emissions in order to mitigate climate change but methane is a far more potent gas, with a substantially higher global warming potential than carbon dioxide.⁶ Global methane emissions are estimated to have increased by around 9% over the period 2006–17,⁷ with equal shares between the fossil fuel sector on the one hand and the agriculture and waste sectors on the other. While emissions in Europe (including the UK) have fallen, methane remains potent and is a key action area if climate change targets are to be achieved. This is clearly an area where it is right for the UK and EU to work together to effect substantial change at the global level. They can also lead by example in taking actions to further reduce methane emissions.

6 Methane management—[The Challenge](#), UN Economic Commission for Europe (UNECE).

7 Saunio et. al., [The Global Methane Budget 2000–2017](#) (Earth Syst. Sci. Data, 12, 1561–1623, 2020), and [supplemental data to Global Methane Budget 2000–2017](#).

1.19 We note too that, as part of the Strategy, the Commission proposes to engage two of the EU programmes in which the UK is likely to participate in the future, namely Horizon Europe and Copernicus. These are important ways through which the UK and EU will be able to cooperate to pursue their methane reduction ambitions.

Action

1.20 We require no further information from the Government on this matter, but we think it would be helpful for the material from the Commission and from the Government to be presented together. We are reporting that material to the House as politically important and we draw it to the particular attention of the Business, Energy and Industrial Strategy Committee and the Environmental Audit Committee.

2 EU Intellectual Property Action Plan⁸

This EU document is politically important because:

- it sets out the European Commission’s agenda for reform of Intellectual Property law in the EU, which—as a large market for the export of UK goods and services—may impact on the protection of UK right holders within the EU in the future; and
- in its Action Plan, the Commission also refers to an upcoming [revision of the EU’s schemes for protected geographical indications](#) (GI) for food and drink products, which may affect Northern Ireland directly because it remains bound by EU law in that area under the Protocol on Ireland/Northern Ireland.

Action

- Draw the EU Intellectual Property Action Plan to the attention of the Business, Energy and Industrial Strategy Committee, the Digital, Media, Culture and Sport Committee and the International Trade Committee, and, in relation to the envisaged changes to the EU’s GI schemes, the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

Overview

2.1 In November 2020, the European Commission published an “[Action Plan](#)” on intellectual property rights (IPR), essentially setting out a timetable for reform of various aspects of EU law in this area. In the document the Commission announced, for example, that it is working on proposals to update the EU’s legal framework for “Geographical indications” for food and drink products, industrial designs and plant variety rights, as well as carrying out work to determine how EU IPR rules may need to be updated to reflect advances in technology such as Artificial Intelligence and 3D-printing. In addition, it calls for rapid implementation of the EU’s envisaged new [unitary patent system](#), and—in the context of the Covid-19 pandemic—the Commission noted that it will explore a “novel licensing system” for patent-protected pharmaceutical products relevant to the public health response.

2.2 By and large, changes to EU intellectual property law will have no direct legal effects in the UK now that it has left the Single Market. A notable exception is the EU framework for “[Geographical indications](#)” (GI), a specific type of intellectual property that limits the use of geographical indications on specific food and drink products for marketing purposes where offered for sale within the EU, such as [Cornish clotted cream](#) or [Gruyère cheese](#).⁹ Under the [Protocol on Ireland/Northern Ireland](#) in the Withdrawal Agreement governing the UK’s exit from the EU, European rules relating to GI—including any changes agreed now the UK is no longer a Member State—continue to apply in and to Northern Ireland

⁸ [Communication from the Commission: An intellectual property action plan to support the EU’s recovery and resilience](#); COM number: COM(2020) 760; Legal base: Not applicable; Department: [Business, Energy & Industrial Strategy](#); Devolved Administrations: Not consulted; ESC number: 41686.

⁹ The protection of GI of EU-produced food and drink products in non-EU markets has also traditionally been a key demand in the EU’s trade negotiations with other countries, but the European Commission’s [EU Trade Policy Review](#) of February 2021 did not refer to them explicitly.

until at least the end of 2026.¹⁰ It is noteworthy therefore that the Action Plan refers to work to update the EU rulebook in this area, on which the Commission [held an initial public consultation](#) in late 2020.

2.3 Moreover, given that the EU remains a significant market for the export of British goods and services, reform of how any IPR associated with those products is protected within the European Union may still have important economic ramifications for specific sectors and industries which rely on intellectual property rights to protect their revenues.

2.4 With this mind, the remainder of this chapter explores the context and substance of the EU’s Intellectual Property Action Plan, and its possible implications for the UK, in some more detail.

The EU Intellectual Property Action Plan

2.5 The EU has a comprehensive web of [legislation on intellectual property rights](#) (IPR) covering patents, trademarks, designs, copyright, protected geographical indications for agricultural products and plant variety rights, as well as rules for the protection of commercially confidential information. These EU laws standardise rules in this field to some extent across its Member States and, in certain cases, enable intellectual property rights registered in one EU country to be recognised automatically across the EU. Their aim, ultimately, is to “help entrepreneurs and companies valorise their intangible assets” and help them do so efficiently by maximising economies of scale within the EU’s Single Market.

2.6 The EU agreed major reforms of its statutory framework for [trademarks](#) and [copyright](#) in 2017 and 2019 respectively. However, this does not mean the regulatory landscape is static. On 25 November 2020, the European Commission published an “[intellectual property action plan](#)“, which identified “five challenges” that, if addressed, would “mak[e] the most of the EU’s innovative potential” and “support the EU’s recovery and resilience” following the Covid-19 pandemic. These “challenges” include the continued fragmentation of IPR laws across the EU and a lack of legal clarity about the treatment of new technologies—such as 3D printing and Artificial Intelligence (AI)—under such rules. Given the impact of Covid-19, the Commission also cites a need to facilitate access to patented medical goods so production can be increased, although it has stopped short of calling for “compulsory licensing” where an entity can be granted a right to access a patented product without the permission of the patent-holder.

2.7 To address these issues, the Commission in its Action Plan refers to a number of existing and new EU policy initiatives in the field of intellectual property. These can be grouped, broadly speaking, into reforms relating to patents, intellectual property in the agricultural sector, and cross-cutting issues (such as adapting IPR law to Artificial Intelligence and improving enforcement against counterfeit goods). We have provided a summary of the key initiatives below.

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

Patents

- Increased coordination of third-party access to patented products in times of crisis, especially in the pharmaceutical industry.** In the context of the Covid-19 pandemic, many developing countries have called for IP rights on products needed for the public health response—like vaccines and other pharmaceuticals—to be waived, so that they can also be produced by companies other than the patent holder.¹¹ The EU has not supported such a step, with the Action Plan instead reiterating the Commission’s support for “voluntary pooling and licensing of IP related to Covid-19”. However, it does envisage further work to establish within the EU a “novel licensing system” that would make it easier for production of goods to be carried out by non-patent holders in “times of crisis”. It also refers to a new coordination mechanism for “compulsory licensing” by EU Member States (where a government grants permission to a party seeking use of a patented invention without the consent of the patent owner).¹² The precise nature of the Commission’s work in this area, to be carried out into 2022, is not clear from the Action Plan.
- The completion of the EU’s [unitary patent system](#).** This is a key piece of EU IPR law that has been in development for more than a decade. Once operational, the system will allow inventors to acquire a single patent that is recognised in 25 of the 27 EU Member States without the need for further national validation procedures.¹³ They are also setting up a new [international Unified Patent Court \(UPC\)](#) to deal with infringements and validity of such patents.¹⁴ In its Action Plan, the Commission notes that the “main missing step” in the launch of the new system is Germany’s ratification of the [treaty establishing the UPC](#), which has been the subject of repeated legal challenges on constitutional grounds.¹⁵ The UK was previously closely involved in the establishment of the unitary patent but will no longer participate in the arrangement post-Brexit, as it is open to EU Member States only;
- Reform of the EU legal framework for [supplementary protection certificates \(SPCs\)](#).** SPCs offer holders of patents related to medicinal and plant protection products a 5-year extension to their rights, to compensate them for the fact that obtaining regulatory approval for their products, for example through clinical trials, is a lengthy and costly process. The Commission has [evaluated](#) the EU’s rules in this field, and concluded that the way they are implemented by different Member States is “fragmented”, resulting in “inefficiencies and a

11 World Trade Organization, “[Members discuss intellectual property response to the COVID-19 pandemic](#)” (20 October 2020).

12 Powers to force compulsory licensing are largely exercised by EU countries at national level under domestic law, rather than under EU legislation. The Commission notes that the only exception is [Regulation \(EC\) 816/2006](#), which provides for a “specific compulsory licence regime which [...] concerns the manufacture of pharmaceutical products for export to countries with public health problems”.

13 Two EU Member States—Spain and Croatia—are not currently part of the unitary patent arrangement.

14 This Unified Patent Court will also have jurisdiction over “European patents”, i.e. patents granted by the European Patent Office which do not have ‘unitary’ effect but are instead validated on the basis of the domestic law of EU countries.

15 Pinsent Masons, “[European Unified Patent Court is delayed again](#)” (18 January 2021). The Agreement establishing the UPC can only take effect once all three participating EU countries with the largest number of patent applications have ratified it. This means Germany’s ratification is a prerequisite for the UPC to become operational.

lack of transparency and predictability”. It intends to make proposals addressing these issues under the EU’s SPC framework in early 2022¹⁶ as part of the new [EU Pharmaceutical Strategy](#).¹⁷

- **Possible reforms to the EU’s approach to Standard-Essential Patents (SEPs).** SEPs are those patents that cover an invention that is a necessary component of a technical standard for a particular product, in particular for mobile communication devices and other products with connectivity to the internet. Holders of SEPs are meant to provide companies manufacturing goods that need to comply with a standard that relies on patented technology with a licence on “fair, reasonable and non-discriminatory” terms, but in practice disputes—and threats of costly litigation—over the terms of such licences, or whether a standard in fact relies on patented technology at all, are common (especially in the automotive sector). Building on a 2017 [policy paper](#), the Action Plan states the Commission will by early 2022 “consider reforms” to the use of SEPs in the EU (although it appears to favour “industry-led initiatives”).¹⁸

Plant variety rights and quality schemes for consumer products

- **A possible “targeted revision” of the [Community Plant Variety Rights \(CPVR\) system](#).** The CPVR is, in essence, the EU’s patent system for plant varieties. In its Action Plan, the Commission recalls the conclusions of a 2011 evaluation which found that the system “functions well overall”, although it acknowledges certain “recently identified shortcomings”—which the Action Plan does not specify—that “could be tackled [...] in a targeted revision of the legislation”, with proposals due by the end of 2022.¹⁹
- **An evaluation of the rules on protected geographical indications for consumer goods.** The EU has several schemes that, by law, limit the use of specific [geographical indications for food and drink](#) sold within the Single Market, as indicators of their quality.²⁰ In the Action Plan, the Commission calls for a “new approach” to make the “protection and enforcement rules [...] more precise”, on which it is [currently consulting](#) with a view to presenting formal

16 The Action Plan notes in particular that the Commission is assessing “the possibility to introduce a unified SPC grant mechanism and/or create a unitary SPC title”.

17 In particular, the Commission has said that it wants to “further optimise incentives and rewards to boost innovation” in the pharmaceutical industry.

18 In particular, the Commission is analysing the merits of an independent system of third-party “[essentiality checks](#)” to provide greater clarity about whether a specific SEP is in fact ‘essential’ for the functioning of a particular technical standard (and therefore whether a licence should be paid for by a manufacturer making a product to that standard). Politico.EU [reported](#) in February 2021 that a group of experts appointed by the Commission to identify a way forward on SEPs “failed to reach any consensus” and “would not all endorse a final report laying out the disagreements”. Their report had been planned for publication alongside the IPR Action Plan, but has now been delayed.

19 A number of industry bodies in the agricultural and horticultural sector had expressed concern to the Commission in 2020 that the CPVR system was not mentioned in an initial “roadmap” setting out which areas of EU IPR law would be looked at in the context of the full Action Plan. This appears to have led to its eventual inclusion in the Action Plan, although the scope of the Commission’s review of the CPVR appears quite limited.

20 Cases of protected geographical indications under EU law include, for example, “cassis de Dijon” liqueur or “prosciutto di Parma”. As discussed further elsewhere in this chapter, UK and EU geographical indications that were protected before the end of the post-Brexit transition period enjoy special status under the Withdrawal Agreement.

proposals by the end of 2021. Separately, the Commission is also assessing the feasibility of a new EU scheme to protect the use of [geographical indications for non-agricultural products](#) like jewellery, steelwork and textiles.

Adaptation of IPR law to new and emerging technologies

- **Consideration of how inventions created with the [use of Artificial Intelligence \(AI\)](#) should be treated for IPR purposes.** The Action Plan does not foresee any specific new EU legislation in this regard,²¹ but refers to an [external study](#) completed in 2020 that identified “room for improvement” with respect to intellectual property protection for creations made “with the help of AI technologies”. Based on this, the Commission will “map and analyse all issues” before recommending any further measures in this area (although no timetable is specified in the Action Plan).²²
- **The reform of the EU’s laws on [protection of industrial designs](#).** This relates to the physical appearance of products like textiles, furniture or electronics. A recent Commission evaluation of the EU rulebook in this area has certain “shortcomings”, including notably how it applies to new forms of design (like user interfaces in apps or 3D-printed products), and it intends to table draft legislation to update the existing rules by the end of 2021.-

Cross-cutting IPR reform initiatives

- **Promote the voluntary and secure exchange of commercially confident data between companies.** The Commission has published a proposal for an overarching EU “[Data Act](#)”, to govern how businesses in the EU can “create, access, share and use data”. However, given that some data held by companies can be covered by intellectual property rights—in particular, in this context, under the EU’s Trade Secrets Directive and Database Directive—it will also consider the need for amendments to those laws as part of the Data Act to “promote data access and sharing” between businesses.²³
- **Tackle the dissemination of counterfeit goods and pirated audiovisual content via the internet.** The Commission has also identified effective enforcement of IPR as an issue that requires further attention, citing the economic losses caused to EU businesses by counterfeited and pirated products²⁴ and a lack of effective IPR protection in other jurisdictions around the world.²⁵ As a first step,

21 The Commission is separately [preparing draft EU legislation](#) on the legal and ethical aspects relating to the use of AI technology.

22 The European Patent Office (EPO) has rejected two patent application that were designated as having been invented by the “DABUS” AI machine. They were rejected, because the EPO considered only natural persons could be ‘inventors’ for the purposes of EU law. These rejections have been appealed.

23 According to the Action Plan, the Commission will in particular consider whether the Trade Secrets Directive would benefit from measures to clarify its scope, namely “which type of data or datasets could qualify as ‘trade secrets’, whether the current set of exceptions can support the data and green economy and whether and how the tools offered by the Directive can be used to efficiently counter the unlawful acquisition, use and disclosure of data and datasets”.

24 The Commission cites figures from the OECD and the EU Intellectual Property Office that indicate “imports of counterfeit and pirated goods into the EU amount to as much as €121 billion, representing up to 6.8% of EU imports in 2016”.

25 The Action Plan notes that “certain non-EU countries do not sufficiently protect IP, often to the harm of EU companies”, adding that “the EU must harness its potential to act as a global norm-setter”.

in December 2020, the Commission tabled an EU “[Digital Services Act](#)” that contains proposals to “clarify [...] the responsibilities of online platforms” when it comes to preventing access by their users to goods and services that infringe intellectual property rights, such as acting as a market place for counterfeit goods or hosting copyrighted audiovisual material.²⁶

2.8 The Action Plan does not envisage any major reforms of the EU’s legal framework on copyright and trademarks, since they were updated relatively recently. However, the Commission is required to carry out evaluations of various aspects of the EU’s body of copyright law in the coming years, including a full review of the overarching [Copyright Directive](#) by 2026.²⁷ This could lead to further proposals for EU copyright reform further down the line.²⁸ The Commission also notes that it will “work towards” securing the EU’s ratification of the [Beijing Treaty](#), which aims to protect the rights of artists in audiovisual performances.²⁹ With respect to trademark policy, the Commission is required to review the functioning of the [2017 Trademark Regulation](#) for the first time in 2021, and it is also considering the potential merits of EU accession to the [Singapore Treaty on the Law of Trademarks](#).

Implications of the EU IPR Action Plan for the UK

2.9 The United Kingdom of course left the European Union on 31 January 2020, and since the end of the post-Brexit transition period on 31 December that year, EU law—including the field of intellectual property—has ceased to apply directly.³⁰

2.10 However, the [Withdrawal Agreement](#) governing the UK’s exit from the EU does contain a number of provisions relating to the protection of intellectual property rights in both the UK and the EU.³¹ In particular, the Agreement requires the UK to maintain the protections afforded to holders of trademarks, designs and plant variety rights that had been granted under EU law before the UK left the Single Market at the end of 2020. Similarly, such rights owned by UK nationals that qualified for protection in EU Member States before the end of the transition period also continue to be protected. In addition, geographical indications for food and drink products which were protected under EU law by the end of 2020 must remain protected where sold in the UK indefinitely.

2.11 The new UK/EU Trade & Cooperation Agreement (TCA) also contains a section on intellectual property rights. In essence, it requires both the UK and the EU to maintain

26 The Committee intends to consider the detail of the proposal for an EU Digital Services Act, and how it may affect the UK, in the near future.

27 In addition, the Commission is legally required to review specific elements of the existing EU copyright framework in the near future, including the [Collective Rights Management Directive](#), the so-called “[Marrakesh Directive](#)” on access to copyrighted material by the visually impaired, and the [Portability Regulation](#) on access to digital content across borders within the EU’s Single Market.

28 The Commission has also [launched a study](#) on copyright data management and artificial intelligence, to increase “transparency on ownership” of copyrighted materials. Similarly, it is preparing guidance on the implementation of Article 17 of the [EU Copyright Directive](#), which sets out a specific legal regime for the use of copyright-protected content by user-uploaded content sharing platforms.

29 The EU and several of its Member States signed the Treaty in 2013 but have not formally ratified it.

30 While the bulk of these laws have been retained under the [European Union \(Withdrawal\) Act 2018](#), subject to modifications made by Ministers using regulations under the Act, future changes to EU IPR law will not have any direct effect in the UK.

31 See Title IV of Part Three of the [Withdrawal Agreement](#). These provisions are unchanged in the version of the treaty put to Parliament by Theresa May as Prime Minister in 2018 and 2019, and the version eventually ratified under Boris Johnson in January 2020.

legislation protecting several types of intellectual property. However, there is no obligation for the UK to continue aligning with future changes to EU law, including those envisaged by the Commission’s recent Action Plan. The Agreement also creates a UK/EU Specialised Committee on Intellectual Property, which will serve as the primary forum for any discussions between the Government and the EU in this field. The TCA does not modify the protections to Geographical Indications for food and drink products under EU law by 31 December 2020, as set out in the Withdrawal Agreement (see above).

2.12 Nevertheless, *future* developments in the EU’s approach to intellectual property law may still have further relevance for the UK.

2.13 First, and most directly, the EU’s existing legislation on Geographic Indication for agricultural products is listed in the Protocol on Ireland/Northern Ireland.³² This means that these rules continue to apply in Northern Ireland until at least the end of 2026.³³ Crucially, the references in the Protocol to EU law are “dynamic”, meaning that any future changes agreed in Brussels—without the UK’s formal input, as it is no longer a Member State—will also take effect automatically under the Protocol. As such, the proposals for reform of the EU’s GI schemes, as envisaged by the Commission’s Action Plan, could in due course result in new EU legislation that will apply directly in Northern Ireland. With respect to the Commission’s separate work on new EU legislation on the protection of geographical indications for non-agricultural products, it is unclear at this stage what its implications under the Protocol may be.³⁴

2.14 More generally, given the EU’s importance as an export market for UK goods and services, any changes in how the intellectual property associated with such exports (or with competing products, in particular those that originate in the EU) is protected within the EU market could have significant economic ramifications for individual sectors and companies. For example, the new unitary patent system—once operational—could make it easier for UK businesses to have their intellectual property protected in most of the European Union.³⁵ The converse may also hold: if the EU were to move to compulsory licensing or other measures that limit the value of patents in the medical sector, for example

32 The Protocol requires the UK to continue applying EU law affecting various aspects of the production, trade and sale of goods within Northern Ireland, to maintain the land border in Ireland free from any customs and regulatory infrastructure. The list of EU rules that continue to have effect in under the Protocol includes a very [limited sub-set of EU legislation relating to IPR](#), which primarily relate to the protection of specific geographic designations of food and drink products as a sign of quality. This means that such goods produced and/or sold in Northern Ireland must continue to observe the EU’s legal restrictions on how they can be marketed.

33 The Protocol foresees the application of a regular “democratic consent mechanism”, allowing the members of the Northern Ireland Legislative Assembly to vote on whether the provisions of the Protocol requiring continued alignment with EU law should remain in effect. The first such vote is due to take place at the end of 2024, and if the MLAs vote against the Protocol, the relevant provisions would cease to have effect by the end of 2026.

34 It is possible that the EU may seek to have any new EU legislation establishing GI protection for non-agricultural products added to the Protocol under its Article 13(4), which the UK would be free to reject (although this would allow the EU to take “appropriate remedial measures”).

35 As a Member State of the EU, the UK had initially been a proponent of the EU’s new unitary patent system, and prior to its withdrawal from the European Union had been due to host one of the specialist sections of the Unified Patent Court. In November 2016—after the Brexit referendum, but before the process of withdrawal was formally initiated—the Government [said it would proceed](#) with ratification of the UPC Agreement. Ratification was [subsequently completed](#) in April 2018. At the time, the Government acknowledged that the UK’s participation in the unitary patent would require further negotiations with the EU, given that the system that was set out was open only to EU Member States. Under the new Prime Minister, the UK [formally withdrew its ratification](#) of the UPC Agreement in July 2020.

in the context of the Covid-19 crisis, that could impact on UK-based patent holders.³⁶ The precise implications of the various proposals for reform set out by the Commission in its Action Plan will vary on a case-by-case basis depending on the type of IPR and the economic sectors concerned.

2.15 The continued relevance of EU IPR policy for the UK is also acknowledged by the Government. In an Explanatory Memorandum submitted by the Department for Business, Energy and Industrial Strategy, the Minister for Science (Amanda Solloway MP) noted that EU IPR reform “is an area of work we will watch with great interest”, adding that the UK can “monitor [them] to ascertain any potential domestic benefit”. The Government is also considering some of the same regulatory challenges in the field of IPR created by new and emerging technologies as identified in the Commission’s Action Plan, for example with respect to the [protection of creations made with the help of Artificial Intelligence](#). However, as a non-Member State, the UK will of course not be formally involved in the policy and legislative processes that lead to reform of EU rules on intellectual property rights.

2.16 Curiously, despite the Action Plan announcing proposals amending EU legislation on Geographic Indication schemes for agri-food products which continue to apply under the Protocol, the Minister states that “there are no Northern Ireland implications arising from this action plan” and consequently consultation with the devolved administration in Northern Ireland was “not required”. While it may be true in a strict sense that the Action Plan—which only announces, but does not contain, draft legislation to amend the EU’s rules on geographical indications—has no direct implications under the Protocol, we would expect the Government to engage with the EU and devolved administration in Belfast proactively to ensure that the UK’s interests are fully taken into account as the Commission prepares its proposals.

Conclusions and Action

2.17 While EU intellectual property rules no longer apply directly in the UK, and future amendments thereto will therefore not have a direct legal impact here, there may still be indirect longer-term implications of the European Commission’s recent IPR Action Plan for UK companies with operations in the EU and, more specifically, for the way that protected geographical indications on food and drink products are enforced within Northern Ireland under the Protocol.

2.18 With respect to the latter, we are concerned by the Minister’s statement in her Memorandum that the Action Plan has no “implications” for Northern Ireland, when it clearly refers to plans to reform EU law that continues to apply under the Protocol. While the subject matter of the Commission’s proposals to change the EU’s statutory framework for GI schemes may well turn out to be non-contentious in the context of the Protocol, there is a broader principle at stake: the Withdrawal Agreement requires the UK to apply new EU law in Northern Ireland over which it no longer has any formal say. That means

³⁶ The relevance of the EU’s approach to intellectual property protection to stakeholders from outside the EU is also clear from the European Commission’s consultation on its draft Action Plan in summer 2020. Even though the UK was approaching the end of the post-Brexit transition period, a number of British industry groups—including the [Sports Rights Owners’ Coalition](#), the [IP Federation](#), the [Chartered Institute of Trade Mark Attorneys](#) and the [Chartered Institute of Patent Attorneys](#)—submitted feedback to the EU on areas of concern they wished to see addressed in the Action Plan. Similarly, there were submissions from organisations in other non-EU countries including the US and Switzerland.

the Government must be highly alert to work in Brussels that has an impact under the Protocol, and ensure that the UK's interests, and those of Northern Ireland in particular, are made clear to the EU as early on in the policy development process as possible. While the Protocol is in effect, engagement by the Government with both Brussels and Belfast on specific EU policy proposals will be key to mitigating its impact on Northern Ireland's place within the UK's internal market. We therefore expect the Government to engage proactively with the European Commission on the substance of its GI proposals and how these may affect Northern Ireland.

2.19 Given that this Action Plan does not contain any specific proposals for reform of EU intellectual property law, we do not require any further information from the Department at this stage. We draw our assessment to the attention of the Business, Energy and Industrial Strategy Committee, the Digital, Culture, Media and Sport Committee and the International Trade Committee, should it be relevant to their respective work programmes. We also draw the specific elements of the Action Plan on Geographical Indications, given their relevance under the Protocol, to the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee. The Committee may consider any specific European Commission proposals that flow from the Action Plan in particular areas of intellectual property law in due course, where appropriate.

3 EU Environment Action Programme³⁷

This EU document is politically important because:

- the framework set out could lead to legislative changes with which Northern Ireland must align, including in areas subject to UK-wide common frameworks; and
- the EU and UK agreed in the Trade and Cooperation Agreement that either Party could adopt “rebalancing measures” if material impacts on trade or investment between the Parties arise as a result of significant divergences between them in a number of areas, including environmental policy. It is therefore important to maintain awareness of the overall direction of the EU policy in this area.

Action

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee; the Environmental Audit Committee; and the Northern Ireland Affairs Committee.

Overview

3.1 The Commission has set out—for agreement by the European Parliament and Council—a suggested framework EU environmental policy between now and 2030. This 8th such Environment Action Programme (EAP) is relevant to the UK because elements of it are likely to apply to Northern Ireland under the terms of the Protocol and because the UK and EU agreed relevant environmental level playing field principles in the EU-UK Trade and Cooperation Agreement (TCA).

The draft EU Environment Action Programme

3.2 The purpose of the 8th EAP is identified as “accelerating the transition to a climate-neutral, resource-efficient, clean and circular economy in a just and inclusive way”. As such, the Programme will support the environmental and climate objectives of the European “Green Deal” as well as the EU’s international commitments.

3.3 The action programme does not identify specific policy initiatives but sets the framework within which EU environmental policy will be conducted through to 2030, including enabling provisions and a monitoring framework. It is proposed that the 8th EAP has the following six thematic priority objectives:

- irreversible and gradual reduction of greenhouse gas emissions and enhancement of removals by natural and other sinks in the Union to attain the 2030 greenhouse gas emission reduction target and achieve climate neutrality by 2050;

37 Proposal for a Decision on a General Union Environment Action Programme to 2030; [COM \(20\) 652](#); Legal base: Article 192(3) TFEU, Ordinary Legislative Procedure, QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41594.

- continuous progress in enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change;
- advancing towards a regenerative growth model that gives back to the planet more than it takes, decoupling economic growth from resource use and environmental degradation, and accelerating the transition to a circular economy;
- pursuing a zero-pollution ambition for a toxic free-environment, including for air, water and soil, and protecting the health and well-being of citizens from environment-related risks and impacts;
- protecting, preserving and restoring biodiversity and enhancing natural capital (notably air, water and soil, as well as forest, freshwater, wetland and marine ecosystems); and
- promoting environmental sustainability and reducing key environmental and climate pressures related to production and consumption, particularly in energy, industrial development, buildings and infrastructure, mobility and the food system.

Trade and Cooperation Agreement

3.4 Since the Commission published the draft EAP, and since the Government submitted its analysis (see below), the UK and EU have reached agreement on their future relationship. Two features stand out as relevant to the 8th EAP.

3.5 The first is the principle of non-regression, whereby neither the EU nor the UK should weaken or reduce, “in a manner affecting trade or investment between the Parties, its environmental levels of protection [...] below the levels that are in place at the end of the transition period.”³⁸ The TCA stipulates³⁹ that this protection includes:

- industrial emissions;
- air emissions and air quality;
- nature and biodiversity conservation;
- waste management;
- the protection and preservation of the aquatic environment;
- the protection and preservation of the marine environment;
- the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances; and

38 Title XI, Article 7.2(2), Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

39 Title XI, Article 7.1(1), Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

- the management of impacts on the environment from agricultural or food production, notably from using antibiotics and decontaminants.

3.6 Second, the EU and UK also acknowledged that significant divergences in a number of areas (including environmental policy) can be capable of impacting trade or investment in a manner that changes the circumstances that formed the basis for the conclusion of the TCA. Either Party may adopt “rebalancing measures” if material impacts on trade or investment between the Parties do indeed arise as a result of significant divergences between them. Such measures are not defined, but may involve tariffs or partial suspension of the TCA. They must be justified with “reliable evidence” and there is a process of consultation laid down before the measures may be applied.

The Government’s position

3.7 The Parliamentary Under-Secretary of State (Rebecca Pow MP) noted in her [Explanatory Memorandum](#) that any legislation that arises from the 8th EAP would have to be judged on a case by case basis to determine if it must be applied in Northern Ireland under the terms of the Northern Ireland Protocol. She added that the proposal covered certain devolved policy areas which may interact with the Common Frameworks being developed with the Devolved Administrations, including Air Quality, Best Available Techniques (on managing Air Quality), Chemicals and Pesticides, Fluorinated Gases and Ozone Depleting Substances and Resources and Waste.

3.8 The Minister welcomed initiatives such as the EU’s EAPs. The UK will continue to work constructively with the Commission, EU Member States and all international partners to tackle those environmental issues which are in line with UK priorities and which demand multilateral co-ordinated action.

3.9 The Minister noted that the current EAP is one of many factors that feeds into domestic policy making. Moreover, she said, the Environment Bill would place a legal obligation on the government to publish a review of significant developments in international legislation on the environment, which would be prepared every two years. This would inform policy-making, better enabling the UK to achieve its ambition to be a global leader in championing the most effective policies and legislation for its environmental ambition.

3.10 The Minister went on to say that UK environmental and climate activity shares many commonalities with the EU’s priority objectives set out in the proposed 8th EAP, including on climate neutrality, climate adaptation, circular economy, pollution and biodiversity.

Our assessment

3.11 The draft Action Programme is an enabling framework and does not in itself propose any policy initiatives. That said, it is relevant information for the UK to be aware of. As the Minister noted, the 8th EAP covers policy areas which include legislation with which Northern Ireland must remain aligned under the terms of the Northern Ireland Protocol and, in some instances, those correlate with areas which are also subject to UK-wide common frameworks. Chemicals and pesticides policies are good examples of that correlation. It will therefore be important for the UK to remain abreast of relevant EU policy developments.

3.12 As highlighted above, it is also important that the UK maintains awareness of EU environmental policy in the light of the mechanism in the TCA allowing either Party to adopt “rebalancing measures” if material impacts on trade or investment between the Parties arise as a result of significant divergences between them.

Action

3.13 We require no further information from the Government at this stage, but we consider the document politically important for the reasons highlighted above. We draw it to the particular attention of the Environment, Food and Rural Affairs Committee; the Environmental Audit Committee; and the Northern Ireland Affairs Committee. We highlight to those Committees in particular the potential impact on policies applicable under the Protocol and the correlation with a number of the UK-wide common frameworks, which are currently subject to scrutiny by parliamentary committees across the UK.

4 The EU's Smart Mobility Strategy⁴⁰

This EU document is politically important because:

- it sets out the legislative and policy initiatives that the EU intends to introduce in the field of transport over the next four years;
- these initiatives are geared towards addressing the challenges—and making the most of the opportunities created by—climate change, and the digitisation of transport systems; and
- the legislative and policy proposal trailed in the Strategy may have implications for Northern Ireland under the Protocol on Ireland/Northern Ireland to the UK/EU Withdrawal Agreement, and will also be of interest to UK-based stakeholders as important reference points for the Government's own plans in related areas.

Action

- Write to the Minister, Rachel Maclean MP, requesting further information on any potential legal and/or policy implications for the UK arising from the Communication.
- Draw this Report chapter to the attention of the Transport Committee and the Business, Energy, and Industrial Strategy Committee.

Overview

4.1 The Communication under scrutiny—[the Commission's Smart Mobility Strategy](#)—sets out the legislative and policy measures that the EU aims to introduce over the next four years. The Commission explains that these measures are necessary to ensure that Europe's transport system is smart, sustainable and resilient.

4.2 The Strategy highlights the economic and social benefits of transport to Europe. It also flags the associated costs and impact of the sector on the health and well-being of EU citizens (from increased greenhouse gas emissions to air, noise and water pollution, accidents, congestion and loss of biodiversity).

4.3 The Commission acknowledges the rise in greenhouse gas emissions as the most serious challenge facing the transport sector, and that previous policy measures and efforts have been inadequate in curbing their rise. The Strategy considers the introduction of more ambitious policies as vital to achieving the EU's goal of reducing greenhouse gas emissions by 55% by 2030 and reaching climate neutrality by 2050. In the Commission's view, rapid action to make transport more sustainable will help ensure the success of the [European Green Deal](#).⁴¹

40 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Sustainable and Smart Mobility Strategy—putting European transport on track for the future; Council and COM number: Unnumbered and COM(20) 789 + Annex; Legal base: --; Department: Transport; Devolved Administrations: Consulted; ESC number: 41716.

41 The European Green Deal is a set of policy initiatives which aim at making Europe climate neutral by 2050. To achieve this target, the Commission aims to boost the efficient use of resources by moving to a clean, circular economy while also cutting pollution by progressively reducing greenhouse gas emissions.

4.4 The Commission argues that the Covid-19 pandemic has shed light on the vulnerabilities of the EU Single Market, and that transport has been one of the sectors hardest hit. The Strategy stresses the need for substantial private and public investment, both at national and EU level, to drive forward the European Green Deal, improve connectivity and support recovery of the transport sector from the pandemic. To improve connectivity and resilience, the Strategy emphasises the importance of timely completion of the [Trans-European Transport network](#) (TEN-T),⁴² and the coordination and prioritisation of investment through various EU funding programmes.

4.5 The Communication argues that the growth of the transport sector is dependent on developing an efficient and interconnected multimodal transport system and it also identifies digitalisation and automation as key drivers for the transformation of the transport system.

4.6 The overarching purpose of the Strategy is to set out how the EU will achieve its goal of a 90% reduction in transport emissions by 2050, which the Commission envisages can be achieved with the right level of ambition and a combination of legislative and policy measures. The Strategy sets the following objectives:

By 2030:

- at least 30 million zero-emission cars will be in operation on European roads;
- 100 European cities will be climate neutral;
- high-speed rail traffic will double across Europe;
- scheduled collective travel for journeys under 500 km should be carbon neutral;
- automated mobility will be deployed at large scale; and
- zero-emission marine vessels will be market-ready.

By 2035:

- zero-emission large aircraft will be market-ready.

By 2050:

- nearly all cars, vans, buses as well as new heavy-duty vehicles will be zero-emission;
- rail freight traffic will double; and
- a fully operational, multimodal Trans-European Transport Network (TEN-T) for sustainable and smart transport with high speed connectivity.

4.7 The Communication sets out ten key areas for future action and details 82 individual initiatives that would help the EU to achieve its vision of developing a smarter, more

⁴² The Trans-European Transport Network (TEN-T) policy addresses the development and implementation of a Europe-wide network of roads, railway lines, inland waterways, maritime shipping routes, ports, and airports. The ultimate objective of TEN-T is to close transport gaps, remove bottlenecks and technical barriers, as well as to strengthen social, economic, and territorial cohesion in the EU.

sustainable and more resilient transport system by 2050. The Strategy's headline action points are divided into three overarching objectives (sustainable, smart and resilient transport).

Sustainable

- i) Boosting the uptake of zero emission vehicles, renewable and low carbon fuels and related infrastructure;
- ii) Creating zero emission airports and ports;
- iii) Making interurban and urban mobility more sustainable and healthy;
- iv) Greening freight transport; and
- v) Pricing carbon and providing better incentives for users.

Smart

- vi) Making connected and automated mobility a reality; and
- vii) Innovation, data, artificial intelligence for smarter mobility.

Resilient

- viii) Reinforcing the single market;
- ix) Making mobility fair and just for all; and
- x) Enhancing transport safety and security.

4.8 The Strategy lists the 82 initiatives that the Commission will bring forward in the next four years to help achieve the overarching objectives of sustainability, digitalisation and resilience. The measures that the Commission has flagged for introduction in 2021 are:

- the revision of CO2 standards for cars and vans (by June 2021);
- an action plan to boost long distance and cross-border passenger rail services;
- the introduction of regulatory measures to enable innovative and flexible tickets that combine various transport modes and give passengers true options for door-to-door travel;
- to implement the ICAO Carbon Offsetting and Reduction Scheme for International Civil Aviation ([CORSA](#))⁴³ (through a revision of the ETS Directive);⁴⁴

43 CORSA is a carbon offset and carbon reduction scheme to lower CO2 emissions for international flights to curb the aviation industry's impact on climate change. Adopted by the International Civil Aviation Organisation (ICAO) in 2016, CORSA uses market-based environmental policy instruments to offset CO2 missions. Beginning in 2021, the scheme is voluntary for all 191 ICAO member states until 2027.

44 [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance).

- when revising the Energy Taxation Directive,⁴⁵ the Commission will aim at aligning taxation of energy products and electricity with EU energy and climate policies. As part of the ongoing impact assessment, it is looking closely at current tax exemptions, including for aviation and maritime fuels, and will make proposal on how best to close any loopholes in 2021; and
- a new initiative on access to car data, through which it will propose a balanced framework guaranteeing fair and effective access to vehicle data by mobility service providers.

The Government's position

4.9 Parliamentary Under-Secretary of State at the Department for Transport, Rachel Maclean MP, [wrote to us by Explanatory Memorandum on the Commission's Strategy on 13 January 2021](#).

4.10 The Minister explains that there are no direct policy implications from the Communication on the UK-EU Trade and Cooperation Agreement, however, the Government will continue to monitor the legislative initiatives that it proposes as they emerge and will assess any indirect impact on UK Government policy or business interests.

4.11 The Minister helpfully explains the content of the Strategy as well as similarities between it and UK Government policy in the field. She notes that:

- decarbonisation is a major challenge facing the transport sector and the Government supports finding solutions which, as set out in the Communication, will ensure increased competitiveness of transport while delivering a reduction of greenhouse gas emissions; and that

there are clear similarities between the Communication and UK Government policy, for example there are parallels with the UK's climate change agenda and the [Prime Minister's Ten Point Plan](#)⁴⁶ as well as the upcoming [Transport Decarbonisation Plan](#)⁴⁷ which is expected to be published in Spring 2021.

4.12 The Minister also explains areas of the Strategy where UK and EU international interests are likely to intersect. She notes that:

- working with global partners (including the EU) within ICAO and the International Maritime Organization will become increasingly important for the UK in shaping its climate policy for both the aviation and maritime sectors; and that
- the implementation of the ICAO Carbon Offsetting and Reduction Scheme for International Civil Aviation (CORSIA) and the revision of the EU Emissions Trading System are two key examples of where potential cooperation could take place.

45 [Council Directive 2003/96/EC](#) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (Text with EEA relevance).

46 HM Government, ['PM Outlines his Ten Point Plan for a Green Industrial Revolution for 250,000 jobs'](#) (18 November 2020).

47 Department for Transport, ['Creating the transport decarbonisation plan'](#) (26 March 2020).

Potential implications for the UK

4.13 The Government has recently published an [Energy White Paper](#)⁴⁸ that outlines how it intends to improve the sustainability of the UK transport sector and reach net zero emissions by 2050. There are important synergies between the EU's Strategy and the Government's White Paper.

4.14 While the White Paper does not specifically reference EU rules and is vague in terms of potential future UK regulation, it does provide ambitious targets for electric, hydrogen and nuclear-powered technologies. Carbon capture also forms a central part of the Government's strategy and the White Paper provides for transitional arrangements relating to those industries reliant on fossil fuels.

4.15 Specifically regarding transport emissions, the White Paper includes a number of Government initiatives:

- from 2030, the Government will end the sale of new petrol and diesel vehicles, ten years earlier than initially planned, and provide a £2.8 billion package of measures to support industry and consumers make the transition to cleaner vehicles; and
- the Government also aims to support this transition by maximising its benefits through investment in innovative technologies and the development of sustainable supply chains.

4.16 What is clear, however, is that sustainable transport has the potential to be one of the first areas of divergence between the UK and the EU following the negotiation and provisional application of the UK/EU Trade and Cooperation Agreement. This is something that the UK Government will have to be mindful of.

4.17 Furthermore, there are a number of distinct policy initiatives listed in the Commission's Strategy that could have policy implications for the UK in 2021 and beyond. The Annex to the Strategy lists 82 initiatives that the Commission aims to introduce by the time of the next European elections in 2024 to help achieve the sustainability, digitalisation, and resilience objectives in the Communication, some of which it aims to adopt this year. For example:

- the Commission aims to propose a revision of CO2 emission reduction targets for cars and vans by June of this year. This development would require UK car manufacturers selling vehicles into the EU market to meet these new standards;
- the Commission aims to implement the ICAO Carbon Offsetting and Reduction Scheme for International Civil Aviation (CORSIA) through revision of its existing ETS Directive. Through the Trade and Cooperation Agreement, the UK and the EU are committed to having carbon pricing mechanisms for aviation recognised in their respective ETS arrangements. It is currently unclear what impact the Commission's commitment to CORSIA might have on the UK's domestic aviation sector; and

48 HM Government, ['Energy white paper: Powering our net zero future'](#) (14 December 2020).

- the Commission aims to propose a new initiative on access to car data, through which it will provide a framework guaranteeing fair and effective access to vehicle data by mobility service providers. It is unclear how this framework will operate and what its implications for UK-based vehicle manufacturers and users will be.

4.18 As well as following these potential policy developments, the UK Government should also be mindful that the EU's Smart Mobility Strategy may affect the substance of EU law in place under the Northern Ireland Protocol, including that relating to vehicle emissions in the event that applicable EU legislation in Northern Ireland is amended or replaced in accordance with Article 13(3) of the Protocol on Ireland/Northern Ireland to the UK/EU Withdrawal Agreement. In addition, the Strategy may lead to the broadening of EU law in Northern Ireland in the event that any legislation arising from the Strategy falls within the scope of the Protocol. Such legislation would, however, need to be discussed at Joint Committee level before its agreement.

Action

4.19 We have written to the Minister requesting further information on the potential implications of the Commission's Strategy for UK law and policy, in particular, concerning Northern Ireland, and UK-based manufactures and stakeholders.

4.20 We have drawn this Report chapter to the attention of the Transport Committee and the Business, Energy, and Industrial Strategy Committee

Letter to the Parliamentary Under-Secretary of State at the Department for Transport (Rachel Maclean MP)

The Committee have asked me to thank you for your Explanatory Memorandum on the above listed document.

In light of the end of the Transition Period—as per the UK/EU Withdrawal Agreement—and the recent conclusion and provisional application of the UK/EU Trade and Cooperation Agreement (TCA), the Committee would appreciate if you could provide further information on the following points. These are all directly related to the Commission's Smart Mobility Strategy.

- The Commission aims to propose a revision to current EU car and van emission reduction standards. We are interested to know whether this development would require UK car manufacturers selling vehicles into the EU market to meet these new standards. Could you update the Committee on whether this is the case and, if so, what recommendations you will offer to UK manufacturers who sell into the EU market while also doing international business with other third countries?
- The Commission aims to implement the ICAO Carbon Offsetting and Reduction Scheme for International Civil Aviation (CORSIA) through a revision of its ETS Directive. Through the TCA, the UK and the EU are committed to having carbon pricing mechanisms for aviation recognised in their respective ETS

arrangements. Could you update the Committee on whether the Government intends to implement CORSIA and, if so, what impact do you envisage this having on the UK's aviation sector?

- The Commission aims to propose a new initiative on access to car data, through which it will provide a framework guaranteeing fair and effective access to vehicle data by mobility service providers. Can you explain the potential implications of such developments for UK-based vehicle manufacturers and users?
- The EU's Smart Mobility Strategy could affect the substance of EU law in place under the Northern Ireland Protocol, including that relating to vehicle emissions in the event the applicable EU legislation in Northern Ireland is amended or replaced in accordance with Article 13(3) of the Protocol. In addition, the Strategy may lead to the broadening of EU law in Northern Ireland in the event that any legislation arising from the Strategy falls within the scope of the Protocol. Can you provide us with a list of forthcoming proposed legislative acts—trailed in the Strategy—that you believe will engage the Protocol?

We request a response to this letter within 10 working days.

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

Department for International Trade

(41705) Commission Delegated Regulation (EU) .../... of 4.12.2020 amending
Annexes I and V to Regulation (EU) 2019/125 concerning trade in certain
— goods which could be used for capital punishment, torture or other
C(20) 8572 cruel, inhuman or degrading treatment or punishment to take into
account the withdrawal of the United Kingdom from the Union.

Foreign, Commonwealth and Development Office

(41696) Joint Communication to the European Parliament, the European
Council and the Council—A new EU-US agenda for global change.
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JOIN(20) 22

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: Methane Strategy [Commission Communication (SC)]; The EU’s Smart Mobility Strategy [Commission Communication (SNC)]; EU Intellectual Property Action Plan [Commission Communication (SC)]

Digital, Culture, Media and Sport Committee: EU Intellectual Property Action Plan [Commission Communication (SC)]

Environment, Food and Rural Affairs Committee: EU Environment Action Programme [Proposed General Union Environment Action Programme Decision (SC)]

Environmental Audit Committee: Methane Strategy [Commission Communication (SC)]; EU Environment Action Programme [Proposed General Union Environment Action Programme Decision (SC)]

Northern Ireland Affairs Committee: EU Environment Action Programme [Proposed General Union Environment Action Programme Decision (SC)]; EU Intellectual Property Action Plan [Commission Communication (SC)]

Transport Committee: The EU’s Smart Mobility Strategy [Commission Communication (SNC)]

Formal Minutes

Wednesday 24 February 2021

Members present:

Sir William Cash, in the Chair

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

Scrutiny Report

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

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

Paragraphs 1.1 to 5 read and agreed to.

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

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

[Adjourned till Wednesday 10 March at 1.45 p.m.]

Standing Order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

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

[Richard Drax MP](#) (*Conservative, South Dorset*)

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

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

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

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

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