

How the future UK-EU relationship can protect the environment

Briefing for parliamentarians and policy makers
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Introduction

We face an increasingly urgent need to step up collective efforts to address environmental challenges, and meet shared international commitments, in relation to issues such as biodiversity loss, climate change and air quality.¹ These issues do not respect national borders and will continue to be affected by the policies adopted across the UK and the EU27 following Brexit.

It is, therefore, vital that the negotiators involved in the Brexit process set out a positive co-operative framework for the future relationship between the EU and the UK. It should be one that delivers for the environment and for the long term health, well-being and prosperity of citizens in both jurisdictions. As noted recently by the UK government, the future relationship should aim to “protect...shared interests and values” and ensure that the UK and the EU can continue to “act together for...mutual benefit”.² Future agreements between the UK and the EU must contain reciprocal standalone environmental provisions as well as rules regarding future UK-EU trade. These must set an agenda for meaningful co-operation and bind both the UK and the EU to continued high and ambitious environmental standards.

Continued co-operation on the environment

Both the UK and the EU have long recognised the importance of protecting the natural environment and safeguarding common resources.³ To achieve common objectives, such as the UN Sustainable Development Goals, it will be important for both sides to continue to co-ordinate their environmental efforts. So it was encouraging to see the reference to close co-operation on issues such as climate change and cross-border pollution in the European Council negotiating guidelines published in March 2018.

To build on this, **the upcoming political declaration on the future UK-EU relationship should include a clear high level commitment to continued close co-operation and co-ordination on environmental matters.** It should identify the institutions and processes needed to support this in practice and include specific proposals regarding future co-operation in those policy areas where there is a clear rationale for maintaining close alignment of effort post-Brexit.

For example, continued UK participation in the Natura 2000 network – the world’s largest co-ordinated ecological network of protected sites for nature – would help to support future co-operation. This would also act as a solid foundation for the development of new and more ambitious policies to drive nature’s recovery. Similarly, Greener UK would welcome clear proposals for continued joint fulfilment of the 2030 climate change targets and Nationally Determined Contributions (NDCs), agreed at the 2015 Paris climate change conference; ongoing diplomatic co-operation on climate change and energy security issues; and UK participation in the Internal Energy Market (IEM).

In addition, **Greener UK recommends that the UK should continue to participate in, and co-operate with, relevant EU agencies.** For example, the European Environment Agency (EEA) provides a rigorous, transparent and cost effective means of collecting, reporting and sharing environmental data and expertise. Another important agency is the European Chemicals Agency (ECHA), which the UK has already expressed an interest in remaining part of as an ‘associate member’.⁴

Joint commitment to continued high environmental standards

In seeking to maintain access to each other’s markets after Brexit, both the UK and the EU have noted the importance of maintaining high environmental standards. For example, in Prime Minister Theresa May’s Mansion House Speech in March 2018, she stated that, in areas like the environment, “the EU should be confident that we will not engage in a race to the bottom in the standards and protections we set.”⁵ Similarly, the EU’s Chief Negotiator Michel Barnier has talked about the need to reach “common ground” on environmental standards as part of any ambitious partnership. This is in line with the European Council negotiating guidelines of March 2018, which call for a set of “robust guarantees to ensure a level playing field” on environmental matters.^{6,7}

Any lowering of environmental standards in either jurisdiction post-Brexit, or failure to enforce such standards, could have significant real or perceived impacts on the fairness of competition and a chilling effect on future environmental policy development. Avoiding such a situation will be vital to the maintenance of a positive political environment for progressive environmental policies in both the UK and the EU. This policy is best encapsulated in the principle of environmental non-regression, which has been evolving at state and international level over several decades. For example, it features to varying degrees in the North American Agreement on Environmental Co-operation in 1993, the constitutions of Ecuador and Bhutan in 2008, and the outcome of the UN’s Rio +20 sustainable development summit in 2012.⁸ In 2016, France incorporated the principle of non-regression into its Environmental Code.

Greener UK recommends that robust and enforceable non-regression clauses and mechanisms, as well as commitments to high standards and principles of

environmental protection, should be included as standard in all future UK trade agreements as well as the UK-EU partnership. This would safeguard against any downward pressure on standards, whilst also protecting the current ability that all parties enjoy to raise their level of environmental ambition.⁹ To be effective, such provisions will need to be significantly stronger than those included in recent EU trade agreements – including those with Canada and Japan – and be subject to binding dispute settlement and sanctions in cases of non-compliance.

The reassurance of robust enforcement

The environmental commitments contained within the future economic partnership agreement will need to be backed by a set of robust mechanisms through which the UK and the EU can reciprocally monitor each other's compliance, resolve disputes and start legally binding enforcement actions where necessary. **Greener UK recommends that such arrangements should be transparent and enable citizens and public interest organisations to participate.** There should be a free, accessible and straightforward mechanism through which complaints can be lodged and possible breaches can be highlighted. This is in line with the European Parliament's resolution of March 2018, which called for the future relationship to guarantee "access to justice and a proper complaints mechanism...for citizens and NGOs with respect to the enforcement of... environmental standards".¹⁰

Relying on enforcement through state-to-state governance structures alone would not be enough to ensure effective implementation of both parties' environmental commitments. To provide lasting reassurances to both sides, **Greener UK recommends that the UK commit, under the future UK-EU partnership agreement, to enhanced domestic oversight and enforcement of environmental law, including the establishment of an independent body (or bodies) with adequate resources, powers, and expertise.**

Conclusion

The development of an ambitious new partnership between the UK and EU provides an opportunity for both parties to demonstrate their international leadership on the environment. It is in the interests of the UK, the EU, our shared natural heritage and everyone's wellbeing, to build a strong platform for future co-operation and ensure that ambitious goals and outcomes are achieved.

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Endnotes

1 www.eea.europa.eu/soer

2 www.gov.uk/government/publications/framework-for-the-uk-eu-economic-partnership

3 For example, see Article 191(2) TFEU).

4 http://greeneruk.org/page_2513.php

5 www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union

6 http://europa.eu/rapid/press-release_SPEECH-18-3162_en.htm

7 www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf

8 The Rio +20 outcome notes "it is critical that we do not backtrack from our commitment to the outcome of the United Nations Conference on Environment and Development". See <https://journals.openedition.org/sapiens/1405>

9 The current powers of the EU to legislate in respect of the environment and climate change are set out in Articles 191 to 193 of the Treaty on the Functioning of the European Union. These provide that environmental legislation adopted by the EU can only set minimum standards and so should not prevent any member state from maintaining or introducing more stringent protective measures, provided these are compatible with the Treaties. (Article 193).

10 www.epgncms.europarl.europa.eu/cmsdata/upload/e9270809-8891-4d5d-bea4-1a764178e282/European_Parliament_resolution_on_the_framework_of_the_future_EU-UK_relationship_14_March.pdf

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