

The environmental implications of different EU-UK relationship options

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The UK parliament has so far not agreed on the terms of the UK's exit from the EU, following the referendum in 2016. Meanwhile, wildlife populations are collapsing, ecosystems degrading and the planet heating up at an alarming rate. Parliament has recognised this, declaring an environment and climate emergency.¹ This declaration adds considerable weight to Greener UK's argument that environmental protections must be maintained and strengthened during the Brexit process, as there is a huge amount at stake for the environment in these negotiations.

In weighing up different Brexit options, MPs are taking into consideration a wide range of factors, and the new Prime Minister will need to do the same. This briefing sets out recommendations for how the environment can best be protected, in line with our green benchmarks for Brexit, and explains the main environmental implications of different potential options.

Recommendations

Greener UK recommends that the UK government:

1. Seek a relationship with the EU that enables close co-operation on the environment, as a core element of the "ambitious, broad, deep and flexible partnership" described in the Political Declaration. Leaving without an agreement with the EU at this point would have severe consequences for the environment and should be avoided.
2. Improve the Political Declaration (if Brexit is to go ahead) so that the future EU-UK relationship:
 - Aims for a high level of environmental protection and recovery; this should be an explicit objective of the relationship, in the same way that the Political Declaration states that the future relationship "must ensure open and fair competition". The parties should establish an environmental partnership in the same way that the Political Declaration states they should "establish a broad, comprehensive and balanced security partnership".
 - Builds on the non-regression provisions in the backstop, including on enforcement and environmental principles, so that neither the EU nor the UK weakens environmental protection in future.
 - Enables continued co-operation on managing transboundary issues and drives international leadership, e.g. meeting ambitious climate targets in line with the Paris climate accord.
 - Enables continued UK participation in key EU agencies responsible for environment, chemicals and energy, so that the UK can continue to influence these institutions and contribute expertise, and benefit from close co-operation in these areas.

- Incorporates a dynamic, co-operative and ambitious approach to regulatory protection for the environment, so that the UK at least keeps pace with the EU on environmental standards and in many cases aims higher.
 - Includes a framework that supports environmental co-operation between Northern Ireland and the Republic of Ireland.
 - Establishes a procedure so that citizens can request investigations into potential breaches of environmental standards.
3. Make the draft Westminster Environment Bill fit for purpose by:
- Introducing a legal framework for leaving the environment in a better state, with binding targets, a private sector due diligence obligation, effective spatial mapping of ecological networks, and provision for addressing the UK's global footprint.
 - Strengthening the independence and powers of the proposed Office for Environmental Protection so that it operates as part of an effective UK-wide, world-leading environmental governance system.
 - Widening the scope of the environmental principles, attaching more robust duties to them, and including non-regression provisions.²
4. Establish a trade policy, anchored in primary legislation, which safeguards the environment, provides transparency, and gives parliament and civil society a voice in trade negotiations.

Environmental implications of the current options

Following unsuccessful attempts by the government to secure a parliamentary majority for its deal, MPs could again be given the opportunity to vote on different options.³ Most of the likely options, such as those set forward in the indicative votes process on 27 March 2019, would involve renegotiating the Political Declaration. The EU has signalled it is open to this.

There is a range of possible outcomes, including: the deal endorsed by EU and UK leaders in November 2018, a 'Canada-style' Brexit, a customs union, a 'Norway-plus' relationship, remain, and no deal. Each involves a degree of uncertainty, some more than others. The different outcomes pose different levels of risk to the environment, which are outlined below. In all scenarios, the UK government would have freedom to go further than the EU and, for example, commit to more ambitious targets via the promised Westminster Environment Bill or more ambitious farming and fishing policies.

We have assessed the risks against our green benchmarks for Brexit.⁴ These are:

1. **Higher environmental standards** in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for backsliding.

2. **Effective systems of enforcement** of environmental law, fulfilling people's rights to environmental information, public participation, access to justice and substantive remedies.
3. **Mechanisms for effective co-operation** on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.
4. **Trade policy that promotes high environmental standards**, minimises the UK's global environmental footprint and is responsive to engagement by civil society.

The November 2018 deal

Risk to environment: medium

This is the current Withdrawal Agreement and Political Declaration, provisionally agreed with the EU. The Political Declaration contains promising language on the environment and it is positive that the UK and EU have declared a desire to work closely together. Yet as a whole the declaration is vague and leaves a lot to be decided in the next phase of negotiations, which are due to take place in the transition period after the UK has left the EU.⁵

The 'backstop' section of the (so far non-ratified) Withdrawal Agreement contains a welcome mutual commitment to non-regression in most areas of environmental law. While this part of the deal may never come into effect, the accompanying Political Declaration says the future relationship will build on the Withdrawal Agreement, which is a positive ambition.

The non-regression provisions, and environmental law as a whole, will also require strong domestic enforcement, which is currently lacking. The UK has published its plans for environmental enforcement in England (and noted that these could apply to Northern Ireland), but two parliamentary committees have concluded they fall short of the requirements in the Withdrawal Agreement and of the "world-leading" institution that has been promised.⁶ The Scottish and Welsh governments have also published proposals but these lack detail.

The risk analysis is further complicated by the scope for a future government or prime minister to change course. Some MPs have indicated they will support the Withdrawal Agreement and Political Declaration, with a view to revising negotiating priorities later and diverging from EU standards. As set out in the next section, this would increase the risk to the environment. It would also mean the UK would be acting in bad faith; this would be highly problematic as the international community's approach to tackling global problems such as climate change rests on the integrity of international treaties.

A 'Canada-style' Brexit

Risk to environment: high

A 'Canada-style' free trade agreement would be an arms-length relationship, with weaker environmental co-operation. The UK would likely lose access to EU

agencies and programmes, losing the influence that comes from participation, as well as access to important environmental and public health data such as the REACH database on chemical safety.⁷ The lack of regulatory alignment would pose risks to environmental standards, especially if the UK's domestic legal framework is not strengthened to make up for the loss of EU governance mechanisms.⁸

Additional risks emerge if a Canada-style deal is designed to enable the UK to agree to the US government's stated priorities for a UK-US trade deal, which include weakening food production standards.⁹ The Institute of Economic Affairs has suggested a Canada-style agreement with the EU would enable the UK to drop environment standards and weaken the precautionary principle, in a report that was endorsed by several MPs before being withdrawn following a Charity Commission investigation.¹⁰ However, a free trade agreement would still require the Withdrawal Agreement, and there is a chance the non-regression provisions in the 'backstop' section would be carried into the future relationship agreement, thereby mitigating the risk of deregulation.¹¹

A customs union

Risk to environment: medium

A customs union was put forward as an option by Rt Hon Kenneth Clarke QC MP during the indicative votes process, and was reported to be a significant point of debate in the Brexit negotiations between the government and opposition.¹² Given the variety of views about what this option might entail, it is difficult to define the environmental implications. For example, it is not clear whether the UK would be required to align with some or all EU standards, though the UK could choose to do so.

It would enable goods in the low carbon supply chain to travel freely within the EU, which would make decarbonisation more cost effective.¹³ The requirement to apply the EU's common external tariff on goods would likely be accompanied by a requirement to comply with EU product regulations,¹⁴ and this would keep the UK committed to vehicle emissions standards and energy efficiency standards for appliances such as toasters. A customs union might also remove the risks of a pivot away from the EU's regulatory sphere and towards that of the US, as the US ambassador to the UK has said it would make a trade deal "much more difficult".¹⁵

Yet in isolation a customs union would not guarantee higher environmental standards or effective systems for implementing and enforcing environmental law. It would not provide many mechanisms for effective environmental co-operation, or ensure trade policy promotes high standards. It raises concerns similar to those with the November 2018 deal, as it is uncertain how well the environment would be protected in this version of Brexit.

A 'Norway-plus' relationship

Risk to environment: low

A 'Norway-plus' relationship would entail fewer risks of divergence away from high EU standards than those associated with the November 2018 deal or a Canada-style deal. It would be a closer form of co-operation, requiring the UK to align with EU standards on an ongoing basis. If alignment were coupled with the non-regression provisions in the Withdrawal Agreement, this would guard against the weakening of standards, creating an overall ratchet effect. It would enable continued participation in EU agencies and programmes such as REACH, the Emissions Trading System, and Natura 2000. It is likely that the UK would be able to develop independent and possibly better agriculture and fisheries policies.¹⁶

The UK's ability to influence EU decision-making would be limited because it would not have a vote. This also limits the ability of civil society to participate in decision-making, although it would be able to engage in 'decision shaping' by making submissions and providing expert advice in the early stages of the policy formulation process.¹⁷

Remain

Risk to environment: low

The UK could maintain current arrangements and remain part of the EU, either by revoking Article 50 immediately, or via a second referendum. The UK would be required to follow all EU law and would be subject to EU enforcement processes where necessary. The UK would continue to participate in EU agencies and programmes with full voting rights and requirements for stakeholder engagement, and would be able to influence within the EU trade negotiations and global discussions on issues such as climate change. It would remain subject to the Common Agricultural Policy (CAP) and Commons Fisheries Policy. The CAP is being reformed to allow more scope for member states to develop their own policies, but the Environmental Land Management system with which the UK government is proposing to replace CAP in England looks to be more environmentally ambitious than anything that would be allowed under a reformed CAP.

No deal

Risk to environment: very high

No deal is the default option in law but poses serious risks to the environment, as set out in a recent report from the Institute for European Environmental Policy (IEEP) and the June 2019 edition of the Greener UK Risk Tracker, which assigned high risk ratings across all policy areas.^{18,19}

Among the many concerns in a no deal scenario, there would be an immediate governance gap, as the proposed Office for Environmental Protection would not be ready until 2021 at the earliest.²⁰ An interim green governance commissioner would

be appointed but would have very limited scope and it is not clear how they would take action if faced with serious breaches of environmental law.²¹ It is not clear what interim arrangements will be introduced in Scotland, Wales and Northern Ireland.

Co-operative mechanisms with the EU would be lost immediately, such as participation in the European Environment Agency. Domestic replacements for important EU functions would struggle to do the job: in an unusual move, the House of Lords recently passed a motion regretting that the plans for chemicals protections after Brexit "could increase the risks to UK citizens' health, and to our environment".²² Pressure for deregulation could increase in a misguided attempt to secure short term economic gain.²³ There would be the risk of hasty trade deals being agreed without due process, which could involve environmentally harmful concessions.²⁴

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Endnotes

¹ <https://www.bbc.co.uk/news/uk-politics-48126677>

² https://greeneruk.org/sites/default/files/download/2019-02/GreenerUK_WrittenEvidence_DraftEnvBillEnquiry_Jan2019_0.pdf

³ <https://www.theguardian.com/politics/2019/apr/30/hunt-brexit-customs-union-deal-could-cost-key-tory-votes>

⁴ https://greeneruk.org/sites/default/files/download/2018-10/Green_Benchmarks_2.pdf

⁵ https://greeneruk.org/sites/default/files/download/2019-01/Greener_UK_meaningful_vote_January__1.pdf

⁶ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/draft-environment-bill-report-publication-17-19/>

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/news-parliament-2017/draft-environment-bill-report-publication-17-19/>

⁷ <https://greeneruk.org/risk-tracker/eu-baseline>

⁸ <https://greenallianceblog.org.uk/2017/12/06/three-brexit-governance-gaps-no-one-is-talking-about/>

⁹ <https://www.bbc.co.uk/news/uk-politics-47418505>

¹⁰ <https://unearthed.greenpeace.org/2018/12/01/institute-of-economic-affairs-charity-commission-brexit/>

Excerpts from the IEA report are quoted in this blog:

<https://greenallianceblog.org.uk/2018/10/04/how-not-to-deliver-a-green-brexit/>

¹¹ <https://blogs.sussex.ac.uk/uktpo/2018/11/21/environmental-non-regression-in-the-withdrawal-agreement-forcing-the-eus-hand-on-the-level-playing-field/>

¹² <https://www.thetimes.co.uk/edition/news/may-prepares-to-keep-eu-customs-rules-dg9c3qd2q>

- ¹³ https://www.green-alliance.org.uk/resources/Britains_Trading_Future.pdf
- ¹⁴ <https://www.instituteforgovernment.org.uk/explainers/options-uk-trading-relationship-eu>
- ¹⁵ <https://www.bbc.co.uk/news/uk-politics-48042524>
- ¹⁶ <https://www.efta.int/About-EFTA/Frequently-asked-questions-EFTA-EEA-EFTA-membership-and-Brexit-328676>
- ¹⁷ https://greeneruk.org/sites/default/files/download/2019-01/Greener_UK_appendix_Norway_plus_relationship_280119.pdf
- ¹⁸ <https://ieep.eu/publications/ieep-report-on-risks-and-opportunities-of-brexit-outcomes-no-deal-outcome-poses-the-worst-threats>
- ¹⁹ <https://greeneruk.org/risk-tracker>
- ²⁰
- <https://www.instituteforgovernment.org.uk/sites/default/files/publications/brexit-two-months-to-go-final-web.pdf>
- ²¹ <https://www.endsreport.com/article/1580318/gove-announce-interim-green-governance-commissioner-shortly>
- ²² <https://www.parliament.uk/business/publications/business-papers/lords/lords-divisions/?date=2016-Oct-11&fd=2019-03-26&itemId=1&session=2016-May-18&sessionValue=12/3/2008+12:00:00+AM&td=2019-03-27&dd=2019-03-26&division=1>
- ²³ https://community.rspb.org.uk/cfs-file/_key/telligent-evolution-components-attachments/01-39675-00-00-00-78-75-97/Sam_5F00_Lowe_2D00_Trade_2D00_Paper_2D00_2019.pdf
- ²⁴ https://greeneruk.org/sites/default/files/download/2018-10/What_would_a_no_deal_Brexit_mean_for_the_environment_0.pdf

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