



## **Review of the Balance of Competences Environment and Climate Change**

### **Response by the Institute for European Environment Policy**

#### **Introduction**

The Institute for European Environmental Policy (IEEP) is an independent research organisation concerned with policies affecting the environment in Europe and beyond. Our aim is to disseminate knowledge about Europe and the environment and to analyse and present policy options. We undertake research and consultancy on the development, implementation and evaluation of environmental and environment-related policies in Europe. We work closely with the full range of policy actors from international agencies and the EU institutions to national government departments, NGOs and academics.

We are a charity with offices in London and Brussels and a network of partners in other European countries. The London office of IEEP was founded in 1980, the Brussels office in 2001. A presence was established in Finland in 2008.

#### **Sources of Evidence**

The evidence underpinning the response that we are making to the consultation is drawn from several sources. These include:

- More than 30 years of experience of EU policy, primarily in the environmental domain, by staff, associates and trustees, stretching back to the 1970s. This has included an extensive range of activities, amongst them both academic and applied research work, sustained interaction with the European Institutions, national officials engaged in EU matters and other stakeholders from civil society, business, science, research and elsewhere, the organisation of conferences and events, evidence to the European Parliament, parliamentary committees in the UK, etc.
- A number of published reports covering both specific issues and the broader generality of EU environmental policy. Amongst the latter are reports on the early EC environmental policy and Britain (Haigh, 1984) and the subsequent Manual of EU Environmental Policy in Britain, later published as the Manual of European Environmental Policy (IEEP, 2011). In recent months we completed a report sponsored by a range of environmental organisations in the UK under the title “Report on the Influence of EU Policies on the Environment” (IEEP, 2013) which we are attaching as an Annex.
- Experience gained in undertaking work relating to environmental legislation commissioned by different DGs within the European Commission, including drafting

impact assessments, reviewing implementation of extant legislation, examining issues where EU intervention might have a role, etc.

- Representation on formal groups and committees. At present we are represented in two so-called “high level groups” established by the European Commission, one concerned with the future of policy in the car industry in Europe, the other with key enabling technologies.

Many of the observations below are difficult to reference to specific reports because they are responding to questions framed in very broad terms. Nonetheless we include some specific examples.

### **The counterfactual**

In any assessment of the impact and implications of EU competence in a particular Member State the counterfactual is a key issue, particularly so where the Member State has been a significant influence on EU policy as is the case with the UK. It is not clear how the UK would have proceeded had it not entered the EU, although, as we suggest below, it seems not unreasonable to imagine that it would have remained within the European Economic Area (EEA) and the European Free Trade Area (EFTA). Certainly it would have been affected by a significant proportion of EU measures on the environment in these circumstances. Furthermore, EU policy probably would have been different in several respects had the UK not been an active and often influential participant since the 1970s. To take only one example, it is unclear whether the EU would have adopted the “package” of climate measures in 2009 had it not been for the strong support given by both the UK and German governments at the time.

### **The Review in context**

The current Review is unusual in being so comprehensive and we are not aware of similar exercises on this scale in other Member States. However, the issues raised are in many cases not new. For example, there was a major debate about the role of the EU and the Member States covering many of the issues now being rehearsed in the UK but at a wider EU level in the early 1990s. This was triggered by the debate leading up to the new EU Treaty agreed at Maastricht in 1992 at which time “subsidiarity” was a major political concern. A Protocol “on the application of the Principles of Subsidiarity and Proportionality” was introduced to the Treaty. This was followed by a mechanism to implement this principle in practice which has led to annual reports on the application of the subsidiarity Article in the Treaty. An active process of reviewing EU policy from a subsidiarity perspective has been maintained and has included elements on environmental policy. From this and other sources of evidence, there is no obvious reason to conclude that subsidiarity has been neglected or that the Balance of Competences have shifted in this domain in favour of the EU.

Within the UK, there has been an active debate on the topic of “better regulation” and the merits of regulatory interventions for many years. Within this process, EU legislation, which is particularly prominent in the environmental domain, has figured to no small degree. It was considered in the Davidson Review on the “implementation of EU legislation” (BRE,

2006) which pointed out that perceptions of “gold plating” in the UK were generally exaggerated.

The role of regulation remains sensitive at an EU level as well. The European Commission has established the High Level Group on Administrative Burdens, currently chaired by Mr Stoiber, which takes an active interest in environmental policy, particularly from the perspective of smaller businesses.

It is also clear that the future of EU environmental policy will not be on precisely the same pattern as in the past. This change of direction has been signalled recently in the Seventh Environmental Action Programme which was agreed under the Irish presidency (Europa, 2013). EU environmental policy is now relatively comprehensive and whilst there may be gaps to be filled, the major effort in future is more likely to be in amending and developing existing policies and responding to the major challenges of building a sustainable and resource efficient economy in a world with increasingly apparent environmental limits. It is important in drawing any conclusions in the Review of Competences to focus on what lies ahead to a greater degree than what has occurred in the past.

### **The changing role of environmental policy**

In our view the Seventh Environmental Action Programme is a helpful review of the state of EU environmental policy and the directions in which it is heading. One of the key issues to emerge is that many of the most pressing future challenges are global in nature. They relate to climate change, as is well understood in the UK and also to biodiversity and the excessive use of natural resources relative to their long term availability. This has been signalled clearly at the global level, for example by both the OECD (2011) and UNEP (2012). It suggests that while local and national issues will remain important, the wider international strand of environmental policy is likely to increase as a proportion of the whole. This is not only because of the global nature of many issues but because of their economic sensitivity. It is already apparent that climate policy is closely linked to aspects of economic policy and national positions are heavily influenced by this. Looking ahead to parallel debates about more efficient use of other resources, including minerals, water and biodiversity, it is likely that competitiveness concerns will be prominent in these domains as well. So there is greater convergence between environmental and economic policy as well as between national and global policies.

In this scenario, the merits of developing and applying policy at an EU level will remain very considerable and the linkages between the internal market and the application of environmental policy could increase rather than fall. At the same time, more attention could shift to the implementation of existing policy both to secure improved environmental effectiveness and an economic playing field which is both more level and more transparent. Improved implementation is indeed a key theme of the Seventh Environmental Action Programme. It corresponds to a traditional emphasis on better implementation in the UK and one which is now particularly relevant given the considerable gap between measures agreed at the EU level and the actual level of implementation on the ground (see for example EC, 2012a).

Whilst it is clear that there are particular sensitivities about EU regulation in the UK, the level of national engagement in the key global environmental debates is relatively high. As a major trading nation, heavily dependant on imported materials and products and increasingly committed to building a green economy, the UK has a stronger political and economic stake in the new environmental agenda than many other countries within or beyond the EU. In this sense it has much to play for as an active participant in EU policy, as the EU has both the size and capacity to be a major player on a level which no individual European country could attain.

## **Responses to specific questions**

### **1 Advantages and Disadvantages**

EU competence in the environmental sphere including climate change has, in our view, been beneficial for the environment, both in the UK and in Europe as a whole. Whilst acknowledging the difficulties of establishing a counterfactual, as noted above, there have been advances in many areas of environmental quality as a direct result of EU policy. For example, EU legislation has been the principal driver of rising UK standards on air and water pollution for several decades, with major benefits, both for the environment and for human health. Improvements in UK air quality between 1990 and 2001 alone avoided 4,200 premature deaths per annum and 3,500 hospital admissions per annum (Defra, 2007). The number of beaches qualifying for the EU's "Blue Flag Standard" has increased very substantially. A total of 812 landfill sites in the UK have stopped accepting waste since the EU Landfill Directive came into effect in July 2001 (Environment Agency, 2013). A number of other examples are given in our recent report on the influence of EU policies on the environment (see Annex 1).

Evidence of improvements in the European environment can be found in reports published by the European Environment Agency (for example EEA, 2010). The overall trend is of improvements in quality of air and water, greater attention to the management of waste and chemicals and a number of steps to address climate change, the loss of biodiversity and a more efficient use of natural resources. These are all areas where EU environmental policy has been a significant force either directly or more usually through its implementation in national measures. At the same time, there is considerably further to go. A substantial proportion of the EU's population remains exposed to levels of air pollution exceeding WHO recommended standards (EEA, 2010). Initial efforts to prevent the decline of European biodiversity by 2010 were not successful and a new target has been set for 2020. Measures to address climate change have helped to reduced emissions of greenhouse gasses and it is expected that emissions will have fallen at least 20 per cent below 1990 levels by 2020. However, this is much less than is required to reduce dangerous levels of climate change or to meet the level of ambition established in the UK.

Without EU interventions in the environment it is reasonable to anticipate that standards in most sectors would be lower in Europe as a whole and in many individual countries. If standards had been set primarily at the national level this would have had resulted in fragmentation and both commercial and political disputes. This is because a significant proportion of issues cannot be addressed without cooperative action by more than one country and also because of the economic sensitivity of policies which have affects on

production costs, the competitiveness of companies and countries and on trade. There was some illustration of this in the tensions between the UK and Scandinavian countries over acid rain in the 1970s and 1980s, leading ultimately to agreement on the Large Combustion Plant Directive in 1988. The UK benefits from improvements in its own environment and also from many of the advances made in the European and global environment, albeit less directly.

It is difficult to be precise about the economic impacts of EU environmental policy as a whole. Some measures will have resulted in certain products and processes being phased out with a short term negative effect on employment whilst these and other measures also may have driven innovation, new investment and a new generation of industries, creating employment in more sustainable sectors. The European Commission has quoted studies indicating that employment and environmental technologies and services in the EU has been growing about three per cent annually, while the global market for “eco-industries” is expected to double over the next ten years (EC, 2012b).

In our recent report (Annex 1) we point out that in many of the sectors where environmental policy is now focussing, including climate change and waste management, there are opportunities for significant increases in employment and that these rely partly on legislation to underpin new investment and growth.

EU environmental policy also has impacts beyond the environment and the economy, for example in the field of science, human health and citizens’ rights. By setting longer term targets and establishing a clear strategic set of environmental priorities, which are not developed in national policy, a framework is established not only for investment in energy supply, manufacturing and infrastructure, but also in more forward looking science and technology. Environmental policy is one of the drivers in establishing priorities in the EU’s own research programme, recently agreed under the title “Horizon 2020”. Citizens’ rights are addressed through improved access to justice on the environment (See Annex).

The drawbacks to the EU competence in this domain are outweighed by benefits but clearly do exist. Policy is made through a process in which political compromises need to be made between the different institutions and the outcome is not always ideal. The objectives and the obligations set out in legislation may not be as precise as they could be as a result of the decision making process and the interests of one country will not always correspond to those of the majority. On some occasions measures may prove ineffective or the objectives may turn out to be inappropriate. One example is the target for renewable energy under the Renewable Energy Directive (2009/28/EC) which has resulted in levels of incentivisation for first generation biofuels which are not appropriate in the light of their contribution to climate change mitigation (Skinner, 2013). EU measures will not be as influenced by the institutional arrangements for delivering them in the UK as national measures often would be. So the level of adjustment required is often greater. Nonetheless the advantages of a concerted approach at a European level are often overlooked by Institutions which focus on the immediate impact of EU measures on themselves.

## **2 Where should decisions be made?**

There are a number of advantages to addressing environmental policy at the EU level. They include the transboundary nature of many environmental issues, the linkages to the single market, potential economies of scale, the administrative advantages of tackling demanding technical issues on a co-operative basis (for example chemicals regulation) and the EU's weight as a player in global negotiations. These are elaborated in the Annex.

Looking at the future agenda, there are several issues where the EU is particularly well suited to intervene. These include the regulation of marine pollution, including emissions from ships where international arrangements move relatively slowly and emissions from aircraft where the EU is the key actor. EU measures on climate change, clearly a transboundary issue, will continue to have value for several reasons:

- The EU has the economic and political weight to influence global negotiations in the way that individual countries cannot. Indeed many other countries outside the EU, such as Norway and Switzerland, are now negotiating inside less formal blocs.
- Many climate related measures either have or are seen to have significant economic implications and it is difficult to sustain progress in an individual country without sufficiently supportive action amongst at least some trade partners. National policy in the UK on climate issues may be inhibited in future if the EU does not progress climate mitigation policies to our higher level of ambition.
- The EU has at its disposal the capacity to adopt policies in several different spheres, including burden sharing between Member States so that it can address internally some of the conflicts holding back progress at a global level. This is beneficial both for the EU's own Members and at a global level, since others can draw on this experience.

At the same time there will be frustrations from reliance on EU level action, such as the slow progress in strengthening the provisions of the Emissions Trading Scheme (ETS). The balance, however, is in favour of a strong EU dimension in policy alongside national and global elements.

## **3 & 4 Internal market and economic growth**

A significant proportion of EU environmental policy measures are relevant to the functioning of the internal market and this is likely to be the case in future for the reasons outlined above.

The conclusion of the report in the Annex is that EU environment and climate change policy do provide significant economic as well as environmental benefits for the UK and this may be increasingly the case with the growing significance of the green economy. Some support for this judgement may be found in the view of external investors in the UK economy. It is notable that Japan as a major investor in the UK, with 1300 companies involved, many of them subject to EU environmental regulation, is strongly supportive of the UK retaining its membership of the EU (EurActiv, 2013).

## **5 Current Legislation**

Generally speaking, EU environmental legislation on the environment and climate change is focussed on outcomes. Much of the legislation is the form of directives leaving national authorities room to meet specified directives through means which are appropriate in their own circumstances. The Water Framework Directive is a good example of this and there are many others in the Institute's Manual of Environmental Policy (IEEP, 2011). However, there are some measures which are concerned specifically with process rather than environmental outcomes. The Environmental Impact Assessment Directive (85/337/EC) is a good example (see Annex). There is a value in such measures but they remain a small minority of the total spectrum of EU environment policy.

We have direct experience of some of the preparation made by the European Commission prior to proposing new measures. There is increasing emphasis on prior assessment of new measures, particularly in the economic sphere as well as addressing anticipated environmental outcomes. In some cases the proposals for new measures are rejected by the relevant Board within the Commission because they are not convinced by the case put forward. The weight given to these assessments is increasing over time in our experience, although their quality varies considerably. It is worth noting that very detailed assessments would cost much more than the budget often available within the Commission at present. So some realism about what is achievable is necessary. In addition the results of the initial assessment may become less relevant during the decision making process if the design of the measure changes significantly, for example during the trilogue process. Assessments of amendments to a proposal are not generally made.

### **6/7/8 Doing things differently**

There is a range of opportunities for using existing EU competence more effectively. These include:

- A stronger scientific and technical database for policy and greater capacity to draw on the centres of expertise throughout Europe. This is flagged in the Seventh Environmental Action Programme (EC, 2012b).
- Greater transparency in the decision making process, particularly in the European Council. It is not always clear precisely why certain decisions have been made and where support for them lies.
- Greater emphasis on effective implementation of measures that have been agreed.
- Within the UK a more strategic and proactive approach to engagement with EU environment and climate policy. This could include a more active engagement in stimulating EU debate on issues regarded as priorities by the UK, for example organising European conferences and seminars. In the 1990s a senior Defra official took a group of his staff for a whole day meeting with DG Environment officials so that greater mutual understanding could be achieved. Although this becomes more difficult in a larger Union the proactive approach is more likely to result in new ways of thinking than a purely defensive one.

- In terms of policy instruments there is an increasing academic literature examining the benefits of environmental taxes replacing other forms of taxation and encouraging a better use of natural resources. There would be benefits to considering environmental taxation more widely in the EU much as the UK does domestically. However, at present the UK's strong opposition to fiscal measures at the EU level inhibits further exploration of this option.
- In the UK there has been a tendency to assume that alternatives to regulation are preferable to the regulatory approach. However, the evidence for this is far from clear. There are several examples of where a voluntary approach at the European level has not led to the level of progress intended. In the case of CO<sub>2</sub> emissions from passenger cars, the voluntary approach was potentially promising because of the rather small number of producers involved. Nonetheless it proved unsatisfactory and led in due course to regulation 443/2009/EC on average CO<sub>2</sub> emission limits for new cars. At present manufacturers are meeting the current target under this regulation earlier than the regulation requires them to.

## **9 International Agreements**

As with other aspects of EU policy there are trade-offs between a national approach and a "Team EU" approach where the Commission and the Presidency play leading roles at an international negotiation. This can be cumbersome and can involve long meetings of EU Member State representatives during a negotiation when other players are free to participate and circulate without having to agree a position for their bloc. This leaves room for improvements in the mechanism and procedures adopted, as has occurred in the climate negotiations with the increased number of specialist representatives leading discussions who are not necessarily Commission officials.

However, in the larger picture there are strong benefits from a collective European position in most international agreements where this occurs. Over time individual countries within Europe are losing political and economic weight relative to emerging new players and so the relevance of the EU as a negotiating forum and force is unlikely to diminish.

## **10 Future Challenges**

The UK's commitment to a greener, low carbon economy can be achieved more effectively within an EU context than outside it (see Annex). At the same time the UK has the opportunity to inject new thinking and priorities into EU policy, should it choose to do so. The so-called "Fitness Checks" of EU environmental policy are becoming established and there is a current focus on waste policy. In this context national governments and other stakeholders can develop and convey their views on sectors of policy as well as individual measures.

Outside the EU the UK would have the choice of different affiliations, such as the EEA and EFTA. However, as argued in the Annex, much of EU environmental policy would continue to apply and the UK would not be involved in the decision making process in which it has played a major role historically. The opportunities for influencing EU policy as it enters a new stage are considerable and the benefits of withdrawing are very far from clear.

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