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Brexit – the Implications for UK Environmental Policy and Regulation

A special independent report commissioned by the all-party parliamentary environment group

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Executive Summary

Countries within the EU have chosen to work together to build a largely common approach to the control of pollution, the mitigation of climate change and associated issues such as the regulation of chemicals. A considerable body of law has been established in the process. EU and UK legislation are now closely interrelated and the UK is one of the most active countries in contributing to the EU debates and decisions.

Consequently there is an important environmental dimension to any decision by the UK to leave the EU. This paper explores the options that might be pursued outside the EU and considers the potential impact on environmental and climate policy, which could be considerable. The UK response could vary under different scenarios for future relationships with the EU and there is also likely to be greater scope for variations in approach by the four constituent countries within the UK following Brexit.

In environmental terms, and for businesses and investments affected by environmental policy, any form of Brexit would give rise to a significant period of uncertainty and some disruption as new arrangements and relationships were put in place. The UK would cease to have any power to determine EU policy or to participate in international meetings as an EU member, with a potential reduction in global influence on climate change negotiations for example. The CAP and CFP would cease to apply and there would be major implications for funding and environmental management.

If the UK were to negotiate membership of EEA most EU environmental legislation would continue to apply, including measures covering pollution control, chemicals and waste management. Exceptions include the Bathing Water Directive. Some routes to limited participation in the EU policy making debate would exist, but they would fall short of the current direct role in decision making. This would apply to a range of EU initiatives expected in the coming decade, for example on the Circular Economy package and the Ecodesign Directive.

On scenarios where the UK was outside the EEA, most environmental legislation would cease to apply. The main exception would be where companies were seeking to export to the EU, and would be obliged to conform to product standards and other requirements in order to do so. Future governments would be free to weaken environmental regulations if that approach was considered to create a competitive advantage, and the pressure from the EU for standards to be enforced would no longer apply. Changes in the composition of climate policies could be expected, and overall levels of ambition are expected to be lower in Europe in the event of Brexit.

1 Introduction

There are many different aspects to the relationship between the European Union (EU) and its Member States. One of these is the way in which environmental issues are handled. Since the 1970s, the EU and its Member States have assembled a very substantial body of environmental policy and legislation, agreeing to a common approach across a variety of fields. These have included:

- Air and water pollution;
- Waste management and recycling;
- Climate mitigation;
- The regulation of chemicals;
- Several aspects of nature conservation;
- Aspects of noise control;
- Regulation of GMOs;
- Environmental impact assessment;
- And a variety of other issues.

This now amounts to a substantial body of law covering most aspects of environmental management. The UK has contributed to this undertaking as one of the key players on many issues, for example the control of water pollution and the development of an integrated approach to the control of industrial emissions. It has been a leading advocate of increasing Europe's ambitions in reducing the emissions of greenhouse gasses (GHGs) and building a lower carbon economy. At the same time, it has been sceptical about the need for new EU regulation in a number of areas and an active proponent of "better regulation". National and EU legislation have become closely integrated and many of the ways forward in environmental terms are expected to be pursued through a common EU approach, albeit with some national variations (for which there is scope in most areas of environmental policy). Within the UK there is a similar approach by the four constituent countries working within a common EU framework, again with certain variations. National institutions, such as the Environment Agency in England and SEPA in Scotland, are adapted to delivering many of the requirements of EU law, including inspection, monitoring and reporting regimes.

Environmental policy is an area where Member States are allowed by the EU Treaties to adopt "more stringent protection measures" than required by EU legislation, except where this would damage other objectives like the Single Market. While in principle the UK could go further than required by EU law, in practice the UK Government has adopted a "no gold plating" approach.

It is therefore natural and indeed highly appropriate to ask what will happen in the environmental sphere should the UK decide to leave the EU following the referendum on June 23rd. This paper considers this question, both in broad terms and in relation to some specific areas of policy, notable industrial emissions, the circular economy and climate change.

2 Leaving the EU

If the referendum results in a decision to leave the EU, a process of negotiation covering several different fronts would begin. In the first place this would involve complex negotiations with the other 27 Member States about the terms of departure, disentangling the close relationship between the two sides. This is expected to take at least two years, e.g. up to 2018, and very possibly longer. There is no precedent for this and consequently some uncertainty about how it would proceed and how certain issues would be handled (House of Commons 2013). Almost certainly it would be based on Article 50 of the Treaty on European Union (TEU). Both transitional and longer term measures would need to be addressed while the UK would continue to be an active member of the EU with voting rights. Current legislation would continue to apply during this period and in some cases amendments would be made to it.

In parallel, other negotiations would need to occur. One of the most important of these would be about the UK's future relationship with the EU itself with its 27 remaining members. There has been much speculation about whether the UK would seek continued preferential access to the EU single market and this would indeed be a critical issue, not least for the environment, but it is far from the only important area. Under some scenarios the future relationship might be close, under others, more distant.

On a third front, the UK would need to initiate urgent negotiations with other non EU countries with which it wished to continue to trade, including other parts of Europe, Canada, Australia, the US, China, India, etc. A variety of options potentially are available here, as we discuss below, but it is not clear how quickly they could be accomplished. For example the new EU-Canada agreement, sometimes cited as a model, took seven years to negotiate and still is not in force (HMG 2016).

Within the UK itself, the central government institutions would not be the only parties with a stake in these negotiations or a role to play in them. The devolved administrations in Scotland, Wales and Northern Ireland would have an interest in many aspects of the new agreements to emerge and would have an important part in developing post-EU policies, which are therefore unlikely to be uniform within the UK. Outside the EU for example both the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP) would cease to apply, and distinctively different approaches between the four countries would be likely to emerge in certain areas. This is irrespective of any separate political developments, such as a possible referendum on Scottish Independence.

Overall there would be a period of very considerable uncertainty lasting a period of years with implications for short-term policy making (which might become more limited, given the sharp increase in preoccupation with external relationships), for longer-term forward planning, and for investment in the private sector. It is not unlikely that the Government would seek to reassure stakeholders that the scale of change that would occur following Brexit would be measured, with most legislation based on EU law remaining in place initially at least. However, it would be impossible to remove all the policy and legal uncertainty created, and hard to maintain the normal rhythm of policy development and implementation in the environment sector against such a backdrop.

3 Outside the EU – the scenarios

There are many possible options for the UK to pursue if it were to leave the EU and there is no clear consensus about which one is most likely to be adopted or even which is preferable, given the spectrum of views amongst those advocating Brexit as to why leaving the EU is itself desirable. The Government and its successors would make these choices, and it is difficult to forecast how far they could be influenced by the preferences of those advocating Brexit. So, while it is helpful to focus on some concrete options in order to assess the implications of Brexit, they are certainly not definitive. Also they must be recognised as aspirational rather than fixed. For example, the UK may decide to pursue membership of the EEA and seek a relatively close relationship with the EU, similar to that of Norway. This involves more than one stage of negotiation, since the UK's current membership of the EEA is based on its status as an EU Member State; that would fall away on departure from the EU and, to re-join the EEA, a first stage is to become a member of EFTA, effectively the gateway to the EEA for non-EU members. So new terms would need to be agreed and it cannot be assumed that negotiations with neighbouring countries, however friendly, would necessarily conclude in the way initially envisaged in the UK.

The Government has published a paper very recently which introduces and assesses various scenarios under the title "Alternatives to membership: possible models for the United Kingdom outside the European Union" (HMG 2016). This concludes that "It would take up to a decade or more to negotiate a new agreement with the EU and to replace our existing trade deals with other countries. Moreover each of the alternative models would come with significant obligations and costs for the UK". Three primary models are identified:

- Membership of the EEA, the Norway model. This allows very extensive privileged access to the Single Market, accompanied by many EU obligations, including contributions to the budget. Most EU environmental legislation would continue to apply to the UK with some important exceptions, notable the Bathing Water, Birds and Habitats Directives. The UK would no longer be able to vote on decisions affecting EU legislation, which would be a major change. EEA member countries may attend technical and advisory discussion on the preparation of draft implementing rules, but are not party to the decisions.
- A negotiated bilateral agreement with the EU, with some access to the Single Market but no budget contributions. The UK would not be bound by EU environmental legislation under this model, unless particular items were negotiated. However, companies seeking access to the Single Market would have to comply with relevant EU legislation, relating to product standards for example. The UK would not have a say in the making or amending of this legislation.
- No special bilateral agreement with the EU and no preferential access to the Single Market. The relationship with the EU would be similar to that of Brazil and other countries with no such deal. WTO rules over trade would apply, both with respect to the EU and other countries. This scenario could arise by design, or alternatively could emerge by default if no new relationship had been agreed with the EU by the time of the UK's departure.

Figure 1: The relationship between the EU and its neighbouring countries.

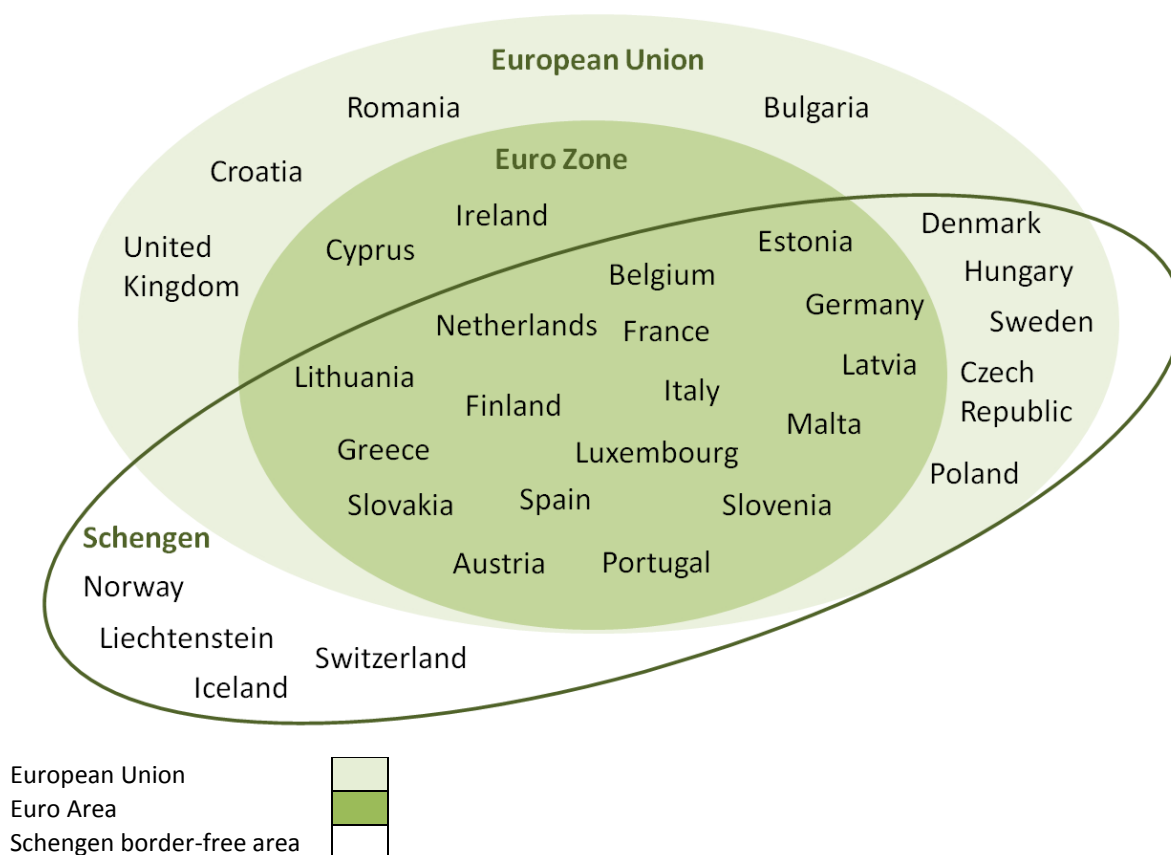


Figure 1, adapted from the Government’s paper, shows some of the current relationships between the EU and its neighbours. EEA countries are Norway, Iceland and Liechtenstein as well as the EU at present. All the non-EU countries in the EEA are members of the Schengen border-free area as well. So is Switzerland, which otherwise is a special case as a member of EFTA and not the EEA (so falling under the second of the categories above.)

3.1 Consequences of departure for environmental policy

From an environmental policy perspective it should be noted that there are several important changes arising, irrespective of which outcome prevails:

- First, the UK ceases to participate as a decision maker in EU policies affecting the environment. This would be a substantial loss of influence.
- Secondly, it ceases to influence the direction of travel of EU policy as expressed in important documents like the Seventh Environmental Action Programme and the Europe 2020 strategy for “smart, sustainable and inclusive growth”, or in European Council decisions on medium term climate and energy targets.
- Third, the UK would participate in international negotiations on the environment, such as the UN Framework Convention on Climate Change, as a separate party, rather than as a member of the EU. This would give it more independence, but little purchase on the overall EU position, which is arguably amongst the weightiest and

most influential on the global scene because of its size, economic importance and environmental leadership in many areas.

- Fourth, the CAP and CFP would no longer apply and alternatives would need to be introduced rapidly. These new arrangements would have legislative, trade and expenditure dimensions and may be significantly different for the constituent countries of the UK. There would be potentially far reaching implications for environmental management, both terrestrial and marine. For example, expenditure on agri-environment policy up to about £3 billion in the period 2013-2020 is one of the key means of incentivising more sustainable land management, but is about two thirds funded by the EU under the CAP.

However, there are also important differences in the environmental outcomes dependent on the model arrived at following departure negotiations. The main difference here is between the scenarios of remaining in the EEA, where most EU legislation continues to apply and the other two scenarios where it does not apply other than to products entering the EU Single Market and, where relevant, to their related supply chains. This is a crucial distinction. The position is summarised in the table below taken from a recent, more comprehensive review of the topic by the Institute (IEEP 2016).

Table 1: Implications of various scenarios related to the EU referendum

	Membership of the European Union	Inside the EEA Brexit Scenario 1	Entirely outside Brexit Scenario 2
Does the UK retain access to the EU Single Market?	Yes	Yes	No, all access to be negotiated
Does it contribute to EU budget?	Yes	Yes (budget contribution would probably fall, however)	No, unless negotiated as part of an access deal
Do the CAP and CFP apply?	Yes	No	No
Do EU environmental laws continue to apply to the UK?	Yes	Most of them will, with some exceptions e.g. the nature directives and Bathing Water Directive.	No, but UK exporters will need to comply to export into the EU
Does the UK have a say in the formulation and amendment of EU policy on the environment?	Yes	EEA countries are only consulted during the preparation process for legislation. They do not take part in the formal negotiations, and cannot vote; and they have no MEPs to influence legislative outcomes through the European Parliament.	No
Would the UK continue to be subject to mechanisms to ensure compliance and penalties for non-compliance?	Yes	Yes, the European Commission retains enforcement powers and fines can be imposed for non-compliance.	No
Would it be necessary to negotiate new trade arrangements which could have impacts on environmental standards?	No	In some areas, yes, including in relation to agriculture and fisheries.	Yes, across a wide front.

Could a future UK government lower current environmental standards in the UK?	Only by means of an agreement at EU level	Not in the majority of cases where they are covered by EU obligations.	Yes; although UK exporters would need to abide by EU product standards, as well as face tariffs in many sectors
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Source: Institute for European Environmental Policy - The potential policy and environmental consequences for the UK of a departure from the European Union

The table takes EEA membership as Scenario 1 and other arrangements with trading partners as Scenario 2.

4 Implications of the Brexit Scenarios

The following sections of the paper explore some of the potential consequences of departure from the EU with respect to two major areas of policy:

- Those measures applying particularly to industrial production, including air and water pollution, waste, recycling and resource efficiency, control of chemicals, etc.
- Those measures concerned with the mitigation of climate change.

In both areas, EU policy plays an important role, although there are also significant differences. For example, domestic UK policy on climate mitigation has high-level objectives and long-term goals established under the 2008 Climate Act; successive 5-year carbon budgets have been set and will continue to be established, in the light of advice from the Committee on Climate Change, which also monitors progress towards the targets.

There are no parallel arrangements for air and water pollution more generally and these are areas where the EU tends to be the forum within which policy is driven forward and strategic goals adopted.

4.1 EU environmental law and industrial production

EU environmental law affects industrial and other business activities in a number of ways. These can be summarised as:

1. Setting direct performance requirements for aspects of industrial operations: e.g. laying down requirements to limit emissions of substances to air or water.
2. Setting indirect performance requirements: EU law may establish targets or processes which need to be interpreted at Member State level by regulators into specific requirements (e.g. on waste handling).
3. Setting broad environmental objectives and some of the primary means of addressing them: much EU environmental law sets environmental objectives (e.g. for air and water quality). Usually, it is up to Member States how they meet these objectives, but if current industrial activity is a significant barrier to meeting those objectives, Member State authorities may need to set requirements for industry to change its processes or broader operations.
4. Setting requirements for the quality of products or certain characteristics of them: e.g. restricting permitting levels of hazardous substances in products.
5. Setting requirement for the performance of products: e.g. vehicle emissions.
6. Setting obligations on the handling of products over different periods of their lifetime: e.g. for end-of-life of vehicles, manufacturers are given responsibility to handle vehicles when they are scrapped to comply with certain environmental objectives.
7. Setting procedural requirements to ensure product safety: the highest profile example is the regulation of chemicals, where businesses have to ensure a series of safety procedures are undergone before a chemical can be placed on the market.
8. Setting other procedural requirements: e.g. risk assessment and safety planning for the prevention of major accidents.
9. Accompanying provisions: there are further accompanying items of law which affect industry, such as that on environmental liability which sets out liability rules for

businesses which damage the environment, usually defined in the relation to environmental objectives set out in EU environmental law.

It can be seen, therefore, that most of the obligations centre around two main axes:

1. Managing industrial performance so that it does not unduly damage the local (or wider) environment.
2. Ensuring that products entering the internal market are safe or meet particular environmental standards (including ability for recycling).

In considering the consequences of Brexit, it is important that businesses reflect on the impact on obligations arising under both of these axes (as well as the detail within them).

Box 1: Examples of legislation that would remain applicable to the UK within the EEA

Brexit within the EEA (Scenario 1) would require that the UK continues to apply most EU environmental law. With respect to the above categories, major examples of legislation of interest to industry which would still apply to the UK within the EEA include:

1. Setting direct performance requirements for aspects of industrial operations: Urban Waste Water Treatment Directive, Annexes to the Industrial Emissions Directive.
2. Setting indirect performance requirements: Industrial Emissions Directive.
3. Addressing the consequences of environmental objectives: Air Quality Framework Directive, Water Framework Directive, Waste Framework Directive, Priority Substances Directive.
4. Setting requirements for quality of products: Restriction on Hazardous Substances Directive.
5. Setting requirements for the performance of products: all vehicle emissions legislation, Ecodesign Directive.
6. Setting obligations on future handling of products: End-of-Life Vehicles Directive, Batteries Directive, Packaging and Packaging Waste Directive.
7. Setting procedural requirements to ensure product safety: REACH Regulation, Classification and Labelling of Products Regulation.
8. Setting other procedural requirements: Seveso III Directive.
9. Accompanying provisions: Environmental Liability Directive.

There are relatively few items of EU environmental law which do not apply within the EEA. Particular examples are:

- The Habitats Directive.
- The Bathing Water Directive.

The latter was a major driver for investment in water treatment in the UK from the 1970s onwards as the number of compliant beaches has climbed steadily. However, the UK is now largely compliant and it is rather unlikely that it would take a backward step, although the pressure from the EU to comply with Directives such as potential action in the ECJ or penalties for national authorities, would be removed. For the Habitats Directive the

situation is different. EU nature legislation is considerably stronger than the UK legislation which preceded it. There are also cases where the UK government has expressed frustration with the limitations that the Habitats Directive have placed or have been considered to impose on particular infrastructure developments. Therefore, it is possible that Brexit within the EEA would lead the government to relax some of the provisions of the UK implementing regulations for the Habitats Directive, again without pressure to comply from the EU. This would, however, be controversial in domestic terms.

Brexit outside the EEA under Scenario 2 would mean that there would be no immediate formal requirement to continue applying any EU environmental legislation. However, many EU **directives** have been transposed into UK law through primary legislation or secondary legislation under Acts other than the 1972 European Communities Act; and this legislation would continue to apply until changed by Parliament. Where requirements have been implemented under the broad order-making powers of the 1972 Act, we assume that new primary legislation would be required to clarify its status on UK departure from the EU, and that any such primary legislation would provide for maintenance of the status quo in the short term.

EU **regulations** would present a different problem for the Government. These are directly applicable in the Member States. Therefore, these could immediately cease to apply. This could cause significant problems for both environmental protection and those subject to regulation. It is likely, therefore, that an arrangement would be made so that they continue to apply in UK law to avoid this disruption. It is worth highlighting that if the Government decided that certain EU Regulations had to continue to apply, the issue of competence of the devolved administrations could be a complicating factor.

In the versions of Brexit with the UK having no formal agreements with the EU, some EU environmental law would continue to influence UK businesses. Any product from the UK, in order to be eligible to enter the EU Single Market, would need to conform to the requirements of that market (which include issues beyond that of the environment). Third countries are already strongly influenced by these product requirements (e.g. on vehicle emissions and components) and UK business would be similarly influenced. Indeed it is likely that businesses exporting to the EU would lobby to ensure UK law is similar in its requirements for the domestic market so that their products are not at a disadvantage to non-exporting UK competitors.

It is worth noting that one of the key political ‘projects’ of the EU is the completion of the single market. Therefore, it is likely that in future, further product-related requirements will develop for example for vehicles, energy using equipment, products containing chemicals ecodesign considerations, etc. and these would also similarly influence UK businesses seeking to sell their products within that market.

The UK probably would seek to negotiate agreements allowing continued access to the Single Market. All evidence suggests that with increasing access, the EU would require the UK to meet much of EU environmental law. The EU is unlikely, for example, to allow equal access for products from UK sectors which were allowed to be more polluting than their EU

competitors. Given the maturity of much EU environmental legislation, the EU is likely to require the status quo as a basic requirement for market access.

The continued application of some EU environmental legislation for the UK outside the EEA would raise administrative questions. Some key market measures, such as the REACH Regulation for chemicals, use a common administrative process across the EU (in this case the European Chemicals Agency in Helsinki) to authorise the placing of new products (in this case chemicals) on the market. This seeks to ensure a level playing field for all EU businesses. On a Brexit scenario outside the EEA, the UK could negotiate continued access to such systems, but what the terms would be are, at this stage, unknown.

It is possible that negotiations with the EU on market access could allow retreat on some environmental protection provisions if the UK could show these would have no competitiveness implications. For example, the UK might argue that meeting the Drinking Water Directive in one part of the country or problems in meeting the Air Quality Directive requirement due to the old age of certain bus fleets does not affect competitiveness (though the EU might seek to protect its citizens visiting the UK from health risks). However, it is likely that the EU would negotiate hard on 'challenging' directives such as the Water Framework Directive, as agreement to relax provisions in the UK would be seen as giving some UK businesses a competitive advantage; and stakeholders in equivalent sectors in the continuing EU Member States would be vigilant in encouraging their negotiators to avoid relaxations for the UK.

Box 2: Influencing EU environmental policy from outside

UK stakeholders currently can influence the development of EU environmental policy through a number of routes:

1. They can lobby the UK Government to influence the stance that it takes both in informal discussions and in formal decision making.
2. They can lobby individual MEPs or political groups to influence the stance that they take in voting, etc.
3. They can lobby the European Commission directly on a subject of interest.
4. They may be invited to be members of working groups, expert groups, etc., which explore technical and policy issues at EU level, influencing policy implementation and further legal development.
5. They can contribute their views within EU-wide associations, such as CEFIC (chemical industry), UEAPME (SMEs), EEB (green NGOs) or associations for specific business sectors (e.g. EUREAU for the water sector).
6. They can respond to direct public requests for information or views by the European Commission (e.g. as public consultations).

UK stakeholders often are influential at EU level. The chemicals sector and power generation sector, for example, have affected both legal developments and the supporting provisions that arise after directives or regulations have been adopted. Environmental NGOs are active on many dossiers in Brussels, not least on climate and nature issues.

The particular form that a potential Brexit would take would influence the ability of the UK

government and UK stakeholders to inform EU environmental policy development. In examining this, it is important to distinguish between informal and formal influence. By formal influence, we mean whether the UK and UK MEPs would have a vote on whether particular legislative proposals (including those considered in Commission-chaired Committees on implementing measures) would be adopted. Under all Brexit scenarios, the UK would no longer have such a vote. Thus its formal influence would be at an end for all future EU environmental law which could continue to apply in the UK (or continue to affect it), again depending on the Brexit scenario.

However, a degree of informal influence would continue to be in place and the nature of this would be dependent on the Brexit scenario. It is important to stress that EU level decision making is highly consensual in nature, seeking ways to bring different views together and depending on the good will and relationships of those participating in the decision making. Brexit (on any basis) could challenge the relationship between UK actors (whether from government, industry, NGO, etc.) and those from the EU at a personal level as Brexit would be an expression of the UK's rejection of EU decision-making. Of course, personal relationships may overcome some of this negative reaction, but it would be unlikely that differing views from the UK would be heard in the same light that they are at present.

Many working groups/expert groups are open to participants from EEA countries (governmental and non-governmental). Therefore, Brexit within the EEA would continue to allow UK access to these platforms for influencing policy. These do tend to be technical discussions and, therefore, good points, cases, etc., from the UK government, business, etc., could continue to influence policy. However, if any of these were to lead to formal decisions for EU law, the UK influence would stop at that point.

Within the EEA other avenues for influence should continue to apply. However, what would reduce would be the range of reasons for EU policy makers (or even EU business partners) to listen to UK views. Where the UK can provide important technical information (e.g. on innovation), this will be likely to continue to be influential. However, if an EU proposal were to fail to address a key environmental problem in the UK or to potentially have a particularly negative impact on UK business competitiveness, EU policy makers would not need to take such views into account if such points were not more widely applicable across the EU.

Brexit outside the EEA would reduce the ability of UK stakeholders to influence EU environmental policy even further. Membership of working groups established at EU level would cease.

4.1.1 On the horizon

There is no large pipeline of potential new EU directives on the horizon which would radically affect the relationship of industry to the environment or costs to business. There are some developments, however, that are relevant; measures on both the circular economy and on climate mitigation (considered in section 4.2 below) are expected to be

introduced in the coming years and they will have long-term implications for the shape of the economy and businesses within it.

The Circular Economy package published by the Commission in December 2015 (COM 2015) signals an important change of direction over the next decade or more utilising a spectrum of approaches rather than relying primarily on new binding regulations. It is a policy statement focusing on the need for society to transform into one in which materials are reused and circulate, rather than one of consumption, waste, poor design and built in obsolescence. The drive for this policy is economic as well as environmental and it clearly presents opportunities for those businesses which can innovate and provide services to support this transformation. The package does contain a legislative element – largely proposing to amend the Waste Framework Directive so that it is more consistent with a circular economy. Other than as an enabling legislation, this legal change would affect few businesses directly outside the waste sector where it is important.

The Circular Economy package contains a large number of potential EU initiatives set out in an Action Programme and also relates to existing plans and processes such as the Roadmap to a Resource Efficient Europe and the development of new proposals under the Ecodesign Directive (the results of the Ecodesign working party are overdue). Over time, quite a large range of initiatives could emerge under the rubric of the Circular Economy. These could include more explicit targets for reducing the use of natural resources and increasing reuse/recycling, extensions of producer responsibility, more green public procurement, more tracing and management of certain materials in supply chains, new approaches to the bioeconomy and greater use of the Ecodesign Directive beyond energy efficiency goals. For example, work under the Ecodesign Directive could result in new requirements on products for their environmental performance. Advances in industrial innovation could affect interpretation of ‘Best Available Techniques’ under the Industrial Emissions Directive, making it more demanding.

Finally, looking ahead, all major EU legislation will be subject to review and these reviews will follow the evaluation processes set out in the Commission’s Better Regulation Communication of May 2015. The term “Fitness Check” could become more familiar. What such reviews would conclude is unknown and some would be several years away. However, radical changes are perhaps not likely given the EU’s record of retaining measures which have been negotiated through a demanding and rather consensual process and amending them only after considerable deliberation.

4.2 Climate/ Energy Issues

4.2.1 *What are the main elements of EU policy?*

There is a broad range of EU policy covering climate and climate-related energy issues. The next section sets out what is on the horizon, but here we set out the main areas of existing legislation and policy.

At an **international** level, the EU takes part in UN climate negotiations. Climate is an area of mixed competence, in which both the EU collectively and individual Member States in their own right sign up to new treaties (partly because Member States have the right to set more ambitious climate targets for their economies if they so choose). However, the EU and its Member States have secured the right to meet their climate targets collectively, rather than at the level of each Member State – something which other parties to the international negotiations initially objected to because of the additional flexibility it created for EU economies.

The EU and its Member States **implement their climate targets** through a combination of the EU Emissions Trading System (ETS) (which covers emissions from power plant, other large installations, and aviation) and the Effort Sharing Decision (ESD) (which applies to emissions from the rest of the economy - roughly half of the total, including the non-electrically powered parts of the transport sector, agriculture, and domestic heating from gas). The ETS has a cap set at European level, and EU legislation then determines how allowances are allocated (who gets how many allowances for free; how the proceeds from auctions of the remaining allowances are allocated; and so on). The ESD gives each Member State a total level of emissions from the rest of its economy, and flexibility to develop policies to live within that limit (with some scope for trading between Member States). Both the ETS and the ESD targets have proved much easier to meet as a result of the 2008 recession than was expected when they were adopted and carbon prices have been low.

Those key policies govern the overall totals for emissions. The EU also has a number of separate policies and pieces of legislation which help to reduce emissions. They include budgetary contributions, through CAP and Structural Funds, which help Member States implement projects to reduce emissions. More significantly, they include legislation in the transport and energy sectors, which directly impact on the EU economy's emissions intensity. Transport legislation includes targets for car manufacturers to reduce emissions across the range of vehicles they put on the market each year. Energy legislation includes rules on energy efficiency (the Energy Performance of Buildings Directive, and the Energy Efficiency Directive, which requires Member States to set plans for energy efficiency policy, and to introduce measures including energy efficiency obligations on energy producers), and on renewable energy (currently including targets for the share of each Member State's energy which should come from renewable sources, as well as targets and rules on sustainability for biofuels, and on exchange of so-called green certificates).

4.2.2 What is on the EU horizon?

There is currently an important package of new measures being developed to translate the EU's commitments for 2030, confirmed in Paris, with measures applicable internally. The key elements of the 2030 package are:

- Revisions to the Emissions Trading System, including more restrictive limits on the number of allowances available, rules on who should receive free allowances, and what should be done with the receipts Member States generate from auctioning of the remaining allowances;
- A new Effort Sharing Decision

- A new target for renewable energy, and decisions on how that target should be implemented, including whether there should be targets for individual Member States, and the extent to which Member States should cooperate in their support arrangements for renewables. The Commission has proposed an overall target of 27% of energy from renewable sources by 2030.
- Revisions to the legislation on energy efficiency directive, and revised target of a 27% reduction in energy efficiency (confusingly, not an absolute reduction, but a reduction from a modelled projection for what energy consumption would increase to in the absence of policy).

All of these are continuations (and in some cases, as we discuss below, a partial withdrawal) of existing areas of legislation. A new element will be added:

- A proposal from the Commission will address how to include changes in the level of carbon stored in land and forests (the “Land Use, Land Use Change and Forestry” sector, or LULUCF, in UN terms) in the EU’s framework for delivering on climate targets.

4.2.3 Initial position of the European Council and the European Parliament

The positions of Member States on climate and energy policy vary significantly. There are some, notably the Visegrad group and particularly Poland, which are concerned at the potential costs of climate policy and its impact on their ability to use (already relatively expensive) indigenous coal resources as a contribution to their energy security; some, particularly the UK, which express relative enthusiasm for an ambitious approach on climate targets, but who are sceptical on the contribution of technology-specific instruments such as the renewables and energy efficiency directives; and some who are sceptical about the ability of the ETS to deliver sufficiently strong market signals to trigger early decarbonisation, and who want to see more support for renewables and energy efficiency, and a more rapid shift away from fossil energy sources and nuclear.

The European Council has already offered some preliminary policy guidance on the approach it wants to see for the 2030 climate and energy policy in the conclusions from its October 2014 meeting, in an attempt to bridge the differences between Member States. The signals from the European Commission are that it will follow this guidance closely. The key elements of the European Council’s conclusions are:

- Endorsement of the headline objective of a 40% reduction in emissions by 2030;
- Endorsement of the Commission’s proposed energy efficiency and renewables targets of a 27% share and a 27% reduction respectively;
- Agreement to a steeper rate of decline in the CAP for the ETS, leading to a 2.2% reduction in the number of allowances allowed on to the market each year
- An approach to allocation of targets in the Effort Sharing Decision which gives poorer Member States a less demanding reduction target, and for richer Member States shares effort on a combination of GDP and the availability of

cheap reduction potential. All Member States will benefit from greater flexibility, allowing them to trade their delivery of emissions reductions among themselves in order to help ensure a cost-effective EU-wide delivery of emissions reductions.

- For both renewables and energy efficiency, a clear statement that individual targets should not be set for Member States, but that the targets should “binding at EU level” instead; this is accompanied by a statement that Member States which want to go further should not be prevented from doing so.
- Agreement to the idea of bringing LULUCF (carbon storage in forests and land) into the target framework; although it remains to be decided how, and it is ambiguous whether this should be accompanied by an increase in ambition, or whether the availability of mitigation options in the LULUCF sector should be used to make it easier for Member States to meet their ESD targets.

The European Council has also endorsed a simplification and clarification of Member States’ strategy and reporting obligations; instead of having separate plans and reports for energy efficiency, renewables, and climate, these will be brought together in a single process, as part of the development of the new “Energy Union” (which will also cover issues with a less direct impact on climate change, including energy security, market liberalisation, regional cooperation, and so on).

The European Council’s approach thus represents a step back from the degree of pressure placed on Member States by the current 2020 target regime, particularly in respect of renewable energy, and to a lesser extent in respect of energy efficiency. The European Parliament, however, has made clear that it is not convinced by arguments against national targets; and both energy investors and environmental groups have expressed concern that the new system will provide significantly weaker signals to the market, risking a failure to deliver (although the 27% targets are not seen as particularly stretching). There is also continuing concern that a significant over-supply of allowances in the ETS market, essentially an overhang caused by the post-2008 recession, means the carbon price will not strengthen enough to deliver sufficient incentive for early investment in low-carbon technologies.

4.2.4 What can we expect to emerge?

The Commission appears keen to conform to the policy guidance provided by the European Council – an approach which has the advantage of securing the powerful backing of heads of government, and thereby a relatively simple passage through Council for what is proposed; but at the same time the disadvantage of accepting the level of ambition to which the least enthusiastic Member States can be pressured in a consensus process. An approach which was based on the Qualified Majority Voting rule would, potentially, allow a greater level of ambition, albeit at the expense of a significant bloc of disgruntled Member States (for example, the Visegrad group). It is also unclear that the European Parliament will accept an approach which avoids Member State targets, and which fails to create a greater level of ambition on energy efficiency in particular. An approach which avoids Member State targets

for renewable energy risks imposing a significant brake on commitment to investment in low-carbon infrastructure; and that without at least some form of indicative target for each Member State, it will be impossible to fully meet the European Council's commitment to allow those Member States which wish to make faster progress to do so in any meaningful form (since their additional investment will simply create breathing space for less enthusiastic Member States to act as free riders).

While some NGOs had expressed a hope that the December 2015 Paris Agreement, including its adoption of a 1.5°C target and a review procedure for commitments, would lead to a strengthening of the EU policy package for 2030, the Commission has concluded [ref] that this is not necessary; and it seems highly unlikely that the European Council or the Council will question that view.

The Commission has yet to put legislative proposals on the table for negotiation between Council and European Parliament; and the likely outcome is difficult to judge in advance. However, the current guess as to the likely legislative outcome is that:

- The ETS will have an improved trajectory of caps, declining at 2.2% a year; and some scope for management through the new Market Stability Reserve; but the underlying price will remain too weak, as a result of the overhang of allowances in the market, to drive significant low-carbon investment;
- Renewables legislation will be adopted without hard targets for Member States, but with some form of indicative indication of what is provisionally expected from each, potentially based on Member States' own initial plans for renewable energy investment;
- A voluntary process of coordination and alignment of support schemes for renewables will emerge, possibly with legislative encouragement; as will a process of regional cooperation on grid investment;
- The Effort Sharing Decision will broadly reflect the European Council's approach
- Land Use, Land Use Change and Forestry will be brought in to the 2030 package, but will be relevant for only a limited number of Member States – either those with significant forestry sectors, or those which have a particular policy commitment to increase their LULUCF mitigation. From a climate mitigation perspective it is absolutely clear that LULUCF should be treated as an additional source of mitigation (in other words, is not used to reduce ambition in other sectors), it is possible that in the horse-trading around allocation of ESD targets, Member States which commit to an ambitious approach on LULUCF end up with a lower share of the required ESD reductions than they otherwise would have;

4.2.5 How could Brexit change this?

The impact of a UK departure would have three key elements (i) the impact on wider European ambition; (ii) the short-term impact of policy uncertainty; and (iii) the longer-term impact on UK climate ambition and the ability for the UK to deliver on that ambition.

Impact on wider EU ambition

The pattern of climate policy in the EU over the last 25 years has been one of pressure for progress from the UK, and other North-West European Member States with a high level of public support for mitigation action, leading to a combined EU-level response which pushes more reluctant Member States in the South (initially) and East of the EU to take action. To some extent, this can be seen as the UK ensuring that its own action on mitigation has limited short-term competitiveness impacts on UK firms. However, the UK has consistently called for the use of market-based instruments, principally the ETS, to drive emissions reductions, and has been less keen on technology specific approaches on renewables, energy efficiency, and vehicles emissions. We could therefore expect that the future of EU policy would see less ambition in caps for the ETS, and in the Effort Sharing Decision; and potentially, more technology-based regulatory approaches, including a continuation of national targets for renewable energy, and more demanding targets on energy efficiency.

Policy uncertainty

The short-term impact of policy uncertainty will be felt primarily in the UK. Energy investors have already expressed worry about recent significant and unheralded changes to the UK's subsidy regime for low carbon energy, including reductions in Feed-in Tariffs, and the puzzling decision to apply the Climate Change Levy to renewables (which do not contribute to climate change). The uncertainty associated with a "Leave" vote would both make it difficult for the UK Government to make rapid progress on the design of a promised new, more market-based, approach to funding for clean energy; and also would remove the limited remaining certainty for investors created by the UK's participation in the EU ETS, and in the post-2020 energy policy framework at EU level. The impact of the latter will, of course, depend in part on how credible the EU's post-2020 framework is seen to be, and whether it creates clear pressure on individual Member States to take action. There is also a perceived overlap between those campaigning for a "Leave" vote, and those sceptical about climate mitigation policy – indeed; a key element of some campaigning for a "Leave" vote has been the cost of EU climate and energy policy. This in turn could lead to a broader assumption gaining currency that future policy on decarbonisation of the UK economy will be less ambitious, with a consequent chilling impact on low-carbon investment decisions.

Longer-term impacts in UK climate ambition

In future, as we note above, it would be likely that the balance of opinion in the remaining EU-27 was less positive about climate mitigation as a result of the UK's departure. Further ambition in the UK, for example to implement the 5-year carbon budgets the Committee on Climate Change advises are necessary, would therefore be more difficult to deliver.

A core element of UK policy on climate in a non-EU future is likely to be carbon trading. If the UK were associated with the EU through membership of EFTA and the European Economic Area, the EU Emissions Trading System would continue to apply, although the UK would no longer be able to influence future caps. If the UK were outside the EEA, it could aim for a link between a domestic ETS and the EU ETS (and would be likely to want to do so in order to provide greater resilience against weather-related fluctuations in emissions, and

to benefit from cost reductions across a wider EU market). However, under such a future linked scheme, any future tightening of the UK cap to meet future carbon budgets would see its effect on prices dissipated, with impacts felt across the EU rather than in the UK alone. The UK would not be able to exercise its current, partially effective, influence on driving down the availability of allowances at EU level. The UK's potential influence on strengthening mitigation ambition internationally would thus be significantly weaker; while UK flexibility to weaken its own mitigation contribution, should a future Government choose to do so, would be much greater.

Recent Government policy statements on climate have emphasised the importance on delivering mitigation goals at least cost; and the need for wider global effort. It seems highly unlikely that, in the event of Brexit, there would be a short-term prospect of a more ambitious domestic policy; and a strong likelihood of significantly weaker policy signals for investors. The longer-term impact is more difficult to foresee, and depends on the development of both public opinion and international climate negotiations. However, the UK will no longer be able to exercise leverage over EU domestic and international policy and it seems significantly more likely that a UK departure would have a long-term negative impact on both domestic and international ambition.

Conclusions

The environmental dimension of Brexit could be sizeable and should not be underestimated. There would be unavoidable uncertainty and disruption in the short term, with a negative impact on investor certainty. The longer-term impacts would be more significant but will vary somewhat according to the new relationships that are agreed with the EU and other countries. All scenarios involve a loss of influence over EU policy, both domestically and globally, although EU law would continue to be a driver within the UK. Pressure to comply with established domestic measures introduced to implement EU legislation would clearly be much reduced in the event of a UK departure from the EU; future governments may be inclined to relax certain standards if competitiveness concerns become more acute in a liberalised trading environment, as seems likely. Conversely, it is difficult to identify obvious drivers for greater environmental ambition in the UK once it is outside the EU, not least as EU Member States already have a Treaty right to introduce more demanding legislation: the Treaty already states that EU environment policy “shall not prevent any Member State from maintaining or introducing more stringent protective measures”.

A lesson from EU experience is that governments are more willing and able to address challenging environmental issues working together rather than independently, not least because it removes fear of being undercut by competing industries in other countries.

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