

Putting the environment at the heart of Brexit

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Summary

The European Union and the United Kingdom are negotiating an agreement to ensure the UK's orderly exit out of the Union, and agree on their future relationship. During the current Brexit negotiations, the European Commission has stated multiple times that its primary focus is on citizens and their rights and as negotiations proceed, the interests of business and market stability will be addressed. But where, then, does the environment feature?

An EU-UK deal should not weaken or undermine Europe's environmental standards, ability to regulate or international credibility. The EU's objective should be to minimise the amount of regulatory uncertainty and divergence, while maximising regulatory stability. Most importantly, the EU should make preferential access to the EU market conditional on the UK agreeing to respect the EU's environmental or climate protection standards. Indeed, Britain must not be allowed to use "environmental dumping" practices to give it a competitive edge over its EU trade partners.

In particular the agreement should ensure that:

- A regulatory dialogue mechanism between the EU-27 and the UK must be conducted in a fully transparent and accountable manner.
- The UK remains part of the EU's 2030 climate framework. This includes both the traded (ETS and non-traded sectors (Effort Sharing Regulation), if it is to be allowed preferential access to the EU market.
- Equivalent and ambitious (future environmental and safety) standards for vehicles adopted by the EU must also apply in the UK, if it is to be allowed preferential access to the EU market. The UK's automotive industry is an integral part of the European market and should adhere to the same rules.
- Vehicles approved in the UK and the EU should be approved according to the same standards and procedures. The UK should remain part of the currently negotiated EU type approval framework.
- Access to the aviation Single Market must be conditional upon adherence of the UK to all current and future safety, environmental and security regulations, rules relating to state aid and climate protection.

- The UK remains in EU ETS or alternatively links its own emission trading system with the EU. Failing that, in the aviation sector the EU should continue to require flights between the UK and EU to surrender allowances.

1. Introduction

The United Kingdom referendum to remain or leave the EU took place on Thursday 23rd June 2016, after 43 years of membership. The outcome was 51.9 % voted for the country to “Leave” the EU while 48.1 % of voters backed “Remain”. Never before has a Member State left the European Union.ⁱ

The focus of EU Chief Negotiator Michel Barnier, supported by the 27 Member States, has been on upholding a number of key principles for the negotiations: the free movement of goods, capital, services, and labour (also known as the four freedoms) are indivisible; a transitional agreement; EU membership remains the most advantageous status; the new relationship is based on level playing field and respect for competition and balance of rights and obligations.ⁱⁱ

The Barnier team (Taskforce on Article 50 negotiations with the UK) has stated multiple times that its primary focus is on citizens and their rights and as negotiations proceed, the interests of business and market stability will be addressed. But where, then, does the environment feature?

From the early prohibition of single-hull oil tankers following devastating spills, inclusion of aviation under the EU emissions trading system (EU ETS), binding sustainability criteria for biofuels and strict sulphur standards for maritime fuel, pedestrian protection rules for vehicles, as well as air pollutant emissions and fuel efficiency standards for cars and vans, or climate targets for all countries, the European Union laws have benefited not just Europeans’ lives, health and environment, but have also saved EU citizens money, while giving European industry a huge advantage in competitiveness and innovation.

These innovative laws have been made possible by working together within a common legislative framework and judicial enforcement, allowing the European Member States to effectively address cross-border environmental issues such as air and water pollution, and climate change. Current and future environmental standards are a crucial pillar of the Single Market, providing citizens with environmental protection irrespective of location and origin of commodities, all the while creating a level playing field and fair competition for industry. The creation of common standards and centralised enforcement have helped minimise competition distortion and avoid a ‘race to the bottom’. The EU’s environmental acquis is a significant force for sustainability across the globe, not least in setting production and product standards for commodities that are being exported beyond the EU market.

The financial settlement of the UK departure has from the start been a contentious issue. Wading into this debate is not the aim of this report. However, we believe that both the Union and the UK should respect in full the financial obligations once an amount is agreed upon.

The following report sets out the guiding principles for negotiators to follow in order to place environmental matters at the heart of the negotiations, and not as an afterthought, to ensure the livelihood of both European citizens and industry. The principles should be used to inform discussions both during the exit negotiations and the subsequent trade deal. A number of key sectoral reports

addressing Brexit and aviation; Brexit and shipping; Brexit and energy; Brexit and climate change and Brexit and road transport will be published by T&E in the coming months.

Priorities

As a European organisation our focus will be on Europe, meaning that we cannot accept any outcome that would weaken or undermine Europe's environmental progress and credibility.

We are calling for:

- that any application of any future EU environmental legislation is a condition for all future participation in the Single Market.
- a robust and ambitious framework for environmental, climate, industrial and energy law; with appropriate governance and institutional oversight during the UK's transition out of and continued trade relationship with the EU.
- that any trade relationship between the EU and the UK is embedded in high standards of environmental and human health protection.
- that any system of mutual recognition or equivalence between the EU and the UK aims at advancing public policy and delivers increased protection.
- appropriate long-term targets and systems are in place to ensure that the UK is held accountable and responsible for its global and transboundary impacts (as provided for in the Multilateral Environmental Agreements such as the Paris Agreement), in recognition of the transboundary nature of climate change, air pollution, etc. and the interdependence upon Europe.

Guiding principles

The EU is not only an economic union, it is a climate union, an environmental union, and since recently an energy union. T&E's core issues are transboundary and rely on international and pan-European collaboration. We have seen time and again that countries are often able to tackle long-term, challenging issues, such as climate change, more successfully when working together.

The EU's environmental objective within the context of the UK's departure, should be to minimise the amount of regulatory uncertainty and divergence, while maximising regulatory stability. As such market access could be conditioned to accepting all European environmental rules. The level of ambition, whether in terms of CO2 standards or oversight requirements, should be of the same level as in the EU acquis, so that mutual recognition of standards and free trade can resume.

Case study 1: Cars and CO₂

One of the most effective EU climate policies to date are fleet-average CO₂ standards that each carmaker on EU market has to meet, with the latest target at 95/CO₂ per km by 2021. This has created a level-playing field for the automotive industry across the EU, increasing trade, pushing development of low emission and alternative vehicles and ensuring equivalent fuel savings for European consumers. It is also the key measure allowing EU member states to achieve their 2030 climate goals in line with the Paris Agreement. The specificities of the UK car market, notably its share of small and niche manufacturers, have successfully be taken on board with derogations and simpler CO₂ standards proposed, allowing the UK's industry to benefit from the EU-wide market and export vehicles freely.

The ideal future scenario would be for the equivalently ambitious future CO₂ standards for 2025 and 2030 to be agreed between the EU-27. Only then the UK can benefit from continuous trade after its departure, key to the competitiveness and very survival of the UK car industry. Alongside future emission standards the enforcement regime (i.e. type approval and market surveillance) has to be equally strict between the two, as only then the mutual recognition of vehicles approved for sale in the UK and EU-27 can be guaranteed. For that reason the UK should continue to be part of the EU type approval framework, the reform of which it is currently negotiating and has so far voted in support.³

2. Environmental acquis & Single Market

Both the UK and the EU remain bound by their shared commitments to tackling pollution and climate change, for example, under multiple multilateral environmental agreements, including the 2030 Agenda for Sustainable Development^{iv} and the Paris Climate Agreement.^v Additionally, as we regularly see in Eurobarometers, there is strong support from citizens for continued Europe-wide action to maintain high environmental standards.^{vi}

The UK's environmental law and policy is based on EU law, contained in the body of law known as the *acquis communautaire*^{vii} which covers the Treaties, EU legislation, international agreements, standards, court judgements, fundamental rights provisions and horizontal principles in the Treaties such as equality and non-discrimination. Many important UK laws have their origin in EU Directives, such as the Environmental Impact Assessment Directive,^{viii} the Environmental Liability Directive,^{ix} and the Strategic Environmental Assessment Directive.^x These function best as part of the EU acquis, due to how they seek to achieve their objectives, and their commitment to implementation and monitoring. There are concerns that these protections could be substantially amended or weakened by the UK government, vulnerable to downward business lobbying once the UK has left the EU – particularly if the Great Repeal Bill is passed, which repeals the 1972 European Communities Act that took Britain into the EU and meant that European law took precedence over laws passed in the UK Parliament. It will also end the jurisdiction of the European Court of Justice.^{xi}

Participation in the Single Market will require a degree of policy alignment post-Brexit to safeguard the shared natural heritage, international environment agenda and long-term prosperity of the UK and the EU. The EU should make application of any future EU environmental legislation a condition for all future access to the Single Market. Any EU-UK deal should include an effective mechanism for enabling continued coordination on environmental matters and a robust and enforceable commitment to the retention of high environmental standards and no regression or roll-back clause by both parties.

The UK has already openly threatened to change its economic model to one of low taxes and weak regulation.^{xii} A carbon-, labour- and tax-haven on the shore of the EU is unacceptable,^{xiii} not least because

it would change the rules by which UK and EU industry compete to the disadvantage of businesses in the EU 27. This would also be to the detriment of citizens and consumers who would become exposed to products and/or substances approved under more lax UK standards.

*Guiding principle 1: A deep and comprehensive EU-UK partnership must require the UK to adopt in full the *acquis communautaire*, while respecting current opt- out clauses, and must not be allowed to dismantle this body of law. If the UK wishes to continue to have access to the Single Market after their exit, then the UK must be required to adhere to and comply with all existing EU environmental and climate laws.*

Case study 2: Air Services Agreement

The creation of the aviation single market has been one of the most high profile examples of European liberalisation in recent decades. The UK has been influential in shaping this development and its airlines, for example British Airways, EasyJet, have benefited from access to the European market.

The UK's stated objective is to retain access to this market for its airlines. However as with other areas of the single market, this access must be conditional on accepting the *acquis communautaire*. To avoid distortion, the required *acquis* must be as broad as possible and include, along with safety and security regulations, rules relating to state aid and climate protection (for example EU ETS). This is the case for non-EU states who are parties to the European Common Aviation Area.¹⁴ If, as is probable, an air services agreement between the UK and the EU will need to be negotiated, there could be considerable contention as some EU carriers intent on clawing back UK traffic rights have indicated, including questions of ownership and control.

3. Legal Oversight

The European Commission and the Court of Justice of the European Union (CJEU) currently play a critical role in overseeing and enforcing compliance with EU environmental legislation and resolving disputes.^{xv} In their absence, future UK compliance with the EU environmental *acquis* is far from guaranteed. If the UK Government wishes to retain access to the Single Market then it should accept the continuing jurisdiction of the CJEU on pertinent issues. Note also that there are a range of ongoing EU infringement proceedings against the UK on environmental matters such as poor wastewater collection and treatment;^{xvi} power plant emissions;^{xvii} and air quality standards in Greater London.^{xviii} The judgements in these infringement proceedings must be duly respected even if handed down after the UK left.

Guiding principle 2: The UK should remain subject to the European Court of Justice (ECJ), as a condition for participation in the Single Market. All judgments from outstanding infringement proceedings must be respected.

4. Agencies

Agencies of the European Union are decentralised bodies established to accomplish specific tasks. Agencies have their own legal personality. Some monitor different market aspects or develop scientific or technical know-how in certain fields. In the June 2017 position paper on the Functioning of the Union Institutions Agencies and Bodies, the Commission proposed that as a minimum, the UK remains a part of and continues to comply with agencies and bodies until its complete withdrawal, including regarding access to documents of the relevant institutions.^{xix} Participation in agencies is not based on EU membership. Norway, for example is a member of the European Environmental Agency via the 1994

Agreement on the European Economic Area. A smooth transition for both the UK and the EU would be to ensure non-voting but paying membership of the UK to key agencies such as European Environment Agency (EEA), European Aviation Safety Agency (EASA), European Maritime Safety Agency (EMSA) and European Union Agency for Railways (ERA).^{xx}

Guiding principle 3: The UK must remain a non-voting fee paying member in all relevant European agencies, as a condition for access to the Single Market.

Case study 3: ETS

The EU ETS is considered to be Europe's flagship climate tool, covering almost half of Europe's emissions in a carbon pricing mechanism. Were the UK to quit this scheme along with exiting the EU, its major emitters (including airlines) may no longer be required to purchase allowances. Though the allowance price is currently low, around €5, the price is expected to increase and an exemption from this purchasing requirement would amount to a distortion of competition.

The ideal scenario is for the UK to remain in EU ETS as per Norway, though obviously it would lose the ability to influence its future design and management. Alternatively it could establish its own emissions trading system and link it to the EU's through a linking agreement, as per Switzerland. However this linking agreement would need to be negotiated prior to the UK departure from EU ETS, with the beginning of the EU ETS 4th trading in 2021 perhaps being the appropriate moment. Were the UK to exit EU ETS or fail to conclude a linking agreement, the EU should continue to require flights between the UK and EU to surrender allowances.

Meeting climate commitments could be a good way to also introduce European Economic Area environmental issues à la Norway. EEA - UK to be part of EEA must accept 4 freedoms, closer cooperation in many areas notably environment. Art 1 of EEA agreement. In 2007 Norway, was the first non EU member to join the ETS. Liechtenstein and Iceland soon followed.

5. Public policy regulatory dialogue

The development of common standards has provided legal certainty and a level playing field for business across Europe. Access to the Single Market by UK companies will entail meeting the set-out rules and standards. Often, these are common standards developed at international level like UNECE (United Nations Economic Commission for Europe), but also at EU level.

Both the EU and the UK have a wealth of knowledge and expertise when it comes to scientific know-how and technical regulatory development. The EU and the UK should not lose out on the opportunity to work together in the development of environmental public policy. By working together to increase environmental protection, the risk of environmental dumping would be limited. A high-level dialogue and exchange between expert regulators that aims at increasing environmental public policy should not be hindered by Brexit.

Public policy development must be at the heart of any future regulatory relationship between the UK and the EU. A regulatory dialogue (mutual recognition and harmonisation) relationship or mechanism must not aim at increasing trade flows, but instead on seeking to maintain or increase stringency. A clear risk of having a trade-oriented regulatory cooperation is the unavoidable deregulatory 'race to the bottom' as environmental standards are sacrificed to simply increase trade flows, thereby further weakening EU law.

Guiding principle 3: A high-level public policy regulatory dialogue must continue to avoid losing valuable technical expertise. Any development of regulatory cooperation, harmonisation or equivalence must be developed in transparent manners with the aim of public policy development, not trade facilitation at its core.

6. Conclusion

As phase 1 of the negotiations slowly progresses, it is important that the Barnier Taskforce, the Parliament and the Council are made aware of the important environmental considerations that will undoubtedly be a substantial part of phase 2. The report outlines some topline key considerations linked to current environmental law, legal oversight, European agencies and future public policy development.

Concretely, we are calling that:

- A regulatory dialogue mechanism between the EU-27 and the UK must be conducted in a fully transparent and accountable manner.
- The UK remains part of the EU's 2030 climate framework. This includes both the traded (ETS and non-traded sectors (Effort Sharing Regulation), if it is to be allowed preferential access to the EU market.
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In the coming months T&E will turn its attention to key European sectors such as aviation, vehicle, maritime and the energy sector; in addition to themes such as climate change and how these will be impacted by the UK departure with recommendations on what a future relationship could look like.

Finally, we respect the democratic process of the UK referendum. However, we believe that a second referendum should be held on the UK's exiting terms from the European Union, enabling UK citizens to scrutinise the final agreement and vote on whether they agree or not.

Further information

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Endnotes

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- ⁱⁱⁱ The UK voted in favour of the Council general approach agreed on 29 May 2017 under the Maltese Presidency of the EU.
- ^{iv} United Nations Transforming our world: the 2030 Agenda for Sustainable Development. Resolution adopted by the General Assembly on 25 September 2015 (retrieved 04/09/2017) http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E
- ^v UNFCCC climate agreement (retrieved 04/09/2017) http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf
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- ^{xi} European Union (Withdrawal) Bill (retrieved 01/09/2017) <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/18005.pdf>
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Also, In it's recent Brexit paper on EU- UK foreign policy cooperation the UK did not mention cooperation on climate change: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643924/Foreign_policy_defence_and_development_paper.pdf (retrieved 15/9/2017)
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- ^{xvi} [Read more \(IP/15/4672\)](#)
- ^{xvii} [Read more \(IP/15/4670\)](#)
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