

The EU Referendum and the UK Environment: An Expert Review

How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?

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Introduction

In 2015 David Cameron announced that he would seek to renegotiate the UK's existing terms of membership with the EU and put the outcome to a vote in a national referendum. The result of that vote is hugely significant because it will shape the UK's relationship with the rest of Europe for decades to come. David Cameron has described it as "the most important decision that the British people will have to take at the ballot box in our lifetime."

The stakes are particularly high in a mature policy area such as the environment, which has been profoundly affected by a wide array of EU policies covering agriculture, energy, fisheries, climate change and of course environmental protection. The EU is well-known for its economic activities – its single market, customs union and currency. Yet its environmental policies, which have quietly accumulated since the early 1970s, address every aspect of environmental protection from air and water pollution, through to land-use planning and climate change. Together, they constitute one of the most comprehensive bodies of environmental protection law in existence anywhere in the world today.

Because policy making in Brussels is often highly technical, its net effect on the daily lives of UK citizens and their local environments tends to escape media attention. This expert review together with a much shorter executive summary seek to address that situation. It provides a detailed review of the academic evidence on how EU membership has influenced UK policies, systems of decision making and environmental quality. Containing 14 chapters and over 60,000 words, it documents how the EU has affected UK environmental policy and how, in turn, the UK has worked through the EU to shape wider, international thinking. It has been authored by 14 international experts, who have drawn on the findings of over 700 publications to offer an impartial and authoritative assessment of the evidence.

Second, this review looks forwards in order to explore what the effects might be of a vote either to remain or leave the EU. A vote to remain would mean that the UK operates in a 'reformed' EU. But what would that actually look like? By contrast, a vote to leave would push the UK into uncharted waters: no state has ever left the EU before. Would environmental standards be more likely to rise or fall, who would make significant decisions and what are the environmental effects likely to be?

This review seeks to cut through the technical complexity and the uncertainty associated with these choices by transparently exploring the risks and opportunities that are likely to arise across three main scenarios:-

- A vote to Remain – (The 'Reformed EU option')
- A vote to Leave – and become a member of the European Economic Area (EEA) (The 'Norwegian option')
- A Vote to Leave – and negotiate free trade deals with the EU (The 'Free Trade option')

There are infinitely more scenarios that could be considered, but these three capture the most critical choices, risks and opportunities. We hope that by presenting the evidence in this way, this review will give voters a much fuller insight into what is at stake on 23 June.

Charlotte Burns, Andy Jordan and Viviane Gravey

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Environmental Policy

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Key findings

- When the UK joined the EU in 1973, almost all its environmental policy was nationally derived. By contrast, the EU had little experience of environmental management and very few policies of its own. UK policy makers were proud of what UK policies had achieved in the past and believed that there was likely to be little to be gained from cooperating at EU level.
- Since 1973 the EU has prompted the UK to adopt a much more preventative approach to policy, with fixed standards and clearer timetables of improvement, and an explicit set of guiding principles such as precaution, prevention and sustainability. The UK has also shaped EU thinking and policy in some areas and prevented EU action in a number of others. Hence over time, the flow influence of has become two rather simply one way (i.e. the EU Europeanizing UK policy).
- The EU has most strongly affected the setting of standards and compliance deadlines in the UK. Other important elements of national policy have been much less affected, such as the government's ability to choose between policy instruments (the power to levy taxes still rests squarely with states), the structures of government departments or the style in which politicians interact with other stakeholders.

Introduction

When the UK joined the EU in 1973, most of its environmental policy was nationally derived. As the first country to industrialize, the UK had been developing environmental policies since the late nineteenth century (McCormick 1991). By contrast, the EU had very few environmental policies of its own. But today, almost all 'national' environmental policy is made by, or in close association with the EU (Jordan 2002). Moreover, the EU's combined influence on national policies across the EU exceeds that of other comparable supranational organizations such as the UN and the Organization for Economic Co-operation and Development (OECD).

This review summarises the available evidence on the impact of EU membership on UK environmental policy. It concentrates on the EU's impact on two elements of policy – its style and its detailed content. The next section summarizes the situation prior to 1973 and the third section reviews the existing literature on the unfolding impacts of membership. The review then compares the UK's experiences with those of other countries and identifies remaining gaps in academic understanding. The final section explores the future under the three scenarios outlined in the executive summary (Burns et al. 2016). As noted above, this review concentrates mainly on policy style and policy content. The EU's impact on national policy structures is considered in the reviews by Bulmer and Jordan (2016), and Scott (2016) which are also in this review.

Analysis

Policy prior to EU membership

Voluntarism and discretion were the watchwords of British policy prior to 1973 (Weale 1997). As new problems emerged, existing laws and agencies were gradually amended to deal with them. Insofar as there was a strategic goal of national policy, it was to engage in a pragmatic 'trial and error' search for the most cost effective (i.e. to business) solutions to environmental problems as and when they emerged. Policy proceeded on the basis of quiet negotiation between polluters and regulators operating in relatively closed communities of experts (Weale et al. 2000: 181). These communities believed that an incremental approach was inherently superior to the EU's evolving preference for strategic, long-term planning, which they viewed as being too rigid and doctrinaire (Ashby and Anderson 1981). These beliefs dovetailed with the structures and procedures of the UK legal system, which relied upon common law solutions and had no formal constitution (Weale 1997).

As for the content of British policy, the overall philosophy or paradigm of British policy was that pollution should be optimized by limiting its effects in the environment, rather than minimised at source (Weale et al. 2000: 177). This approach was assumed to be more effective and more economically efficient than forcing all polluters to attain the same (i.e. harmonized) statutory standards. Hence the UK was reluctant to set long-term policy goals, especially when the achievement of them could not be guaranteed. In terms of the policy instruments used, the British preferred regulatory instruments, but somewhat different to those sought by the EU. Whereas the latter preferred fixed legislative standards and deadlines to ensure comparability of effort, the UK widely employed non-legislative guidelines and flexible implementation systems. The style of policy was consequently reactive and consultative: regulators working in specialized agencies preferred not to set standards which could not be complied with.

In summary, the British tended to view the environment in slightly narrower terms than other northern European states. They had decided to focus on problems that loomed large in a relatively crowded island state, which shared no land borders with other states. The EU was not expected to influence these national policy characteristics because:

- In 1973, environmental policy constituted an extremely minor aspect of EU affairs (Jordan 2005; Jordan and Adelle 2012). There was, therefore, very little policy that could conceivably 'Europeanize' (that is significantly re-shape) (Knill 2001) member state policies.
- There was a very widely shared view within the UK that British policy was inherently superior to the policies of continental states or anything that the EU might conceivably produce (Hajer 1995). In the late 1970s, the DoE advised the Commission not to invest time in designing new policies, because the UK was 'well placed to cope with its own environmental problems' (in Evans 1973: 43). Most professionals assumed that if membership had any environmental implications, the flow of influence would mainly run the other way i.e. from the UK to other Member States via Brussels.

Main impacts of membership on the UK

There is an extensive academic literature that describes and explains the impact of policy on the UK, much of it informed by a study produced by Nigel Haigh (1984). It examines the dynamics of change across and within different EU states (for a summary, see Jordan and Liefferink 2004). More recently, analysts have investigated how far the EU is making national policies more similar, through facilitating processes of policy convergence.

In terms of the content of policy, the EU has encouraged the UK to adopt a more preventative, source-based policy paradigm. Over the course of forty years, EU membership has made the objectives of national policy more environmentally ambitious. A more consistent and formal system of administrative control has emerged based upon fixed standards and timetables of compliance, rather than administrative rules of thumb. There are many more source-based, emission controls, and a much more explicit set of guiding principles and objectives such as precaution, prevention and sustainability. But the EU has not forced the UK to adopt a fully precautionary policy paradigm (Jordan and O’Riordan 1995). A more accurate description is one of significant change but with important elements of continuity. This can be seen in the way that the UK shaped the integrated pollution prevention and control and the water framework directives to incorporate elements of British thinking (see inter alia Lowe and Ward 1998; Wurzel 2005; Jordan and Greenaway 1998).

In terms of policy tools, the EU has prompted the UK to adopt more source-based controls, as well as formal environmental quality standards for certain types of pollutants. These reflect the EU’s preference for more harmonized and precautionary-based policies (Wurzel 2005). Again, however, there have been significant elements of continuity in the UK’s response (Jordan, Wurzel and Zito 2003; Jordan, Wurzel, Zito and Brueckner 2003; Jordan 2004). Indeed, domestic and international drivers are the main reason for the appearance of ‘new’ environmental policy instruments such as voluntary agreements and eco taxes etc. (Wurzel et al. 2013). The precise calibration of policy instruments is where the EU’s influence has been greatest of all: the EU has adopted many new emission standards, tightened existing ones and formalized their achievement by setting strict deadlines (Jordan and Liefferink 2004).

As regards the style of national policy, there is considerably more transparency and public involvement today than there was in 1973. The most marked change is to be found in the regulation of public utilities such as energy and water, which are now regulated at arm’s length from government, by non-departmental public bodies. EU policy has had a significant influence in bringing this about, but it has not been the only factor (Jordan 1998 a/b). Privatization has also ushered in a much more open and formal style of regulation. In general, businesses have come to realize that tougher and more independent regulation plays well with customers and shareholders, and provides a sounder basis on which to make long term investment decisions. Overall, therefore, the domestic policy style has changed significantly since 1973, but it has not been transformed, i.e. there has been no significant shift towards a more adversarial and/or impositional style.

In summary, some aspects of British policy have been deeply transformed by the EU’s growing involvement; but not all of them have. So while the content of national policy has been significantly affected, the style (and also the structures) of national policy have remained

relatively resilient to the EU's incursions. This pattern is entirely consistent with the legal character of EU policy (EU Directives generally establish the goals to be achieved, but leave states to determine the means and the structures to achieve them), but also by the rhythms of international policy making (via the UN and OECD for example) and by the growing willingness (post-1987) of the British environment department proactively to shape Europeanization by uploading more national policy ideas to Brussels.

Europeanization: experiences in other sectors and countries

How do these findings compare with experiences of Europeanization in other sectors and countries? In one of the most comprehensive cross sectoral analyses undertaken of the Europeanization of the UK, Bache and Jordan (2006a) concluded that environment policy had been the most Europeanized of five policy areas covered (the others being foreign affairs, competition, monetary and regional policy). This spectrum of Europeanization is approximately equal to the extent of the EU's legal competence to act, although there have also been more specific sub-sectoral differences (Bache and Jordan 2006b: 269).

Meanwhile, Jordan and Liefferink (2004) have examined the Europeanization of ten national environmental policy systems, including the UK's. They discovered that the EU has affected some aspect of policy content in all ten states. Even the most environmentally progressive or 'leader' states such as Germany, Sweden and Austria have been forced to adjust some domestic practices so they align more closely with EU policies. The overall pattern is one of slow and steady adaptation in terms of paradigms and instruments, with more significant changes in relation to goals and the setting of instruments. Generally speaking, the EU has not had a significant effect on policy instrument selection at the national level. National policy styles do not appear to have changed that much under the EU's influence. On the whole the dominant style remains consensual rather than adversarial, but it has become more proactive in some states (Liefferink and Jordan 2005). In short, the EU's impact has been highly differential.

In terms of the extent and timing of policy convergence, policy content has converged slightly more than style and structure (Jordan 2003), but none of the three main elements has significantly converged to the point of similarity. National policies have certainly not converged upon a single, European 'model' of policy dictated by the EU; they appear to be far too deeply rooted in history, changing only very slowly to external pressures from bodies such as the EU. On balance, Europeanization has only been a weak and indirect cause of the modest policy convergence, which has occurred since 1973. The EU's main contribution has been to add sharpness and a greater sense of urgency to longer term processes of policy convergence arising from greater economic and trade integration (Jordan and Liefferink 2004) (for an Eastern European perspective, see Boerzel and Langbein 2013).

Disentangling causal relationships

Various attempts have been to disentangle Europeanization from other (i.e. non-EU) drivers of national policy change, which is one of the most significant sources of uncertainty bedeviling this area of research. Three analytical approaches have been employed to better understand the relative importance of different sources of change. First of all, some analysts have manipulated

the selection of cases (i.e. comparing changes in a selection of states over time). Studies that have looked at the states that joined after 1970 reveal that poorer states, such as Spain and Greece, joined with weaker environmental policies and even now are still some way behind the more industrialized states, even though the formal, legal content of their national policies has been heavily Europeanized by EU membership. By contrast, more industrialized states such as Finland, Austria and Sweden joined the EU in the 1990s with national environmental policies that were about the same or (in some crucial respects) stronger than EU policies. Finally, Norway is not formally a member state, but its policies are very similar to those of the EU (Hovden 2004). The main conclusion that has been drawn from these patterns is that domestic socio-economic changes are at least as (and probably more) important than Europeanization inspired by and transmitted through EU membership (Lieverink and Jordan 2005).

Second, it is possible to undertake 'bottom up' analyses of all the drivers of domestic change, including those that derive from national and international sources. Such studies have revealed a large number of 'non-EU' drivers including domestic economic pressures (Ireland, Austria, Finland and Germany), new public management (the UK), national party politics (Austria, Germany and the UK) and long-term industrial transformations (Spain and Ireland). Studies conducted in this tradition confirm that the EU should not be assumed to have been the main driver of domestic change (Jordan and Liefferink 2004).

Thirdly, analysts have sought to explore the 'counterfactual', i.e. what would have happened had EU membership not occurred. Of course, the counterfactual can never be fully known, but it can be explored indirectly through interviewing experts (Jordan and Liefferink 2003) or examining the occasions when particular states have sought to default from EU rules, resulting in legal proceedings in the European Court of Justice (Boerzel 2001; Boerzel 2016). Counterfactual analyses suggest that:

- National environmental policies would have been modernized without the EU, but not nearly as quickly, as uniformly or as comprehensively as they have been.
- Without the EU's influence, national policies would probably not have been expressed in such specific and quantified terms as described above. Europeanization appears to have removed the most obvious outliers and brought the environmental systems of the economically more peripheral states up to the same level as the states in the more industrialized North of Europe.

On balance, the three approaches confirm that Europeanization has probably only been a weak and indirect cause of the relatively limited policy convergence reported above. The most obvious – but by no means the only – explanation is that this pattern corresponds to the equally differentiated modus operandi of the EU, i.e. the EU primarily disseminates policy content (and especially goals and targets), not policy structures and a new policy style.

Significantly, the EU has very little power to dictate the structure or the functioning of national public administrations (Bossaert et al. 2001: 3; Goetz 2001: 1040) to its Member States, or directly influence their policy styles. Directives (the main instrument of EU environmental policy) are, as noted above, mainly orientated towards the ends to be achieved, rather than the means of achievement.

Research gaps and uncertainties

There are three main gaps in understanding that remain to be addressed. The first relates to the extent to which changes in policy affect policy outcomes and impacts (i.e. the quality of the natural environment). This may appear simple to address, but requires careful evaluation to disentangle policy from non-policy drivers (see Burns 2016). Current research suggests that EU environmental policy has not produced (at least yet) a strong societal demand for high levels of environmental quality in each and every member state. The domestic political demand for environmental parity with the more industrialized parts of the EU (as expressed through public opinion surveys and votes for green parties) remains comparatively weak in southern and eastern parts of Europe, in spite of the extensive Europeanization of national policy (Jordan and Lifferink 2004). Similarly, analysts are still trying to understand how far EU policies translate into significant and enduring changes in environmental quality across different parts of Europe – a topic covered in the review by Burns (2016). Levels of environmental quality in the EU do not appear to be converging strongly (Neumayer 2001), for a number of reasons including weakness in policy implementation (Jordan 1999).

Second, more detailed quantitative analyses of policy change could be undertaken fully to tease out the extent of the EU's influence and/or compare the EU with other federated systems. There is certainly plenty of policy resilience to be found in more fully federated political systems such as the US and Canada (Scheberle 1997; Harrison 1996), Australia (Holland et al. 1996) and Germany (Rose-Ackermann 1995), in which case it may be unrealistic to expect deep Europeanization and significant convergence in a relatively new political system as the EU. Very recent studies (Holzinger et al. 2008; Knill 2005; Lifferink et al. 2014) seem to bear out this expectation.

Finally, existing research dates from the mid-2000s and therefore does not fully address the various ways in which Europeanization interacts with increasing devolution in the UK (but see the contribution by Bulmer and Jordan (2016) in this volume).

The Future

A Vote to Remain – The 'Reformed EU Option'

Environmental policy was not an explicit part of the Prime Minister's negotiating remit, nor of the final agreement reached. However, the environment may be affected by the request to reformulate the yellow card system to stop unwanted new legislation and to scrap existing laws. It is certainly the case that the current UK government has been in the vanguard of moves to roll back wildlife legislation at the European level under the REFIT agenda (The Guardian 2015), and that the term 'red' tape is often used as a synonym for unwanted environmental laws.

However, given that UK government's habitats (HMG 2012) and balance of competence reviews (HMG 2014) were broadly supportive of the existing scope and implementation of EU environmental policy, the likelihood of significant policy dismantling at EU in this scenario seems unlikely (although ongoing reform does seem likely given the Commission's willingness to review existing legislation, such as the habitats and birds directives (see Europa 2015)). It is also worth remembering that the vast majority of existing EU environmental laws were adopted for competition reasons to ensure a level playing field within the Single Market. Hence it seems unlikely that there will be that much appetite amongst other EU countries for unpicking policies,

especially if doing so undermines the functioning of the Single Market.

A Vote to Leave – The 'Norwegian Option'

Non-EU members of the EEA enjoy preferential access to the Single European Market, but as a condition of that access they have to abide by most of the *acquis communautaire*. As with full Member States, EU law takes supremacy over national law in this scenario - thus requiring EEA members to implement EU law or face legal sanctions (Jordan 1999). A detailed analysis of Norway's experience of Europeanization (Hovden 2004) strongly suggests that as an EEA member, the UK would still be obliged to implement the majority of EU policies. Norway has found that its ability to shape EU policies has been relatively limited (Hovden 2004: 167), greatly reducing the influence of its national parliament and other stakeholders. As far as Norway is concerned "membership of the EEA is *de facto* the same as full membership" (Hovden 2004: 168). Even outside the EEA, Norway would probably still have aligned itself to EU standards to facilitate trade (Hovden 2004: 168). In summary, UK policy may not actually change much under this scenario.

However, as a member of the EEA, there might be some notable differences, specifically in areas covered by the directives on bathing water, birds, and habitats, where as a member of the EEA, the UK government would no longer be bound by EU laws. The UK would therefore have the same options as under the 'reformed UK' scenario (i.e. the opportunity to amend and/or repeal EU laws, but possibly at the associated risk of greater policy (and hence investor) uncertainty). Given the UK's recent espousal of regulatory reform in the area of habitats (The Guardian 2015; Europa 2015), it would not be particularly surprising if the UK government sought to rapidly rollback the EU's influence in this area under this scenario.

A Vote to Leave – The 'Free Trade Option'

If the UK leaves the EU, the government will have the opportunity to amend and/or repeal the acts adopted to give effect to EU laws. The risk is policy (and hence investor) uncertainty: standards will be either weakened or possibly strengthened depending upon the political preferences of the government in power.

Four decades of Europeanization may not be straightforward to rollback – national legislation adopted to give effect to EU Directives will remain in place and it may be costly, complicated and time consuming to repeal it in an evidence-based manner. Given what is already known about the EU's influence, the content of UK policy is likely to be more open to change than the style and the structures.

Even outside the EU the UK's destiny will not be fully in its hands – there is a range of important international agreements and regional agreements to which the UK will remain subject especially in relation to transboundary air and atmospheric pollution, chemicals regulation and the dumping of hazardous waste. The additional question that the UK must consider is whether it will be able to secure its international environmental policy preferences negotiating outside the auspices of the EU. One of the known benefits of EU membership is that it allows states to participate in a large negotiating bloc thereby pooling resources (i.e. more cost effective negotiation) and punching above their weight as individuals.

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Climate Policy

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Key findings

- UK and EU climate policies have co-evolved. In recent years the UK has repeatedly advocated higher emission reduction targets than most other Member States, thereby increasing the ambition of the EU's longer-term targets. It also influenced the decision to adopt emissions trading as a key policy instrument. Were the UK to leave, blocking minorities against more ambitious climate action would become easier to form, potentially weakening EU policy.
- The EU's 2020 targets (which require the UK to achieve a 34% reduction in greenhouse gas emissions and 15% energy from renewables) have led the UK to adopt a much more interventionist energy policy, including new financial support mechanisms, industrial incentives and planning laws.
- UK carbon budgets set under the Climate Change Act and EU effort-sharing targets are generally consistent. The situation after 2023 remains to be clarified, however. At present, the Committee on Climate Change estimates that the target under its proposed fifth carbon budget could be more demanding than targets emerging from EU-level agreements. This may add to pressure to weaken the proposed UK carbon budget.
- UK climate and energy policy choices are made within the EU's evolving state aid rules. As an EEA member outside the EU, equivalent rules would continue to apply.

Introduction

This expert review covers UK climate change mitigation policy, focusing on the 2008 Climate Change Act and its framework of carbon budgets, the EU Emissions Trading System, government support for investments in renewable energy, and certain aspects of energy demand-side management. It highlights how the UK and the EU influence each other in the climate policy area, both in terms of policy and policy-making processes. Due to space constraints, it touches only briefly on how ultimate environmental outcomes may have been affected. It should be read in conjunction with the reviews on energy policy (Sutton 2016) and international diplomacy (Oberthür 2016) in particular.

The review does not cover UK climate adaptation policy, in part because its reach is so cross-sectoral and affected potentially by so many pieces of EU legislation. These include *inter alia* the Floods Directive, the Water Framework Directive and the Habitats Directive, each of which have a

bearing on how far and in what way the UK can protect itself from the impacts of climate change (but see Berkhout et al. 2013; Urwin and Jordan 2008).

Analysis

This section first addresses the UK's influence on EU climate policy, then the impacts experienced in the other direction. Effects on policy *ambition* (the stringency of emission reduction targets); policy *scope* (the range of instruments deployed); and policy *stability and predictability* over time are highlighted. Evidence regarding these impacts is available from a range of sources:

- The peer-reviewed academic literature (e.g. Carter and Jacobs 2014);
- Evidence submitted to the UK government's *Balance of Competences* study (across individual reports on environment and climate change, energy policy, and competition and consumer protection, see HM Government 2014a, b and c);
- Inquiries by Parliamentary committees (e.g. House of Lords 2013) and the independent Committee on Climate Change (2015);
- Think tank reports (e.g. Cary and Metternich 2013; IEEP 2016: pp. 61-69).

A number of these sources go some way to teasing out cause and effect in the dynamics of the UK-EU relationship. The academic literature in particular has traced how the steady increase in the number of EU environmental policies transformed UK environmental policy and politics (Bache and Jordan 2006). It notes how, in the sphere of climate policy, Europeanization has been a less significant driver (Rayner and Jordan 2011; Rayner and Jordan forthcoming), not least because EU policy was slower to evolve, only really taking off in the period after 2000 (Jordan et al. 2010). It also highlights the influence the UK has exerted over the EU's climate policy agenda. Little if any literature, however, engages in systematic counterfactual forms of analysis to ask what either UK or EU policy would look like had the UK not joined the EU in 1973.

UK influence on the EU

The UK has exerted significant influence both on the substance of EU climate policy and the institutional structures through which it emerges. Having gradually adopted a more pro-European stance in the late 1990s, the UK was better placed to help the climate policy agenda in the EU through the development of domestic policy instruments - most notably the UK Emissions Trading Scheme - that could be (in some respects) 'uploaded' to the rest of Europe (Rayner and Jordan 2011; Wurzel 2008). In this way, the scope of the EU's instrument mix has widened, to encompass the kind of market-based policy that had hitherto been regarded as somewhat 'alien' to the EU context (van Asselt 2010). In terms of the ambition of EU targets, as part of the 'green group' in the Council of Ministers, the UK has repeatedly advocated higher reduction targets than most other Member States (Skovgaard 2014; Wettestad 2014). The effect of this advocacy has been to underpin relatively high levels of ambition embodied in EU emission reduction targets. At the same time, however, the UK has also generally opposed binding national targets for renewable energy deployment and energy efficiency, to some effect in the latest EU 2030 climate package.

The UK has also influenced the EU's climate-related institutional development. For example, after the UK government created the Department of Energy and Climate Change (DECC), as a separate ministry in addition to the Environment Department in 2008, the European Commission established its own Directorate-General for Climate Action (DG CLIMA) in 2010. Kraemer (2015) argues that the establishment of separate climate ministries 'will most likely be repeated in other EU Member States and beyond'.

EU influence on the UK

Carter and Jacobs (2014: p. 136) highlight how, in signing up to the EU 2020 targets set in 2007 (which required the UK to reduce greenhouse gas emissions by 34% and increase the share of renewable energy to 15% of final energy consumption), UK governments 'were effectively compelled to adopt a much more interventionist energy policy. The result was a major overhaul that included new and increased subsidies, new industrial incentives, and a new planning regime'. Thus, ambition was raised and the scope of the UK's climate policy expanded. Cary and Metternich (2013: p. 1) argue that 'overall, EU climate policy has been a powerful, positive force in helping the UK to meet its own energy investment and climate change goals' (as set in the Climate Change Act). Another of Cary and Metternich's key findings was that 'although the [EU] decision making process can be protracted, this is seen as a real benefit by investors, especially those in sectors with long lived and capital intensive assets; the decisions are seen as more steadfast and less subject to short term political intervention.' (Cary and Metternich 2013: p. 6). In this way, stability and predictability – two of the most important factors in the long-term success of policy (Kraemer 2015) – have been positively affected.

In the discussion that follows, some specific effects of EU membership on UK policy and policy making are outlined.

Overall emission reduction targets and carbon budgets

Since the late 1990s, the UK has shown itself willing to take on a relatively large share of total emission reduction effort, under the EU's internal burden sharing agreements. In 1997 it offered to take on a 10% reduction, but agreed to increase this to 12.5% after the signing of the Kyoto Protocol - the only state prepared to shoulder a greater share (Haug and Jordan 2010: p. 86).

The UK's emission reduction targets and carbon budgets, set under the auspices of the Climate Change Act¹, must be compatible with EU-level policy. The first three carbon budgets (from 2008 to 2022) took into account the EU's goal of reducing greenhouse gas emissions 20% by 2020 (Lockwood 2013). However, Lockwood (2013: p. 1343) argues that 'the relationship between budgets from 2023 onwards and future EU targets remains unclear and controversial'. Effort-sharing methodologies in European legislation may differ from equivalent methodologies applied under the Climate Change Act (Sandbag Climate Campaign 2014). The Climate Change Committee's recommended fifth carbon budget is for a 57% reduction on 1990 levels for 2028-

¹ The 2008 Climate Change Act includes a 2050 target for the UK of an 80% reduction in greenhouse gas emissions by 2050, and mandates the creation of 'carbon budgets', which the Committee on Climate Change (n.d.) defines as 'a cap on the amount of greenhouse gases emitted in the UK over a five-year period'

2032. This includes the UK's share of international shipping emissions and an allowance for aviation. Based on the EU's target of reducing greenhouse gas emissions by 40% in 2030, the Committee estimated that the EU target required 'a UK reduction of 53% below 1990 levels over the 2028-32 period, within the range 50-56%' (Committee on Climate Change 2015: p. 33). If EU targets eventually agreed are significantly lower than the Committee's recommended level, pressure to weaken the UK carbon budget could potentially mount.

The EU Emissions Trading System

The EU Emissions Trading System (EU ETS) is a 'cap-and-trade' system that places an overall cap on emissions, allocates allowances to emit greenhouse gases to regulated installations, and allows those allowances to be traded (see OJEU, 2003). It covers emissions from electricity generation stations, refineries, steel, cement, aviation activities within the EU, and other energy-intensive industries (European Environment Agency 2014: p. 31). In 2013, these sectors made up approximately 40% of the UK's GHG emissions (European Environment Agency 2015, 2016). Despite the fact that it is an EU policy, the ETS is considered a major component of the UK's mitigation policy, with Carter and Jacobs (2014: p. 132) going so far as to argue it is the 'main plank'.

Since it began operating in 2005, the ETS has been increasingly governed through policy making in the European institutions (Wettestad et al. 2012). The UK has consistently taken a leading role in this process, first as an early adopter and advocate of emissions trading (Nye and Owens 2008; Meckling 2011; Skjaereth and Wettestad 2009: p. 109), then as a policy entrepreneur pushing for increased policy stringency (e.g., DTI 2006: pp. 29-35; Wettestad 2014: pp. 74-75; DECC 2014; Wurzel 2008). From 2008-12, when emission caps were determined by each Member State, the UK's relatively ambitious approach to cap-setting helped the Commission to exercise downward pressure on the generous allocation plans of countries such as Poland, and deliver a carbon price higher than it otherwise would have been (IEEP 2016: p. 62). The UK supported the move to set a single, EU-wide cap centrally from 2013. This centralisation increased the UK's ability to influence the overall level of ambition across the EU, and thus the carbon price applying in the UK (ibid.: p. 62). In addition, UK domestic climate policy – including the Carbon Price Floor and the 2008 Climate Change Act – has taken into account and in some cases added to the EU ETS's minimum standards (House of Commons Library 2014; UK Government 2008).

Increased renewables deployment

British interest in wind power (and in particular its deployment off-shore) predated the major push by the EU for binding renewables targets by several years. It was the incoming Labour government in 1997 that pledged to source 10% of electricity from renewables by 2010. Energy policy makers saw it as a means to reduce dependence on imported natural gas (Toke 2011: p. 528). Nevertheless, since 2009, the Renewable Energy Directive has been important in boosting electricity generation from renewable sources in the UK, sending a clear signal to investors. The directive led to a 'dramatic change in ambition and a complete culture change amongst civil servants' (Cary and Metternich 2013: p. 8). It lowered the costs of renewable energy technologies and 'allowed the creation of major European renewable energy supply companies' (ibid.).

Generation from renewables in the UK grew by 98% from 2001-07 and by 88% between 2007 and 2011 (Eurostat 2013). However, the domestic renewables target of 10% by 2010 proved both impossible to achieve and remarkably expensive: the cost per tonne of carbon saved was between £280 and £510 (NAO/DTI 2005). In late 2015, the Climate and Energy Secretary was forced to acknowledge that the UK is not on course to meet its 2020 renewables target (Kaminski 2015), but despite this, continued with an energy policy ‘reset’ which seriously weakened existing support schemes, especially in the case of feed-in tariffs for solar installations (Simkins 2015).

The environmental outcomes associated with these targets are not necessarily positive, however. For example, significant investments have been made in renewable energy technologies that are low cost but of uncertain sustainability, e.g. imported biomass used in electricity generation (Cary and Metternich: p. 18; see also Evans 2015). Similar concerns have brought biofuels targets for the transport sector into question.

EU state aid guidelines, which exist to prevent distortions of competition and trade, have relevance for renewable energy policy. However, the general prohibition on state aid is ‘subject to numerous exceptions, recognising that government intervention can be necessary to correct market failure and for social purposes’ (EFTA Surveillance Authority n.d.). Commission guidelines published in 2008 on state aid for environmental protection explicitly encouraged Member States to support renewable energy, combined heat and power (CHP) and district heating (Centre for European Reform 2015: p. 2). Revised guidelines on green energy issued in April 2014 instructed Member States to replace existing fixed rate feed-in tariffs with more market-responsive feed-in premiums (European Commission 2014). The new rules, which do not apply to existing support schemes, are intended to better integrate renewables into the EU energy market, and encourage use of auctioning for support allocation to keep costs down. Feed-in tariffs can still be used for small-scale renewables. The UK is among the Member States that has already made changes in line with the 2014 rules (CEER 2014).

Green Investment Bank and Guarantees Scheme for Infrastructure

The provision of capital to create the Green Investment Bank (GIB) required Commission approval under state aid rules. The UK government originally hoped that the GIB would be allowed to make a range of investments in any project fulfilling a green objective. However, the Commission took the view that it should only be allowed to invest in sectors with evidence of a clear market failure, in order to avoid undue distortion in the financial sector. The UK has the option to notify and seek approval for the GIB to invest in further sectors as and when the need arises. For example, the Commission gave approval for GIB investment in the green deal finance company, which supported household energy efficiency measures (HM Government 2014c), until its abolition in 2015.

The UK Guarantees Scheme for Infrastructure has also been constrained by the need to comply with EU state aid rules. State development banks in other Member States, ‘have block exemptions from these requirements as they were established prior to the EU existing and were folded into EU treaties and directives’ (Caldecott 2015: p. 25).

The situation has become more flexible with a Commission decision to ease lending rules in November 2015 (Shankleman 2015). The GIB will now be allowed to invest in larger solar power schemes, smart grids, and other energy infrastructure (Shankleman 2015). UK ministers have cited the restrictions placed on the bank's activities by EU state aid rules as one of the reasons for its part-privatisation (Hatchwell 2015).

Energy efficiency

The EU has had an important influence on the development of UK energy demand-side management policy. EU policies such as the Energy Efficiency Directive, the Smart Meter Rollout Directive, the Energy Labelling Framework Directive, and the Ecodesign Framework Directive have helped the UK to 'increase the energy efficiency of appliances, equipment and buildings' (Warren 2014: p. 948). For example, the Energy Efficiency Directive requires that all Member States create energy efficiency policies, that companies be subject to energy audits, and that consumers have access to their own energy consumption data (Warren 2014: p. 947).

Some respondents to the government's Balance of Competence Review, however, argued that the UK has at times 'suffered from being a leader in this area, often having to amend existing UK legislation to meet new EU requirements' (HM Government 2014b: p. 9), in apparent reference to the implementation of the Energy Performance of Buildings Directive in the context of the UK's pre-existing 'zero-carbon homes' commitment (ibid.: p. 62). The zero-carbon homes plan has subsequently been abolished (Roach 2015). Still of concern, however, is the Commission's pressure on the UK regarding its VAT reduction policy for energy efficient materials and products. The Commission's view – that 'the UK can only grant differential VAT on social, not environmental grounds' (Cary and Metternich 2013: p. 18) – was upheld in a European Court of Justice ruling (Court of Justice 2015).

Transport emissions

The existence of the EU-level voluntary agreement with car manufacturers from 1998, then EU-level legislation since 2009, has allowed the government to privilege supposed technical fixes in tackling rising emissions from the transport sector, downplaying the potential of demand management measures such as road pricing (Environmental Audit Committee 2006). In 2007, road transport CO₂ emissions were around 11% above 1990 levels ([ENDS Report 409](#): pp. 34-38), though technological improvements have seen them falling since.

The Future

A Vote to Remain – The 'Reformed EU Option'

The renegotiation brief, as evidenced in the Tusk letter makes no reference to the environment or climate change. Were the UK to remain in a reformed EU, national and EU climate policy would most likely continue in a closely inter-connected and generally supportive relationship with one another.

A Vote to Leave – The 'Norwegian Option'

Iceland, Liechtenstein and Norway – the three states that together with the EU comprise the EEA – submitted Intended Nationally-Determined Contributions equal to the EU's 40% reduction, with a view to fulfilling this through collective delivery with the EU (Burns et al. 2015). Switzerland and Monaco, both non-EEA European states, went beyond the EU target and committed to reducing emissions by 50% from 1990 levels by 2030. On this basis, Burns et al. (2015) suggest that if the UK were a member of the EEA, it 'would be likely to stay relatively close to the climate policies of the EU'. They also argue that the UK 'would very likely remain a climate leader in the near future' because of prior commitments in the Climate Change Act as well as domestic pressure from the public and NGOs.

The Climate Change Act could prove vulnerable, however, especially if a No vote was associated with a resurgent right wing in the current government, lukewarm at best towards the climate agenda, lasting into the 2020s. One analysis of its future prospects has noted how the basis of hostility towards the Act is 'largely ideational':

'...linked not only to doubt about the scientific basis of anthropogenic climate change, but also ideological opposition to taxation, state intervention and the supranational powers of the European Union. Ensuring the political sustainability of the Act rests crucially either in a decline in the power of such groups [hostile to climate policy], or in a discursive transformation of climate policy, in which it becomes dissociated with these ideas and credibly associated with other ideas that have more positive connotations across the political spectrum' (Lockwood 2013: p. 1346).

Cary and Metternich (2013) report widespread concern that the UK would struggle to maintain a coherent climate and energy programme were it to leave the EU. The element of stability and predictability – as highlighted above, critical for the long-term success of policy – would be compromised. The vast majority of interviewees for their study said that leaving the EU would be inadvisable on climate and energy grounds for a number of reasons, including risks to business from costs associated with 'an uneven playing field and less influence on policies that companies have to comply with', as well as increased uncertainty, reducing the 'ability to plan for the future, or invest in the necessary technology and skills' (ibid.: p. 22).

Outside the EU, as a member of the EEA, the UK would still be subject to supranational authority concerning state aid. EEA members must comply with state aid rules that are 'broadly equivalent' to those in the EU (EFTA Surveillance Authority n.d.). Plans to grant state aid would need to be notified in advance to the EFTA Surveillance Authority. The Authority would then 'assess whether such a plan constitutes state aid and, if it does, examine whether it is eligible for exemption' (ibid.).

In an EEA scenario, the UK would likely be required to remain in the EU ETS, because the underlying legislation is mandatory for participation in the EEA (OJEU 2003). The case of Norway suggests that the UK would have very limited flexibility in ETS implementation (Gullberg and Skodvin 2011; Mueller and Slominski 2015) and that both the government and UK-based

businesses would have limited influence on future policy making in this area (Gullberg 2015; Miard 2014; cf. Hovden 2004).

In an 'EFTA scenario', it is possible that the relevant climate policies would not be included in bilateral EU-UK agreements, although in the case in Switzerland, the only non-EEA member of EFTA, they are (see Mueller and Slominski 2015: pp. 9-11). A UK ETS could therefore exist outside of the EU ETS, but as in the case of Switzerland, the EU would likely have significant influence on the design of the policy (Mueller and Slominski 2015: p. 10).

A Vote to Leave – The 'Free Trade Option'

It is likely that in this scenario, the UK would leave the EU ETS, as all current participant countries are either full EU Member States or members of the European Economic Area (EEA) (European Environment Agency 2014: p. 29). Were it to withdraw, given its past role in pioneering emissions trading it is possible that the UK would re-adopt a national-level system (which, however, would take time and effort). Were this the case, the discussions that took place on linking Australia's subsequently repealed ETS with the EU system provide a precedent for linking a re-established UK ETS with the EU ETS (Mueller and Slominski 2015: pp. 11-13). However, this would most likely require the resulting policy to be designed to be compatible with the EU ETS.

It can be said with rather more certainty that this total withdrawal scenario would give rise to significant risks to long-term EU climate policy ambitions. As part of the 'green group' in the Council, the UK has consistently advocated higher reduction targets than most other Member States (Skovgaard 2014; Wettstad 2014), albeit while also opposing binding national targets for renewable energy deployment and energy efficiency. Blocking minorities against more ambitious climate action would become easier to form, thus weakening EU policy. The EU would be in a worse position to reform the Emissions Trading System again to deal with any future crises in its effectiveness. Any weakening of EU policy would have global consequences, given the EU's long-standing climate policy leadership role (see Oberthür 2016).

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Energy Policy

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Key findings

- The UK's membership of the EU has had a significant impact upon its energy policy, something observed most clearly in the UK's power generation sector and the growth of renewables. Although fossil fuels remain the dominant source of electricity generation, there has been strong growth in the contribution from renewables – notably wind – since the mid-2000s.
- The ability to choose between different energy sources and the structure of energy supply remains a Member State competence, which has allowed the UK to seek new nuclear generation capacity and to develop its shale gas sector, even though other Member States are set to shun both sectors.
- Alongside the promotion of renewable energy, the EU has sought to liberalise energy markets and create the single energy market. Market liberalisation in the UK has been deepened through EU membership, but the UK was unilaterally at the forefront of this move in the 1990s and has shaped how it has developed in Europe.
- The future of energy if the UK left the EU is unclear. The examples of Norway and, to a lesser extent, Switzerland provide reference points for relations with non-EU countries. Based on this, membership of EEA and EFTA would see the UK retain certain EU energy policies.

Introduction

This expert review will set out the overall impact of EU membership on UK energy policy, as a result of key energy legislation. It will also highlight potential features of the relationship between the UK and EU in the event of a 'no' vote or reformed relationship after the referendum. The review focuses on: the transition of the power generation sector from fossil fuels to renewables; the determination of Member State energy mix; and the process of market liberalisation.

Along with analysing the development of EU policies in these areas, the brief will also review the existing body of academic literature and evidence on EU energy policy, focussing on policies from the late 1980s onwards – when the first UK privatised its Electricity industry following the 1989 Electricity Act. The review will not include proposals set out in the Commission's 2015 Energy Union framework document as these have yet to be fully agreed and their impact would only be hypothetical at this stage.

Although EU energy and environmental policy has covered all parts of energy to some degree, this review will not cover regulation and harmonisation of technical norms in upstream energy production. Equally wider environmental impacts of climate change policies are covered in other sections of this review.

Analysis

Transition to renewable energy in power generation

The EU has introduced policies on decarbonisation in a number of areas including, transport, heating, and energy efficiency. In terms of the power generation sector, the most significant policies were the Large Plant Combustion Directive (2001/80/EC), the EU Emissions Trading System, and the Renewable Energy Directive (2009/28/EC) – the last two being key parts of the Third Energy Package.

Large Plant Combustion Directive (LPC Directive)

The 2001 LPC Directive sought to end the operation of industrial plants with a rated thermal unit equal to or greater than 50MW – which came online before 1987 – in an attempt to reduce sulphur dioxide, nitrogen oxide, and particulate emissions. The directive applies to all UK coal plants, and gave three options: comply with the emissions limits specified in the Directive; enter a National Emissions Reduction Plan where participants would meet collective emissions reduction targets and trade emissions allowances; or remain operating for a maximum of 20,000 hours between 1 January 2008 and 31 December 2015 – known as ‘opting-out’ (Gross *et al.*, 2014). The Directive was replaced and strengthened by the Industrial Emissions Directive (2010/75/EU), increasing the scope and depth of regulation through drawing together seven Directives, which came into force on 1 January 2016. Under the LPC Directive, six of the UK’s seventeen operational coal fired plants opted-out, which removed 8GW of capacity from the 28MW pool that was online in 2008 (DECC, 2014). In 2011 the more stringent Industrial Emissions Directive came into effect, which will see further closures. As of December 2015 the UK had 17GW of operational coal capacity, with around 5GW of this expected to go offline by the summer of 2016. Of the remainder, at least 5GW is compliant with the Industrial Emissions Directive and will remain operational beyond 2025, but the status of the remaining 7GW is yet to be determined (Argus Media 2015). Egenhofer *et al.* (2011) argued that these policies have hit the UK hardest in the EU. Even though the environmental aspect of this should be welcomed, it has negatively impacted the power generation industry to such an extent that there could be security of supply risks ahead, as investment in new plant has been de-incentivised (Egenhofer *et al.*, 2011).

The EU Emissions Trading System (ETS)

The ETS was first launched in 2005 following the Kyoto Protocol – and revised in 2009. It introduced a ‘cap and trade’ mechanism on emissions from power stations, energy intensive industries and aviation. By putting a price on emissions the ETS effectively promoted energy efficiency measures and the development of more renewable energy sources at the expense of fossil fuels. A review of the ETS by Martin *et al.* (2012) concluded that UK emissions in the regulated sectors fell by three per cent following its introduction, but it is difficult to separate out industrial and power generation sector abatement. In a survey of literature by Laing *et al.* (2013)

on the ETS, they concluded that overall studies had generally found the scheme lead to a reduction in emissions across the EU.

The 2009 Renewable Energy Directive

The 2009 Renewables Directive (2009/28/EC) set an EU-level target of a 20 per cent share of energy consumption to be from renewable sources by 2020; the UK adopted a national target of 15 per cent by 2020. It built on the previous 2001 Directive on the promotion of electricity produced from renewable energy sources (2001/7/EC), which had set a Community-wide target of 22 per cent by 2010, and an indicative target of 10 per cent for the UK. The UK's Department of Energy and Climate Change anticipated at the time that to meet the target 30 per cent of electricity demand would need to be from renewables by 2020, with 12 per cent in heat demand and 10 per cent in transport (DECC 2009). The Directive was broadly successful, and by 2014 renewable energy supplied 7 per cent of total UK demand, compared to just 1.3 per cent in 2005. (DECC, 2016). A House of Commons library report (2013) argued that the focus on renewables in the UK has been driven by EU targets and policies. The impact of these policies on power generation can be seen in the growth of renewable capacity from 9.2 gigawatts (GW) in 2010 to 27.2GW by the start of 2015 (DECC 2015b; 2016). Renewable sources generated 19.1 per cent of total electricity in 2015, compared to just 6.7 per cent in 2009 (Eurostat, 2015). Following the 2001 Directive, Reiche *et al.* (2004) addressed the policy differences in renewable energy promotion across EU Member States and highlighted the variegated nature of policy adoption, implementation, and levels of success. In the UK they observed that, while starting with a much smaller renewables sector compared to other Member States, the ready availability of fossil fuels (e.g. North Sea gas) hampered renewables development. Later Kern *et al.* (2014) highlighted how the UK offshore wind sector grew strongly in part as a result of aligned embedded economic and environmental interests between state actors and developers.

Determining the energy mix

Energy policy is a shared competence between Member States and the EU, and the transition to renewables intersects with the right of Member States to determine their energy mix, detailed under Article 192(2) of the 2008 Treaty of the Functioning of the European Union which affirms that, the establishment of the single energy market shall not affect 'a Member State's choice between different energy sources and the general structure of its energy supply' (European Commission, 2008). The adoption of measures like those described above can only be adopted on the basis of other non-energy related provisions, such as by a unanimous decision of the Council (HM Government, 2014, p5).

While the UK has seen strong growth in renewables following EU policies, its own 2008 Climate Change Act also played a role. The Act included lowering carbon emissions by 24 per cent by 2020 and 80 per cent by 2050 compared to 1990 (HM Government, 2008). But though 'carbon budgets' and a legally-binding cap on emissions were introduced, no targets on renewable generation were included. Jackson (2010) questioned whether these targets could be met while simultaneously meeting power generation capacity needs in the wake of coal plant closures under the LCP Directive.

Although the role of EU policies in growing renewables cannot be understated, at a broader political level, the UK has consistently demonstrated a political will to tackle climate change, with the governments of Margaret Thatcher, Tony Blair, Gordon Brown and the Liberal-Conservative coalition all supporting reducing carbon emissions whether domestically or internationally (Helm 2010, Rayner & Moore, 2016). More recently, in the wake of the 2014 agreement on an EU 2030 Climate and Energy Framework, Energy and Climate Secretary Ed Davey noted how the UK had been leading the climate debate and pushing for an ambitious target (DECC, 2014b). But following the election of the Conservative government in 2015 there has been a scaling back of the renewables incentive schemes and support mechanisms introduced after the 2009 renewable energy Directive. The government has also put new gas and new nuclear at the forefront of future electricity supply and ensuring decarbonisation (Rudd 2015), with the development of new shale gas resources being considered. The UK stance on both is somewhat at odds to other EU Member States, notably regarding shale gas and fracking. Some states such as Bulgaria, France and Germany have introduced moratoria but the EU has not introduced a Union-wide policy on it; rather, its involvement so far has been in environmental regulation – where it already plays a substantial role – and minimum principles for safeguarding in its development (European Commission, 2014).

In the same ways as the abundance of North Sea natural gas led to the so-called ‘dash for gas’ in the 1990s – and delayed the transition to renewables – the government’s current support for shale gas development is grounded largely in using indigenous supplies to increase supply security. But Grubb *et al.* (2006) analysed the implications of low-carbon objectives – of which many are EU-led initiatives – on UK electricity supply security, and concluded they have had a largely positive effect on security of supply. The UK developing its own capacity market is also emblematic of how it retains influence on wider energy policy. Although the Commission launched a sector inquiry in 2015 looking at capacity mechanisms and their role relative to state aid and market distortion, others including France, Germany, Italy and Denmark have or are considering capacity mechanisms to ensure that electricity supply can match demand in the medium and long term (European Commission, 2015). The UK committed to new nuclear capacity – at the Hinkley Point C – in 2010 and signed agreements with EDF and Chinese state-owned nuclear group CGN in 2015. The development was approved by the European Commission, and although Austria is challenging the development under State Aid rules, the Commission insisted that choosing energy sources is up to Member States (The Guardian 2015). The final investment decision for the project has been delayed several times since it was first announced in 2013, but it is expected to be made by developer EDF in 2016; however EDF said the UK’s potential exit from the EU would not change the development (Reuters, 2016).

Market liberalisation

The intervention from the EU on normative (environmental) grounds in energy is somewhat at odds with its key policies of market liberalisation and unbundling of the energy industry, due to its promotion of renewables and subsequent market distortion as a result of member-state specific support schemes (Buchan, 2012). However, it has also been argued that fossil fuel subsidies have distorted markets and encouraged excessive energy consumption (IMF, 2013), as well as negatively impacting renewables growth in the electricity generation sector (Bridle & Kitson, 2014).

Although policies began to emerge through the 1990s, real progress on the single energy market was made during the UK's 2005 EU Presidency. The government's stated energy priorities during the presidency included the driving forward of open and competitive energy markets in Europe, the promotion of long-term security of supply, and tackling climate change (Dutton, 2015). But the process began in the UK much earlier, with the privatisation of the UK electricity sector enshrined in the 1989 Electricity Act. This split the former state-owner Central Electricity Generating Board (CEGB) into four companies; three received generation assets, and one received the transmission network in England and Wales. Helm (2014) argued that the UK's method of liberalisation was used as a model in the EU for its own single energy market, and the policies of the 2009 Third Energy Package, even if the process is not complete in other European countries. The UK was also more influential in the liberalisation of EEA-member Norway's electricity sector than early EU policies (Bartle, 2006), although EU policies were eventually adopted in Norway with minimal changes required (Claes, 2002).

The twin policy streams of decarbonisation of power generation and market liberalisation are central to EU energy policy, but there are tensions between them and between the EU and Member States. The UK is a notable example of tensions between policies on market liberalisation and those on renewable energy and decarbonisation. Keay (2013) highlights how EU legislation promoting renewables means that, in effect, the UK government is intervening in the market and it determines the make-up of the power generation mix – something at odds with its ideological preference for market liberalisation. Keay (2016) further contends that European electricity markets are 'effectively broken' due to government support for power generation sources that have very different characteristics from the ones around which European markets were designed, with support for renewables over other sources of electricity generation. In response to this intervention, Jackson (2010) also notes how the EU attempted but failed to further deregulate European energy markets to increase competition and incentivise the building of more generation capacity across the EU.

The Future

It is unclear what relationship the UK would seek with the EU if it were to leave, or what reformed membership would look like if it remained a member.

A Vote to Remain – The 'Reformed EU Option'

Energy has not been a point of renegotiation for the UK, with the four key objectives being economic governance, immigration, sovereignty and competitiveness. In his letter to Donald Tusk regarding the negotiations David Cameron highlighted a desire to stem 'the flow of new regulations' while still respecting and protecting the integrity of the single market (Cameron, 2016). As such, it is unlikely that energy would be directly affected by a renegotiated membership of the EU. However, even if the UK remains in the EU it is uncertain what path its energy policy would take; despite remaining an EU member, policies could further diverge from other EU Member States. For example UK policies on renewable electricity generation, nuclear energy and shale gas development already somewhat differ to other Member States, and it is uncertain whether this divergence would continue regardless.

A Vote to Leave – The 'Norwegian Option'

Although it is unclear how much legislation the UK would be required to adhere to if it left to the EU, through being highly interconnected to other EU members through energy infrastructure adopting elements of the single market it is likely to be a legal requirement whether the UK had EEA or EFTA membership. However, the UK would not necessarily be in a position where it could determine the nature of its new post-membership relationship with the EU (OIES, 2016, p.6).

Norway, as an EEA member, remains the most pertinent example of how the relationship could be if the UK leaves. EEA membership gives Norway a place in the EU's single market, and as such EU legislation – and wider *acquis* – applies equally, which meant that as of 2012 Norway participated in 26 agencies, including in energy, but had no vote in them (Claes, 2002). At a general level, Gullberg (2015) identified three main energy policy challenges that EEA membership presents: EU energy policy directly applies to Norway, but it has no representation in EU institutions; EU policy indirectly influences domestic Norwegian policy through being the largest market for Norwegian oil and gas; and Norwegian and EU interests often diverge, as the EU has a high import dependency. Gullberg also demonstrated that Norway has little lobbying influence in Brussels, and often uses alliances with other Nordic countries or EU members to bolster its efforts. Energy industry analysts, Platts (2015), suggested that the UK is likely to remain integrated in EU energy markets due to the benefits it brings in trade and investment, while Buchan further argued that even if the UK were to leave, the EU could still insist it adopts all future single market legislation, as per Norway and the EEA. The Financial Times (2016) highlighted the difficulties Norway faces, in the context of oil and gas production, in adhering to certain EU energy Directives but having no role in their formation.

Buchan (2012b) suggested the Swiss model would suit the UK more than Norway's. Switzerland is a member of EFTA, but not the EEA, and its relationship with the EU is built upon a series of bilateral agreements, rather than automatic application of laws as per the EEA. That said, Norway's legal and institutional similarities to the EU meant the implementation of policies was typically unproblematic (Buschle, 2014); even in the event of a UK exit, the legacy of EU membership is likely to have a similar affect. Even if the UK were to withdraw and have a bilateral relationship with the EU similar to that of Switzerland, it would still be bound by its own 2008 Climate Change Act. Although leaving the EU could see policy reversal, such as extending operating hours for plants previously set to close under the IED, it could also allow the UK to further develop its own renewables sector, even if EU targets no longer apply (House of Commons Library 2013).

A Vote to Leave – The 'Free Trade Option'

Even in the event of a 'no' vote under which the UK does not become a member of EEA or EFTA, it is very unlikely that the UK would not still retain elements of the single market, energy policy or adapt its new policies accordingly. Liberalisation and the internal energy market have increased energy supply security (Metais, 2013), which suggests EU policies will remain part of the UK in some form. This holds immediate relevance for the UK, as imported gas was 61 per cent of total supply in 2014, with 71 per cent coming via pipelines from the EU and Norway (DECC, 2015). And despite the promotion of domestic renewables, imported gas is set to remain a key part of UK energy supply in the coming decades (Rogers, 2011). The UK remaining a part of the single market

would also be of benefit to the EU as the UK is a large producer of oil and gas and is an arrival point for liquefied natural gas tankers. Leal-Arca and Fillis (2015) set out how the extra-EU multi-lateral regimes of the Energy Community – in which Norway has observer status – and Energy Charter Treaty serve and promote EU-specific energy security policies.

The fallout of any resulting change of policy and legislation would most likely be experienced in Northern Ireland. As part of the UK, it would exit the EU in the likelihood of a ‘no’ vote, but it is part of a single wholesale energy market with the Republic of Ireland and there are shared legislative and regulatory functions between the two system operators and regulators. Further to this, the Republic of Ireland – as an isolated member of the EU in energy terms – is dependent upon gas and electricity imports from the UK, and the nature of this relationship if the UK votes to leave to the EU is unclear. Although the agreement underpinning the single Irish market is based on UK and Irish legislation and not EU legislation, future divergence of UK energy policy away from the EU could be problematic for Ireland because all of its energy interconnections are with the UK (OIES, 2016). Dublin-based research institute ESRI suggested Brexit could lead to the return of physical and economic barriers between Northern Ireland and the Republic, at a time when plans are being made to increase physical energy interconnection between them (Barrett *et al.* 2015)

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Agricultural Policy

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Key findings

- The Common Agricultural Policy (CAP) has had an overall negative environmental impact on environmental quality, fostering the intensification of agriculture, increasing water and air pollution and accelerating the decline in farmland birds. However, it is very likely that a national agricultural policy would have produced very similar effects.
- CAP reforms since the early 1990s have reduced, but not counteracted these negative environmental impacts. The CAP has also had some positive environmental impacts, for example in limiting land abandonment in high nature value farmland.
- The UK has been a consistent champion of CAP reform and pioneered environmental measures that have been taken-up and widely applied, generating benefits across the EU. However, the UK's ability to achieve reform has been greatly constrained by the wider strategic objective of retaining its national budget rebate; and by diverging policy objectives between the devolved and central administrations.

Introduction

This expert review analyses the environmental impacts of agricultural policy. It explains how the European Common Agricultural Policy (CAP) and its implementation in the UK have influenced both negatively and positively UK environmental policy and quality. It also describes the role UK actors have played in 'greening' the CAP, *i.e.* "including policy measures designed to fulfill environmental objectives" (Dobbs & Pretty 2008, p.766) or reducing negative environmental externalities of farming, and in increasing its positive externalities.

To do so, it analyses different CAP reforms, from 1992 to 2013 and their changing environmental impacts, as well as how these impacts were mediated by different implementation choices across the EU, and within the UK, across the devolved authorities. This analysis then forms the basis of a discussion of the potential future of agricultural policy (and of its environmental impacts) across three scenarios of the future.

Broader debates regarding the future of the CAP or the impact of a potential exit of the UK on other countries' agricultural sectors fall outside the scope of this review (but see Gardner, 2015; Matthews, 2015b).

Analysis

Impacts on environmental quality

European agriculture over the last 60 years has been characterised by intensification of production, concentration into larger units and a narrowing specialisation of production (Bowler

1986; Winter 2000). . Some of the most intensified farming sectors in Europe (such as poultry farming) receive very limited CAP support (Institute for European Environmental Policy 2016, p.10), as other factors, such as technological changes, also influenced these three trends (Potter & Goodwin 1998). Nevertheless, the CAP provided a secure environment, and a strong level of support for farmers which meant these trends were “carried faster and to a greater extent than would have occurred without the CAP” (Bowler 1986, p.20).

There is a broad and deep consensus in the academic literature that intensification, concentration and specialisation of agriculture in the EU have led to environmental damages to rural environments throughout Europe. These damages cover notably losses of habitats for biodiversity and a sharp reduction in the number of farmland birds (Donald et al. 2002; Donald et al. 2006), pollution from fertilisers and pesticides, and the damage to “valued landscapes” (Hodge 2013, p.255). While intensification also took place beyond Western Europe, decreasing trends in farmland birds were noticeably stronger in the EU15 Member States compared to the 10 candidate countries in early 2000s (Donald et al. 2002). These negative environmental externalities have been very costly. Thus, the net costs of the environmental externalities generated by the CAP in the UK by the late 1990s were estimated to be equivalent to the entire budget devoted to supporting agricultural activities (Pretty et al. 2000).

Nevertheless, some instruments of the Common Agricultural Policy, introduced over the last twenty years, have had positive environmental impacts. For example, agri-environment measures, voluntary schemes through which farmers get compensated for improving the environment on their farm, cover 84 million hectares across the EU, including 12 million hectares in the UK (Zimmermann & Britz 2016, p.213). While their great variety between and within Member States makes comparison and analysis difficult (Uthes & Matzdorf 2013), they have had an overall positive impact on farmland biodiversity (Batáry et al. 2015). Funding for Least Favourable Areas and High Nature Value farming further helped limit land abandonment, maintaining agriculture in areas in which agriculture has profoundly shaped the landscape and biodiversity over centuries and where biodiversity would be at risk if agriculture were to disappear (Potter & Burney 2002, p.39).

Greening the CAP?

The CAP has been reformed multiple times (in 1992, 1999, 2003, 2008 and 2013). While other concerns, such as the weight of the CAP on the EU budget and negotiations in the World Trade Organisation mattered as much if not more (Daugbjerg & Swinbank 2011; Daugbjerg & Swinbank 2015; Ackrill et al. 2008), all these reforms have also been defended as attempts to green the CAP (Winter 2000; Winter & Gaskell 1998; Feindt 2010; Erjavec & Erjavec 2009; Erjavec & Erjavec 2015; Ackrill 2008). While many environmental groups and researchers have been critical of the level of greening achieved in the last 2013 reform (Brunner & Robijns 2014; Matthews 2013b), taking action at EU level on agriculture has been praised as shielding long-term environmental investment from changes in governmental priorities in Member States and preventing a race to the bottom across Europe (HM Government, 2014, pp.45,53). This section reviews the crucial role played by the UK in pursuing this greening agenda at EU level.

UK support for greening the CAP

The UK has repeatedly pioneered the use of environmental policy instruments which were later adopted throughout Europe (HM Government, 2014, p. 45). Thus, it was the first member state to create Environmentally Sensitive Areas in 1986 after these were made possible by a 1985 EU regulation (Robinson 1994; Dobbs & Pretty 2008). In 1992 these Environmentally Sensitive Areas became part of the CAP. Together with Denmark, the UK pioneered the use of cross-compliance, requiring farmers to meet certain environmental standards in order to receive their main CAP subsidies (Potter & Goodwin 1998, p.293; Ward 1999). Alongside France and Portugal it pioneered the use of modulation after the 1999 reform – a mechanism making it possible to divert part of the funding for main, non-targeted CAP subsidies (Single Farm Payments) to increase funding for rural development (including agri-environment measures) (Falconer & Ward 2000; Lowe et al. 2002). Both cross-compliance and modulation became compulsory in the subsequent 2003 reform (Burrell 2009). UK NGOs such as the RSPB (Fouilleux & Ansaloni 2016, p.318), and the UK government were also instrumental in putting forward a public goods model for agriculture (Falconer & Ward 2000, p.273; Potter & Tilzey 2007), which was highly debated during the 2013 reform (Erjavec & Erjavec 2015; Matthews 2013a; Gravey 2011).

After pioneering agri-environment schemes in the late 1980s, the UK saw a strong rise in the uptake among farmers (DEFRA 2014, pp.15–16; Dobbs & Pretty 2008, p.767). This strong rise is reflected in how the UK allocates rural development funds, between environmental and non-environmental purposes. Thus, the UK and Ireland both spend more than 40% of their rural development funds on agri-environment schemes, compared to an average of 22.3% in EU-15 and 12.1% in EU-12 countries (Uthes & Matzdorf 2013, pp.251–252).

UK support for greening agricultural policies has gone hand in hand with its broader goal of reforming the CAP. The UK has long supported CAP reform, alongside other Member States such as Sweden, Netherlands and Denmark (Grant 2003, p.22) –supporting in particular a reduction in the CAP budget and in its share of the overall EU budget (Boulanger & Philippidis 2015; Swinbank 2015) as well as a liberalised policy (Dibden et al. 2009; Potter & Tilzey 2007), with reduced market intervention. Yet greening objectives and overall reform objectives have not always coincided. Hence, after pioneering agri-environmental schemes, the UK did not develop them in the immediate aftermath of the 1992 reform (which made them an integral part of the CAP), as spending discretionary EU funds on these schemes would have reduced the size of the UK budget rebate (Falconer & Ward 2000; Lowe et al. 2002). This focus on maintaining the rebate and containing the size of the EU budget has repeatedly constrained UK action for CAP reform (HM Government, 2014, p. 37). Reluctance to contribute additional UK funding to match EU contributions on rural development policies has further meant that the UK has had a comparatively small budget for agri-environmental schemes. The UK tried to increase this budget through the use of modulation, a mechanism allowing a share of funding for direct payments to be diverted to rural development (Carwell 2010; Swinbank 2015). Moreover, ‘decoupling’² Single Farm Payments from production, a policy long supported by the UK government and rolled-out by the 2003-2008 reforms, was expected to reduce production levels and accelerate an

² i.e. providing subsidies to farmers based on size of agricultural land and not on the basis of production levels.

extensification process (in low price conditions), thereby generating better environmental conditions (Posthumus & Morris 2010). But UK NGOs argued decoupling could have a negative impact on farming in marginal areas (Potter & Burney 2002, pp.40–41) – increasing risks of land abandonment in High Nature Value farmland (Potter & Tilzey 2007).

A more devolved implementation of the CAP

While the CAP is a common EU policy, it is not uniform across the EU (Nielsen et al. 2009). The ‘renationalisation’ of the CAP has been on-going for the last 20 years, increasing member state leeway in implementation (Burrell 2009). Some Member States have made the choice of a unified national implementation, others, such as the UK, have devolved implementation. Crucially, different authorities can exercise their discretion to allow for, or constrain further greening of the policy (Ward 1999, p.171). Hence, UK devolved authorities have the right to implement common EU rules differently (HM Government 2014, p.22).

As a result of this approach, sharp differences in the agricultural sectors of the different nations of the UK – with, for example, 65% of Scottish agricultural land considered ‘less favoured’ (Carwell 2010) – manifest themselves in very different political priorities regarding CAP reform and the weight and implementation of different instruments. Differences between a ‘DEFRA vision’ and visions of farming and agricultural policy in Wales (House of Lords EU Select Committee 2015c) or Scotland (Swinbank 2015) are stark. These differences are visible when looking at environmental aspects of the CAP, with most Agri-Environment Schemes agreed in Scotland, Wales and Northern Ireland being higher-level or targeted, while England boasts most entry-level schemes (DEFRA 2014). They were further made apparent in the implementation of EU legislation on Genetically Modified Organisms (GMOs) – with Scotland, Wales and Northern Ireland demanding opt-outs for “all GMOs either currently authorised or going through the [EU] authorisation procedure”, with no equivalent demand made by England (Grant et al. 2016, p.22). Finally, these political differences were notable when considering the flagship CAP payment, Single Farm Payment, which the UK government wanted abolished in the last 2013 reform – while Scotland fought for its continuation, and the possibility to adopt coupled payment for less-favoured areas (Swinbank 2015).

The Future

A Vote to Remain – The ‘Reformed EU Option’

The CAP has featured prominently in the UK reform agenda for the EU in the past (Swinbank 2015), and Environment Minister Liz Truss indicated in September 2014 that further reform of the CAP would likely be a core element of the renegotiation (House of Commons Library 2015b). This failed to materialise, and instead the renegotiation brief, as evidenced in the Tusk letter (Cameron 2015a) makes no reference to agriculture, and/or to the environment.

In the UK, differentiated implementation (of agri-environmental schemes, of GMO rules etc.) is likely to continue, although the leeway of each devolved authority is constrained by common EU rules.

In a reformed EU, agriculture is likely to remain a key political priority, with a high (if likely to continue to decrease) share of the EU budget (Bailer et al. 2015; Boulanger & Philippidis 2015). Common action on agri-environmental rules are likely to continue to foster long-term investments and to prevent a race to the bottom – although increased differentiation between Member States will mean that different types of greening policies are likely to be pursued. DEFRA is likely to keep pushing for further reduction in CAP support, and for a reduction in the overall CAP budget, with a transfer of funding from the Basic Payment Scheme to Rural Development and Agri-Environment Scheme. While such a reform agenda found wide support among environmental NGOs and agricultural economists in the run-up to the 2013 reform (Erjavec & Erjavec 2015; Matthews 2013a), division within the UK (in particular the very different Scottish position) and within the EU on these questions (illustrated by the agreement in 2013 for a voluntary transfer of funding from rural development to the Basic Payment Scheme) illustrate the difficulties of achieving such a reform in the future.

A Vote to Leave – The 'Norwegian Option'

The EEA Treaty does not cover agriculture – which means the UK would not have to continue applying the CAP. Leaving the EU and the CAP, raises key uncertainties for the British agri-food sector, which is expected to be significantly impacted (Thompson & Harari 2013, p.6), but it also creates opportunities for the UK authorities to devise an alternative British agricultural policy or policies. On the long term, impacts of exiting the CAP on the environment would depend on the British agricultural policy/policies adopted and on the trading arrangements for agricultural products (Buckwell 2016, p.6). On the short term, potentially lengthy negotiations, both within the UK as agriculture is a devolved competence and between the UK and the EU, will increase risks and uncertainties for the British agri-food sector.

Within the UK, the devolved authorities currently implement the same agricultural policy, after receiving EU funding. New devolution agreements would need to be reached to fund agricultural policy from the UK treasury (House of Commons Library 2015b), which raises a number of questions concerning the nature of agricultural policies and the level of support in the UK after a 'no' vote. It is worth noting that EEA and EFTA countries currently subsidise their agriculture to a higher degree than the EU (HM Government 2014) – but UK internal policy preferences make any increase in agricultural support extremely unlikely (Buckwell 2016, p.4). Indeed, while the Common Agricultural Policy remains a political priority in the EU (and a high share of the EU budget) DEFRA's repeated calls for reduced spending on agriculture in the EU makes it unlikely that spending on agriculture would remain the same. Instead, considering the continued opposition of DEFRA to the CAP status quo, joining the EEA or EFTA could offer the opportunity for a radical shift in agricultural policy and a radical drop in funding (Gardner 2015) – and a shift toward environmental public goods (Swinbank 2014; HM Government 2014). Buckwell argues a British Agricultural Policy could go in two opposite directions – a 'cold bath' approach, with swift removal of subsidies and opening to international competition (inspired by the New Zealand transition in agricultural policies in the 1980s); or a multifunctional farming policy, recognising the specificities of the sector and its impact on environmental quality and rural development (2016, p.23). The content of a future British Agricultural Policy is likely to depend on four factors:

- The government in charge of presiding over the birth of a British Agricultural Policy (in particular, political positions on free trade – will it negotiate deals favouring the service industry or agriculture... – on the environment). (Buckwell 2016, p.22)
- Respective strengths of farming and environmental pressure groups in influencing the policy debate. (Buckwell 2016, p.7)
- Regional divergences within the UK (Swinbank 2015), which may constrain DEFRA's ability to deliver a paradigm shift in agricultural policies (Grant et al. 2016)
- Regulatory divergence between the UK and EU which would remain limited if the UK wishes to export to the Single Market (Matthews 2015a).

Concerning greening, farmers are likely to oppose all change in agricultural policies which would put them at a competitive disadvantage (Nielsen et al. 2009) with their European peers. This would make further greening (greener than the current CAP) difficult to achieve as politically costly for the UK authorities. Conversely, key EU environmental directives – such as the Birds and Habitats directive – which have proven unpopular and difficult to implement in the UK, notably in relation to the farming sector, may be scrapped and possibly replaced by less stringent rules, hereby conferring a competitive advantage to UK farmers (Grant et al. 2016). Regulating GMOs is a devolved matter – opposition to GMOs is likely to continue in Wales, Scotland and Northern Ireland, while the rules in England may be loosened. Finally, profound changes in agricultural policies raise questions of compliance with environmental legislation – currently fostered by cross-compliance mechanisms. Removing direct payments would also remove key financial incentives for respecting environmental standards (Grant et al. 2016).

As for the EU, future liberalisation (and greening) of the CAP appears less likely as the EU would lose one of its strongest CAP reform advocates (Buckwell 2016, p.55). The UK would have no say on how much of its EEA contribution would be used to funding the CAP.

A Vote to Leave – The 'Free Trade Option'

A vote to Leave and negotiate a free trade agreement with the EU outside of the EEA will affect future agricultural policies, in the UK as well as in the EU, as well as trade of agricultural and food products (NFU 2015; Swinbank 2014; Matthews 2015a).

Trade options are numerous regarding whether the UK would sign a formal agreement with the EU, whether it would include agriculture, how the UK would renegotiate trade with non-EU third parties, and the pace at which these renegotiations would happen (Grant et al. 2016).

As with the EEA scenario, a full Brexit implies an exit from the CAP and the need to agree on a British alternative – with profound political differences across the devolved authorities, and uncertain trading relations with the rest of Europe and the world. As with the EEA scenario, agriculture is likely to be less of a – budget and policy – priority for the UK government compared to the status quo. Regarding greening, similar pressures anti-greening are likely to be observed, which may or may not be counterbalanced by the strength of the UK countryside and environmental actors. Crucially, compared to the EEA scenario, all EU environmental directives impacting farming could be re-opened, and potentially watered-down, as for example the Nitrates Directive which is unpopular amongst British farmers (Grant et al. 2016, p.14).

As for the EU, the impact on the future of the CAP is uncertain – on the one hand, liberal CAP reform would lose one of its strongest advocates, on the other hand, the CAP budget would lose one of its key net contributors, making high agricultural subsidies costlier for the remaining EU Member States (Matthews 2015a; Buckwell 2016).

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Fisheries Policy

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Key findings

- The sustainability of the UK fisheries, regulated by the EU Common Fisheries Policy (CFP), has improved considerably in recent years. The latest reform of the CFP provides cause for further optimism.
- The majority of fish stocks under EU management are highly mobile and straddle international boundaries. Therefore, even if the UK left the EU there would be continued need for international governance of fisheries.
- The rights of foreign vessels to fish in British waters (and of British boats to fish in other territories) would be subject to re-negotiation should the UK leave the EU. The outcome of any such negotiations is highly uncertain.
- Many other EU environmental policies (e.g. Habitats Directive, MSFD, and funding streams (e.g. EMFF)) have benefits for fisheries or for the marine ecosystems upon which fisheries depend. The fate of these instruments under a Brexit is highly uncertain.

Introduction

The performance of UK fisheries under European Union (EU) membership has come under considerable criticism in the past. Until recently, many stocks were overexploited under this system, with some coming close to collapse (e.g. North Sea cod) (Daw & Gray, 2005). Many people have pointed the finger at out of touch, centralized governance from Brussels (e.g. Conservative Party, 2005; HM Government, 2014), while others cite the routine setting of fish quotas above scientific advice (O’Leary et al., 2011, Carpenter et al., 2016). Members of the UK fishing industry (and indeed some politicians) also frequently highlight the perceived loss of fishing rights under the European system and the injustice of foreign vessels fishing in British territorial waters (Fernandes & Stewart, 2015).

This review will investigate the sustainability and productivity of British fisheries under the current European system in more detail, particularly its future prospects after the recent reform of the Common Fisheries Policy (CFP). It will also consider the necessary form of an alternative fisheries management regime, should the UK vote to leave the EU. Furthermore, I will discuss the rights of foreign vessels to fish in British waters, the reciprocal rights of British boats to fish in the waters of other states, and how this might change with a British exit from the EU. Finally, I will examine the influence of other European environmental policies (e.g. Habitats Directive, Marine Strategy Framework Directive - MSFD) and funding streams (e.g. European Maritime and Fisheries Fund - EMFF) on fisheries sustainability and the consequences of a Brexit.

Analysis

What has been the overall impact of EU membership on UK fisheries policy, politics and governance?

By far the most significant impact of EU membership on British fisheries has been the adoption of the European Common Fisheries Policy (CFP)³. The CFP has its roots in the 1970s, but was fully implemented in 1983 after the establishment of 200 mile Economic Exclusion Zones (EEZs) through the United Nations Convention on the Law of the Sea (Baldock et al., 2016). The CFP has been the subject of considerable criticism in terms of both its reduction of the rights of British fishers and also the poor performance of European fisheries since it was implemented (Froese & Proelß, 2010; Khalilian et al., 2010; O'Leary et al., 2011). Despite this damning narrative, a recent analysis of 118 years of statistics (Thurstan et al., 2010) revealed that the vast majority of the decline in demersal fish stocks around the UK occurred prior to the implementation of the CFP and that overall fish numbers have been relatively stable since then.

More recently, Fernandes and Cook (2013) presented evidence that since the CFP was reformed in 2002, fishing pressure has been dramatically reduced in European fisheries and the health of many fish stocks has been improving. Indeed in 2011 the majority of assessed fisheries were considered to be sustainably fished for the first time. Of course lauding this modest achievement would be setting the bar fairly low and the CFP has taken a long time to come good. However, there is cause for further optimism. Two of the prime reasons for the past failings of the CFP have been consistent setting of catch quotas above scientific advice (O'Leary et al 2011) and rules which at times resulted in discarding up to 90% of fish caught (Diamond & Beukers-Stewart, 2011). Both of these issues are being addressed in the latest reform of the CFP, enacted in January 2014, and management plans are being shifted more towards the regional scale and designed to produce maximum sustainable yield in the long term⁴⁵.

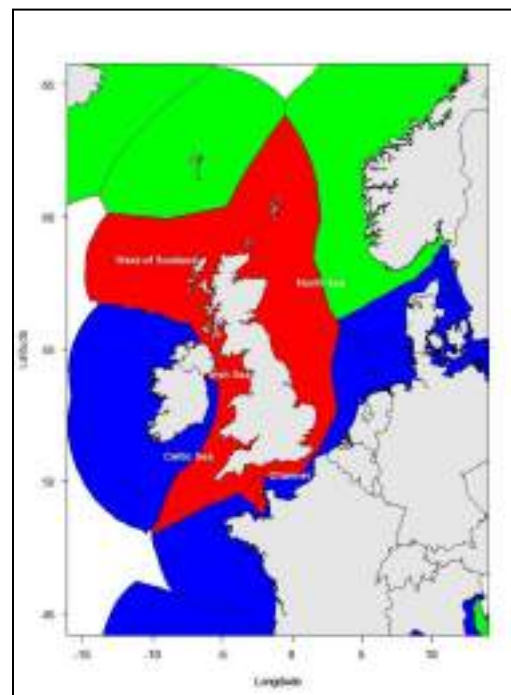


Figure 1. Map of the British Isles showing UK waters. The UK's Exclusive Economic Zone (EEZ) is in red, EU member states' EEZ in blue and other EEZs in green. (Source: Fernandes & Stewart (2015)).

Another of the main arguments for the UK to leave the EU with respect to fisheries is that it would increase the fishing grounds / stocks available to the British industry and give the UK sole control over its fisheries. While it is fair to say that fisheries appear to be more sustainable in countries which largely have sole jurisdiction over their waters (e.g. Iceland, Norway, USA, Australia, New Zealand) (Beddington et al., 2007), all of those

³ http://ec.europa.eu/fisheries/cfp/index_en.htm

⁴ http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁵ http://ec.europa.eu/fisheries/reform/index_en.htm

countries are relatively isolated from their neighbours. In comparison, the UK shares the North Sea, for example, one of its main fishing areas, with 6 other countries, while on the west it is closely bordered with Ireland.

Due to this geographical location among numerous neighbouring countries, the UK's EEZ only extends to the full 200 miles in segments to the north and west of Scotland and in a thin wedge to the far south-west of England. This factor adds considerable complexity to managing fisheries in UK waters, regardless of EU membership.

The majority of the main species fished commercially by UK fleets (e.g. mackerel, herring, haddock, cod, and plaice) are highly mobile (Neat et al., 2014; Trenkel et al., 2014). This factor, in combination with the UK's close proximity to other countries, means that most of these fish spend different periods of their life history in the EEZs of different countries (Neat et al., 2014; Trenkel et al., 2014). Rather than respecting man-made jurisdictional boundaries, fish occur largely in stock units defined by environmental factors and their evolutionary history (Neat et al., 2014). These fish should therefore be considered European, rather than just British (Fernandes & Stewart, 2015). If the UK were to leave the EU, measures to manage these stocks (thereby determining the "British share" of the catch) would still need to be negotiated through multi-lateral agreements in much the same way as currently occurs. Likewise, these agreements would need to be informed by scientific advice from the International Council for Exploration of the Sea (ICES), again as is already the case.

Some valuable commercial species such as *Nephrops* prawns, scallops, crabs and lobster are much more sedentary and less transboundary in nature (Skerrit et al., 2013; Howarth et al., 2015). However, with the exception of *Nephrops*, all of those species are already under sole national control. In the case of *Nephrops* there may be an argument for a small increase in access to the stock which lives in British waters if Britain leaves the EU, but the vast majority of the EU quota already goes to the UK (Fernandes & Stewart, 2015).

A further argument for the UK to leave the EU is that it would stop foreign vessels from fishing in British waters. Of course if that were the case it would also likely limit the rights of British boats to fish in other states waters, which is widespread at present. For example, UK vessels landed more catch into the Netherlands, Denmark and Ireland than into England, Wales and Northern Ireland in 2014 (MMO, 2015). The reality is that a Brexit would require a complete re-negotiation of fisheries rights. A number of foreign fishing rights extend back to the Middle Ages (Conservative Party, 2005) therefore banning these vessels from UK waters may well be incompatible with international law (Carpenter, 2016). Other fishing rights would not change. It is worth noting that probably the most significant change in UK fishing opportunities stemmed not from EU membership, but from the "Cod Wars" with Iceland – particularly the 3rd Cod War (November 1975 – June 1976) when Iceland claimed its full 200 mile EEZ (Guðmundsson, 2006).

It is important to consider whether or not such a re-negotiation of fishing rights might damage our crucial trading relationship with Europe. At present the UK exports approximately 80% of its wild caught seafood, with 66% going to Europe. For example, 4 of the top 5, and 7 of the top 10, export destinations for UK caught seafood are European countries (MMO, 2015). In contrast, the

UK imports approximately 70 % of the value of seafood consumed here, with over 70 % of that (in terms of both volume and value) coming from non-European countries (Seafish, 2015). The top source countries include Iceland, China and Canada (Seafish, 2015). Maintaining this balance plays a key role in ensuring the UK's aquatic food security (Jennings et al., 2016).

Several other pieces of European legislation have had considerable impacts on the health of our marine ecosystems and consequently fisheries. Probably the most significant of these is the Natura 2000 network of European protected sites designated under the Habitats Directive (1992) and Birds Directive (1979). This network includes Special Areas of Conservation (SACs), for species and habitats, and Special Protection Areas (SPAs), for birds. Those with a marine component are collectively known as European Marine Sites (EMS). These sites have been designated to protect priority / threatened species or habitats (features), although there is likely to be an umbrella benefit from them to the wider environment. For a number of years after implementation, the legislation behind EMS appeared to have little teeth, but that changed in 2004 with the precedent set by a legal case in the Wadden Sea SAC which designated fishing as a plan or project which required appropriate assessment (De Santo, 2007).

Further pressure from NGOs on the UK government to enforce EMS legislation, particularly with respect to managing fishing activities in SACs (Solandt et al., 2013; 2014) has seen a sea change in the protection of these sites. Since 2012 Defra have developed a risk-based approach to managing these activities based on a matrix which combines the vulnerability of the features with the effects of the fishing gear to be considered (Defra, 2013). Consequently a number of large area inshore coastal areas within SACs around England have now been protected from bottom towed fishing gear⁶. There is considerable evidence that European marine ecosystems benefit from this level of protection (Fenberg et al., 2010). Furthermore, although these measures may appear to reduce fishing opportunities, in the medium to long-term they are likely to enhance ecosystem resilience and fisheries productivity, particularly through larval export and spillover of shellfish such as scallops and lobsters, due to protected areas acting as nursery and breeding refuges (Beukers-Stewart et al., 2005; Howarth et al., 2014; Howarth et al., 2015).

Two further pieces of European legislation have relevance to fisheries; the Marine Strategy Framework Directive (MSFD), enacted in the UK in 2012, and the Water Framework Directive (WFD), enacted in 2000. The overarching objective of the MSFD is to achieve Good Environmental Status (GES) in all of Europe's marine areas by 2020 (Defra 2012). This will involve taking an ecosystem based approach to management of all human activities in UK seas, including fisheries. To date the MSFD has resulted in an initial assessment of the environmental status of UK marine areas (Defra, 2012), a monitoring strategy (Defra, 2014) and a UK programme of measures (Defra, 2015).

An excellent example of how the MSFD is already having effects, even at the regional level, is the Clyde 2020 programme⁷, designed to revitalize the Clyde Sea, currently one of Europe's most altered marine ecosystems (McIntyre et al., 2012). Finally, the WFD⁸ should be mentioned. Although focused primarily on achieving good environmental status in freshwater environments,

⁶ <http://www.association-ifca.org.uk/marine-protected-areas/european-marine-sites-ems>

⁷ www.gov.scot/Topics/marine/marine-environment/Clyde2020

⁸ http://ec.europa.eu/environment/water/water-framework/index_en.html

improvements should also result in enhanced water quality in estuaries and nearshore areas, given its remit extends 1 nautical mile out to sea (3 nautical miles in Scotland) (Defra, 2015).

These inshore areas often act as important nursery and feeding sites for marine fish (Elliott & Hemingway, 2008). There should also be direct benefits to anadromous fish (e.g. salmon, trout) and catadromous fish (e.g. eels) which migrate between fresh and saltwater. That said, the biological benefits of improvements resulting from the WFD remain equivocal at this stage (Hering et al., 2010).



Figure 2. European Marine Sites around the UK are now protecting sensitive marine habitats such as maerl beds (*Lithothamnion spp.*), pictured here, which are high in biodiversity and provide key nursery refuges for commercially important species, such as cod (*Gadus morhua*) (Photo: Howard Wood)

Along with the influence of European policy on UK fisheries and marine ecosystems, the EU also provides considerable amounts of relevant funding aimed at making European fisheries more sustainable. The most significant of these funding streams is the European Maritime and Fisheries Fund (EMFF)⁹ from which the UK is destined to receive €241.1 million between 2014 and 2020. Although EMFF funds are then matched by the UK government, it has been questioned whether or not such funding would be available at all without the EU (Baldock et al., 2016). The EMFF's stated objectives are to encourage sustainable fisheries and support coastal communities. Like the CFP overall, the EMFF has been subject to past criticism, particularly in its previous guise as the Financial Instrument for Fisheries Guidance (FIFG) from 1994 to 2006. Even the European Commission's own Green Paper on the need for reform of the CFP in 2009 stated that overcapacity in European fishing fleets was being artificially maintained through aid from the EMFF and indirect subsidies (e.g. exemption from fuel taxes)¹⁰. However, there is again cause for optimism in the future – since the FIFG was reformed as the EMFF in 2007 there has been much

⁹ http://ec.europa.eu/fisheries/cfp/emff/index_en.htm

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF>

more emphasis on sustainability. In fact, the latest incarnation of the EMFF (since 2014) is specifically designed to deliver the objectives of the reformed CFP⁷.

The EU also provides substantial scientific research funding to the UK and fosters highly active and productive collaborations across Member States and further afield (Royal Society, 2016). The actual value of this support can go well beyond the initial monetary outlay if it targets areas with little other funding and / or primes bids for income from other sources. The scale of EU funding available is immense, for example the Horizon 2020 programme (2014-2020) is set to allocate approximately €80 billion to research, development and innovation (Royal Society, 2016). The UK is one of the largest recipients of research funding in the EU; between 2007 and 2013 this amounted to €8.8 billion. It is difficult to be precise about how much of this supports research on fisheries and / or marine ecosystem management, but that is down to the nature of work needed to solve environmental challenges. Take the [BENTHIS](#) project for example, which is receiving €6 million from the EU to examine the impact of fisheries on benthic ecosystems. It involves 33 partners (4 from the UK) across 12 countries, all working towards a common goal. It is also informed by other EU research streams – even the European Space Agency (not a body of the EU but supported by EU Member States) provides satellite images of primary productivity and circulation patterns in the ocean which are vital for interpreting the dynamics of marine communities (Szostek et al., 2016). This is the scale on which marine research often needs to be conducted to gain a full understanding, but the UK's involvement in such programmes would likely be limited after a Brexit.

The Future

It is worth considering the risks and opportunities for fisheries under three possible outcomes after a vote on UK membership of the EU.

A Vote to Remain – The 'Reformed EU Option'

The conclusion of this review is that the UK's continued membership of the EU would likely be the best long-term option for UK fisheries. It is worth noting that the gross profit margin of UK fisheries was €367 million in 2014 – the most profitable in the EU (STECF, 2015). So the UK is already doing well under current arrangements, despite some past failings of the CFP. There is also considerable cause for optimism for the future. The reform of the CFP in 2014 is resulting in more sustainable quota setting, more appropriate regional-based management and better use of the EMFF (Salomon et al., 2014; Carpenter et al., 2016). The introduction of the landing obligation (discard ban) is also likely to further increase sustainability in the future, despite some teething problems (Diamond & Beukers-Stewart, 2011). The UK played a major role in leading these reforms, and from within the EU is likely to be able to strongly influence further reforms in the future (HM Government, 2014). Furthermore, powerful environmental legislation such as the Habitats & Birds Directives, WFD and MSFD are either starting to provide tangible benefits or are coming into being. These measures should help ensure the long-term health of the wider marine ecosystem, upon which fisheries depend. Finally, the continued supply of substantial research funds from the EU will help keep British marine scientists at the forefront of solving fisheries and marine ecosystem management challenges. Certainly there is room for further improvement in all

of the above policies, but within the EU the UK can be part of that process as we adapt to a changing world coming under increasing anthropogenic pressure.

A Vote to Leave – The 'Norwegian Option'

As discussed above, such a move would require the formation of a new fisheries management system that still operated through a series of multi-lateral agreements (likely not dissimilar to the current arrangements in the CFP). Foreign rights to fish areas within the UK's EEZ would need to be re-negotiated with respect to historical agreements (pre-dating the EU), Britain's access to other states waters and the biological distribution of the relevant fish stocks. The vast majority of respondents to the Review of the Balance of Competences between the UK and EU agreed that such international governance is essential for successful fisheries management (HM Government, 2014; Baldock et al., 2016). Negotiating all of these agreements on sharing fishing opportunities and access rights would likely be lengthy and difficult, with highly uncertain outcomes (Baldock et al., 2016). Tensions would likely arise, not only between the UK and EU Member States, but also between the devolved British jurisdictions, especially with Scotland given the relatively high importance it places on fisheries (Baldock et al., 2016). It is possible that the same reference period (1973-78) that was used to determine fishing rights under the CFP could be used in these negotiations (Carpenter, 2016). In terms of the annual setting of fishing opportunities (generally quotas at present) a possible key difference with a new system is that Britain could "walk away" from negotiations if it wasn't happy with the deal being offered by the EU. Although this may sound appealing, it is likely to result in the setting of unsustainably high catch limits, as occurred during the recent "Mackerel Wars" when Iceland, Norway and the Faroes all argued for (and set) a higher quota / share of the catch than that advised by the EU (HM Government, 2014; Carpenter et al., 2015; Jensen et al., 2015). Economic / shared resource theory, and a long history of fisheries mis-management around the world, all make it highly likely that Britain would then set higher catch limits than offered, even if it resulted in unsustainable levels of fishing (O'Leary et al., 2011; Carpenter et al., 2015; Jensen et al., 2015; Carpenter, 2016).

The UK's continued involvement with the various other EU environmental policies and research funding streams which help support both fisheries and the marine ecosystem they rely on, remains highly uncertain should the UK exit the EU. For example, will the protection offered by European Marine Sites (SACs and SPAs) be dissolved or will they be incorporated into national marine nature conservation designations / management plans (e.g. MCZs & MPAs)? It seems likely this decision will be based on the priorities of the current UK government, which despite stated ambitions, has a relatively poor record on environmental sustainability to date (Environmental Audit Committee, 2014; Baldock et al., 2016). Along those lines, it is worth noting that in recent years European Marine Sites have generally offered much higher levels of protection than the MCZs and MPAs currently being implemented by the UK government (Defra, 2013).

If the UK leaves the EU, but adopts the Norway model (EEA) it would need to abide by certain rules and regulations to gain preferential access to the EU market, including many environmental ones (although with several exceptions)¹¹. For example, Norway has adopted the WFD and

¹¹ <http://www.efta.int/media/documents/legal-texts/eea/the-eea->

MSFD¹², but not the Habitats or Birds Directives¹³. This may lead to a more positive environmental outcome than a complete EU exit, although the UK's influence on any future changes to such legislation would be markedly reduced. From a fisheries point of view, maintaining current channels of trade is certainly vital, given that the majority of seafood captured by UK boats is exported, largely to the EU (See above; MMO, 2014).

A Vote to Leave – The ‘Free Trade Option’

This option is likely to pose the greatest risk to the long-term productivity and sustainability of UK fisheries. While the fisheries management system may operate in a similar way to the one described above (in Outcome 2), that would come with considerable risks. In addition, after a complete exit there would appear to be little likelihood that Britain would continue to adhere to the wider environmental policies currently implemented by the EU. Access to marine environmental research funding would almost certainly decrease and opportunities for essential international collaboration would be damaged.

[agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf](#)

¹² <http://eeagrants.org/Partnerships/Donor-programme-partners/Norwegian-Environment-Agency>

¹³ <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf>

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Land Use Planning

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Key Findings

- Land use planning remains largely under national control; EU legislation in this field can be adopted only by the unanimous agreement of Member States. Nonetheless, the important environmental role of planning in the UK has been strengthened by EU membership in diverse ways.
- Strict environmental standards introduced by the EU set the parameters within which many planning decisions are taken, notably in relation to nature conservation and air quality. EU membership has also affected planning *procedures*, for example by promoting public participation, improving access to justice and enhancing the provision of environmental information. Directives on Environmental Impact Assessment and Strategic Environmental Assessment have been particularly important.
- EU policies have been significant in promoting agendas for integrated and cross-sectoral planning approaches to environmental issues, though these agendas have gained less traction on practice, as the domestic institutional context has often been unreceptive.
- Since 2000, the environmental protection role of planning has been weakened in the UK as governments have reduced the scope for challenges to economic development on environmental grounds. EU environmental legislation has provided a bulwark against these trends, but only in a few areas, because land use planning remains one of the least Europeanised spheres of UK environmental policy. Planning may thus provide some indication of how ‘pro-growth’, deregulatory agendas could affect other spheres of environmental policy, should the UK leave the EU.

Introduction

This expert review focuses on the effects of the UK’s EU membership on the land use planning system and their environmental implications. Particular attention is given to the processes for forward planning and development control, as governed by ‘Town and Country Planning’ legislation, while recognising that the boundaries of ‘planning’ are always blurred. We focus mainly on policies and decision-making processes, rather than environmental outcomes, as this is where the effects are most clearly reported in the literature.

Land use planning in the UK is significantly devolved to the governments of Northern Ireland, Scotland and Wales, leading to some divergence in policy and practice. But since EU membership has not been a major factor in precipitating distinctive approaches, we do not examine these

complexities in any detail. Where we write about ‘the UK’, our analysis applies most directly to England.

It should be remembered, of course, that a fundamental rationale for the EU has been to promote competitiveness, trade, economic growth and open borders, thus shaping infrastructural demands and other development pressures for planning. Some of these pressures, such as requirements for waste management and renewable energy facilities, are themselves reflective of EU environmental agendas. Nevertheless, the EU’s conception of how development pressures should be reconciled with environmental protection arguably constitutes a stronger interpretation of sustainable development than that of UK domestic policy.

Analysis

The agenda

Planning is widely regarded as one of the UK’s longest-standing mechanisms for environmental protection. Its founding institutional principles and norms are very much a product of the UK’s legal and administrative context, with little influence from other countries (Newman and Thornley 1996; Nadin and Shaw 1997; Haigh 1987). Moreover, land use planning remains largely a national matter, as EU legislation in this sphere can only be adopted by unanimity (Article 192(2), Treaty on European Union). For these reasons, UK governments have remained by far the greater shaper of the procedures, organisational structures and goals of planning, and the effects of EU membership have been incremental.

Nevertheless, planning is a broad, porous and fluid policy sphere, open to myriad influences and external factors. Consequently, policies emanating from the EU have exerted a wide-ranging influence on the system, even if ‘(t)he overwhelming majority of these measures are not focused explicitly on planning’ (Bishop et al 2000, 309; Haigh 1989; Jordan 2002; Rydin 2003; Tewdwr-Jones and Williams 2001). Arguably this influence has been at its clearest and most durable in the environmental sphere (Cullingworth et al 2015; Wilson 2009).

Land use planning in the UK has been reformed by successive governments over the last 10–15 years, with intensified ‘streamlining’ since 2008. An emphasis on deregulation and representations of planning as a ‘barrier’ to growth have been wielded to promote ‘efficiency and expedition’ (Samuels 2015, 646). The effects have been to increase the power of developers; strengthen central direction over local actors; reinforce growth agendas; and obfuscate the meaning of sustainable development (DCLGSC 2014). The scope for public engagement, and the opportunities available to those who would use the planning system to promote environmental sustainability, have both been diminished. Overall, the environmentally protective role of planning has been weakened (Cowell 2013; Lee et al 2013; Tafur 2015). In this sense, the status of land use planning as ‘the least Europeanised’ field of environmental policy (Lowe and Ward 1998, 290) might be a portent for wider UK environmental policy after an EU exit—though much, as argued below, would depend on the precise scenario, the trading relationships established, and the priorities of the government in power.

Key impacts

The evidence base

In the context of land use planning, deciphering the environmental effects of UK–EU relationships is not straightforward. While there is a significant research literature concerned with planning and the EU, much of which also addresses environmental aspects (Dühr et al 2010), few analysts have focused on the effects of the EU on land use planning, in the UK, and with a focus on environmental considerations (Haigh 1987; Jordan 2002; Reynolds 1998). Research with a systematic or substantial evidence base is scarce (for some exceptions, see Bishop et al 2000; Tewdwr-Jones and Williams 2001; Wilson 2009). Moreover, the research effort tends to cluster around the negotiation and adoption of EU measures, with less attention to implementation and enforcement. This is important, because the effects of such measures can be significantly shaped in these latter stages (Fairbrass and Jordan 2001; Jordan 2002), and because the planning system has a role in implementing many aspects of the legislation.

The effects of greatest interest in this review fall into three main categories: the institutionalisation of firmer environmental standards; the shaping of decision-making processes; and the promotion of integrated, cross-sectoral approaches to planning.

Firmer environmental standards for planning

A key effect of EU membership has been to institute firm, substantive standards of environmental protection. These set the context within which planning operates and reduce the scope for domestic actors to trade off environmental quality for economic goals.

Nature conservation directives for Birds (79/409/EEC) and Habitats (92/43/EEC) are prime examples (Fairbrass and Jordan 2001; Wilson 2009). These Directives, reinforced by various EU legal decisions, give greater weight to important ecological considerations over pressures for damaging development (Owens and Cowell 2011). In short, projects that would harm sites and species designated under EU legislation should be given consent only if there are ‘imperative reasons of overriding public interest’ (Commission of the European Communities 2000)—a stiffer test than that presented by previous UK legislation. While ‘development’, as regulated by planning, is not always the major threat to wildlife sites or listed species (agricultural practices and, potentially, climate change being more important), certain damaging planning applications—including a quarry at Oaken Wood, Kent (Bishop et al 2000) and the Dibden Bay port expansion, Hampshire (Wilson 2009)—have been refused. Development plan land allocations have also been changed (Mid-Glamorgan—see Bishop et al 2000), and extant planning permissions revoked or modified (sludge dumping at Barksore Marshes, Kent [Bishop et al 2000]). The Directives have not always prevented damaging development, but where projects have proceeded they have required measures to reduce, mitigate and compensate for adverse effects (for example, Cardiff Bay [Cowell 2000] and housing in the Thames Basin [Wilson 2009]).

The influence is not only terrestrial. Rulings under the Habitats Directive have confirmed that its protective requirements apply to the UK’s offshore territory (Fairbrass and Jordan 2001). Indeed,

EU action has encouraged UK domestic moves towards marine spatial planning (Fletcher et al 2014), including the designation of Marine Protected Areas (IEEP 2016).

In relation to air quality, UK standards are underpinned by the 2008 Ambient Air Quality Directive (2008/50/EC), which lays down precise limit values for a range of pollutants and requires action to meet them. Compliance has been germane to planning decisions in an array of locations, especially where new, potentially polluting development is being proposed in areas where air quality is already close to or exceeding permitted limits. The prospective new runway at Heathrow Airport is a prominent example (ENDS Report 2015a).

Shaping decision-making procedures

At the time of joining the then European Economic Community in 1973, the UK had a well-developed and comprehensive planning system. Even so, European measures seeking to improve procedures in this sector have often encountered domestic resistance, based on concerns they would add little to domestic practice while creating ‘bureaucratic hurdles’ and causing delays through objections and litigation (Glasson et al 2012, 45; Haigh 1989; Jordan 2002; Sheate 2012). Adoption and implementation of EU policies has nevertheless had a number of important effects on decision-making procedures.

A key example is the Environmental Impact Assessment Directive (85/337/EC) and subsequent amendments. These Directives formalised what might otherwise have been a more voluntaristic British approach to EIA (Jordan 2002), by helping to standardise the type, quantity and accessibility of information about possible impacts, which must be provided when potentially damaging projects are considered (Haigh 1989; House of Lords 2000), and enabling decision-makers to be held to account (Sheate 2012). The Directives have also brought under scrutiny potentially high-impact activities previously outside the ambit of the UK planning system—notably in agriculture, forestry and offshore oil exploration (Jordan 2002). In negotiations over the Directives, the UK helped to make the legislation less susceptible to legal challenges (Haigh 1989)—an illustration of how EU policies are not simply hierarchically ‘imposed’ on Member States, and of the UK’s contribution to shaping more effective regulations.

The effects of EIA on decisions and development outcomes resist easy measurement, but there is evidence that, in combination, the process of assessing impacts, the provision of information and the facilitation of scrutiny (by planning authorities, publics, civil society organisations and statutory bodies) have been influential. They have led to modifications to projects, resulting in reduced impacts (Wood and Jones 1997; Glasson et al 2012), and enabled the early identification of problems, facilitating mitigation measures (Blackmore et al 1997). If such effects have mostly been of modest significance, EIA processes have, on some occasions, contributed to the refusal of damaging proposals (Cowell and Owens 1998). The majority of parties involved in EIA have regarded it as beneficial (Glasson et al 2012; Wood and Jones 1997).

Similar claims have been made for the Directive on Strategic Environmental Assessment (EC/2001/42), which requires assessment of certain plans and programmes before approval (Jordan 2002). The proposed Directive sought also to apply SEA to policies, but this was opposed

by a number of Member States, including the UK. The requirements of the Directive have co-evolved with longer-standing procedures (in England) for the Sustainability Appraisal (SA) of plans, including economic and social as well as environmental objectives (generating some concern that environmental goals might be marginalised; RCEP 2002; Jones et al 2005; Morrison-Saunders and Fischer 2006).

Rarely, in the early days, did SEA in practice deliver the ideals of comprehensive assessment or public engagement (Jones et al 2005; Owens et al 2004). Nevertheless, planners report that appraisal has fostered greater understanding of plans and sustainability issues, improved transparency in plan-making, and induced learning for future plan revisions (Glasson et al 2012). SA and SEA have led to plans being modified, albeit by fine tuning of policies rather than changes in strategy (Smith et al 2010). Commentators also point to improved accountability. Sheate (2012) analysed National Policy Statements for energy and ports, as well as planning policy statements on eco-towns, concluding that SEA had provided an arena for public and interest group participation and for assessment of policy measures that might otherwise have escaped scrutiny. A key point of challenge, facilitated by the Directive, concerns assessments that have failed adequately to consider 'reasonable alternatives', leading to certain prospective policies being revised or even withdrawn (Glasson et al 2012; Sheate 2012).

Both the EU and the UK have ratified the UN Convention on *Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* (the Aarhus Convention). Although Aarhus is not an EU measure, the Court of Justice of the EU (CJEU) has a role in securing compliance, with important effects on environmental decision making in the UK. CJEU decisions have underscored the standing of environmental organisations in representing legitimate public interests, and UK governments have been forced to improve financial protection for those bringing environmental cases before the courts (Maurici and Moules 2014; ENDS 2015b). Incremental reinforcements to public rights to information and the enablement of public engagement have also been provided by 'the Seveso Directives' (currently 2012/18/EU), in respect of the control of major accident hazards (Walker et al 1999).

Integrated environmental governance

A perennial issue in the quest for more environmentally effective planning is the pursuit of 'joined up' or 'integrated' approaches, such that actors in different sectors (for example, transport, environment, energy) work to align their activities, and planning is undertaken at spatial scales better attuned to ecological, economic and social processes, which transcend administrative and national boundaries (RCEP 2002). The EU has been an important promoter of such integration (Jordan 2002), but has exerted influence primarily through the generation of ideas and encouragement of collaboration, assisted by targeted funding (Colomb 2007).

One much-discussed initiative has been the European Spatial Development Perspective (ESDP, Commission of the European Communities 1999), which represents a key step in the EU's interest in spatial policy (Cullingworth et al 2015; Morphet 2015). The ESDP was concerned with promoting 'balanced sustainable development' across the EU, in part by redressing spatially uneven and unsustainable development patterns. Of particular relevance here is its promotion of

‘spatial planning’, which entailed the integration and coordination of all sectoral activities with spatial consequences. Although purely an advisory document, ESDP ideas influenced government reforms to planning in the early 21st century, with the creation of Regional Spatial Strategies in England intended to promote integrative spatial planning along ESDP lines (ODPM 2005, para 30; Haughton et al 2010; Baker and Wong 2013; see also Shaw and Sykes 2003; DETR 2000). Spatial planning with a recognisably European flavour also informed exercises in national spatial strategy-making in Northern Ireland, Wales and Scotland (Harris et al 2002; ECOTEC and Department of City and Regional Planning, Cardiff University 2001).

Linked to ESDP objectives is the INTERREG programme, funded by the EU structural funds, developed to foster collaboration between regions in different Member States on cross-border and transnational issues (Colomb 2007; Dühr and Nadin 2007). Planning authorities in the UK have been frequent participants in INTERREG projects addressing (*inter alia*) environmental and marine issues (e.g. off-shore renewables, climate change adaptation) as well as trade and transport infrastructure (Bishop et al 2000).

Commentators identified the EU Water Framework Directive (WFD) (2000/60/EC) as having ‘potentially far-reaching ramifications’ for the planning system (White and Howe 2003, 621), in that it could strengthen the position of water and environmental issues. The WFD is integrative in promoting a ‘comprehensive, holistic and sustainable approach’ to water policy (Carter and White 2012, 2331) by instituting processes for setting objectives and pursuing ‘good water’ status for all ground, surface and coastal waters, to be achieved principally by River Basin Management Plans operating at the ecologically relevant catchment scale. EU marine policy has also become an important driver of integrated approaches to coastal zone management in the UK (Fletcher et al 2014).

Despite the potential merits of these various integrative measures, firm evidence that they have had lasting effects on UK planning is limited. This is due in part to the difficulties of attributing particular outcomes and decisions to multi-dimensional, multi-actor and strategic-level planning activities, and of charting subtle, longer-term learning effects on practices and ideas (Colomb 2007). So, for example, there is little evidence to date that the WFD has significantly affected land use planning processes and outcomes, with analysts noting how achieving the environmental goals of the Directive depends on actors and issues (especially agricultural practices) beyond the reach of the competent authorities charged with delivery (Carter and White 2012; Salvidge 2015). Similarly, ‘spatial planning,’ as pursued by the Regional Spatial Strategies (RSS) has faltered—in practice, under Labour, when achieving sectoral integration became subordinate to delivering on central government goals (Haughton et al 2010); and existentially under the 2010 Coalition Government, which abolished regional-level governance entirely (Baker and Wong 2013; Morphet 2015, Owens 2015).

To a large extent, the fate of EU-driven agendas in this field has exposed the fundamental and enduring difficulties of fostering spatially and sectorally integrated planning. The issues are complex and contested, agency is dispersed, and the powers to align actors—relying mostly on persuasion, ideas and (modest) financial support—are often too weak to dislodge dominant sectoral agendas (Degeling 1995; Dühr and Nadin 2007; Owens and Cowell 2011). Furthermore,

over the last decade the political context for planning has become less receptive to spatial and sectoral integration, as concerns with complex issues around sustainability have been eclipsed by intensifying emphasis on economic growth and competitiveness (Dühr and Nadin 2007). EU policy, in embracing the Lisbon agenda, is itself implicated in such shifts, and thus in wider struggles to reconcile economic and environmental goals in the planning system

The Future

Although planning is ‘the least Europeanised’ environmental policy field (Lowe and Ward 1998, 290), its structures, procedures and outcomes have been influenced by EU membership in significant ways: through the institution of firm environmental standards, not readily traded off against other objectives in planning and development control; through measures that enhance the availability of environmental information and allow projects and plans to be subjected to greater scrutiny; and, more subtly, through the generation and absorption of knowledge and ideas. Further, there is evidence that EU membership has provided a bulwark against the ‘rolling back’ of environmental concerns in the planning system over the past decade. So, for example, the National Planning Policy Framework (for England), which collapsed a library of planning policy into a single document, still states that ‘(p)lanning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements’ (DCLG 2012, para 2). It is pertinent to our analysis in this final section that the NPPF refers in this context only to European wildlife sites; the need for plan appraisal to be compliant with the SEA Directive; and EU limit values for pollution.

Inherent uncertainty attaches to all three post-referendum scenarios considered in this document, and particularly to the two that involve Britain’s exit from the EU. In the case of land use planning, the uncertainties are multiplied for a number of reasons, making it especially difficult to gauge how the planning system might evolve. One is that the EU has not been the prime mover in shaping land use planning in the UK. Since 1973, governments have modified the system in numerous ways (for example, by adjusting the weights attached to development and environment, national and local decision-makers, or public and private interests); EU membership has scarcely hindered such changes. A further complication is that where the EU *has* had discernible impacts on UK planning, these have not occurred through a substantial body of European planning legislation, but rather through the EU’s interventions in other policy areas.

A Vote to Remain – The ‘Reformed EU Option’

In the context of the ‘Remain’ scenario, it is noteworthy that the reforms agreed in recent UK/EU negotiations have not been focused on environmental (or planning) matters. More significant, perhaps, are the EU’s wider commitments to growth and ‘better regulation’, with the latter sometimes including reform of environmental rules (as well as the processes through which they are agreed). Even in the ‘Remain’ scenario, therefore, there could be changes to the environmental protection role of planning vis a vis the facilitation of growth, arising from policy adjustments in areas such as air pollution control and species protection. Indeed, the European Commission has itself begun developing measures to accelerate planning decisions for major infrastructure, looking to the UK as something of an exemplar (European Commission 2011;

Marshall 2014). Set against these possibilities is the view that the environment is a mature, already ‘reformed’, EU sector, in which substantial future deregulation seems unlikely (Gravey 2016b & Burns 2016). If so, we might expect European environmental law to continue to frame and constrain UK planning policies and outcomes.

A Vote to Leave – The ‘Norwegian Option’

If Britain leaves the EU, but negotiates successfully to remain in the EEA, there are further uncertainties. While ongoing trade relations with the EU might require retention of much of the environmental acquis (and thus its effects on planning), some of the most significant measures in terms of our analysis—for example, the Habitats and Birds Directives—would not be part of an EEA agreement (ENDS 2015c). The UK government would then have the power to change its laws and regulations in these areas. Whether it would choose to do so is a matter of conjecture. Historically, some planning policies for protected areas (e.g. National Parks) have been resilient in the face of deregulatory impulses, largely because they enjoy sustained societal and political support (Thornley 1991; Cowell 2013), though European wildlife sites might come under pressure for more ‘flexible’ approaches (see, for example, HM Government 2012).

A Vote to Leave – The ‘Free Trade Option’

If Britain leaves the EU and does not become part of the EEA, the losses of the EEA scenario (from a planning/environment perspective) would still apply and opportunities to revise legislation would no longer be constrained even by EEA requirements. The consequences would be contingent on how far environmental issues are relevant to any alternative trade agreements negotiated, on government priorities, and on what Kingdon (2003, 163) calls ‘the balance of organised forces’. It is conceivable that land-use issues, always a sensitive domain for EU intervention, and with complex relationships to trade *sensu stricto*, would not be the strongest contenders for inclusion in future trade agreements.

One message to emerge from this analysis is that an assessment of the environmental effects of the scenarios—be they positive or negative—cannot simply be read from the extent to which the UK would still need to comply with present legislation. Rather, the implications reflect a more profound and deeply politicised set of arguments about human–environment relations, the sustainability of economic development, and the public benefits of planning, regulation and engagement with decision-making processes. Both the ‘streamlining’ of the planning system in England and some strains of resistance to EU membership emanate from beliefs that regulation, participation and coordination are burdensome (Cameron 2012, 2015), and that markets should determine the extent, location and environmental sustainability of development with minimum interference. Interestingly, flaws in similar arguments fomented the creation of the UK planning system in the nineteenth century and the expansion of the EU environmental agenda a century later. A serious debate about the environmental merits of EU membership demands that these wider arguments be vigorously aired once again.

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International Policy

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Key findings

- The UK has played a prominent role in giving the EU an international environmental face. It makes important contributions that shape the EU's positions, strategy and diplomacy on critical global topics such as climate change, ozone depletion and biodiversity protection.
- The EU has acted as a major diplomatic actor in international environmental negotiations, on a par with large states such as the US and China. Working together at a global scale has allowed the Member States to project their international influence further than if they had acted alone.
- EU environmental policies have significant external effects across the globe. The EU's international standing derives from the economic strength of its single market, the ambition and legal force of its internal policies and the fact that it speaks for 28 Member States and over 500 million citizens.

Introduction

This expert review addresses the role of the EU and the UK in international environmental policy. It focuses on multilateral environmental agreements (MEAs) that arguably provide the main fora of international environmental policymaking. Several hundred MEAs exist, including the 1992 UN Framework Convention on Climate Change; the 1992 Convention on Biological Diversity and its protocols; the Rotterdam, Stockholm and Minamata Conventions on chemicals; and the Vienna Convention and its Montreal Protocol for the protection of the ozone layer. The EU itself is a party or signatory to close to 50 MEAs (including regional agreements).¹⁴ Apart from constituting international treaties, MEAs also provide fora for regular decision-making through which international environmental policy is developed (e.g. Gehring 2007).

This review explores the role of the EU and its Member States in international negotiations and environmental diplomacy. In doing so, it also addresses the important links between domestic and international EU policy-making, in part based on the EU's power arising from an integrated market and related regulatory standards that serve as a source of bargaining power at the international level ('market power': Damro 2012; 2015; 'regulatory power': Young 2015) and form a significant part of the EU's 'capability' in this policy field (Bretherton and Vogler 2006).

¹⁴ See list at: http://ec.europa.eu/environment/international_issues/pdf/agreements_en.pdf.

Analysis

The making of the EU's international environmental policy

In the largest parts of international environmental policy making, legal competences are shared between the EU and its Member States (i.e. both possess authority to regulate to some extent in accordance with the relevant provisions of the Treaty on the Functioning of the European Union – TFEU). Only in limited sub-areas, for example where international trade or fisheries are concerned, exclusive EU competence exists. Even in the case of MEAs focusing on areas of exclusive EU competence, such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, Member States have retained certain competences (e.g. regarding budgetary matters). The division of competences has also remained a sensitive issue because involvement in external relations has remained precious to Member States. Hence, relevant international environmental agreements generally constitute ‘mixed agreements’ with participation by both the Member States relevant for the agreement and the EU itself, which usually has to declare the extent of its competences (Eeckhout 2011; Morgera 2012).

Shared competence in the context of ‘mixed agreements’ implies the interdependence of the EU (represented by the European Commission) and its Member States, which requires coordination for policy coherence. Article 218 TFEU sets out the cooperative procedures to be followed in case of the negotiation of new international treaties (see Eeckhout 2011, especially chapter 6; Buck 2012). As a matter of practice and practicality, they are also followed where international negotiations do not aim at new international treaties. Accordingly, the European Commission is to make recommendations for negotiating directives to the Council of Ministers of EU Member States that decides on these directives (usually by qualified majority). The EU negotiator, usually the European Commission (in the case of the international climate negotiations: the rotating Presidency of the Council of Ministers), subsequently leads the negotiations in close coordination with a committee of the Member States. But specific negotiating positions and objectives, reflected in the aforementioned negotiating directives or in Council Conclusions (with the latter requiring consensus among Member States), are generally decided by the Member States. The European Parliament also provides input, since the entry into force of the Lisbon Treaty in December 2009 based on its power to veto EU ratification of most international treaties (Article 218, para. 6 TFEU). Negotiating positions and strategy are also further developed during the negotiations in consultation with the Member States. Informal pragmatic arrangements have been developed over the years to optimise EU negotiating influence. For example, in the international climate negotiations, a system of ‘lead negotiators’ has been established that allows the EU to reap benefits from continuity and make use of negotiating skills available among both the European Commission and the EU Member States, prominently including the UK (Delreux and Van den Brande 2013). While the coordination arrangements are time-consuming and have at times been cumbersome (e.g. Wettstad 2000), the discussions involved help EU negotiators to become acquainted with the various aspects of an issue early on (e.g. Birkel 2010).

Coordination has over the years increasingly extended to ‘environmental diplomacy’ beyond international negotiations as such. Enhanced efforts have been made to reach out to international partners via embassies and other bilateral and inter-regional contacts so as to enhance impact and pool resources. This has included the creation of the ‘Green Diplomacy Network’ to coordinate environmental diplomacy of the EU and the Member States in concrete

terms. Since the entry into force of the Lisbon Treaty strengthened by the European External Action Service (EEAS), the Network has served to coordinate diplomatic demarches prior to international climate summits and to share relevant information among EU Member States (Vogler 2005; Schunz et al. 2009).

The UK has constantly played a prominent role in shaping EU external environmental and climate policy and diplomacy. It may not be surprising that over the years, and especially after the entry into force of the Lisbon Treaty, these arrangements have repeatedly given rise to internal conflicts. Discussions especially concerned the interconnected issues of the external representation of the EU and its Member States and the division of competences between them. In these discussions, the UK has regularly pushed for securing a continued prominent role for the EU Member States in both respects. For example, it has consistently resisted the long-lasting push by the European Commission to be, on the basis of Article 218 TFEU, the sole negotiator for the EU and its Member States in international climate negotiations – as it already is for most other MEAs, in some cases after intense internal discussions (e.g. Corthaut and Van Eeckhoutte 2012; Thomson 2012; Delreux 2012).

As one of the biggest Member States, the UK has generally also been a very influential voice in policy debates forming EU positions, in recent years especially in the climate change context also as a member of the progressive ‘Green Growth Group’ of EU Member States. For example, the UK was one of the main driving forces of agreement on a GHG emission reduction target of 20 per cent by 2020 (and a conditional offer to increase this to 30 per cent) agreed in 2007 (Rayner and Jordan 2011, pp. 99, 103) and of a GHG emission reduction target of ‘at least 40 per cent’ by 2030 agreed at the European Council in October 2014 (e.g. Dupont and Oberthür 2015b). The UK has also played a strong role in overall European environmental and climate diplomacy. Building on its strong diplomatic network across the world and its wealth of diplomatic experience and expertise, it has been able to greatly contribute to and shape European environmental diplomacy in the Green Diplomacy Network and beyond, e.g. including in the Cartagena Dialogue on for Progressive Action that has served to build a broader international coalition on climate change in the 2010s (Schreurs and Tiberghien 2007; Rayner and Jordan 2011; Oberthür 2016).

The EU as a major power and leader in international environmental policy

The existing literature has revealed that the EU and its Member States have been rather successful in international environmental policy over the past decades, frequently acting as an international ‘leader’ or ‘leadicator’ (i.e. a mix of leader and mediator: see Bäckstrand and Elgström 2013). The EU has been a major driving force in several areas of international environmental policy (Zito 2005; Oberthür 2009; Vogler 1999; 2005; Vogler and Stephan 2007; see also literature overviews in Groen and Oberthür 2013; Groen 2015), including climate policy (Gupta and Grubb 2000; Damro 2006; Schreurs and Tiberghien 2007; Oberthür and Roche Kelly 2008; Oberthür 2011; Wurzel and Connelly 2011; Bäckstrand and Elgström 2013). As such, it has helped to shape and/or bring about several MEAs, including the Montreal Protocol for the protection of the ozone layer (Oberthür 1999), the Cartagena Protocol on biosafety to the Convention on Biological Diversity (Rhinard and Kaeding 2006; Falkner 2007), the Nagoya Protocol on genetic resources to the Convention on Biological Diversity (Oberthür and Rabitz 2014), the Rotterdam and Stockholm Conventions on chemicals (Delreux 2008; 2011; Selin 2014) and the recent Paris

Agreement on climate change (Obergassel et al. 2016; Oberthür and Groen forthcoming). International negotiations and agreements on the environment have, at the same time, also regularly served as important focal points for the development of EU internal environmental policy and law.

On some of these occasions, the EU has been rather successful in pushing for environmental ambition even though it implied policy change that is inherently difficult to achieve. This general picture does not exclude some important failures, most prominently at the Copenhagen climate summit in 2009 (Oberthür 2011; van Schaik and Schunz 2012; Groen and Niemann 2012), which have generally been overcome over time. In the case of climate change, this has involved adaptation of the EU strategy to changing geopolitical structures (Bäckstrand and Elgström 2013; Oberthür 2016). Overall, the EU has managed to be on a par with other major powers such as the US and China.

The available evidence suggests that coordination in international environmental policy has been strongly mutually beneficial for the EU as a whole and its Member States, including the UK. First of all, it has enhanced EU influence and weight in this policy field as it has allowed EU Member States to enhance their influence by pooling their respective resources. For example, the EU still has the biggest market worldwide and accounts for about one-fifth of world GDP, to which the UK contributes about one-sixth. The UK also contributes somewhat less than 15 per cent to overall GHG emissions of the EU that itself accounts for about one-tenth of global emissions (WRI 2016). Its share in the overall EU share in global biotechnology patent applications (a main measure of power with respect to the regulation of genetic resources) is comparable (Oberthür and Rabitz 2014). The situation is similar with respect to other relevant indicators (installed capacity of renewable energy, share of consumption and production of relevant products, including chemicals, financial capabilities). On the one side, the UK would be one among quite many players accounting for less than five per cent of the world total without EU pooling – far behind the US and China (and the remainder of the EU). On the other side, the remainder of the EU would be significantly weakened as a player without the UK, not least vis-à-vis the US and China, since it would lose about one-sixth of its weight (Rayner and Jordan 2011; on the underlying notion of ‘market power Europe’, see Damro 2012; 2015).

Second, the whole EU including the UK have also gained from the sharing of the effort of environmental diplomacy implied in the coordination discussed above, including through the increased cost-effectiveness implied by the pooling of resources. For example, while others have benefited from information sharing and outreach executed by the UK, the UK has similarly benefited from environmental diplomacy activities of other Member States, the EEAS and the European Commission. Each of these contributors has in this context been able to bring their comparative advantages to the table, such as special relations with particular parts of the world (e.g. Spain/Portugal – Latin America; France – francophone Africa; Central and Eastern Europe – Eastern neighbourhood). As a result, EU diplomacy has had a broader reach than any of the Member States would have had on its own. Also, the ‘team EU’ approach to negotiations has been found to overall enhance negotiating capabilities (Delreux and Van den Brande 2012; Thomson 2012, p. 106), although a debate on whether the EU always needs to speak with (only) one voice or could, alternatively, bring one message with many voices has gained some momentum (Conceicao-Heldt and Meunier 2014).

The importance of domestic EU policy

The central importance of EU domestic policy for the EU's international role has been firmly established in the literature, including at least four significant aspects:

- 1. The EU's domestic policies shape its external policies.** It has been well established in the literature that the EU tends to advocate and push for ambitious international environmental policies especially where and to the extent that it has developed ambitious domestic policies. There is a clear rationale for this correlation: to the extent that Member States are subject to stringent and potentially costly regulation, they gain an interest in internationalizing this regulation in order to provide their industry with a level playing field. In addition, they learn about the benefits of such regulation and can bring the lessons learned to the international level (e.g. Schreurs and Tiberghien 2007; Kelemen 2010, Kelemen and Vogel 2010; Oberthür 2011).
- 2. International credibility and influence.** Especially where the EU has advocated ambitious environmental and climate policies at the international level, its domestic policies have furthermore very much affected its credibility. Where domestic policies are not in sync with international demands and proposals for action, the EU has been vulnerable to allegations of lacking credibility. This has, for example, been the case in the 1990s regarding climate change (e.g. Wettestad 2000; Oberthür and Pallemmaerts 2010, pp. 28-38), but also more broadly (e.g. Burchell and Lightfoot 2004). Turned positively, 'leading by example' has been an important component of the EU's 'soft power' as it proves that solutions propagated internationally are not hollow words, but do work in practice, and that the EU has important knowledge and expertise available for addressing the problem at hand (e.g., Gupta and Grubb 2000; Oberthür and Roche Kelly 2008; Parker and Karlsson 2010).
- 3. EU coherence in international environmental policy.** EU influence and success in achieving its objectives in international environmental policy have been related to the internal coherence of the EU and its Member States in international negotiations. As is known from negotiation theory and the concept of 'two-level games', internal divisions in particular undermine ambitious, reformist positions (and can be helpful for defending conservative ones) (Putnam 1988; Meunier 2000; Rhinard and Kaeding 2006; Oberthür and Rabitz 2014). In this respect, established ambitious domestic EU policies do not only raise the interest in internationalizing them (see above), but also tend to unite EU Member States towards this goal and thus significantly support coherence (see Groenleer and van Schaik 2007; van Schaik 2013; Birkel 2010).
- 4. International policy diffusion.** Beyond international negotiations, domestic environmental legislation in the EU has been found to have significant effects on international companies and foreign jurisdictions ('Brussels effect'). Especially EU environmental product standards may de facto have global reach because of the size of Europe's market. Such effects also entail that other jurisdictions (be they national or subnational) copy or emulate EU environmental legislation. Important factors driving such regulatory diffusion again derive from (1) the size of the EU's internal market ('market power Europe'), but also from (2)

learning across jurisdictions because countries are facing similar problems (Bradford 2012; Biedenkopf 2012; Damro 2012; Young 2015; see also Holzinger and Sommerer 2011).

As a Member State, the UK has been part of a complex policy-making system which it has co-shaped. EU policy-making is characterized by important feedback effects that in many ways have supported coherence among its members. Significantly, EU domestic environmental and climate policies have provided a strong basis for external policy and external effects, creating a win-win for EU Member States. The UK leaving the EU would undermine these forces and weaken these undercurrents of the EU's international environmental policy, while at the same time depriving the UK of its capacity to co-shape them. EU domestic and international environmental policy would likely change as a result, in many cases (including climate policy) towards less ambitious policies. The result could be an increasing alienation between the UK and the remainder of the EU that may also complicate attempts of coordinating between the remainder of the EU and a UK operating outside the EU.

The Future

As the saying goes, 'it is difficult to make predictions, especially about the future'. Uncertainty may be particularly high regarding future dynamics in a 'no' vote scenario, especially in the longer term (because of possible knock-on effects). The below assessment is thus based on a *ceteris-paribus* assumption, namely that the EU would, in the case of a no vote, maintain its operations as is without the UK. This might or might not be the case as the UK leaving may result in some remaining EU Member States pushing for further integration, while centrifugal forces across the EU may be strengthened.

A Vote to Remain – The 'Reformed EU Option'

The EU reforms sought by UK Prime Minister Cameron seem to have little direct bearing on the EU's international and domestic environmental policy. However, the demands for 'sovereignty' expressed may well affect the dynamics of policy development, as both the departure from 'ever closer Union' and the stress of 'subsidiarity' may be employed to attack future initiatives for progressive policy development. Most directly related to international environmental policy, they may well strengthen traditional UK arguments for keeping a prominent role for Member States in external environmental policy under 'shared competences' (representation as well as policymaking). As existing arrangements have in the past by and large proven effective (and sufficiently flexible), this may not be reason for major concern.

A Vote to Leave – The 'Norwegian Option'

If the UK became a member of EFTA or EEA, there might be two potential ways in which it may relate to the EU's international environmental policy. It may simply associate with the EU's international policies (without a place at the table of EU external decision-making). Alternatively, and perhaps more likely, it could pursue its objectives in international environmental policy formally independently of the EU (like Norway or Switzerland). In this case, the UK would nevertheless be under considerable pressure to closely align with EU objectives to a significant extent, since, especially under the EEA agreement, it would have to apply much of the EU legislation implementing international environmental agreements anyway. In both cases, both

sides would likely lose in international influence and diplomatic capability. Attempts to coordinate their environmental diplomacy could be made, but this would presumably require considerable extra-efforts because of a lack of existing structures for the effective pooling of diplomatic resources with non-Member States. In any event, the UK would not have any formal say on relevant domestic and external EU policies. EU policies could as a result be expected to change in substance as the balance of interests changes (with one of the more ambitious forces on climate change leaving). To the extent that the domestic policies of the EU and the UK diverge over time, differences between the UK and the EU at the international plane may also grow more significant and make coordination more cumbersome. The international reach of market-relevant EU legislation, reinforced by EEA/EFTA obligations, would to some extent limit this effect. While both the EU and the UK would lose in international influence, especially the losses for the EU would to some extent be limited by EEA/EFTA arrangements supporting UK alignment.

A Vote to Leave – The ‘Free Trade Option’

The UK leaving the EU completely would likely result in a more extreme lose-lose situation (compared with the EFTA/EEA scenario). As in the EFTA/EEA scenario, both the EU and the UK would significantly lose in diplomatic capability and international weight/influence (as their ‘market’ and ‘regulatory power’ would be diminished), for example vis-à-vis China, the US, Japan and others. This effect would be more pronounced for the UK than for the EU. The EU would also lose one of the currently more progressive internal forces especially regarding climate change (although this factor may be subject to change over time). The UK would probably become an independent international player, entering into occasional alliances – with the EU or others. The market and regulatory power of the EU would likely work towards aligning some part of UK policies with those of the EU, but divergences (that may not be great to start with) are likely to grow over time as domestic policies increasingly develop in different directions, and are not limited by EFTA/EEA membership.

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National Government

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Key findings

- The EU does not place any legal obligations on how member states organize their domestic administrative systems or their relationship with devolved countries. This arrangement gives UK central government a relatively free hand to (re)structure and resource Whitehall departments or (not) to devolve significant legal powers to Wales, Scotland or Northern Ireland.
- Although the structures of Whitehall have been largely unaffected, EU membership has deeply affected the inner workings of individual departments. Over time, the environment ministry (DEFRA) and the Department for Energy and Climate Change (DECC), have learned to shape EU policies at the design stage so they align with the UK's changing national interests.
- Environmental policy is devolved whereas EU policy is the responsibility of UK central government. In the wake of devolution, EU policy has provided a common framework which allows some national differences to emerge but limits the scope for substantial divergences. UK ministers must be sensitive to these differences when negotiating in the EU.

Introduction

The effect of deepening EU integration upon UK government has been slow and accretive and has taken place in a manner relatively unseen by the UK public. The cumulative effect of the changes, however, has amounted to a substantial and significant alteration in the pattern of UK government and policy-making that could be regarded as a quiet revolution. The election of the Blair government in 1997, and its re-election in 2001, gave the process of adapting to EU membership a considerable shift in pace and direction as the UK sought to bring about a 'step-change' in its relationship with other member states. However, this impulse was rather short-lived with subsequent governments giving a lower strategic priority to shaping the EU policy environment.

In this chapter we review what has taken place within government since the UK joined the EU in 1973. We explore the changes in the structures of central government and the policy making processes in which they are embedded. We begin by examining the changes at the central government level (centred on the cabinet and foreign offices) and then move out to consider the main departments of state and then down to look at the relationship between Whitehall departments and specialized agencies such as the Environment Agency and subnational government.

Analysis

In this chapter we review how central government structures and decision making processes have been impacted by EU membership. We do so from the perspective of Europeanization (Green Cowles *et al.* 2000; Knill 2001; Boerzel and Risse 2000), which we take to include both the top-down impact of the EU upon the UK and also the flow of influence running in the other direction. We recognize that following EU membership, an iterative process has been under way, not least because the adaptation of the UK governmental system has been consciously designed in part to ensure effective input into EU policy-making in Brussels. The process entails two separate steps. One is that domestic institutions must find suitable ways of processing EU policy business. The lowest adjustment cost is incurred by incorporating EU business into the pre-existing domestic logic of UK governance. Secondly, domestic institutions must also adapt their procedures so as to be able to make an effective input to EU policy dynamics (Benson and Jordan 2008).

National government

UK central government's adaptation to EU integration has been a long-term process (Bulmer and Burch 2009; Armstrong and Bulmer 1996). It began in 1961 with the first application for membership (Edwards 1992). The process developed in earnest after the UK's formal accession in 1973 (Bulmer and Burch 2009; Armstrong and Bulmer 2003). Even then it was not, at least so far as the machinery and operation of government was concerned, a 'big-bang' event (Hannay 2000), since adjustment had begun years before in EU facing departments such as agriculture and foreign affairs (Bulmer and Burch 2001; 2009). Nonetheless, by 1973 a central hub for coordinating EU policy-making across Whitehall had fully formed (Bulmer and Burch 1998; Bender 1991).

This hub today comprises the prime minister and his office; the foreign secretary and the Foreign and Commonwealth Office; the Cabinet Office European and Global Issues Secretariat; the UK Representation to the EU in Brussels, and a group of key legal advisers (Bulmer and Burch 1998; 2009; Kassim 2000). An inner core of ministries that have major EU responsibilities is made up of the Treasury, DEFRA and the business department (Smith 1999). The remaining departments form an outer core, although some like the Home Office or DECC have also gained substantial EU responsibilities since 1973. Further from the core are the devolved authorities, for which EU policy has significant implications, for instance regarding the Scottish government's environmental or fisheries policies. By contrast with the pre-devolution situation, ministers in Whitehall have to coordinate policy with devolved authorities having a quite different electoral mandate from that in Westminster (see Bulmer *et. al* 2006: 84-6). Formally, however, European policy remains a reserved matter for the UK government, i.e. the Whitehall departments take the lead in EU negotiations and ultimately are responsible for ensuring that EU law is fully complied with (Burch and Holliday 1996).

All these departments, the devolved executives and selected government agencies – such as the Environment Agency – have had to find ways to monitor developments in the EU and to implement decisions and legislation that has been agreed. They also have had to develop policy machinery so as to be effective participants in decision-making at EU level (Bulmer and Burch 2009; Kassim 2001). The agriculture ministry was one of the first line departments to reorganise

itself in this way. It realised that it was in its departmental interest to be fully involved in EU processes. Even when accession negotiations failed in the 1960s due to President de Gaulle's veto, it realised that it had to monitor the development of the Common Agricultural Policy.

Precisely when these organisational adaptations have taken place has, therefore, been a function of the evolution of policy at EU level. In several departments (Smith 2001), the arrival of a new minister triggered an organisational shake-up to make the department more effective in utilising the opportunities (or minimise the costs) arising from membership (Buller and Smith 1998). In the case of DEFRA, the arrival of John Gummer accelerated cultural and tactical changes that were already underway in the department (Jordan 2003). DEFRA – or the Department of the Environment as it then was – began to change in the late 1980s, following a number of highly politicised conflicts with the European Commission over non-compliance with key EU laws on water, air and waste water treatment (Lowe and Ward, 1998). Many Whitehall departments (including the Department of the Environment) viewed EU commitments as no more than 'statements of intent'. As their legal status became clearer (through enforcement action by the Commission leading to rulings by the European Union Court of Justice [CJEU]) it greatly complicated attempts to drive through important policy programmes such as water and energy privatisation (Jordan 1998a/b). Over time DEFRA adapted (DoE 1993; Haigh 1995). It 'learnt' more *European* tactics (Humphreys 1996), established new alliances and, most profoundly of all, adopted a new (i.e. more environmental and more European) 'departmental view' (Jordan 2002 p211). Paradoxically, 'Europeanisation' has greatly strengthened DEFRA's arm in battles with other Whitehall departments, even though it did not consciously set out to achieve this outcome (Jordan 2001; Jordan 2002). Nonetheless, the need to comply with EU laws remains a factor constraining domestic policy making (and thus DEFRA's autonomy), for example in relation to urban air quality in London and in and around Heathrow airport.

The interaction with non-EU factors

The broad pattern of adaptation summarised above has intersected with a number of other developments since 1973, shaping how government deals with the EU. First, governments have taken quite different approaches to the EU depending on the prevailing political commitment to Europe or the majority commanded in Parliament (Bulmer and Burch 1998). Second, devolution after 1999 meant that a new set of arrangements had to be set up and added to existing coordination processes – in the form of concordats – between Whitehall and the devolved authorities over such issues as information-sharing, consultation and legal responsibilities (Bulmer et. al 2002). The impact of the concordats varied between and within ministries. Within DEFRA strong agricultural policy coordination had existed for decades between the UK government and the 'territorial' departments, such as the Scottish Office in Edinburgh (see above). The concordat built on established working relationships, facilitated at the start of devolution by Labour's governing role in London, Edinburgh and Cardiff. For environmental policy, however, the concordats had bigger implications because such coordination was not well established and consultation with Scotland, for example with its different 'habitat' considerations, was sometimes neglected (Bulmer et. al 2006: 127). Under the present political constellation between London and the devolved authorities there is scope for party politics to hamper agreement as well, since the Scottish National Party government in Edinburgh might for

both substantive and political reasons disagree with, say, the London government's negotiating position on EU fisheries policy.

Finally, changes to the administrative and political climate, such as the introduction of new public management methods and the climate of austerity following the 2008 financial crisis, have also had more subtle effects on the way in which the UK engages with the EU. In other words, the EU has not compelled the UK to make changes but is part of a wider policy context within which change and adaptation are taking place (Bulmer and Burch 2009, 192-6).

More than anything else, adaptation to the EU has been affected by the ongoing political contingency arising from party-political division over European integration (George 1994). The Heath and Blair governments embraced working within the Brussels because of the tone set by the two prime ministers. Divisions within the Labour governments of Wilson and Callaghan, the Conservative ones of Major (from 1992) (Forster 1999), (from 2015) Cameron and the Conservative-Lib Dem coalition, made policy more reactive and reluctant, although again with some significant variation amongst departments.

The Thatcher governments in the 1980s benefited from a large parliamentary majority but the pattern of engagement varied over time as her own view of the EU shifted. Securing a budget rebate placed her first government into conflict with European partners but, once resolved, led to a period where British neo-liberal economic ideas became very influential in the momentum behind creating the single market, which is at the heart of today's EU (and also acted as a springboard for EU environmental policy (Jordan 2002; Jordan 2000). This development led other European states to push for stronger social policy and monetary integration, which in turn led Mrs Thatcher back into conflict with partners and the then Commission President, Jacques Delors. Domestically, the ensuing divisions in the Conservative Party contributed to the fall of Mrs Thatcher and the EU becoming a highly poisonous issue for successive Conservative leaders (Young 1998).

Patterns of change in the environment sector

When it joined the EU, the UK had some of the oldest and most innovative policy structures in the world (Jordan 1998a; Lowe and Ward 1998). In 1863 it created the first industrial pollution control agency in the world, known as the Alkali Inspectorate (Ashby and Anderson 1981). In 1970, it created the world's first integrated environmental ministry – the Department of the Environment (Draper 1977; Holdgate 1979). The EU was not expected to have much of an influence on these arrangements (but see HOLSCEC 1979; RCEP 1984). On the contrary: influential policy elites expected the Commission to learn lessons from Britain's long and 'proud' heritage of environmental problem solving (Waldegrave 1985).

These policy structures have changed massively since 1973 (Haigh and Lanigan 1995). The environment department has undergone many structural changes, first absorbing and then losing responsibilities for transport. Currently, DEFRA has responsibility for agricultural matters having absorbed the former agriculture ministry. The Alkali Inspectorate is long gone, its functions now being performed by the national Environment Agency.

Most of these changes were domestically inspired. For example, as part of a massive programme of institutional change and upheaval between 1979 and 1997, the Conservatives scaled back the

civil service, merged departments, privatized industries such as water and energy, and contracted out many central run functions to the market. The EU was only really an indirect cause of change. For example, the EU was a factor in the establishment of a national rivers authority, since absorbed into the Environment Agency (O’Riordan and Weale 1989). EU membership has also accelerated the centralization of local decision making powers because ultimately the UK government has to account for compliance to the European Commission (Haigh 1986; Ledoux et al. 2000). But again, the organizational landscape would have changed regardless of Europeanization, not least to fit the centralizing and new public management aspirations of successive governments since 1979.

Although not formally required by the EU, these structural changes have, however, fed back through and impacted on the UK’s response to European environmental policies. For example, the privatization of the utilities provided the private investment needed to comply with water and air pollution directives. And the establishment of the national rivers authority focused political attention on the pollution of rivers and bathing beaches (Jordan 1998a/b; Jordan and Greenaway 1998; Jordan 1999). The Europeanisation of national government and national policy have therefore become inextricably intertwined.

It is very difficult to know what the structures of UK environmental government would have looked like irrespective of membership (but see Jordan and Liefferink 2004 for counterfactual analyses of Europeanisation in various Member States including the UK). The creation and subsequent dismemberment of influential bodies such as the Royal Commission on Environmental Pollution (Owens 2015) and the Sustainable Development Commission had nothing to do with the EU. Similarly, the adoption and expansion of cost benefit and regulatory impact procedures in decision making have arisen from domestic impulses and are now being enthusiastically uploaded to the rest of the EU (Radaelli 2010). Many have argued that the negotiation of international environmental agreements on issues such as climate change and acid rain would, in all probability, have forced DEFRA to take on a greater central steering role irrespective of the EU (Jordan 2001), although such agreements do not include nearly as many detailed policy targets and timetables as those associated with EU policy.

Finally, throughout all these changes (be they EU or UK inspired), the guiding philosophy of UK environmental governance has remained largely unchanged. This holds that central government (nowadays working within the EU) should set the broad legislative and policy framework, leaving the detailed aspects of implementation either to specialist agencies or to local government officials working in areas such as environmental health or waste management (Fairbrass and Jordan 2001). Detailed comparative work has revealed that the impact of Europeanisation on the structures and processes of UK government has been relatively path dependent, i.e. building on pre-existing patterns and procedures (Jordan 2003). In that respect, the UK’s experiences have been very similar to other countries, including those countries (Germany, Denmark and the Netherlands) that have done the most to shape the direction and scope of EU environmental policy (Jordan and Liefferink 2004). In fact, research suggests that even the most ‘Europeanized’ parts of national state structures (i.e. those coordinating EU policy within Brussels) (Kassim et al. 2000; Liefferink and Jordan 2004) retain their distinctive national characteristics (Kassim 2000; Kassim 2001; Kassim 2013).

Conclusions

EU membership has had a significant impact upon central government departments in the UK, particularly their inner working and policy processes. Their organisational structures and funding have been less directly affected by membership. The processes of adaptation to membership have been undertaken overwhelmingly within the existing parameters of the organization of Whitehall and Westminster. This adaptation has centred on ensuring the UK government, broadly defined, meets its obligations of membership. At the same time, new processes have evolved in order for the UK to play a more constructive role in negotiations at EU level.

The character of adaptation reflects the fact that the EU does not place any obligations on how Member States organize their domestic governance. The only exception is in relation to the supremacy of EU law, which has impacted on the long-standing principle of parliamentary sovereignty (Giddings and Drewry 1996): an effect that has assumed a totemic character in contemporary party politics (Bache and Jordan 2006). The significance of this impact is deeply contested. Some regard it as symbolising that the UK has lost its all-important independence. Others consider this to be a necessary trade-off for the UK gaining additional weight as part of the much larger trading and political block that the EU constitutes in global politics, including on negotiating on issues such as climate change.

Arising from these developments central governments have developed an efficient policy and diplomatic machinery for engagement with the EU *when the political circumstances permit*. Its strengths may be seen as (see also Bulmer and Burch 2009, 219-23):

- Its well-coordinated and well briefed approach, with negotiators in Brussels singing from the same hymn sheet (Christoph 1993);
- Its strong tactical awareness when the government is prepared to engage with the EU in a positive manner; and
- The skill of officials in using networks in Brussels to get views across.

However, there are also some weaknesses:

- A weak long-term strategy to maximise UK interests in the EU;
- The lack of any consistent alliance/s to underpin European diplomacy, in part due to political ambiguity towards the EU over the decades of membership;
- The risk of over-coordination and inflexibility, which can become especially counter-productive when following a dogmatic political line (e.g. the UK policy of non-cooperation with the EU during the Major government (Baker et al. 1993) when the UK even sought to veto policies that it supported out of protest at the export ban on UK beef following the crisis over 'mad cow disease'; and
- Intermittent use of 'megaphone diplomacy' at EU level – usually for domestic political reasons – that undermines the quiet and often subtle coalition-building that is needed to advance UK interests in the EU and beyond.

A particular consequence of the political schizophrenia towards the EU has been that the UK has been much better and consistent at putting EU policy into practice than it has been consistent in

achieving an imprint on that policy. The single market and eastern enlargement were notable UK imprints on EU policy. The latter ironically enabled the labour migration that has become so politically sensitive. In the environmental area, the UK has been extremely influential in promoting ideas such as emissions trading (Wurzel et al. 2013), integrated pollution control and better regulation exercises such as impact assessment (Jordan 2002; Jordan and Jeppesen 2000). The UK is now regarded as being an effective shaper of thinking within the Commission and other Member States. It is no longer derided as ‘The Dirty Man of Europe’ (Rose 1990). Other initiatives in foreign policy cooperation, defence, labour market reform and economic competitiveness have been achieved less consistently.

The Future

A Vote to Remain – The ‘Reformed EU Option’

Overall the primary focus of the renegotiation (as laid out in the letter to Donald Tusk, 10 November 2016) was on ‘non’ environmental issues (migrants, commitment to ‘ever closer union’ and the status of the euro area etc.). Environmental policy was not an explicit part of the negotiating remit, but may eventually be affected by other aspects of the deal (e.g. administrative burden reductions, better regulation etc.) that was eventually brokered at the European Council in February 2016 (European Council 2016). Given that EU environmental policy already incorporates many of these aspects, the extent of the change to the status quo in this scenario is likely to be rather limited. Hence of the three scenarios the net impact on national government is also likely to be relatively limited.

A Vote to Leave – The ‘Norwegian Option’

Non-EU members of the EEA enjoy preferential access to the Single Market, but as a condition of that access they have to abide by most of the *acquis communautaire*. A detailed analysis of Norway’s experience of Europeanization (Hovden 2004) reveals that as an EEA member, the UK would still be obliged to implement most EU environmental policies. Norway has found that its ability to shape EU policies is also relatively limited (Hovden 2004, 167), greatly reducing the influence of its national parliament and other stakeholders. As far as Norway is concerned ‘membership of the EEA is de facto the same as full membership’ (Hovden 2004, 168). Even outside the EEA, Norway would probably still have had to align itself to EU standards to facilitate trade (Hovden 2004, 168).

As a member of the EEA, there are a few notable differences, specifically in areas covered by particular directives: bathing water, birds, habitats, and aspects of the water framework directive. As a member of the EEA the UK government would no longer be bound by EU laws in these areas. The UK would therefore have the same options as under Scenario 1 (i.e. the *opportunity* to amend and/or repeal EU laws, but possibly at the associated *risk* of greater policy (and hence investor) uncertainty).

National governmental *structures* would also not change much under this scenario. As a full member state, control of government structures would be at the national level. This scenario is very unlikely to precipitate a wholesale restructuring of Whitehall departments for example. The *procedures and processes* are also unlikely to change much, but:

- UKREP and the hub would still need to be focused on Brussels, but the UK would effectively be on the outer core politically and not directly at the negotiating table.
- Line departments would still need EU coordination departments, but more based on reception (transposing and implementing policy) than projection.
- For EU facing departments in the core (where EU policy represents a significant share of their time – e.g. DEFRA), the nature of policy work would change – towards what the Norwegians have perceived as policy making ‘by fax’ from Brussels (Hovden 2004).
- Important international (e.g. UN) agreements and regional agreements (e.g. UNECE) are also likely to remain.

Finally, the UK Parliament is likely to be more influential in this scenario, principally in the policy areas noted above. Whitehall resources may have to be shifted accordingly. However, the UK government would be much less influential in the EU as in Scenario 1.

A Vote to Leave – The ‘Free Trade Option’

In theory, there would not be a significant change on the structures of government – control over which has always lain in the hands of states. Exit is very unlikely to precipitate a wholesale restructuring of Whitehall departments for example. The *procedures and processes* of policy are more likely to change in this scenario, potentially quite quickly and without significant cost:

- UKREP and the hub would not need to operate at the same level / be as focused on Brussels.
- Line departments would no longer need significant EU coordination arrangements.
- For EU facing departments in the core (where EU policy represents a significant share of their time – e.g. DEFRA), the nature of their policy work would change (an initial key challenge would be extrication from the *acquis*; then building up national and international policy links as opposed to servicing EU policies)

The biggest formal change would be for Parliament, which would no longer be overshadowed by the EU. It would also be able to develop and scrutinize policy at the pace of the UK policy process rather than that of the EU. These activities may require additional resources to be invested in national parliamentary activities. The challenge of holding the UK government to account for its national and international activities would remain unchanged.

The key uncertainty is what the new centre of gravity for Whitehall will be (bilateral trade deals? The World Trade Organization?). International policy work in DEFRA-DECC will almost certainly continue – there is a range of important international (e.g. UN) agreements and regional agreements (e.g. UNECE) to which the UK will remain subject especially in relation to transboundary air and atmospheric pollution, chemicals regulation and the dumping of hazardous waste. Businesses exporting into the single market will also have to comply with relevant EU standards. This demand may require the line departments to retain some EU facing departments and units.

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Domestic Law and Legal Procedures

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Key findings

- EU law is supreme over conflicting national law and contains more robust mechanisms for its enforcement in the UK than much international law. EU law confers rights on individuals that they can enforce before their domestic courts.
- The UK should consider passing an Act of Parliament to maintain the effects of directly applicable EU law and subordinate legislation based on the European Communities Act 1972 (ECA) if the ECA were to be repealed. This would give the UK Parliament time to decide which provisions to amend or repeal.
- Members of the EEA are still subject to the strong influence of EU law, not least because the EU Court of Justice remains the *de facto* interpreter of EEA law.

Introduction

This contribution explores the legal dimension of the UK's current and future relationship with the EU. It addresses a number of scenarios, including continued UK membership of the EU, continued membership in accordance with the 'new settlement' concluded between the UK and EU, and UK withdrawal from the EU. The withdrawal scenario is addressed in two parts. While the first considers UK withdrawal from the EU without membership of EFTA/EEA, the second considers the implications of UK withdrawal combined with membership of EFTA/EEA. The contribution focuses on a number of key themes including the status of EU/EEA law, the influence of EU/EEA law on the interpretation of UK law, the enforcement of EU/EEA law and the EU's transnational environmental governance framework.

The contribution does not include a detailed analysis of the role played by EFTA/EEA states in the adoption of EU legislation (for a critical analysis see Hofmeister, 2015 and Norwegian EEA Review Committee, 2012 which argues that membership of the EEA has brought benefits but also created a democratic deficit in Norway).

Many of the legal aspects of the UK's relationship with the EU are not specific to the area of environmental law. Consequently, much of the discussion that follows does not focus exclusively on environmental law.

Analysis

The Status of EU Law in the UK

EU law is given effect in UK domestic law by virtue of the European Communities Act 1972 (ECA). Notwithstanding the ostensible sovereignty of the UK Parliament, EU law is, in practice, accorded

supremacy over conflicting national law within the UK. The ECA also empowers the UK executive to adopt subordinate legislation to give to EU law, including those parts of EU law which are not 'directly applicable' and therefore not self-executing as such. While the EU Treaties, Regulations and Decisions are directly applicable, EU Directives are not.

The Influence of EU law in the Interpretation of UK Law Today

EU law – as interpreted authoritatively by the CJEU, has had an enormous influence on the interpretation of UK law. This is true in relation to UK law as a whole and not just those parts introduced specifically with a view to implementing EU law. This influence is the result of two primary mechanisms:

- the preliminary ruling procedure contained in Article 267 TFEU allows, and sometimes requires, national courts to refer a question of interpretation of EU law to the CJEU. The CJEU's interpretation is binding on the referring court;
- 'as far as possible', UK courts are required to interpret UK law in the light of the wording and purpose of EU law in order to achieve its underlying purpose (*Marleasing*, 1989).

The influence of EU law on the interpretation of UK law is of the utmost importance because the CJEU adopts a robustly teleological approach in interpreting EU law (Fennelly, 1986).

If the UK were to withdraw from the EU, the preliminary ruling mechanism would no longer be available to UK courts and the *Marleasing* consistent interpretation obligation would no longer bind them. The UK courts would have much greater flexibility and autonomy when interpreting UK law. There are, nonetheless, those who argue that it would be 'sensible' for the UK courts to continue to follow the judgments of the CJEU when interpreting national law that is based on EU principles unless there are 'overwhelming considerations to the contrary' (Nicolaidis, 2013, p. 217). This argument would seem to hold water at least in so far as compliance with the EU law as is interpreted by the CJEU is required as a condition of access to the EU internal market.

It is uncertain whether UK courts would favour a more literal or textual approach to interpretation if the UK were outside the EU. While the UK courts have become more accustomed to pursuing a teleological approach, they have sometimes expressed unease with this approach.

Lords Mance and Neuberger recently criticized the CJEU for interpreting the Strategic Environmental Directive in a manner that the EU legislature did not intend, in order to achieve a 'more complete regulation of environmental developments' (HS2, 2014 para. 189). They were unequivocal in stating that absent a judgment of the CJEU, the Supreme Court would have favoured a different, and narrower, reading of the provision in question (para. 187).

The Enforcement of EU Law Today

By comparison with a 'normal' system of public international law, the EU legal order encompasses unusually robust mechanisms for the enforcement of the law (Anderson, 2012).

The European Commission performs a watchdog function and can commence infringement proceedings against Member States (Article 258 TFEU). If a Member State does not take the

necessary measures to comply with a CJEU judgment finding it to be in breach of EU law, the CJEU may order it to pay a lump sum or penalty payment (Article 260 TFEU). If the UK were to withdraw from the EU, this centralized mechanism for enforcing EU law would no longer apply to the UK.

Individuals may rely on the 'direct effect' of much EU law to ensure protection of their rights by national courts. We saw an example of this in the recent high-profile *ClientEarth* case (2015), where an NGO was able to rely upon the EU's Ambient Air Quality Directive (Directive 2008/50/EC) to challenge the failure of the UK government to comply with it.

The EU's Transnational Governance Framework

As a result of its membership of the EU, the UK is embedded within a transnational governance framework that shares responsibility for environmental decision-making across the different EU institutions and across different Member States (Homeyer, 2009). This is true not only in relation to the enactment of EU legislation but in relation to its implementation, enforcement and revision as well.

The contours of this transnational governance framework varies significantly across different environmental domains. It may entail a 'comitology' type procedure for the adoption of implementing acts or it may entail a less formal procedure designed to facilitate cooperation between Member States. The establishment of the 'Common Implementation Strategy (CIS)' relating to the Water Framework Directive offers an excellent example in this latter respect (Scott & Holder, 2007).

The EU's transnational governance landscape is increasingly filled with agencies or *ad hoc* entities of various kinds; be it the European Chemicals Agency, the European Food Safety Authority or the European IPPC Bureau (Lee, 2015). Member States play an important role within these, including by sending representatives to serve on their various committees or by nominating members to their expert groups.

This EU's transnational governance framework offers a number of advantages. It allows Member States to pool resources and to share and develop expertise (Homeyer, 2009, 2010). It often requires Member States to compare their level of performance, thereby enhancing accountability by increasing transparency and facilitating Member State to Member State 'peer review'. While certain aspects of the EU's transnational governance framework may entail a loss of decisional autonomy for Member States, this is not invariably the case. Cooperation will often result in the development of working practices or non-binding guidance documents. Even where autonomy is reduced, the countervailing advantages should not be overlooked.

The Future

A Vote to Remain – The 'Reformed EU Option'

Most of the elements contained in the Decision of the Heads of State or Government concerning a new settlement for the United Kingdom within the EU (European Council, 2016) have limited relevance in the area of EU environmental law. Due to the transboundary nature of many, if not

most, environmental problems, this is an area of law that is considered in the main to be 'subsidiarity-proof'.

The Prime Minister has asserted in the past that the concept of 'ever closer union' included in Article I TEU has been used by the European courts 'to enforce centralising judgments' (House of Commons, 2015 p.7). It is, however, notable that this phrase was not referred to in the most important 'constitutionalising' judgments of the CJEU, such as those asserting the direct effect and supremacy of EU law.

To the extent that this phrase has been cited in cases involving EU environmental law (see, for example, Advocate-General Kokott in *Ville de Lyon*, 2009), this is because Article 1 TEU also provides that the EU is to take decisions as openly as possible and as closely as possible to the citizen. As per Article 1 TEU, the judgments in question were concerned with openness (access to EU documents) rather than ever closer union as such.

The provision in the 2016 Decision to the effect that the phrase 'ever closer union' is not intended to 'an equivalent to the objective of political integration' and that it should not be used to support an extensive interpretation of the competences of the Union or of the powers of its institutions set out in the Treaties is important in a symbolic sense but is unlikely to lead to direct changes to the interpretation of EU law.

A vote to leave

The Process of Withdrawing from the EU

Article 50 TEU was added by the Lisbon Treaty and governs the withdrawal of a Member State from the European Union. This provides that the EU and the withdrawing state 'shall negotiate and conclude an agreement with that State, setting out arrangements for its withdrawal, taking into account of the framework for its future relationship with the Union' (for discussion of the many legal complexities and questions see Lazowski, 2012; Herbst, 2005, Tatham, 2012 & House of Commons Library, 2013).

Article 50 provides that failing agreement, the Treaties shall cease to apply to the withdrawing Member State two years after its notification to the European Council of its decision to withdraw. A negative referendum result does not itself trigger this notification and so there could also be a period of pre-negotiation before formal negotiations begin. It is by no means clear what a withdrawal agreement would look like. Would it aim to be a comprehensive trade agreement or only create a framework for future negotiations?

It is widely accepted that the two-year negotiation window may be too short to permit the conclusion and ratification of a withdrawal agreement and it is notable that this period can be extended with the unanimous support of the European Council and the withdrawing Member States

The legal literature discussing the withdrawal process gives a taste of the complexity involved (Lazowski, 2012; Hofmeister, 2015). A withdrawal agreement would require the qualified majority support of Council and the consent of the European Parliament. If it were to take the form of a mixed agreement it would also have to be ratified by each EU Member State. In addition to a withdrawal agreement, new international agreements to govern the future relationship between

the withdrawing Member State and the EU would likely be required. Accession agreements to EFTA and the EEA would have to be approved and ratified by all existing members of these organisations (Article 56 EFTA and Article 128 EEA).

Table 1: Procedures for Withdrawing from EU and for Joining EFTA/EEA

	Withdrawal Agreement	EFTA/EEA Accession
Voting	Qualified Majority Vote	Unanimity
European Parliament	Consent	Consent
Ratification by existing Member States	Yes, if mixed agreement	Yes

A Vote to Leave – The 'Norwegian Option'

If the UK were to withdraw from the EU but become an EFTA/EEA state, this would imply an important role for EEA law within the UK. Existing literature examining the nature and implications of EEA law for EFTA/EEA states allows us to envisage what the impact of EEA law within the UK might be. It also allows us to ascertain the continuing influence of EU law within EFTA/EEA states.

The Status of EU Law in EEA States

The aim of the EEA agreement is to promote a continuous and balanced strengthening of trade and economic relations between Parties with equal conditions of competition, and respect for the same rules, with a view to creating a homogenous European Economic Area (Article 1(1) EEA).

The EEA agreement not only covers the EU internal market but also entails close cooperation in other fields including the environment (Article 1(2)(f) EEA). The EEA is a dynamic legal order that incorporates new EU legislation that is EEA-relevant within the annexes and protocols to the EEA Agreement. Around 7,000 EU acts have been incorporated into the EEA Agreement in this way (Fredriksen & Franklin, 2015 p. 631). While most EU environmental legislation is incorporated into the EEA Agreement, some key provisions remain outside, including the Habitats and Wild Birds Directives.

Disagreements about the geographical scope of application of the EEA Agreement is currently hindering the incorporation of the Marine Strategy Framework Directive (Directive 2008/56/EC) into EEA law (Fredriksen & Franklin, 2015 p. 655). Likewise, the EU Regulation on trade in seal products (Regulation 1007/2009) has not yet been incorporated into the EEA Agreement (Fredriksen & Franklin, 2015 p. 658). A recent Norwegian review of the EEA Agreement found compliance with environmental directives occurs around 9-12 months later in the EEA compared to the EU (Norwegian EEA Review Committee).

EFTA/EEA states enjoy a number of 'exit' options to resist the incorporation of EU acts within the EEA. They have a right, 'speaking with one voice', to block the adoption of Joint Committee

Decisions incorporating EU acts (Article 93(2) EEA).¹⁵ This could result in the provisional suspension of the affected part of the annex to the EEA Agreement (Article 102(5) EEA) although as yet this has not yet occurred (Fredriksen & Franklin, 2015 p. 631). ‘In a very limited number of cases, the EFTA States have negotiated exemptions and amendments to the [EU] legal acts in question (Fredriksen & Franklin, 2015 p. 631).

Certain EFTA/EEA states, most notably Iceland and Norway, have also used the constitutional requirement in Article 103 EEA to create long delays in the incorporation of EU legislation into the EEA Agreement. (Fredriksen & Franklin, 2015).¹⁶

Euro-skeptics often favour the EEA option on the basis that these exit options enable EFTA/EEA states to maintain their sovereignty and to act ‘unilaterally to protect [their] national and economic interests (North, 2013 p. 42). This argument may be thought to privilege form over substance given the limited voice enjoyed by EEA states in the EU legislative process and the reality of their being bound by large swathes of EU legislation on an ongoing basis.

The Influence of EU Law in the Interpretation of EEA Law Post-Brexit

The concept of ‘homogeneity’ in the EEA Agreement implies not ‘just’ the incorporation of EEA-relevant EU law into the EEA Agreement but also the homogenous interpretation of EU and EEA law (Article 105 EEA).

It is clear from the text of the EEA Agreement that provisions of the EEA Agreement that are identical to EU law shall be interpreted in conformity with the relevant rulings of the CJEU given prior to the date of signature of the Agreement (Article 6). The EFTA Court is also required to pay due account to the principles laid down by the relevant rulings of the CJEU delivered after the date of signature of the EEA Agreement (Article 3(2) Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (SCA)).

In practice, the EFTA Court follows judgments delivered by the CJEU even where these are given after the date of the EEA Agreement (Fredriksen & Franklin 2015 p. 632). It also seeks to align the EEA Agreement with the CJEU’s interpretation of both EEA-relevant EU legislation and with the evolving terms of the EU Treaties. ‘[A]uthority on the interpretation of the common EEA rules rests with the [CJEU] (at least *de facto*)’ (Fredriksen & Franklin, 2015 p. 633).

While the EEA Agreement does not include a preliminary ruling procedure, allowing or obliging national EFTA/EEA courts to refer questions of interpretation to the EFTA Court, an advisory opinion procedure is established by Article 34 of the Surveillance and Court Agreement. While this has been used relatively rarely to date, the EFTA Court has raised the possibility that courts of last instance in the EFTA/EEA states may be obliged by the duty of loyal cooperation to refer questions of interpretation to the EFTA Court (*Irish Bank*, 2011).

¹⁵ The Joint Committee is made up of representatives of EU and EFTA/EEA Member States.

¹⁶ A list of Joint Committee Decisions in relation to which EFTA/EEA states have indicated that constitutional requirements need to be fulfilled, including environmental examples, can be found here: <http://www.efta.int/media/documents/legal-texts/eea/other-legal-documents/list-of-awated-notifications/list-awated-notifications.pdf>.

The Enforcement of EEA Law

The EFTA Court has jurisdiction to hear infringement procedures brought against EFTA/EEA states (Article 108(2)(a) EEA). Article 31 of the SCA empowers the EFTA Surveillance Authority to launch procedures of this kind. 'The centralized surveillance regime established under the EEA Agreement and the SCA is one of the main tools to secure effective enforcement of the law' (Baudenbacher, 2016 p. 150). It has been observed that the EFTA Surveillance Authority is less active than the EU Commission in bringing infringement actions to court (Baudenbacher, 2016 p. 150), and evidence of 'transposition deficits' in relation to EU law is starting to emerge (Fredriksen & Franklin 2015, pp. 662-664).

The judgments delivered by the EFTA court in infringement cases are binding on the EFTA/EEA states (Article 33 SCA). However, by contrast with the infringement procedure within the EU, the EFTA court is not entitled to impose a lump sum or a penalty payment on a non-complying state.

Also, by contrast with most EU law, the principles of direct effect and primacy do not form part of the EEA legal order (Article 7 and Protocol 35 EEA, Burri & Pirker, 2013). Nonetheless, national EFTA/EEA courts are obliged to interpret national law to be consistent with EEA law, subject to limits imposed by 'interpretative methods recognized by domestic law' (Fredriksen & Franklin, 2015 p. 668).

The principle of state liability in damages that was developed by the CJEU (*Francovich*, 1990) case has been found to apply also in relation to breaches of EEA law (Burri & Pirker, 2013 pp. 222-223; Speitler, 2013). Indeed, the EFTA Court has indicated that state liability may be stricter in the EEA than in the EU to compensate for the lack of direct effect and primacy of EU law (Magnússon & Hannesson, 2013).

The EFTA/EEA states within the EU's Transnational Governance Framework

EFTA/EEA states participate in many aspects of the EU's transnational governance framework for environmental law. However, they do not enjoy voting rights within EU 'comitology' committees or within EU agencies (Fredriksen & Franklin, p. 680). For example, EFTA/EEA states do not enjoy voting rights on the European Chemicals Agency's Management Board or in its Committees on Risk Assessment or Socio-Economic Analysis (Decision 25/2008 of the EEA Joint Committee). Nonetheless, where the Commission adopts an authorization decision in relation to a chemical substance of very high concern, EFTA/EEA states aim to adopt corresponding decisions within 30 days (Decision 25/2008 of the EEA Joint Committee, Annex 1(g)).

A Vote to Leave – The 'Free Trade Option'

The Status of EU law in the UK after a Brexit

From an EU perspective (on the importance of distinguishing between a UK and an EU perspective see Lock, 2015), EU law would cease to have effects in the UK from the date specified in Article 50(2). If a withdrawal agreement has been negotiated, this would be the date of its entry into force.

From a UK perspective, the situation would be more complicated and would depend upon the manner in which the EU law in question had entered the UK's domestic legal order.

Directly applicable EU law which has not been implemented by UK legislation forms part of UK law by virtue of the ECA and would cease to be part of UK law if the ECA were repealed.

Where EU law has been implemented by an Act of the UK or Scottish Parliament, it would remain part of domestic law unless the implementing statute were repealed.

Much EU law is implemented in the UK by way of subordinate legislation under the powers conferred by the ECA.¹⁷ It is likely that, in the absence of a statute providing to the contrary, this subordinate legislation would lapse if the ECA as the enabling act were repealed.¹⁸ Difficult questions would likely arise about which Act(s) of Parliament had provided the legal basis for the adoption of particular pieces of subordinate legislation.

In order to prevent the repeal of the ECA creating gaps and incoherence in UK law, it would be desirable for the UK to pass a ‘grandfathering’ Act of Parliament providing for the continued application within the UK of directly applicable EU law and subordinate legislation that implements EU law (Reid, 2015 concurs with this view). It would then be open to the UK (and the devolved authorities) to decide on a case-by-case basis which directly applicable EU laws and which subordinate legislation should be amended or repealed. This would be especially important for EU laws that regulate access to the EU internal market and that seek to ensure a high level of protection for human health and the environment. It would also provide time for the UK to decide which laws need to be retained to ensure fulfilment of the UK’s international (environmental) law obligations. The UK would also have to decide which UK statutes should be ‘cleansed’ of references to EU law (for example, the Equality Act 2010).

It would be open to the UK to amend the ECA to include a ‘Henry VIII’ clause, thereby allowing Acts of Parliament implementing EU law to be amended or repealed by way of subordinate legislation that has not received the assent of Parliament. Douglas-Scott has argued that this would be anti-democratic, undermine the sovereignty of the UK Parliament and breach individuals’ fundamental rights (Douglas-Scott, 2015).

The UK might also want to retain some of the substantive rules presently contained in EU primary law; for example the environmental law principles contained in Article 191 TFEU. This could be done either by enacting corresponding national legislation or by including a provision in the ‘grandfathering’ Act of Parliament mentioned above.

The task of deciding which EU laws to maintain as part of the UK legal order would be rendered all the more complex as a result of the devolution of authority to Scotland, Wales and Northern Ireland. While environment is an area of devolved authority, foreign policy powers including EU matters, together with aspects of energy and transport, are areas that are reserved to the UK. In managing the transition from membership to withdrawal, difficult questions about where to draw the boundary between environment, energy and transport would arise (see Reid 2015). It has also been argued that withdrawal might result in greater disparities emerging between the environmental law in force in the England, Scotland, Northern Ireland and Wales (Reid, 2015).

¹⁷ Insofar as powers under the ECA concern devolved matters – including environmental law – they are exercised by Scottish ministers by virtue of section 53 of the Scotland Act.

¹⁸ The existence of a close relationship between an enabling act and subordinate legislation adopted on the basis of it is apparent from ss. 13 and 17 of the Interpretation Act 1978. See also para. 1.2.11, Office of Public Sector 2006 which expressly supports this view.

The Enforcement of Environmental Law Post-Brexit

While, subject to conditions to be determined by the UK, it would similarly be open to individuals to seek judicial review of government action based on rights conferred by UK law, the ClientEarth case illustrates two aspects of the enforcement jigsaw that would be lost if the UK were to withdraw completely from the EU.

First, the UK Supreme Court would not have an opportunity (or an obligation) to make a reference for a preliminary ruling to the CJEU concerning the interpretation of EU law. As noted previously, the Supreme Court would enjoy greater interpretative autonomy as a result.

Second, the CJEU emphasized in its preliminary ruling in ClientEarth (2013) that ‘Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law’ (para. 52). As this suggests, the CJEU has been rigorous in scrutinizing and seeking to upgrade the effectiveness of national remedies available for breach of EU law (see by way of example Factortame, 1989; Francovich, 1990). If the UK were to withdraw from the EU, the CJEU would no longer play a role in scrutinizing the effectiveness of the legal remedies available under UK law.

Nonetheless, the UK, along with the EU, has ratified the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (along with many other international environmental agreements. See Reid, 2015).

Article 9(4) of the Aarhus Convention requires that procedures for challenging decisions within the area of environmental law provide adequate and effective remedies, including injunctive relief as appropriate, and be fair equitable, timely and not prohibitively expensive. As things stand, the Aarhus Convention does not have direct effect in EU law (Stichting Natuur, 2012). At present, however, it can be enforced by the European Commission in the context of infringement proceedings against states and national courts of EU Member States have a strong legal obligation under EU law to interpret national law to be consistent with the terms of this Convention as far as is possible. This would not be the case if the UK were to withdraw from the EU.

If the UK were outside the EU, it would still be open to members of the public to bring a complaint against the UK before the Aarhus Compliance Committee. Decisions of the Aarhus Compliance Committee are binding on Parties as a matter of public international law.

Participation in the EU’s Transnational Governance Framework Post-Brexit

Some European environmental networks operate at a Europe-wide level and include non-EU Member States. IMPEL, the European Union network for the implementation and enforcement of environmental law, is an example of this. In many situations, however, the UK would be excluded from these networks if it were not a member of either the EU or the EEA.

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Parliament and Politicians

Prof Neil Carter (University of York)

Key findings

- EU Law has had a significant impact upon the principle of national parliamentary sovereignty. British Members of the European Parliament (MEPs) have a greater capacity than MPs to shape EU environmental rules. The Lisbon Treaty offered MPs more influence over EU policy-making but those powers have hardly been exercised.
- The growing importance of the EU in domestic environmental policy was a significant background factor encouraging the major parties to strengthen their environmental programmes from the 1980s.
- Party political competition on environmental topics has been stimulated by the EU's ambitious climate policy targets. Discontent with EU environmental policy has contributed to growing partisanship, especially over climate policy, since 2011-12.

Introduction

Membership of the EU has had an impact both upon the UK parliament and political parties. This review considers two main implications of EU membership, first for democracy and parliamentary sovereignty; and second, for the way in which the EU has contributed to the environment becoming electorally salient and the subject of party competition in the UK (i.e. party politicisation). A key issue in the debates around sovereignty has concerned the EU's so-called democratic deficit around which there is a vast academic literature as well a range of parliamentary reports and 'grey' literature covering the nature of the deficit (e.g. see House of Commons Library 2014; Follesdal and Hix 2006), how the EU has sought to address it via empowerment of the European Parliament (Lord 2013; Rittberger 2003) and the implications for the UK, especially for the principle of parliamentary sovereignty (See House of Commons Library 2014). Each issue is covered in the first section below.

The second section analyses the interaction between EU membership and the way parties treat environmental policies. In recent years there has been an explicit attempt to combine euro- and enviro- scepticism, with the EU blamed for the persistence of so-called 'red tape' that some (typically right-of-centre politicians) would like to see removed. Habitat protection has been a key target of these efforts. There is no academic work that focuses explicitly on this relationship between the EU and the party politics of the environment in the UK, while scholarly work on the party politics of the environment mostly addresses the role of EU membership only in passing. This second section therefore presents a synthesis of the party politicisation literature, drawing additionally on the environmental policy literature and media coverage where appropriate.

Analysis

The EU and the UK Parliament

A key issue in the wider academic literature on the EU is the on-going debate around the so-called democratic deficit (see *inter alia* Bang *et al.* 2015; House of Commons Library 2014; Follesdal and Hix 2006; Moarvscik 2002; Majone 1998). A key component of this deficit debate concerns how Member State governments by pooling their sovereignty at the supranational EU level have sacrificed the ability of national parliaments to hold either the European Commission or national governments to account. Central to the debates in the UK has been the development of the principle of the supremacy of EU law. Under this principle any UK law that conflicts with the provisions of EU legislation must be set aside in favour of the EU policy (see Scott 2016 in this volume). Hence, it is suggested that the UK parliament has limited opportunity to scrutinize EU laws via its select committees and, furthermore, that the supremacy of EU law undermines UK national sovereignty and the sovereignty of Parliament.

The question of scrutinizing EU legislation is not solely an issue for the UK Parliament (see *inter alia* Auel and Christiansen 2015; Cooper 2012; Raunio 2011; 2009); it has long been an issue of concern across the EU. There has consequently been a move to strengthen the role of Parliaments in EU decision-making as a way of addressing this element of the democratic deficit. Thus, under the Lisbon Treaty an ‘early warning system’ was introduced enabling national parliaments to object to a Commission proposal within eight weeks of receiving it, and if a third of Parliaments submit an opinion the Commission has to review the proposal (Europa 2016). However, the Commission can choose to maintain the proposal as it is, or amend or withdraw it (*ibid*). This process is the so-called ‘yellow card’ procedure. There is also an ‘orange card’ procedure under which if at least half of the national parliaments submit ‘reasoned opinions’ on a legislative proposal falling under the ordinary legislative procedure and the Commission maintains the proposal, the legislative proposal will be submitted to both the Council and the European Parliament for review (*ibid.*).

Thus, as Auel and Christiansen (2015) point out, whilst national parliaments do not have the right to force the Commission to take their opinion into account, they can force the Council and the EP to consider their concerns. However, at the time of writing only two yellow card procedures have been triggered, leading to one proposal being withdrawn and one maintained and no orange card procedures have yet been triggered (Europa 2016). This issue of parliamentary scrutiny of EU legislation and the ability of national chambers to assert their sovereignty was central to Prime Minister Cameron’s reform efforts as he sought (successfully) to secure a new ‘red card’ procedure, whereby if sufficient numbers of national Parliament’s oppose a proposal it will be withdrawn (Tusk 2016). It remains to be seen whether this new red card procedure will be used more often than its predecessors: Hagemann *et al.* (2016) suggest it will make little difference.

Another way of dealing with this on-going challenge of scrutiny and accountability has been to increase the powers of the European Parliament (EP). The EP has been transformed from being an institution often derided as a toothless tiger, composed of national parliamentarians seconded to Strasbourg, into a powerful directly elected chamber (See Burns 2016) composed of 751 Members, 73 of which are elected by UK citizens to represent them (European Parliament 2016). The EP decides policy jointly with national ministers at the European level in the vast

majority of policy areas (notably excluding foreign affairs and fiscal matters), and nearly all environmental policy. This development has increased democratic input into EU decision-making, but because many of the negotiations on legislation are informal, it has raised the prospect of national parliamentarians finding it even more challenging to scrutinise EU-level decisions (House of Lords 2009). Hence the UK's MEPs have more scope to analyse EU legislation than UK MPs. On environmental policy the EP's Environment Committee has carved out a reputation for advancing the environmental agenda at the European level (Burns 2013), and UK MEPs have played a central role in the negotiations of some key policies such as the 2009 Climate Change Package.

The democratisation processes at the EU level have also had a transformational effect upon smaller UK parties. In 1999 Proportional Representation (PR) was introduced for European elections, enabling smaller UK parties that have struggled to secure MPs at Westminster under the plurality voting system, such as the United Kingdom Independence Party (UKIP) and the Greens, to secure regular representation at the European level. Individual politicians such as Caroline Lucas, currently the only Green MP, and Nigel Farage, leader of UKIP, have gained domestic prominence by being elected as MEPs. Overall, while membership of the EU has raised a series of challenges for democratic scrutiny, limiting the ability of national parliamentarians to hold the executive to account effectively for decisions made at the European level, it has also opened up new avenues for representation, especially for smaller parties and alternative opportunities for scrutinizing and amending EU legislation via the European Parliament.

Party Politicisation of the Environment

The impact of the EU upon the parties' environmental policy positions was limited until around 2006. Mainstream parties took more interest in the environment from the mid-1980s, and the major parties gradually strengthened their environmental policies. However, between 2006 and 2010 there was a step-change in the political salience (importance) of the environment, particularly climate change, that for the first time saw all three major parties competing aggressively to be the 'greenest' party. The ambitious climate policies of the EU contributed significantly to this new 'competitive consensus' amongst the parties. Subsequently, though, negative perceptions of the EU contributed to the gradual breakdown of this consensus under the Coalition Government as Conservative backbenchers, under pressure from UKIP and urged on by a vocal right-wing press, adopted an increasingly partisan approach to climate change.

Typically, parties have shown most interest in the environment at the mid-term stage of the electoral cycle when public concerns are often highest and party leaders seem more receptive to environmentalists in their parties (Flynn and Lowe 1992; Carter 1997, 2006). At these moments parties tend to issue a flurry of documents, with each iteration stronger than its predecessor four or five years earlier, but as the next general election approaches the environment slips off the radar, securing only a marginal place in the party manifesto and then largely forgotten during the campaign. While no party can afford to ignore the environment, the Conservative and Labour parties have both pursued a strategy of preference-accommodation, characterised by a reactive approach to public opinion, but resisting competition over the environment (Carter 2006).

The literature identifies a range of factors that explain this limited politicisation, including the low salience of the environment amongst the public, the plurality electoral system, the historic

weakness of the Green Party, and the concern with economic growth than dominates in both the Conservative and Labour parties (McCormick 1991; Robinson 1991; Carter 2006).

However, there were several key moments when the parties came under pressure to improve their green credentials, and the impact of EU membership played a significant part in that response.

Party politicisation in the 1980s and 1990s

The first concrete evidence of UK party politicisation was the publication in the mid-1980s of policy documents by Labour and the SDP, followed in September 1988 by Mrs Thatcher's speech to the Royal Society where she accepted many of the scientific arguments about global environmental problem (Carter 1997). These developments occurred in a context when the UK was increasingly subjected to criticism for its poor environmental record. During the 1980s the UK repeatedly sought to obstruct or dilute EU legislation, frequently leading to policy misfits and laws that the UK found difficult to implement, resulting in numerous infringements (Jordan 2002, 2004). Yet Labour put little pressure on the Conservative Government before 1989, in part a reflection of its own ambivalence about the EU. Instead, the assault on the Government's environmental record was led by the ENGOs which, marginalised by the Thatcher Government, had refocused their campaigning on Brussels where they were able to show how the Government was out of step with the EU (McCormick 1991; Lowe and Ward 1998).

The ENGOs coined the derogatory label 'Britain: the Dirty Man of Europe', which increasingly framed perceptions of the Thatcher Government's attitude to the environment (Rose 1990), which were reinforced by the increased volume of EU environmental legislation following the Single European Act. In response, the Prime Minister supported the DoE in inter-departmental conflicts over acid rain, North Sea pollution and ozone depletion. More significantly, Thatcher's Royal Society speech revealing her apparent 'conversion' to green causes was an attempt to divert attention away from EU and domestic problems onto global issues where the UK had a better story to tell. Yet, far from satisfying the public these efforts simply contributed to the Green Party attracting an extraordinary 15% of the vote at the 1989 European Parliament election (McCormick 1991; Robinson 1992), but due to the voting system securing no representation. Whilst the Green success proved short-lived, the willingness of voters to use the European election to express their concern about the Government's environmental policy helped ratchet up party political concern about the environment. The first Government white paper on the environment since 1970, *This Common Inheritance* (DoE 1990), soon followed, as did new policy documents from Labour and the Liberal Democrats.

From the mid-1990s the Labour Party became much more willing to attack the Conservative Government on its environmental record, citing non-compliance with EU requirements. It produced an ambitious policy document, *In Trust for Tomorrow* (Labour Party 1994), that emphasised the importance of EU institutions in delivering environmental protection. Under Tony Blair, Labour adopted an increasingly positive approach to the EU and began to attack the Conservatives on this issue. Whilst John Gummer was Secretary of State, the DoE had become more willing to engage with EU policy processes, achieving some successes in uploading UK legislation. Gummer also introduced several domestic policy initiatives, such as limits on car parking at out-of-town shopping centres, widely praised by environmentalists. Yet Gummer's

best efforts couldn't deflect continuing criticism of the Conservative Government for its poor environmental record.

Following Labour's landslide victory in 1997, John Prescott and Robin Cook made bold promises to prioritise environmental issues. Prescott played an active role within the EU delegation agreeing the Kyoto Protocol in 1997. The Environment Minister, Michael Meacher, pursued a progressive agenda in Brussels alongside a strong group of like-minded ministers that for several years included Green Party ministers from Belgium, Finland, France, Italy and Germany (Bomberg and Carter 2006). So, although the environment was marginalised domestically for most of Labour's first two terms in office, within the EU the UK government steadily discarded its reputation as an environmental laggard (Jordan 2004).

Meanwhile the Liberal Democrats were consistently greener than the two major parties during this period, as measured by the content of their policy programmes and the priority given to the environment in their manifestos and their election campaigning (Weale et al 2000; Carter 2006; Burall 2007). The increasing Europeanisation of the environmental policy arena proved a good fit with the party's ideological concern for the environment and its enthusiastic support for the EU (Webb 2000).

The strengthening of multi-level government in the UK arising from the devolution reforms of the Labour Government in the late 1990s have boosted the party politicisation of the environment at the regional level. The Scottish Nationalists and Plaid Cymru have both embraced an environmental agenda, in turn prompting the Scottish and Welsh versions of the Conservative and Labour parties to be greener than their Westminster counterparts (Chaney 2014). The presence of Green MEPs since 1999 has given the Party a platform to raise its national profile, which contributed significantly to the election of its then leader, Caroline Lucas, as an MP in 2010. Yet the presence of the Greens in Brussels has done very little to intensify the party politics of the environment.

In 2006 there was a fundamental upheaval in UK environmental politics – particularly the politics of climate change - which heralded unprecedented intense party competition over the issue and encouraged the major parties to shift their positions on climate change (Carter 2014). As a result, the Labour Government, with enthusiastic cross-party support, transformed climate and energy policy by introducing the landmark *Climate Change Act 2008*, which introduced ambitious long-term emission reduction targets on a statutory basis, five-yearly carbon budgets and an independent Climate Change Committee with a remit to advise the Government on the policies needed to achieve these targets (Carter and Jacobs 2014). The legislation was backed by an innovative Low Carbon Transition Plan, a wide range of policy measures on renewable energy, feed-in tariffs, carbon capture and storage, infrastructure planning and domestic energy efficiency, and supported by significant public investment.

A critical event in this transformation was the election of David Cameron as leader of the Conservative Party in December 2005 and his decision to make the environment the centrepiece of his strategy to modernise his party and make it more electable (Bale 2010; Carter and Jacobs 2014). Several other domestic factors contributed to this politicisation of climate change: notably huge increases in media coverage and public concern about climate change during 2005-2006; Friends of the Earth's successful 'The Big Ask' campaign for a climate change act; the

appointment of David Miliband as Secretary State for the Environment in May 2006; and the publication of the Stern (2007) report which did so much to galvanise business support for action on climate change (Jordan and Lorenzoni 2007; Maclean 2008; Gavin 2009; Rutter et al 2010; Lockwood 2013; Carter and Jacobs 2014;). But it was the ‘Cameron effect’ that was critical in ramping up party competition over the issue.

However, EU policy also stimulated and then reinforced party competition over climate change. Three examples stand out.

First, in early 2006 the UK Government was wrestling internally with the level it should set the UK’s emissions cap for the second phase of the EU ETS. Deep disagreement between DEFRA, the Treasury and the Department for Trade and Industry (DTI) had led to a proposed emissions reduction of 4.1- 8.0 MtC below business as usual, with the Treasury and DTI insistent it should be at the lower end of that range. Cameron challenged the Government to set it at the more ambitious end of the range. David Miliband, Secretary of State at DEFRA, wanted to make a swift impact in his efforts to wrest the political initiative back from Cameron, so in frantic last minute negotiations he managed to persuade Chancellor Brown that the UK should lead by example by setting the cap at the maximum cut of 8 MtC (Carter and Jacobs 2014).

Second, the EU acted as a major external policy driver to sustain the political momentum behind the CCA and the party politics of climate change. In March 2007 the European Council agreed ambitious new climate and energy targets for 2020, including a particularly challenging target that 15% of all UK energy should come from renewable sources. The decisions by Blair to sign up to this target, and his successor Brown to endorse it, effectively compelled the Government to adopt a significantly more interventionist energy policy requiring new and increased subsidies, new industrial incentives and a new planning regime (Carter and Jacobs 2014).

Third, the consensus in favour of progressive climate policy was sustained for at least the first two years of the Coalition Government. A key moment was the decision to accept the 4th carbon budget. Chris Huhne, the Liberal Democrat Secretary of State for Energy and Climate Change, was a strong proponent of acceptance. Chancellor George Osborne resisted on the pragmatic grounds that acceptance might undermine the austerity budgeting of the Government. Eventually Cameron intervened to ensure it was approved, although Osborne insisted on a commitment to review it again in 2014. The UK’s commitment to its EU target of a 34% reduction in GHG emissions was critical in ensuring the 4th carbon budget was approved (Carter and Clements 2015).

In these examples EU membership played a positive role in encouraging parties to strengthen their environmental credentials and to compete with their rivals on environmental issues. By contrast, since 2011-12 EU membership has contributed to a growing partisan divide over environmental policy, especially over climate change.

The environment has traditionally been regarded by political scientists as a valence issue: a consensus issue about which voters and parties are generally agreed about the desired outcome – a better environment (Dunlap 1995; Johns et al 2009; Clarke et al 2011). Party competition over the environment – where the issue is salient - is expected to be about performance: the perceived competence of the parties to deliver environmental protection policies. Certainly this assumption underpinned Cameron’s decision to embrace the environment as one of his signature

issues for modernising his party – he assumed it would be regarded positively right across the political spectrum (Carter and Clements 2015). And during the period of competitive consensus when the three major parties competed to be greener than each the environment did operate as a valence issue. Subsequently, that consensus began to splinter, with climate change in particular becoming increasingly partisan, reflecting developments in the USA (McCright and Dunlap 2011; Guber 2013) – and Canada and Australia – where it is characterised by sharp political divisions.

Repeated criticisms by Conservative Ministers of the EU's impact played an important contributing role in this gradual breakdown of consensus from 2012 onwards. During the Coalition Government the Conservatives explicitly linked their increasing scepticism towards the EU with their opposition to what they perceived to be 'excessive' regulation. Ministers, such as Michael Fallon, frequently complained that their deregulatory initiatives, such as the 'red tape' review that aimed 'to make sure that our environmental, climate change and energy policies...are not strangling businesses and individuals with red tape' (*Guardian* 2 September 2011), were undermined by their inability to touch European regulations that fell outside the Government's 'one-in, one-out' approach to new regulations (*Telegraph* 20 September 2012). Similarly, George Osborne insisted on a review of the European habitats and wild birds directives on the grounds that they were 'placing ridiculous costs on British businesses', although the subsequent DEFRA review found this claim to be false in over 99.5% of cases (*Guardian*, 22 March 2012). Conservative efforts to cut regulations were also stymied by opposition from their Liberal Democrat coalition partners, particularly within DECC where Liberal Democrat Cabinet ministers, Chris Huhne and Ed Davey, frequently went public with their efforts to defend environmental legislation.

This deliberate framing of the EU, unwanted regulations and the environment resonated with growing Conservative scepticism towards the UK's climate policies. Cameron's embrace of green issues had never been universally welcomed by Conservative MPs (Carter 2009). The guarded disgruntlement of Conservative backbenchers whilst in Opposition became increasingly vocal under the Coalition Government. Significant sections of the political right in the UK, including Conservative MPs, the right wing press and UKIP, have developed a deep partisan hostility to progressive climate policy by framing it 'variously as a "green tax", as "subsidies", as an unwarranted intervention by the state, and sometimes as associated with Europe – all frames which connect with wider political values at the core of the Tory right identity' (Lockwood 2013). Specific targets for this partisan hostility have been onshore wind farms and green levies on domestic fuel prices, which have both been stimulated by the need to deliver renewable targets agreed with the EU. Chancellor Osborne played up to this viewpoint when he declared at the Conservative Party conference in September 2011 that:

'We're not going to save the planet by putting our country out of business. So let's, at the very least, resolve that we're going to cut our carbon emissions no slower but also no faster than our fellow countries in Europe. That is what I've insisted on in the recent carbon budget' (Osborne 2011).

Moreover, public opinion surveys indicate that a similar partisan divide exists in the wider electorate concentrated amongst supporters of UKIP and the Conservative Party (Carter and Clements 2015).

The Future

This discussion assumes that the Conservative Party is re-elected in 2020, on the grounds that: (1) they continue to lead in the polls; (2) impending boundary changes, which reduce the size of the House of Commons to 600 MPs based on equal sized constituencies, will significantly bolster its electoral position; (3) the Labour Party under Jeremy Corbyn is a divided and weak Opposition.

Overall, whatever the outcome of the referendum in the short to medium term there is likely to be considerable similarity in the party politics of the environment, with current trends generally hardening.

A Vote to Remain – The ‘Reformed EU Option’

The growing partisanship will continue and probably strengthen as the ‘losers’ (the Conservative right and UKIP) will remain entrenched in the same frame of scepticism towards the EU, environmental regulations and green taxes. The Conservative leadership will be concerned to assuage disappointed and potentially embittered sceptics in the party so it will be reluctant to embrace further stringent EU climate measures or ambitious environmental policies. Whoever replaces Cameron as leader is likely to be more sceptical on climate change.

The Labour Party has the *scope* to make the environment a positional issue by which to distinguish itself from the Conservatives. However, that opportunity already exists but there is little evidence that the current Labour leadership has the inclination to exploit it. The Liberal Democrats are sure to maintain their emphasis on environmental issues in their efforts to re-establish the party as a serious electoral force, but they will have to compete with the Greens for the environmental ‘issue public’.

A Vote to Leave – The ‘Norwegian Option’

The growing partisanship will continue and probably strengthen as the ‘winners’ exercise their new-found independence to question swathes of EU-related environmental policy. EFTA rules require UK to accept the bulk of EU environmental policy, so in practice this will mean the status quo will prevail in the short-term. However, although a significant rolling back of policy is unlikely, we can expect strong resistance to new legislation and then frustration when new rules are ‘imposed’ on the UK without the UK Government having a say. Cameron’s successor as leader is likely to be more sceptical on climate change.

The Labour Party has the *scope* to make the environment a positional issue by which to distinguish itself from the Conservatives. However, that opportunity already exists but there is little evidence that the current Labour leadership has the inclination to exploit it. The Liberal Democrats are sure to maintain their emphasis on environmental issues in their efforts to re-establish the party as a serious electoral force, but they will have to compete with the Greens for the environmental ‘issue public’.

A Vote to Leave – The ‘Free Trade Option’

The growing partisanship will continue and probably strengthen as the ‘winners’ exercise their new-found independence to undo swathes of EU-related environmental policy. If, as seems likely, the Conservative’s post-EU model is to make the UK a neoliberal low tax, low regulation state, then environmental regulations will be an obvious target for removal or dilution. In particular, future carbon budgets will either be rejected or be significantly weaker than is necessary to meet the UK’s longer-term emission reduction targets. Cameron’s successor as leader is likely to be more sceptical on climate change.

The Labour Party has the scope to make the environment a positional issue by which to distinguish itself from the Conservatives. However, that opportunity already exists but there is little evidence that the current Labour leadership has the inclination to exploit it. The Liberal Democrats are sure to maintain their emphasis on environmental issues in their efforts to re-establish the party as a serious electoral force, but they will have to compete with the Greens for the environmental ‘issue public’.

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Environmental Groups

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Key findings

- EU membership has offered significant opportunities to environmental groups to influence both the shaping and implementation of legislation. The EU has also provided some groups with significant funding to carry out projects in the UK, for instance in the field of nature protection.
- In the UK, as in other EU states, environmental groups have shown varying degrees of interest and involvement in EU matters. However, the most active have played a key role in the creation and functioning of pan European groups. With massive memberships, money and expertise, the British groups matter in Brussels.
- UK environmental groups have become progressively more effective at using the opportunities provided by EU law to lobby the UK government to fulfill its commitments, in multilevel and always more complex processes of decision-making.

Introduction

Research on interest groups has developed mainly since the 1990s (but see Meynaud 1958, Meynaud and Sidjanski 1971), addressing the strategies of interest groups based in Brussels, including European federations with national members (eurogroups), as well as domestic groups targeting EU institutions. The growing number of NGOs in Brussels (Harvey 1993) has confirmed that more EU competences attracted more groups, thus making decisional processes more complex (Mazey and Richardson, 2006: 259).

Although the relative influence of NGOs compared to other interest groups still divides researchers (Dür 2008, Klüver 2013, Dür et alii 2015), most agree on the paradox characterizing EU decision-making process. EU institutions represent an additional forum for domestic interest groups, especially when their views cannot prevail at home. However, accessing the European level policy-making is resource intensive in terms of reputation and expertise, and thus selective (Coen and Richardson 2009).

Most environmental groups in Member States seem to be little affected by EU matters, while the environmental NGO community based in Brussels involves the most professionalised of these groups (Bursens 1997). Following complex EU policy developments and valuing European actions in front of their individual members is indeed challenging for national groups (Rucht 1993). Besides, conventional lobbying prevails in Brussels over protest politics (Mazey and Richardson 1992, Imig and Tarrow 2001, Rucht 2001). This justifies focussing this focuses on the strategies of British groups in Brussels (*via* European-wide organisations) and at the national level.

Analysis

Environmental organisations in Britain have 5 to 8 million people (Saunders 2013: 5). Most prioritise advocacy activities, thus displaying a distinctive feature within the third sector (Clifford and al. 2013: 255; 260)¹⁹. In comparison with other third sector organisations, they also have smaller budgets and workforces. A few national environmental organisations stand out however and enjoy large individual membership compared to similar organisations in Europe. The National Trust, Wildlife Trust and the Royal Society for the Protection of Birds (RSPB) are close or beyond 1 million members each, the UK branches of the World Wildlife Fund, Greenpeace and Friends of the Earth (FOE-EWNI²⁰) are among the top three of their respective international networks. How have environmental groups so different in size and aims seized the opportunities the EU represents in terms of advocacy?

Countervailing interests and adaptation over time

Despite the real barriers against effective advocacy on the EU stage, both national environmental groups and European-wide organisations have come to collaborate with European institutions. A European NGO community based in Brussels began in the mid-1970s and developed in the late 1980s. The European Commission, especially the Environment Directorate General (DG), initially “needed their pressure” in order to gain autonomy from the expertise and arguments of the organisations affected by its proposals (Mazey and Richardson 1992, Rucht 1993). The Commission is indeed responsible for drafting new legislation and the implementation of the existing one. DG Environment has developed a funding programme for environmental EU-based organisations as did the Commission other policy sectors (Wessels 2004). Because their views compete with the ones from economic interest groups, environmental groups represent “countervailing interests”, facilitating “the passage and implementation of new legislation” (McFarland 1987) both at the EU and national level.

This review first underlines the part played by UK organisations in the NGO networks created in Brussels, before accounting for the opportunities the EU offers in terms of funding, litigation, and drafting legislation to groups targeting at domestic decision-making processes. As EU decision-making has come to cover more environmental issues, attracting more interests competing to shape legislation under preparation, the British organisation took part in multilevel policy campaign.

The progressive commitment of a few UK organisations

National environmental organisations initially tended to see the European Communities (EC) as a mere trade agreement, like government officials. Their interest in EC policy developments has been progressively stimulated by the expansion of this new domain of competence since the 1980s. The UK environmental movement was then more driven by a domestic and international agenda (Lowe and Ward 1998a). It has given rise to conservation organisations already committed to international cooperation such as the RSPB (1889), Fauna and Flora Preservation Society (1903), and finally the WWF (Lowe and Ward 1998: 9, Dixon 1998: 222).

As a candidate country, the UK participated with Ireland, Denmark and Norway in the

¹⁹ Data from England and Wales

²⁰ Friends of the Earth England, Wales and Northern Ireland

consultations prior to the publication of the First Environmental Action programme in 1973. The very same year, several environmental groups from different European countries met in Brighton and decided to form a European federation. A few newly created UK organisations, including FOE-EWNI, were among the promoters of this idea before and during this meeting. One year later, the Environmental European Bureau (EEB) was founded by 39 national environmental organisations from nine countries (Lowe and Goyder 1983: 164). The creation in Brussels of the first European environmental organisation followed the Stockholm conference and reflected the growing citizen activism related to nature and environment protection in Europe and the corresponding expansion of their organisations (Dalton 1994).

The EEB was a first stepping stone to Brussels for UK NGOs, (Lowe and Goyder 1983). It provided national organisations key experiences in multilevel lobbying, by providing them with information on the legislation under preparation (Berny 2008). FOE-EWNI, the RSPB, and a few national chapters of the WWF and Greenpeace joined the EEB, and became involved in the activities of their respective international networks in Brussels. FOE Europe was established in 1985. In the 1990s, other international organizations followed suit, because of the growing importance of the EU in domestic legislation, the legal recognition of the environment as a competence by the Single European Act and the possibilities of funding field projects for conservation organisations (Long 1995).

The WWF UK and the RSPB initiated two of these lobbying structures in Brussels (Long 1998). The creation in 1993 of Birdlife International, based in Cambridge but with a lobbying office in Brussels, concluded the cooperation the RSPB had established with several national ornithologist organisations in order to boost the implementation of the Birds Directive which was then defective in most Member States. It provided data to the European Commission in order to assess the designation of sites by Member States (Berny 2009). The RSPB had already supported the adoption of the directive in 1979 in a context where the UK government was favourable to the text (Boardman 1981). The strategy consisting of following an issue from adoption to implementation in Brussels and at home is challenging but rewarding (Mazey and Richardson 1992).

Only a minority of British organisations was engaging with European partners and/or activities in Brussels in the mid-1990s, most updated with of EC policy developments, without necessarily taking action (Lowe and Ward 1998b). The situation has not significantly changed, while the agendas of the most prominent national environmental organisations remain domestically driven (Rootes 2002, Rootes 2004). The relative Europeanization of preferences and strategies of British groups reflects a similar experience in other states (Bursens 1997, Falkner 1999).

Still “small NGOs find it difficult to engage in the two-level-game” (Wurzel and Connelly 2011), although environmental NGOs may engage with their networks or directly towards the EU institutions. Some actions are limited in time, such as relaying a petition or providing data to European allies or decision-makers. However playing the European game at home has nevertheless proved a driver for internal change. Some recent studies point out its consequences in terms of organisational growth and professionalization (Koussis & al. 2008, Börzel & Buzogany 2010, Berny 2013).

EU-related opportunities accessible from home

British organizations have also proved more aware of the importance of EU legislation and put pressure on national public authorities. They may not be more active in Brussels than their European counterparts (Long 1998), but they have indisputably gained leverage on governmental action since the 1980s, by taking advantage of the three types of opportunities offered by the EU in the realm of implementation, funding and shaping legislation.

Any individual or organisation can complain to the Commission when a member state does not comply with environmental legislation, thus opening the possibility of an infringement procedure. By promoting the *complaints procedure*, DG Environment has collected information on national situations (Krämer 2009). British environmental organisations became critical of the slow pace of enforcement of EC policy by the government, providing evidence of the defective implementation of EC legislation on air and water quality. At the end of the 1980s, one third of the complaints sent to the European Commission were from the UK (Lowe and Ward 1998a: 21).

Although the legal standing before the European Courts is limited, the complaints procedure proved an efficient way to get the UK environmental groups challenging the discretionary and ad hoc management of environmental issues then prevailing (Lowe and Ward 1998a). The resort to national courts represents another possibility in this regard promoted by environmental groups. A judgment from the EU Court of Justice (Commission v. UK (C-530/11) concluded the 10-year campaign of an NGO coalition (Macrory and Westaway 2011), driving the government to decrease the cost of court proceedings in environment matters in line with its obligations under the Aarhus Convention (Cowell and Owens 2016). Client Earth obtained several judgments from national and EU courts requiring the government to take action to meet EU air quality norms, confirming the access of citizen to national courts in this realm (Court of Justice of the European Union 2014). Local organisations sometimes joined by national NGOs (for instance, WWF UK in 2012 on the agricultural pollution affecting several landmark rivers and basins or FOE-EWNI on fracking in Sussex) have used EU law before national courts or the environmental agency²¹.

Environmental groups' joint efforts have contributed to enforcing EU law in the national legal order. Resulting sometimes in substantial gains, legal tools also help exerting pressure on the government or public bodies, along with cooperative modes of action.

Funding, the second opportunity under discussion here, has also supported the initiation and promotion of EU legislation, notably thanks to the LIFE programme. LIFE is an incentive instrument aiming at fostering participation and mutual learning between the actors concerned by EU legislation. This financial instrument for environmental projects has since 1992 co-financed 237 projects in the UK for a total value of € 528.4 million, including 58 coordinated by NGOs and foundations²². Conservation groups such as the RSPB were able to carry out a significant number of operations in the UK. In comparison, environmental groups have developed fewer projects in order to illustrate a European approach (WWF UK's WaterLIFE project promoting implementation of the Water Framework Directive) or contribute to awareness-raising (the WWF

²¹ https://www.foe.co.uk/resource/press_releases/uk-found-breach-eu-access-environmental-justice-law_14022014 and <https://www.foe.co.uk/page/standing-your-right-have-say-balcombe> Accessed the 15.03.2016.

²² <http://ec.europa.eu/environment/life/project/Projects/index.cfm?> Accessed the 4.02.2016.

UK's *Live well campaign* or the current FOE LIFE project, *School of sustainability*²³).

Regardless of their topics, all these projects associate a large array of actors, often mixing local residents, firms or scientists. This cooperative approach proved useful to an understanding of shared responsibility, explaining a decrease in breaches of EU law according to the RSPB (2012). LIFE project funding usually require provision of external funding and does not cover advocacy goals. Separately, European environmental/climate organisations can apply to LIFE for operating grants (LIFE 2014-2020 Regulation (EU) 1293/2013)²⁴.

Finally, trying to shape the legislation under preparation has been central to environmental group activity. Both legal strategies and operational programmes have strengthened the expertise of environmental NGOs accessing Whitehall, a growing tendency since the 1990s (Hilton et al. 2013). The RSPB continues its early involvement regarding conservation issues and beyond (Garner 2011). The WWF UK extended its involvement in marine conservation with lobbying targeting the marine act adopted in 2009.²⁵ FOE-EWNI launched a campaign in 2005 that proved decisive in the adoption of a genuinely new piece of legislation addressing climate change (Carter and Childs 2015, Nulman 2015). Greenpeace UK has pressurized firms carrying out illegal logging in rainforest, while its Brussels office has called for an EU level regulation²⁶.

The engagement of British environmental groups on policy issues related to the EU has been consistent and has challenged the policy communities organised around vested interests (Maloney and Richardson 1994, Fairbass and Jordan 2001). Some organisations have certainly been more active and even targeted European institutions, but NGOs also have access *via* the Brussels-based organisations.

Multilevel lobbying in complex decisional processes

While acknowledging their actual influence on some pieces of EU legislation (McCormick 2001, Eichener 1997, Weale 1996), some authors underscore that the organisations established in Brussels remain relatively independent from their national constituencies (Warleigh 2000). This conclusion reflects the selective nature of any participation in European policy-making process, but does not capture its evolution over time.

If 'rational action demands direct lobbying in multiple venues' (Mazey and Richardson 2006 : 256), such a strategy is still challenging for environmental eurogroups. The European Commission is less active in proposing new legislation (Čavoški 2015) and the European Parliament less amenable to their ideas or successful in promoting them (Rasmussen 2013, Burns et al. 2012). The necessity of undertaking lobbying actions in Brussels with the support of member organisations appeared thus even more crucial in order to shape legislation or prevent the ones perceived as threatening.

The environmental NGO community based in Brussels is characterized by a focus on lobbying and policy staff compared to other NGO sectors (Greenwood 2003). It gathers 20 organisations, with around 150 policy experts (Hontelez 2012). Some have come to work together into a coalition, the

²³ https://www.foeeurope.org/sites/default/files/school_of_sustainability.pdf Accessed the 16.03.2016.

²⁴ <http://ec.europa.eu/environment/life/funding/ngos/> Accessed the 16.03.2016.

²⁵ http://www.wwf.org.uk/wwf_articles.cfm?unewsid=2978 Accessed the 16.03.2016.

²⁶ <http://www.greenpeace.org.uk/blog/forests/victory-after-10-years-campaigning-eu-votes-ban-illegal-timber-20100707> Accessed the 16.03.2016.

Green 10 (Long 1998, Webster 2002). The Green 10 includes initially the organisations firstly established in Brussels. These latter remain prominent in terms of income, staff, and the number of issues covered (EEB, FOE Europe, WWF European Policy Office (EPO), Greenpeace EU unit and Birdlife International). They often collaborate together, forming "policy clusters" on specific issues and varying the modes of action and targets, beyond simply DG Environment (Long and Lörinczi 2009).

British environmental groups take part in both the functioning and activities of European NGOs. Indeed, these structures receive funding from their European members. Given their relative wealth compared to the majority of European countries, the contribution of British organisations is likely to be substantial. However, apart from Greenpeace or WWF EPO, membership fees are in reality marginal in their overall budgets (FOE Europe 2014, WWF EPO 2015). Another aspect of UK NGOs' participation is their presence in task forces established by these European structures as way of mobilizing the expertise of member organisations. For instance, the EEB has 16 working groups involving 400 participants from across Europe (Hontelez 2012). The British organisations proved to be involved in the chair of several task forces (Berny 2008). They have also several times led the European scale campaigns within their network (the anti-GMO campaigns of FOE-Europe or the campaign for reform of the CAP of Birdlife). More recently, FOE UK took the lead for FoE Europe on the circular economy campaign on the proposal of the Commission COM(2015) 614.

The joint campaigns of NGOs in Brussels are often replicated at the domestic level. Both Birdlife International and the WWF EPO have been active collecting data on the implementation process of the Habitats Directive (Fairbass and Jordan 2001). Although implementation problems of the Birds and Habitats directives remain in many Member States, both have proved to be crucial in the conservation of wildlife in the UK²⁷. With other Brussels-based NGOs, they also addressed policies having significant environmental externalities, such as the CAP and the structural funds (Mazey and Richardson 1994, Long 1995). The REACH regulation has triggered a legislative battle within the European Parliament and Council, with some industrialists able to shape national positions in the council (Zito and Jacob 2009, Hontelez 2012). Public communication launched in Member States drew public attention to the importance of chemicals in daily life and whose properties were unknown. Another recent example of multilevel lobbying is the current campaign of the EEB, Birdlife, FOE-Europe and WWF Europe which aims at defending the nature legislation (Birds/ Habitats Directives) under a Fitness Check from the European Commission. Half a million people wrote to the Commission of back up their position, creating a record for its consultation process²⁸. Interestingly, more signatories came from the UK than from any other Member State²⁹.

The involvement of British organisations made several times a difference with impacts beyond the UK. They promoted some principles that were used by the Commission when seeking to justify reform of the CAP or structural funds in order to "green" them (Fouilleux and Ansaloni 2016, Ansaloni 2013). Climate policy provides another example, with FOE-EWNI succeeding in convincing several European partners of the network to adopt a campaign asking for a legislation similar to the one adopted in Britain (Childs and Carter 2015). WWF UK encourages the British

²⁷ <http://science.sciencemag.org/content/317/5839/810.full> Accessed the 16.03.2016.

²⁸ http://europa.eu/rapid/press-release_MEX-15-5452_fr.htm Accessed the 3.02.2016.

²⁹ http://www.wcl.org.uk/docs/Joint_Links_REFIT_press_release_July15.pdf Accessed the 3.02.2016.

government and firms to develop a legal and sustainable market in timber, while the WWF EPO addresses the Timber regulation under review at the EU level in 2015 (Heald 2015).

Compared to the 1990s, few studies exist on environmental groups' access and influence or the europeanisation affecting their strategies. However, the recent policy cases concluding this discussion confirm the countervailing pressure exerted by these organisations, regardless of their scope of action, in Brussels or at home.

The Future

Following the previous discussion, the implications can be assessed as regards possibility of shaping legislation, litigation and funding in the UK as well as in Brussels.

A Vote to Remain – The ‘Reformed EU Option’

British environmental NGOs will remain active campaigners in order to improve policies at the EU level, by developing joint actions with their EU NGOs allies and local constituency.

	5-10 year trends	20+ years outlook	Progress to policy targets	Read more in Section ...
Protecting, conserving and enhancing natural capital				
Terrestrial and freshwater biodiversity			☐	3.3
Land use and soil functions			No target	3.4
Ecological status of freshwater bodies			☒	3.5
Water quality and nutrient loading			☐	3.6
Air pollution and its ecosystem impacts			☐	3.7
Marine and coastal biodiversity			☒	3.8
Climate change impacts on ecosystems			No target	3.9
Resource efficiency and the low-carbon economy				
Material resource efficiency and material use			No target	4.3
Waste management			☐	4.4
Greenhouse gas emissions and climate change mitigation			☑/☒	4.5
Energy consumption and fossil fuel use			☑	4.6
Transport demand and related environmental impacts			☐	4.7
Industrial pollution to air, soil and water			☐	4.8
Water use and water quantity stress			☒	4.9
Safeguarding from environmental risks to health				
Water pollution and related environmental health risks			☑/☐	5.4
Air pollution and related environmental health risks			☐	5.5
Noise pollution (especially in urban areas)		N.A.	☐	5.6
Urban systems and grey infrastructure			No target	5.7
Climate change and related environmental health risks			No target	5.8
Chemicals and related environmental health risks			☐/☒	5.9
Indicative assessment of trends and outlook		Indicative assessment of progress to policy targets		
☒	Deteriorating trends dominate	☒	Largely not on track to achieving key policy targets	
☐	Trends show mixed picture	☐	Partially on track to achieving key policy targets	
☑	Improving trends dominate	☑	Largely on track to achieving key policy targets	

Figure 1. An indicative summary of environmental trends (EEA, 2015)

While the accumulation of EU environmental policies over time has been impressive, pressures on the environment have continued to increase in many areas: important objectives such as the EU Biodiversity Strategy's goal of halting biodiversity loss by 2020 will simply not be met. The European Environment Agency's latest report underscores the relative but insufficient progress in many areas (cf. Figure 1, EEA 2015).

Problems in implementing EU legislation as well as assessing the added value and shortcomings of alternative and voluntary approaches (for instance, the Plan for Forest Law Enforcement, Governance and Trade (FLEGT) adopted in 2005) are still high on the agenda of environmental eurogroups.

A Vote to Leave – The 'Norwegian Option'

The UK will be excluded from the formulation and adoption of EU policies. The British environmental groups may try to influence the EU legislation under preparation and remain active in their respective networks in Brussels. However, major texts are excluded from the EFTA and EEA agreement, such as the Bathing water, Birds and Habitats directives (IEEP 2016).

The leverage of British environmental groups on these fields where they have played a significant role at the EU and domestic levels will thus significantly diminish. Furthermore, the UK legislation adopted to transpose the EU law could be amended, driving them to concentrate their efforts at the national level in order to protect the environmental *acquis*. They may neglect their proactive role at the EU level and fail to push Britain to adapt to major future challenges with an economy pressing more on natural resources.

The conditions for the admissibility of actions brought by individuals are tighter before the EFTA court compared to the EU Court of Justice³⁰ and there is no leverage through financial penalty in case breaching (Scott 2016). Like the European Commission, the EFTA surveillance authority initiates infringements procedures against Member States on the basis of a complaints procedure.

Although NGOs were only 5% of the complainants in 2015, environmental cases have been increasing over the years (EFTA surveillance Authority 2015, Jaeger 2014). In this scenario, possibilities of litigation will be more limited before the EU court of justice, while any individual of an EU country (for instance, NGOs or firms) is also able to use the EFTA complaints procedure.

Finally, UK environmental groups will still be eligible for LIFE funding only inside the items covered by the EFTA/ EEA agreement (Regulation 1293/2013).

A Vote to Leave – The 'Free Trade Option'

Compared to the EFTA scenario, the most prominent advocacy organisations will have even more likely to defend the legislation already adopted, jeopardizing the role they play in the Brussels NGO networks. The transboundary nature of several phenomena involving other European countries such as climate, air quality and migration species may affect Britain.

³⁰ The Treaty of Lisbon eased the conditions for the admissibility of actions brought by individuals against decisions of the institutions, bodies, offices or agencies of the European Union. In the EFTA case, the judgment of the Court *Plaumann & Co. v Commission of the European Economic Community* (Case 25-62) still prevails. http://curia.europa.eu/jcms/jcms/P_69328/ Accessed the 16.03.2016.

British environmental groups and citizens will be deprived of access to the European Commission and EU courts when it will come to the UK, while still able to report failures of any EU member state to fulfil its obligation through the complaints procedure which is open to non-EU citizens and organizations.

Funding in the field of research would probably be compromised as well as the availability of data on the quality of the environment (British Ecological Society 2015).

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Reforming EU Policy

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Key findings

- The UK has been one of the most vocal advocates for ‘better regulation’ and greater subsidiarity at EU level since the early 1990s, alongside other Member States (Netherlands, Germany) and parts of the European Commission.
- Environmental policies, such as water, air or biodiversity directives, and policy processes have been frequently targeted under ‘better regulation’ plans – criticised for harming national sovereignty and creating unnecessary regulatory burdens.
- Policy processes have been extensively reshaped and the number of policy proposals has sharply fallen, but there has been no extensive deregulation at EU level.

Introduction

The new settlement for the UK within the EU agreed in February 2016 (European Council 2016), addressed four concerns raised by David Cameron in his renegotiation (Cameron 2015a):

1. Reforming EU *economic governance* to secure the interest of non-Euro members
2. Increasing efforts for *competitiveness* at EU level by reducing the total “burden of existing legislation”.
3. Addressing questions of *sovereignty*, by ending ‘Britain’s obligation to work towards an “ever closer union”’, enhancing the role of national parliaments and make sure that “the EU’s commitments to subsidiarity [are] fully implemented”
4. Tackling intra EU *migration* and reducing “the current very high level of population flows from within the EU into the UK”.

This renegotiation touched on two very different questions – reforming the way the EU works and reforming the UK/EU relationship (Cameron 2015b). As the negotiation proceeded, it opened the way for multiple legal and political options, from changing national policies to a full-blown reform of the European Treaties (House of Lords EU Select Committee 2015b, p.9; House of Lords EU Select Committee 2015a, p.13), with the final deal offering a mix of different legal options (Weiss & Blockmans 2016, pp.11–12).

The four items identified in David Cameron’s renegotiation were not new sources of concerns for the UK. The UK opted out of joining the Euro in the 1992 Maastricht Treaty and from the Schengen area in the 1997 Amsterdam Treaty. Beyond treaty changes, it has been a central advocate for greater subsidiarity and the reduction of the burden of EU legislation since the early 1990s (Major 1992; House of Lords EU Committee 2005; Cameron 2013). This expert review focuses on these two issues. It analyses how the UK argued for regulatory reforms at EU level – in order to increase both sovereignty and competitiveness – over the last 25 years, and the impact these demands have had on EU environmental policies.

This review first traces back the frames (i.e. “the terms in which the issue is defined”(Princen 2011, p.929)), venues (i.e. “distinct institutional arenas” (ibid.) with different participants), and targets (policies or policy processes) through which the UK and other political actors at EU level sought regulatory reform since the early 1990s. Second, it discusses the successes of these earlier attempts in terms of changes to policy (existing legislation and policy proposals) and policy processes (within the European Commission, and through the legislative process). Third, it investigates to what extent the recent renegotiation differed from earlier reforms, in terms of frames, venues and targets, before discussing likely outcomes of vote to Leave or Remain in the EU on future regulatory reform.

Analysis

The quest for subsidiarity after the Danish ‘no’ to the Maastricht Treaty

The Danish ‘no’ to Maastricht is considered in the literature to mark the end of the “permissive consensus” on European integration, i.e. the moment at which the European general public started to adopt a more negative tone on the EU (Hooghe & Marks 2008). It also marks the beginning of more than 20 years of British demands for regulatory reform in Europe. Tasked with finding a solution to the Danish crisis, the 1992 UK Presidency, under John Major, called for reforms of EU policy and policy processes to meet the principle of subsidiarity¹ (van Kersbergen & Verbeek 1994).

Different interpretations (or frames) of this principle were deployed during the 1992 British Presidency (van Kersbergen & Verbeek 1994), revealing the “Janus-faced nature of subsidiarity” (Golub 1996, p.692). Thus, interpretations of subsidiarity ranged from calling for repatriation of certain existing policies and a reduction in policy proposals (as supported by the UK) (Jordan 2000), to calls for further policy expansion (van Kersbergen & Verbeek 1994).

These discussions yielded two very different sets of targets. The Commission list contained 20 policy proposals and a promise to revise existing legislation in areas such as agriculture, animal welfare and the environment – where it vowed to focus “on air and water, to take new knowledge and technical progress into account” (European Council 1992, p.30). The more comprehensive UK list, which was leaked before the final Presidency summit, contained 71 targets (including 27 environmental ones), mixing existing policies with proposals (Wils 1994). The European Council endorsed the Commission list, starting an annual process of reporting on the application of subsidiarity and proportionality principle. The content of these hit lists highlight how subsidiarity was used to challenge existing environmental legislation as well as proposals for future environmental policies. In the following years, the UK government continued to make demands for regulatory reform, building coalitions with other Member States. It produced a slimmed down subsidiarity ‘hit list’ together with the French Government (Golub 1996), before supporting the German 1994 Presidency’s demands for greater competitiveness and for an independent review of the body of EU legislation (Financial Times 1994), as well as the 1996 Dutch Presidency’s work on the quality of EU legislation (Kellermann 1999).

Pushing for better regulation at EU level

EU regulatory reform was back on the UK political agenda in time for its 2005 Presidency, with frames, venues and targets markedly different from the Major years. The 2005 UK Presidency pushed for regulatory reform “very much from a pro-European perspective” (House of Lords EU Committee 2005, p.22) – similar to how the 1994 German Presidency had framed regulatory

reform as a “pro-European gesture” (Agence Europe 1994). Venues also differed – the UK was not acting alone, but within the Council as part of a coalition of six consecutive EU presidencies aiming to foster better regulation at EU level (Six Presidencies 2004). As in the 1990s, this Member States-led process aimed at influencing the orientation of the European Commission, which had also pledged to take Better Regulation seriously (Radaelli & Meuwese 2009). Furthermore, compared to an early 1990s focus on specific policies, the UK 2005 Presidency targeted principally policy processes, pushing for the adoption of Better Regulation principles at EU level, such as impact assessments (an area in which the UK was a pioneer (Lodge & Wegrich 2009)), or administrative burdens reduction (a Dutch model adopted by the UK in 2005, (Wegrich 2009)). Compared to the 1990s, the greatest criticisms of EU environmental policies did not come from Member States (with Dutch and British ministers arguing for “more European action... to protect the environment” (Financial Times 2005)) but from within the European Commission. Thus, a number of Commissioners tried, but failed, to block the publication of European Environmental Strategies (Löfsted 2007), and environmental policy was chosen as one of 13 priority areas on which the objective of 25% reduction of administrative burden should be tested (European Commission 2009).

Austerity and sovereignty concerns in the 2010s

Calls for regulatory reform were reinforced after 2010, when José Manuel Barroso made ‘smart regulation’ the *leitmotiv* of his second term as Commission President (European Commission 2010), with a marked shift from reducing administrative burdens to reducing regulatory burdens (Van den Abeele 2014). This move was supported by the UK government-sponsored *Cut EU red tape* report, which took aim at the regulatory burdens of 30 proposals and existing policies, including 7 environmental ones (Business Taskforce 2013). Questions of sovereignty and subsidiarity in the face of EU regulation resurfaced in the UK – notably in David Cameron’s Bloomberg speech and the Balance of Competences review (Cameron 2013; House of Lords EU Committee 2014) – and beyond, as demonstrated by the Dutch subsidiarity review (Ministerie van Buitenlandse Zaken 2013). But while competitiveness and cutting red tape found support among many Member States (Mitterlehner et al. 2015; Make It Work Initiative 2014), the alternative framing of subsidiarity and competences, as understood by the UK, did not (Blockmans et al. 2014, p.7). These discussions revealed tensions between the UK and the Netherlands, traditional allies on EU regulatory reform (Emerson 2013), on whether to frame EU regulatory reform as a cooperative, open process or to adopt a more confrontational tone (Wiersma & Schout 2014). These tensions were exemplified in one of Barroso’s last speeches as Commission President in October 2014:

“The successive British governments certainly made the case for a ‘less red tape’ agenda, but sometimes in a way that was not helpful. A way that was perceived as coming more from an anti-European angle” (Barroso 2014, pp.3–4)

Barroso’s successor Jean-Claude Juncker adopted a very different tone – much less critical of UK efforts. In a speech in front of the European Parliament in July 2014, he argued that what the EU was doing was “not sufficient” with regard to both subsidiarity and reducing red tape (Juncker 2014a, p.17). Once again, a renewed attention to Better Regulation raised concerns about the fate of EU environmental policy. The Juncker Commission saw first, the merger of the Environment and Fisheries portfolio, second, the merger of the Climate Change and Energy portfolio, and third, the creation of a new role – First Vice-President in charge of better regulation (Čavoški 2015). In terms of political priorities, Juncker’s mission letter to the new Environment & Fisheries

Commissioner called for Karmenu Vella to focus his action on making sure existing environmental legislation is “fit for purpose”, advocating the choice of the “least burdensome approach” (Juncker 2014c, p.2,4).

To sum up, the UK government has been a central advocate for regulatory reform at EU level since the early 1990s, couching its demands in either calls for greater subsidiarity or as a way to achieve greater competitiveness, targeting both policy (proposals and existing legislation) and policy processes. Over time, it managed to build multiple coalitions with like-minded states, and parts of the Commission for regulatory reform – with a strong focus on environmental policies. These coalitions remained fragile, with notable disagreement on how calls for EU regulatory reform should be framed and how to connect with broader attitudes to European integration (regulatory reform as either constraining or reinforcing the EU), although the Juncker Commission (2014-2019) appears to be closer to the UK on red tape and subsidiarity than its predecessors.

What impacts have the reforms had?

As shown above, calls for regulatory reform have both targeted policies and policy processes. Within policy impacts, we can distinguish between impacts on the quality, or content of policies and impacts on the quantity, or number of policies; as well as between impacts on policy proposals and on legislation already in place.

The reduction in the number of new environmental policy proposals has been reported in the literature since the middle of the 1990s (Golub 1996; Jeppesen 2000).

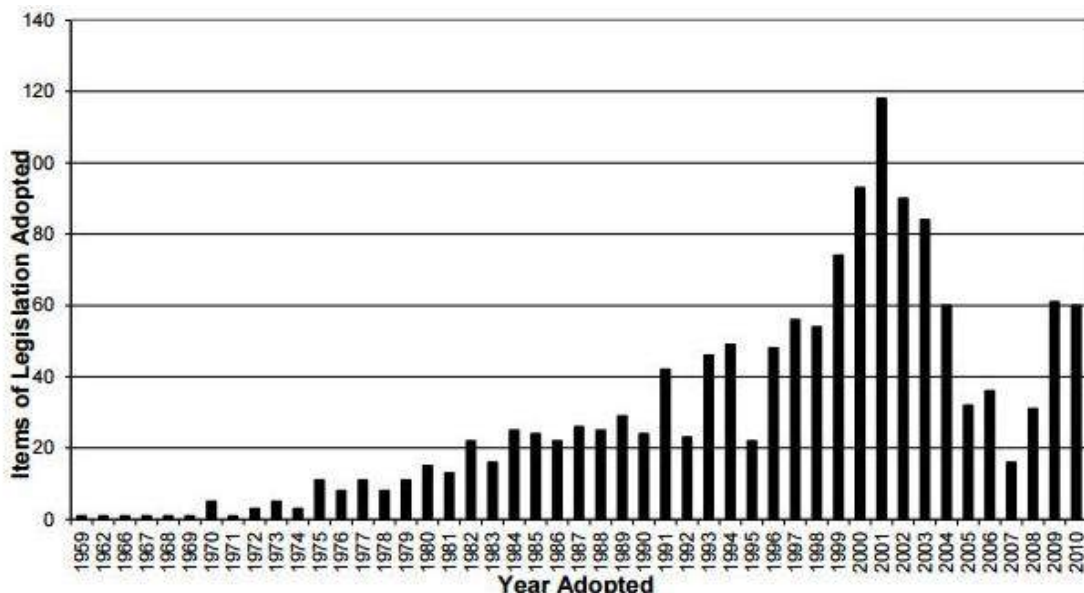


Figure 1. Number of items of EU environmental and related legislation adopted each year 1959–2010 (Farmer 2012)

This trend is continuing, and has been further confirmed by the 2016 Work Programme of the European Commission, which offered 23 new policy proposals, only one of which is environmental (European Commission 2015).

Other factors may impact the number of policy proposals put forward – environmental policy is now a mature policy area at EU level, where most environmental issues are regulated (Jordan & Adelle 2012). But proposals singled out in calls for regulatory reform, such as the proposal for a soil directive targeted in the UK Cut EU red tape and Dutch Subsidiarity Review have subsequently been removed (European Commission 2014; Business Taskforce 2013; Ministerie van Buitenlandse Zaken 2013).

Regarding existing policies, the impact of the first 1990s wave of regulatory reforms on existing environmental policies is conventionally considered limited:

“Many instances of supposed deregulation appear to be mere reregulation, so that little tearing-up of environmental laws has actually occurred throughout the EU” (Flynn 1998, p.692)

Furthermore, a number of case studies focusing on the impact of the British ‘hit lists’ in the early 1990s on EU environmental legislation found that the targeted policies, in particular water directives, may have been reformed, but that they had overall seen a *strengthening* in standards, and not a loosening of standards as pushed for by the UK government (Jordan 2000; Jordan & Turnpenny 2012; Jeppesen 2000).

There is very limited academic research on the impacts of regulatory reforms conducted in the 2000s on environmental policies, and many reforms started in the 2010s, such as the Fitness Check of the Habitats and Birds Directives are still ongoing. A longitudinal study of the direction of policy change in European environmental legislation targeted for regulatory reform over the last 25 years found complex patterns of change, with a mix of expansion, *status quo* and dismantling (Gravey & Jordan forthcoming). While few examples of policy dismantling (*i.e* “the cutting, diminution or removal of existing policy” (Jordan et al. 2013, p.795)) were apparent at the legislation level, delving within the pieces of legislation found numerous examples of cuts to policy instruments and an increase in the use of derogations, to provide greater implementation flexibility for Member States (Gravey & Jordan forthcoming).

Concerning policy processes, the UK government has long pushed for greater attention to Better Regulation principles at EU level, and for the creation of a Better Regulation executive at EU level (House of Commons 1998; House of Lords EU Committee 2005) – these demands were met with the creation of a Better Regulation portfolio in the Barroso Commission in 2004 (Barroso 2014), and of the post of 1st Vice-President for Better Regulation in the Juncker Commission 10 years later (Juncker 2014b). The change of internal structure in the European Commission (Kassim et al. 2013) went hand in hand with a change of frames and with a move of the European Commission to the right (Wille 2012). The Commission also increasingly appeared to move closer to UK concerns – as exemplified by Juncker’s mention of EU “red tape” and his statement that “not every problem that exists in Europe is a problem for the European Union. We must take care of the big issues” (2014a, p.17). Beyond the Commission, the UK has managed to build larger coalitions with other Member States – from 2 in 1993, to 6 in 2004 (Six Presidencies 2004), and up to 19 signatories to a Better Regulation letter in 2015 (Mitterlehner et al. 2015).

In conclusion, due to the consensual nature of policy-making at EU level (Hix 2007), changes to precise piece of legislation will often lead to a compromise and a mix of expansion and dismantling. However the UK has proven successful in stopping policy proposals it opposed, and in reforming how policy proposals are developed at EU level, hereby contributing to shaping the policy agenda from the start.

How does the 'new settlement' compare?

The recent renegotiation was debated around 4 issues: economic governance, immigration, competitiveness and sovereignty (Cameron 2015a). The latter two have been at the heart of UK calls for regulatory reform over the last 25 years.

On competitiveness, the UK government eschewed publishing a public 'hit list' or 'shopping list', in part because such a list could easily be scrutinised for success or failure (House of Commons Library 2015a, p.11), although precise policy targets, with a focus on environmental and social EU policies had been a mainstay of UK demands since the early 1990s. Instead the UK's demands focus on policy processes, with calls to include a "target to cut the total burden on business". This demand appears to be an attempt to upload a UK approach to better regulation, exemplified by the "one in, two out" rule for new regulations (Voermans 2015, p.106).

On sovereignty, again the focus is on policy processes, in particular on changing the role of national parliaments in the EU legislative process – a demand first made during Cameron's 2013 Bloomberg speech.

The Future

A Vote to Remain – The 'Reformed EU Option'

The UK would retain a strong voice for EU regulatory reform, creating further opportunities to pursue and orientate regulatory reform in the EU. As the recent Better Regulation letter showed (Mitterlehner et al. 2015), regulatory reform and cutting EU 'red tape' is the part of its renegotiation bid in which the UK has greatest support from other Member States – in part because it is framed as reforming the EU for the benefit of all its Member States, and not only about the UK's relationship with the EU. On subsidiarity, experts have argued the deal agreed in February 2016 on powers to National Parliaments goes further than what was expected by most (Blockmans et al. 2014; Weiss & Blockmans 2016).

Greater focus on better regulation – exemplified by the continuation of the REFIT programme in the short term and, in the medium term the adoption of net targets (hereby hindering further policy expansion) would be expected, as long, at least, as the Commission and Council remain predominantly on the right hand of the political spectrum.

Environmental NGOs have repeatedly raised concerns with framing environmental policies as 'red tape' and with the REFIT exercise in particular – continued membership, and a strong UK advocacy for reducing EU regulatory burdens is likely to increase the risks associated with this programme.

A Vote to Leave – The 'Norwegian Option'

Regulatory reform at EU level has long been seen as an "Anglo-Saxon obsession" (House of Lords EU Committee 2005, p.21). A UK exit would change the balance of power between remaining EU actors, and would likely lead to a reduced focus on cutting red tape at EU level (Frantescu 2015; Global Counsel 2015).

Considering environmental legislation, as member of the EEA the UK would be bound by most of the environmental *acquis*, without being able to influence discussions on reducing burdens at EU level (Global Counsel 2015). The UK would only be able to reduce the burdens created through implementation acts for EU directives ('gold plating'). On the few pieces of environmental legislation (birds and habitats, bathing water) which do not apply in EEA members, as well as in fisheries and agricultural policies, UK governments would be able to adopt 'less burdensome' alternatives, which could have less ambitious environmental objectives.

A Vote to Leave – The 'Free Trade Option'

This scenario is similar to the EEA one: the UK would lose its influence on EU regulatory reform, and other advocates for cutting red tape and increasing subsidiarity in the EU would be weakened. This may create an opportunity for opponents of recent better regulation programmes at EU level such as REFIT to push for changes at EU level.

By voting Leave and not joining the EEA, the UK would be bound by a significantly smaller amount of EU environmental rules – only rules pertaining to product and process standards, required to export to the Single Market. This means that UK governments would be free to cut 'red tape' in much greater arrays of environmental legislation. This means that environmental NGOs would have to campaign against cuts to environmental legislation in both the UK and at EU level.

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Environmental Quality

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Key findings

- The EU has been a major factor driving improvements in the quality of drinking and bathing water, the reduction of landfill waste, the reduction of emissions from power stations and the protection of habitats.
- However, there continue to be challenges in relation to water pollution, urban air quality and the protection of some species. Excessive cost is often cited as a reason for the UK's relatively poor implementation of these policies.
- In many areas environmental quality improvements were required by both the EU and international treaty commitments. However, the legal force of international laws is generally less than that of corresponding EU rules.

Introduction

The EU has a comprehensive suite of environmental policies that cover the key environmental media of air, water and land, as well as covering habitats and the biodiversity of flora and fauna (See Burns and Jordan 2016 in this volume; Europa 2016a). Since joining the EU in 1973 the UK's water and air quality have improved and there has been a reduction in the volume of waste produced. There is evidence that the implementation of EU policies has helped to protect some habitats with positive effects upon a range of flora and fauna. The EU is generally also seen to have been a leader in relation to climate change and the UK has been a key player in the evolution of this area of the environmental *acquis* (see Rayner and Moore 2016 in this volume). However, the EU has had negative effects upon water quality and habitats associated with the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) (see Gravey 2016; -Stewart 2016), and there are on-going challenges associated with improving air quality.

As noted by Burns and Jordan (2016), there has been a shift in national policy style and stringency as a consequence of EU membership of the EU. However, it is challenging to trace the causal relationship from these changes in EU and national policy through to their combined impact on environmental quality at the EU, national and sub-national level. Analysts face a range of methodological challenges that arise when trying to determine the causal relationships between all these elements.

Analysis

There is a well-established academic literature analysing the impact of the adoption of the *acquis* upon UK environmental policy some of which covers quality (e.g. see *inter alia*, McCormick 1991;

Gray 1995; Jordan and Greenaway 1998; Lowe and Ward 1998; Jordan 2002; 2004; Wurzel 2005). However, the main focus of this work has been upon the impact of the EU on policy style and environmental governance within the UK and between the UK and EU. What is noteworthy is that there were a range of studies through the 1990s and into the early 2000s but since then detailed academic analyses of the impact of the *acquis* upon UK environmental quality have been sector and/or instrument specific, and have tended to focus upon the cost implications of specific items of legislation or upon evaluating their effectiveness in certain contexts. Many of these analyses have been conducted to inform processes of regulatory reform at EU level (see Gravey 2016b for a summary).

Longitudinal data on quality are available from European Environment Agency (EEA), and other types of data on quality can be sourced from the UK government, EU institutions and international organisations.³¹ There is also a range of studies produced by think-tanks including *inter alia* the Institute for European Environmental Policy (IEEP); Ecologic; Green Alliance; and the Stockholm Environmental Institute (SEI).³² The Yale University Environmental Performance Index (EPI), and Germanwatch's Climate Performance Index³³ also provide data on different aspects of national environmental quality. From these data it is possible to identify long terms trends in key substances and media. However, these data are not necessarily collated in order to measure the effect of specific policy instruments. Indeed a key challenge for analysts of EU environmental policy is the fact that evaluation of policy is highly politicised, subject to disputes between the Member States and the Commission and the EEA and the Commission (Mickwitz 2013). Moreover policy evaluation in the EU tends to focus upon whether the objectives of policy have been achieved not upon the causal relationship between the adoption of a policy instrument and improvement in environmental quality (*ibid.*). Furthermore, any improvements (or reductions) in environmental quality can rarely be attributed to one specific policy, given that policies are often adopted in packages and may interact with one another. Hence, whilst it is possible to use available data to track for example, trends in acidification, it is less straightforward to attribute causal relationships between those trends and specific legislative instruments.

In view of this complexity, this review proceeds via a concise analysis of each of the key policy areas identified above, in order to facilitate sector specific discussion. It then turns to unpack further the methodological challenges associated with determining a clear causal relationship between the development and extension of the EU's environmental *acquis* and the concomitant changes (and for the most part improvements) in UK environmental quality.

Water

In the field of water there was an immediate misfit between new EU and existing UK policies (Jordan 1999; 2002; 2004; Jordan and Burns 2016). Over time the literature has shifted away from

³¹ For example, the Department for Environment, Food and Rural Affairs (DEFRA), Department of Energy and Climate Change (DECC), the UK Environment Agency (EA), various EU Directorates-General (notably DGs Environment and Climate, although it is worth noting that these data in turn are usually supplied by the Member States), and international agencies such as United Nations (UN) and World Health Organisation (WHO).

³² See <http://www.ieep.eu>; <http://ecologic.eu>; <http://www.green-alliance.org.uk>; <http://www.sei-international.org>

³³ See <http://epi.yale.edu>; <https://germanwatch.org/en/9472>

a concern with measuring and explaining the effects of that misfit (see Jordan 1999; 2002; Ward 1998) towards a focus upon how water-users' perceptions of water quality shape their behaviour (Morgan 1999; McKenna *et al.* 2011; Ravenscroft and Church 2011) or the impact of regulations upon particular regions (Bourblanc *et al.* 2013; Quesada 2014) or sectors (especially agriculture)(see *inter alia* Börger *et al.* 2014; Dolan *et al.* 2012; Hynes *et al.* 2012; Mouratiadou *et al.* 2010; Wright and Jacobsen 2010; Bateman *et al.* 2006; Hanley *et al.* 2006).

The principal instrument governing water quality in the EU is the water framework directive which seeks to manage water quality within river basins catchment areas with the overall goal of achieving good water status for inland and coastal waters (European Parliament and Council 2000). It is underpinned by a set of so-called daughter directives covering *inter alia* ground water, urban waste water; drinking water and bathing water. The nitrates and integrated pollution control directives are also of relevance to improving European water quality (Europa 2016b).

Jordan (2002) argues that EU has had a profound effect upon the way water is regulated and monitored in the UK, largely due to the different style of regulation based upon uniform emissions limits preferred by the EU in its early water policy development which came into conflict with the UK's more voluntaristic and quality-oriented approach (See Ward 1998; Jordan 1999; 2002; Jordan and Greenaway 1998). It is noteworthy that the water framework directive, which was adopted in 1998 reflects a compromise between the dominant regulatory paradigms in the UK and Germany (Wurzel 2005). The directive requires water bodies to work towards 'good water status', which critics have argued is insufficiently well-defined and/or unrealistic for many water bodies (HoL EUC 2012), and it is clear that some states are struggling to implement the directive's provisions (*ibid*). The issue of costs especially in relation to managing pharmaceuticals in water has emerged as a central issue of concern (*ibid*).

Indicators reveal that the compliance with a range of water quality standards across Europe has improved since the 1970s (EEA 2012; 2014). Certainly it is no longer permissible to pump large volumes of untreated sewage into the seas around Britain as was the norm in the 1960s and 70s (Ward 1998; Jordan and Greenaway 1998; Jordan 2002). There has been extensive investment in sewage treatment in order to meet the requirement of the Urban Waste Water Directive (IEEP 2013; 2016). On drinking water, Europe is the second best performer globally in providing access to safe water (EPI 2016). In a 2014 report on 25 years of implementing the drinking water directive in England, the Drinking Water Inspectorate (DWI) found that quality had generally improved although nitrates and some biological parameters continue to cause occasional problems (DWI 2014). Nevertheless, the EEA (2015a) finds that nitrate concentrations declined by 20% on average in European rivers between 1992 and 2012.

In summary, the EU has had a profound and long lasting impact upon the way water is managed in the UK and a generally positive effect upon its overall quality.

Air Quality

Air quality is regulated through a number of key instruments relating to acidification, industrial pollution, ozone depleting substances and greenhouse gas emissions, especially from vehicles.

The main EU activity in this area started in the 1980s and intensified throughout the 1990s (see Selin and Van Deever 2003). The UK's failure to join the so-called 30% club of nations committed to reduced sulphur dioxide emissions contributed to the UK's reputation for being 'the dirty man of Europe', although ironically the UK went on to overachieve the 30% target via the adoption of combined cycle gas turbines (Skea 1995). Jordan (2002) suggests that the degree of misfit between the UK and EU was less obvious in the field of air largely due to the EU's targets being relatively weak. It is also notable that many of the air quality proposals were negotiated once the UK had become more established within the EU and the Department of Environment was more adept at shaping discussions in the Environment Council. For example the UK successfully played a role in weakening the Large Plant Combustion Directive adopted in 1988, but played a more constructive role in the formulation of the Integrated Pollution Prevention and Control directive adopted in 1996 (Skea 1995; Jordan 2002; 2004).

In terms of overall trends, there is a correlation between the existence and extension of the EU's *acquis* and the reduction in levels of acidification, (EEA 2015b), ground and high level ozone and air pollution (EEA 2015c; Wilson *et al.* 2012; Guerreiro *et al.* 2014) in the UK and other states. However, there are some areas of policy where the EU has struggled to improve environmental quality – most notably in relation to particulate matter in urban areas (Guerreiro *et al.* 2014). The Commission has recently repealed and consolidated air quality legislation (see Europa 2016c). The current strategy is based upon establishing a set of national emissions ceilings for key primary and secondary pollutants, however a number of states, including the UK, are struggling to implement provisions of the ambient air quality and cleaner air for Europe directive (HMG 2015). Indeed in January 2016 it was revealed that the UK had already breached its annual limits for nitrogen dioxide by 8 January in one part of London and it was anticipated that further sites would be in breach within a matter of days (The Guardian 08/01/16; The Telegraph 08/01/016). This breach followed on from legal action taken against the UK government for failing to implement air quality laws by Client Earth between 2010 and 2015 (See Scott 2016 in this volume). Whilst the UK is not alone in struggling to meet emission limits (Doerig 2014; also see Europa 2016c) the EU's requirement that states meet standards, measure quality and provide transparent data all provide opportunities for campaigners who want to see air quality further improve.

Overall, whilst UK air quality has improved since joining the EU, with respect to some key pollutants it is struggling to implement regulations, with concomitantly negative effects for UK citizens.

Habitats

The UK considered itself to be a pace setter in nature conservation and as in other areas it took a relaxed view of European moves to extend the *acquis* to nature protection, on the grounds that such moves would have limited implications for UK nature laws (Lowe and Ward 1998; Fairbrass and Jordan 2001). Academic studies suggest that the EU has had a positive impact on the welfare of bird species across Europe (Donald *et al.* 2007; Sanderson *et al.* 2015.). Notably Sanderson *et al.* (2015) compare the population trends for species protected under the birds directives, analysing the difference between those covered by annex I which requires special conservation measures

and non-annex I (species that have less protection under the legislation). They also compare trends across EU states to take into account the length of membership. Notably those bird species subject to a higher level of protection under Annex I are faring better. Sanderson *et al.* (2015, p.1):

‘conclude that the EU's conservation legislation has had a demonstrably positive impact on target species, even during a period in which climate change has significantly affected populations.’

The Royal Society for the Protection of Birds (RSPB) has claimed that the Natura 2000 and habitats directives have had a positive effect in the UK on the grounds that protected sites in the UK were being lost at a rate of 15% a year before the directives were implemented, but this declined to just 1% a year afterwards (The Guardian 28/10/2015). Additionally, the government's own review of the Habitats directives in 2012 found that on the whole they were working well (HMG 2012), and that claims that the UK was guilty of gold-plating its implementation of the directive were not substantiated (also see Morris 2011). Hence, as in the area of air and water policy, in the field of habitats we see an initial policy misfit followed by improved quality in key indicators. However, it is worth noting that while some birds protected under the EU Birds directive have fared better over-time (Sanderson *et al.*, 2015), common farmland birds populations have declined by 50% since 1970, and continue to do so (DEFRA, 2014).

Waste

The EU's waste policy like other sectors has evolved since the 1970s expanding from an early concern with hazardous waste to encompass electronic waste, batteries, end-of-life vehicles and more recently a concern with establishing a circular economy (Europa 2016d). In 2010 the UK committed itself to a long term goal of a no-waste economy based upon the similar principles to those underpinning the circular economy model (DEFRA 2015), namely adopting closed product loop cycles to reduce the amount of waste generated. In an early analysis of the EU upon the UK's waste sector Porter (1998) suggested that the influence of the EU on UK waste policy was less profound than it was for other areas, on the grounds that many of the changes made in this sector were as a consequence of domestic legislation such as the adoption of the 1990 Environmental Protection Act, but also due to the positive engagement of the UK with EU waste policies. More recently, evidence submitted to the Government's balance of competence review suggests that the EU has had positive impact upon UK waste policy, most notably by promoting a shift from landfill to recycling of waste (HMG 2014, p.24-5.) The targets established by the waste framework directive to ensure 50% of municipal waste is recycled (Europa 2016d) seem to have resulted in change in the UK, where recycling rates have increased by 400% since 2000 (Local Government Association, 2015). DEFRA remains committed to reducing the amount of waste sent to landfill (DEFRA, 2015). Overall then in this policy sector there seems to have been, a notable and positive impact of EU membership in reducing the volume of waste produced in the UK.

Chemicals

Chemicals in the UK are regulated via a range of international and regional agreements. On the international level there are the Rotterdam (Prior Informed Consent (PIC)), Stockholm

(Persistent Organic Pollutants [POPs]) and Basel (Transboundary Hazardous Waste) conventions, as well as various air and water quality, pesticide and nitrates directives.³⁴ At EU level the main pieces of chemicals legislation are the Regulations on the Registration, Evaluation and Authorisation of Chemicals (REACH), and the Classification, Labelling and Packaging of chemical substances and mixtures (CLP). The latter instrument incorporates the UN's Globally Harmonised System of Classification and Labelling of Chemicals (GHS) (Europa 2016e). The primary purpose of these EU rules has been to provide systematic information upon hazardous materials and clear labelling in order to facilitate trade but also to protect human health and the environment.

In terms of the impact upon environmental quality, EEA data indicate that the UK has made good progress in reducing the presence and use of POPs (EEA 2016) and heavy metals (2015d) since the early 1990s. However, a scoping study commissioned by DEFRA on the impact of REACH and CLP suggested that given the presence of a range of legislation regulating the use of chemicals it is difficult to disentangle the costs, benefits and impact of EU chemicals legislation (RPA 2009) from policy that is nationally and internationally derived. Although the same report concludes that on balance REACH has reduced the risk posed by certain chemicals (*ibid*). It is worth noting that evidence submitted to the balance of competence review highlighted the economies of scale that accrue to states under the EU's chemicals regime and evidence submitted by Chem Trust argued that the UK would need to implement a version of REACH to access Single European Market but would have less say in its content (HMG 2014). Overall it is difficult to determine a specific EU effect in shaping the impact of chemicals upon the UK's environment. However, as more evidence becomes available on the environmental impacts of REACH it may be possible to do so. It should be noted though that the EU is an important actor in the field that has played a global leadership role in developing a method for regulating chemical substances.

Isolating the EU effect

Although the implementation of the environmental *acquis* within the UK has not always been straightforward it has generally improved environmental quality (although see Gravey 2016 and Stewart 2016 for the effect of EU agriculture and fisheries policies). However, as noted in the introduction, one obvious objection to this overall finding is that the changes observed would have happened anyway. For example, scholars (Holzinger *et al.* 2011) have sought to determine if there is wider convergence of environmental policy on a global scale across OECD countries, i.e. that states are in any case developing policies along similar lines through processes of economic competition and knowledge sharing. Longitudinal analyses of policy has revealed a general trend towards policy convergence – but the majority of the sample reviewed was drawn either from the EU or became an EU member state during the study period (Holzinger *et al.* 2011), leading Holzinger and Somerer (2011) to conclude that the EU has played a crucial role in driving up environmental standards across Europe. Overall then it is difficult to isolate convergence from more general patterns of Europeanisation arising from EU membership.

³⁴ See <http://synergies.pops.int/>

With regard to air quality, a set of important international and regional agreements have shaped the evolution of the sector, most notably the Convention on Long Range Transboundary Air Pollution (CLRTAP), the Vienna Convention and Montreal Protocol on ozone depleting substances. Similarly on chemicals and water, EU legislation is nested within a hierarchy of international treaty obligations and guidelines that have shaped regulations globally. Moreover, there is a range of confounding variables that may also explain some of the improvements in the UK's environmental quality indicators. For example, in some areas policies have been pursued for non-environmental reasons but have nevertheless had a beneficial impact upon environment. One obvious example is the shift away from coal-generated power stations towards combined cycle gas turbines (CCGT) in the energy sector in the early 1990s (the so called 'dash for gas'), which led to a decline in SO₂ and CO₂ emissions (Skea 1995; HMG 2006). Thus, whilst there is a clear correlation between the extension and implementation of the environmental *acquis* and improvements in a range of environmental quality indicators (EQIs) covered by European regulations, it is methodologically challenging to attribute these changes solely to the effects of EU membership. However, EU membership has clearly had a transformative effect on the style and crucially the transparency of national policy (Burns and Jordan 2016). Moreover, where UK environmental quality falls below the standards agreed, information about that shortfall is available and legal avenues to secure better implementation can be pursued (See Scott 2016).

The Future

A Vote to Remain – The 'Reformed EU Option'

Under the 'Reformed EU Option' there may be changes to environmental quality emerging in response to the on-going policy reviews and evaluations at EU level. The habitats and birds directives are currently the subject of a Regulatory Fitness check, and air quality and waste are also undergoing a review (see Gravey 2016b in this volume). Consequently, there remains scope for further reform of EU environmental policy, and perhaps a weakening under this scenario. The UK government has been successful in its reform negotiations in securing a red card system that will enable the UK Parliament to cooperate with other legislatures across Europe to block unwanted legislation (See Carter 2016). One risk arising from this development is further pressure to weaken policies that have already been identified as targets, such as habitats with knock on effects upon quality. However, remaining also raises the opportunity for campaigners to keep pressuring for implementation of EU air legislation in order to improve air quality especially in the UK's cities.

A Vote to Leave – The 'Norwegian Option'

If the UK votes to leave the EU and the government manages to negotiate UK membership of the European Economic Area (EEA), much of the environmental *acquis* would continue to apply with the notable exception of bathing water, birds, habitats and some climate legislation (EEA 2011; See Burns 2013). The common agricultural and common fisheries policies would also cease to apply. The implications for environmental quality under this scenario are dependent upon what happens to the legislative acts adopted to give effect to EU policy. Certainly on habitats protection it seems likely that there may be some weakening of existing policy in this scenario.

Much of the investment to improve bathing water standards was made in the 1990s and 2000s. Hence, the political pressure to lower standards in this area may not be significant. On CAP and the CFP the impact of withdrawing from these policies on environmental quality again will depend upon the scope and nature of policies that replace them (See Gravey 2016 and Stewart 2016 in this volume).

A Vote to Leave – The ‘Free Trade Option’

If the UK leaves the EU and does not become a member of the EEA, then the UK government would be free to repeal or reform national legislation implemented to give effect to EU obligations. However, many product regulations will need to remain in place if UK companies wish to access the Single European Market, but the UK government will have limited say over their content. Some instruments, especially those designed to deal with global environmental problems are in turn nested within other international agreements, which means they will remain, and probably largely in the same format. The key issue here is a legal one: EU environmental policy tends to have higher standards and more rigorous enforcement mechanisms than international policies. A complete exit therefore raises the risk of weaker enforcement and lower standards (See Scott 2016 in this volume). Moreover, the requirement to provide data to the EEA and also to benefit from the EEA as a source of expertise will go under this exit scenario.

More broadly, the environmental impacts of an EU exit are dependent upon the environmental ambition of the government of the day. This implies a degree of uncertainty for investors. The improvements in UK water quality have been driven by significant investment in sewage treatment, similarly the transition to a low carbon economy will require significant investment in renewable energies. This exit scenario therefore raises the risk of uncertainty in long-term environmental planning which may negatively affect investment with concomitant impacts upon environmental quality.

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Future Scenarios

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Key findings

- Remaining in a ‘Reformed’ EU reduces the level of uncertainty as it means the status quo will effectively prevail. However, there is an on-going risk of further political pressure to review and potentially deregulate EU environmental policy. UK citizens and pressure groups will continue to have the opportunity to use EU legal processes to enforce existing standards.
- In the event of a vote to leave, followed by a successful application to join the EEA (the ‘Norwegian Option’) the status quo will also prevail except in the areas of Common Agricultural Policy (CAP), Common Fisheries Policy (CFP), bathing water, habitats and bird protection and some areas of climate policy. Here there is a potential risk of uncertainty in terms of the long term planning of these policy areas which may change according to the preferences of the government of the day. Habitats protection is potentially at risk of deregulation.
- In the event of a vote to leave and negotiate access to the EU under a ‘Free Trade Option’, the reviews agree that there is risk of uncertainty with regard to the future shape of environmental regulation with concomitant risks for UK environmental policy and the quality of the natural environment. The implications for sovereignty and parliamentary supremacy are uncertain.

Introduction

This review draws together the evidence from all the other reviews on the implications that arise from the three possible outcomes of the referendum:

- A vote to Remain (the ‘Reformed EU Option’).
- A vote for the UK to Leave the EU, followed by negotiated membership of the European Economic Area (EEA) (the ‘Norwegian Option’).
- A vote for the UK to Leave the EU and negotiate access to the Single Market (SM) under free trade rules, (the ‘Free Trade Option’).

The discussion proceeds by analysing the implications of each scenario for the UK’s existing system of environmental policy, procedures of decision making, and environmental quality. Before doing so, however, it is important to set the wider context, by discussing the content and outcome of the reform and renegotiation that provide the focus of the referendum, and also the practicalities of withdrawing from the Union.

The Reform Agenda

The reform agenda spelt out by David Cameron in his letter of 10 November 2015 to European Council President Donald Tusk had no explicit mention of environmental policy (Cameron 2015). The resulting offer from Tusk is similarly silent on the issue, although there is a commitment to cutting red tape at the European level (Tusk 2016), which could be interpreted as a commitment to review and potentially deregulate the environmental *acquis* (see Gravey 2016b in this volume). Despite the absence of an explicit environmental agenda within the reform mandate a vote to leave the EU will have a range of potential impacts upon the UK's environmental policy, governance and quality. Moreover, the emphasis on deregulation both domestically and at the EU level that has characterised the current and previous administrations since 2005 (as evinced by the Red Tape Challenge, one-in, two-out rule, the Habitats Review, and Balance of Competence exercise) has implications for environmental governance in the UK across all three referendum scenarios.

How Would the Process of Leaving the EU Work?

If the British public vote to leave the EU, a key issue of concern is how the process of 'Brexit' will be managed and, relatedly, what kind of 'Brexit' scenarios are available (see inter alia: Baldock et al. 2016; HMG 2016; Piris, 2016; McFadden & Tarrant, 2015 for possible scenarios). The UK Government (HMG 2016) has identified three broad approaches available to the UK:

- The EEA 'Norwegian Option' which would allow the UK privileged access to the Single Market (SM) but which would be accompanied by EU obligations over which the UK would have limited say.
- A negotiated bilateral option (similar to Swiss arrangements) which would allow the UK some access to the SM depending upon the nature of deals negotiated, and the UK would have to abide by many single market regulations again with little say in the content of those regulations.
- No special bilateral agreement and no preferential access to the SM. UK access to the EU would be dealt with under existing WTO rules.

Some commentators suggest that the UK's likely preferred option is some kind of EEA half-way house (or as Piris (2016) puts it, 'half membership') where the UK picks and chooses which aspects of the *acquis* it is prepared to implement (*ibid.*); others suggest a looser FTA scenario underpinned by a similar pick and mix approach (Grant et al. 2016). However, these types of scenario may not be palatable to the UK's European partners. Similarly the Swiss negotiated bilateral option is likely to be impractical for both parties (Piris 2016). On the UK side the sheer of number of treaties that would need to be negotiated is a potential obstacle. On the EU side there has been a distinct cooling in relations with Swiss following the 2014 referendum in which Switzerland voted to reduce immigration from EU states (EurActiv 2014), it therefore seems unlikely that the EU would consider a similar relationship with the UK. Consequently it seems more likely that in the event of a Brexit, the UK will choose between the EEA 'Norwegian' and WTO 'Free Trade' options.

But how would either of these two scenarios unfold? After a vote to leave, the UK would have to invoke the procedure set out in Article 50 of the Treaty on European Union. The process of

withdrawal is time-limited to two years unless the two parties agree to extend it. It is worth noting that HMG (2016, p.6) suggests that whichever of the exit scenarios is pursued it could take up to a decade to negotiate a new settlement with the EU and other trading partners. Moreover, whatever the outcome of the referendum, the UK will have to negotiate the terms and conditions governing its settlement with the EU.

To negotiate membership of the European Economic Area (EEA) like Norway, Iceland and Liechtenstein, the UK would first have to open negotiations to re-join the European Free Trade Area (EFTA), and then use that as a springboard for joining the EEA, which would require the unanimous agreement of the remaining 27 Member States, along with Iceland, Liechtenstein and Norway. The WTO, 'Free Trade Option' is available either as a deliberate choice for the UK or a default position in the event that withdrawal negotiations do not reach a satisfactory conclusion after two years.

Whichever variant of the 'Brexit' options is chosen, the UK will be required to implement some of the *acquis communautaire* if it wishes to access the European market, over which the UK will have little to no say in shaping (see Baldock *et al.* 2016). Crucially, under the 'Free Trade Option', not only will the UK face the Common External Tariff (CET), it will also no longer benefit from the array of Free Trade Agreements to which the EU is party (Piris 2016; HMG 2016). And whilst an approach based on a 'Free Trade Option' would see the UK facing fewer obligations than either EU or EEA membership UK companies will have reduced access to the Single Market in key sectors such as services (almost 80 per cent of the UK economy), and would therefore face higher costs (HMG 2016). Turning to the question of budgetary contributions, if the UK joins the EEA then it will still contribute to the EU budget albeit perhaps at a reduced level (HoC Library 2013). If the UK leaves the EU altogether then it will no longer have to contribute to the EU budget.

To summarise, for the UK to leave the EU the Article 50 procedure would need to be followed. On balance it seems that there are two realistic 'Brexit' scenarios (the EEA 'Norwegian Option' or the 'Free Trade Option') and in both cases some elements of the *acquis communautaire* (EU rules) will have to be applied in order to access the single market. The following sections summarise the implications arising from three broad post-referendum scenarios as identified in the evidence reviews in this volume:

- i) A vote in to Remain -- the 'Reformed EU Option'.
- ii) A vote for the UK to Leave the EU, followed by negotiated membership of the European Economic Area (EEA) (the 'Norwegian Option').
- iii) A vote for the UK to Leave the EU and negotiated access to the SM under free trade rules, (the 'Free Trade Option').

Remain: the 'Reformed EU Option'

As noted above the environment did not explicitly feature in the renegotiation discussions which were primarily concerned with sovereignty, economic governance and migration, although the emphasis upon competitiveness and deregulation could be taken to refer to some environmental policies. Broadly speaking, in this scenario life in the UK would continue much as it does now.

Policy

On policy there is likely to be continuation of the *status quo*, which provides the opportunity for the implementation of the reforms in agriculture and fisheries, to mitigate the negative environmental externalities currently arising in both these policy areas. However, we are also likely to see further deregulatory rhetoric in key sectors that have posed implementation dilemmas for the UK government such as air quality and habitats. For international policy the UK has the on-going opportunity to shape EU and international policy via its membership and the EU continues to enjoy the opportunity to benefit from UK leadership on climate policy.

Governance

For those keen to see a reassertion of parliamentary sovereignty, this scenario presents the opportunity to use the red card system in future, although Hagemann *et al.* (2016) suggest that this opportunity is unlikely to be used. Moreover, the implication that follows from the evidence presented here and elsewhere (e.g. McFadden and Tarrant 2015; Piris 2016) is that such sovereignty is largely illusory in a globalised and Europeanised market place, where outside the EU the UK would face itself having to 'take' many policies in which it has had little say. Politically, EU environmental regulation may be the subject of on-going debate and calls for deregulation within the Conservative party. Labour, the Greens and Liberal Democrats would have the opportunity to make the environment an oppositional issue if that seemed expedient or possible. This outcome presents a range of opportunities and risks for pressure groups – similar to those they encounter today – on how to drive the environmental policy agenda at the European and domestic levels. It is evident that the UK's calls for deregulation have received a sympathetic hearing in Brussels as exemplified by Tusk's reply to Cameron (Tusk 2016). Consequently, it seems likely that pressure groups will find themselves campaigning against any diminution in environmental protection that may arise as a consequence of such deregulatory pressure, as they have done in the case of the habitats fitness check (see Berny 2016 in this volume).

Quality

The implications for quality are similar to those for policy – there will be a continuation of the *status quo* but with the opportunity available for citizens to hold the UK government to account for failing to reach prescribed standards (see also Scott 2016). Staying inside the EU offers the UK government the opportunity to press for further reforms to the *acquis communautaire* – it seems likely given the prevailing economic and ideological context in Europe that the UK's partners are receptive to deregulation, with all that implies for environmental quality and regulatory standards.

Leave the EU and Become a Member of the EEA: The 'Norwegian Option'

Under this scenario the UK would continue to enjoy access to the Single Market, and would still be subject to the majority of the environmental *acquis communautaire*, but with limited opportunity to shape its contents. EEA Members are supposed to comment collectively upon EU provisions but the operation of these processes is not consistent. However, the elements of the

acquis pertaining to the CAP, CFP, habitats and birds directives, bathing water and element of climate policy will no longer apply to the UK.

Policy

On international policy, Oberthür (2016) suggests that the UK would probably seek to pursue its own international policy preferences but would be bound to follow collective EU positions. Consequently, the UK could maintain *de jure* independence whilst in fact being subject to a *de facto* alignment with wider EU international policy objectives. Moreover, the UK leaving the EU raises the risk of changing balance of power within the Union which will still affect the UK, and also risks weakening the EU in international negotiations due to the diplomatic weight and strength that the UK can offer. On policy, Burns and Jordan (2016) anticipate limited change except in relation to those areas of the *acquis* which fall outside the EEA agreement, where attempted deregulation may occur. Thus for energy and climate policy relatively limited change is anticipated, but all authors note the Norwegian experience of assuming the costs and benefits of EU membership without having a say in the rules.

On farming and the common agricultural policy, Gravey (2016a) notes that the EU will lose a major source of funding and a key liberal voice calling for reform. Similarly, at national level we would be likely to see a major shake-up of the funding and regulatory regime for agriculture, particularly in relation to the devolved administrations. It seems likely from an environmental perspective that the farming lobby will oppose greening measures and will seek to roll back policies on habitat and bird protection, and on nitrates, which are seen as expensive. Stewart (2016) suggests that under this scenario the UK will be required to put in place a new fisheries management system that is likely to be similar to what is currently in the CFP. He also argues that this option is likely to raise risks for long term fisheries productivity and sustainability, as there is little evidence to suggest that Britain would continue to adhere to wider environmental policies currently offered by the EU. Moreover, access to marine environmental research funding would almost certainly decrease and there is a risk of fewer opportunities for essential international collaboration.

Governance

Overall there are relatively limited implications for the UK legal order and government, arising from the 'Norwegian Option' with Bulmer and Jordan (2016) hypothesising that much will stay as is, with the most likely consequence being for scrutiny of EU policy, which the Norwegian experience suggests will become more reactive. For parliament and parties, Carter (2016) suggests that the EEA option will result in growing politicisation of environmental policy with renewed calls for deregulation and frustration amongst eurosceptics over having to still implement much of the *acquis*. Berny (2016) suggests that this scenario raises the risk of pressure groups becoming implementation watchdogs on the aspects of the *acquis* that will remain in place and reactionary defenders of water, habitat and birds regulations which are likely to be subject to calls for deregulation.

Quality

On quality there are fewer risks than are associated with a complete exit but Burns (2016) suggests that the prospects for habitats, birds, and water quality will be dependent upon the preferences of the government of the day and the impact of lobbying. Owens and Cowell (2016) argue that in the areas where the *acquis* has not shaped policy economic deregulation has triumphed over sustainability, suggesting that the ‘Norwegian and ‘Free Trade’ options raise potential risks for environmental policy.

Leave the EU: The ‘Free Trade Option’

Under this option the UK could seek to negotiate access to the single market under free trade rules established by the WTO. The UK would not be required to contribute to the EU budget but would also not be able to benefit from shared expertise and resources provided via the European Council, the Commission or other important bodies such as the European Environment Agency. The minimum protections for the environment secured by international conventions would continue to apply but the standards and enforcement for these policies is generally weaker than exists under the ‘Remain’ and ‘Norwegian’ options. The UK government would be free to reform environmental policy but many of the environmental rules adopted to facilitate the operation of the single market (such as product standards) would have to stay in place if the UK wanted to trade with the EU. The UK government would have little say over their content. Thus the UK would be a policy-taker in many areas

Governance

There is scope for considerable incoherence and numerous policy gaps emerging in the event of an EU withdrawal, as most directly applicable EU law and subordinate legislation has been implemented under the powers conferred by the European Communities Act (ECA), and would cease to apply (Scott 2016). Scott therefore suggests that it is desirable that an Act of Parliament be passed that provides for the continued application of directly applicable and subordinate EU legislation. Scott also notes that the EU’s transnational governance framework offers a range of important advantages in relation to environmental policy most notably the pooling of expertise which allows the UK to draw upon expertise located elsewhere in the EU and vice versa. These opportunities will likely be lost under an exit scenario.

From a government perspective, Bulmer and Jordan (2016) note that there are limited implications for the structures of government but that processes and procedures across Whitehall may change. Notably EU-facing departments, such as DEFRA, will see a rebalancing of some of their work in the short and long-term, which may provide the opportunity for some more pro-active policy developments in domestic environmental policy. The most important implications, however, would relate to the question of the supremacy of Parliament, which they suggest would be able to scrutinize policy at the pace of national rather than EU policy processes. This finding however, must be tempered according to which of the broad exit scenarios the UK and EU negotiate. It seems likely that much of the environmental *acquis* as it applies to the Single Market will still be applicable to the UK under most exit options, which has on-going implications for the supremacy of the UK parliament, and the pace at which the UK considers relevant legislation.

Turning to the implications for political parties, Carter (2016) suggests that if the Conservative administration remains in place, the UK will witness an effort to weaken environmental rules as far as possible through processes of deregulation. However, he suggests that there is scope for the Labour Party to use the environment as an oppositional issue under such a scenario. The Green Party however, will lose a key source of its current influence that derives from having MEPs in the European Parliament in the event of an exit. For pressure groups there is a similar set of challenges. Many of the UK's pressure groups benefit from EU membership by being able to access a range of resources both financial and human (expertise, networks) that will no longer be so readily available. Moreover, as Berny (2016) notes, pressure groups will no longer be able to rely upon the CJEU as a vehicle for upholding environmental standards. As under the 'Norwegian Option' they face the risk of being transformed from proactive campaigners for stronger standards at EU level into reactive defensive organisations that spend more of their time trying to protect hard won environmental regulations. This interpretation is underpinned by a pessimistic assumption about the likely attitudes and behaviour of parties and government towards the environment in the event of an EU exit, which is shared across the reviews.

Policy

Burns and Jordan (2016) suggest that a major issue under a complete exit is the uncertainty that will follow, which raises the risk of uncertainty for investors and, by extension, investment in key sectors. The content of policies rather than their style and structure is likely to be subject to reform, and even here a significant roll back of policies is unlikely. One possible outcome is that standards will increasingly depend upon the political preferences of the party in government. However, regulations on transboundary air and atmospheric pollution, drinking water, chemicals and hazardous waste will probably stay in place as they derive from international commitments. However, as noted by Scott (2016) and Burns (2016) these standards are generally set at a lower level with weaker enforcement mechanisms. Turning to the international level Oberthür (2016) argues that an UK exit from the EU risks a 'lose-lose' scenario. The EU will lose the UK's diplomatic capability and influence, and it will also lose one of the current most progressive forces in relation to climate change (also see Rayner and Moore (2016) on this point). From the UK's perspective, its international standing is likely to diminish, moreover given the size and regulatory power of EU, the UK would be likely to fall into line on a range of policies, although over time divergence may emerge.

On climate, Rayner and Moore (2016) suggest that an EU exit raises the risk of the UK leaving the EU emissions trading scheme, but also offers the opportunity for the UK to put in place a national system that would be linked to the ETS. Regarding energy, the high level of integration between the UK and EU energy markets, suggests that the UK will remain entwined within those markets but with the risk of having less say over the rules governing them (Dutton 2016).

On farming and the common agricultural policy, the implications are similar to those under the 'Norwegian Option', thus there is a risk for the EU of losing funding from the UK and a key liberal voice calling for reform. There is a likelihood of a major shake-up of the funding and regulatory regime for UK agriculture, particularly in relation to the devolved administrations. It seems likely from an environmental perspective that the farming lobby will oppose greening measures and will seek to roll back policies on habitat and bird protection, and on nitrates, which are seen as

excessively costly. Stewart (2016) suggests that even in the event of an EU exit, the UK will be required to put in place a new fisheries management system that is likely to be similar to the current arrangements under the CFP. He also argues that an exit from the EU is likely to be unfavourable for fisheries productivity and sustainability, as there is little evidence to suggest that the UK would continue to adhere to wider environmental policies currently offered by the EU. Moreover, there is a high risk that access to marine environmental research funding would decrease with knock on effects upon essential international collaboration.

Quality

On quality, as for policy, the UK will continue to be bound by international commitments, which are significant for drinking water, chemicals regulation, and transboundary air and atmospheric pollution. However, as noted above there is still risk of lower standards as these international rules are generally weaker and harder to enforce. In other areas there is a risk that environmental rules will be subject to deregulatory pressures which may jeopardise the gains made in environmental quality since the 1970s and potentially limit future improvements.

Conclusion

To conclude, a systematic review of the evidence reveals an overwhelming consensus that the ideological climate is sympathetic to a deregulatory agenda at the European level and domestically in the UK. Consequently, whatever the outcome of the referendum, there are likely to be ongoing demands for less intrusive environmental policies, marshalled under the banner of reductions in 'red tape'. The evidence also suggests that there are a number of criticisms that can be levelled at the EU due to the negative environmental externalities that policies such as the CAP and CFP cause. In the event of a full exit there are a range of policies that will remain in place due to the UK's international policy commitments, but the standards will be lower and less readily enforceable. On balance the evidence suggests that leaving the EU completely, or even joining the EEA/EFTA, would create much uncertainty and therefore risks for UK environmental governance, policy and quality.

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The following kindly offered comments on earlier versions of this review. They are not responsible for any errors of fact or interpretation.

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