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## **Re: WWF-UK's response to the Call for Evidence on the Government's Review of the Balance of Competencies between the United Kingdom and the European Union**

### **Executive Summary**

EU policy on the environment has been built up in a gradual process since 1973 to become what is perhaps now the most developed set of measures and principles in any part of the world. It has acquired global influence in the process, reinforced by the increasing size and economic importance of the EU.

As such, it plays a pivotal role in protecting biodiversity and embedding sustainable practices throughout the territory of the EU and beyond. Many environmental issues are global and trans-boundary in nature (such as air quality, marine environment and migratory species), in respect of which EU action has established common standards through a shared approach.

Environmental law and policy should not be misrepresented as a source of constraint on economic activity. This response demonstrates that it leads to new markets and technologies and to increased sustainability and efficiency of production systems. It has also catalysed economic and commercial benefits by establishing common EU standards for companies, which operate in an increasingly pan-European market (e.g. EU standards for CO<sub>2</sub> emissions from vehicles). And there are also employment and economic benefits arising from tourism, alongside social benefits, such as the health and well-being of citizens and less tangible changes in the quality of life and aspects of culture.

EU legislation has led to stronger environmental protection in the UK, including improvements in water quality, reductions in industrial emissions and reduced levels of waste going to landfill. Despite various setbacks and a current lack of ambition, EU legislation has delivered significant achievements such as establishing the world's first Emissions Trading Scheme (ETS) and accelerating investments and cost reductions in several renewable energy technologies. Being part of the EU also allows the UK to punch above its weight in international climate change negotiations and could help significantly lower the costs of moving towards a low-carbon economy.

However, the relationship between the UK and the EU is not one-way. The UK has, and continues to play, a pivotal role in shaping the development and establishment of EU legislation, at times providing a leadership role on progressive EU legislation, such as the Habitats Directive, the Water Framework Directive and a draft Directive on Marine Spatial Planning. The corollary of this is that EU and UK legislation and policy are no longer entirely distinct – disentangling the two would be difficult.

On balance, the environmental benefits to the environment of EU membership have significantly outweighed the drawbacks. Therefore, if there were to be a shift in competence



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from the EU to UK as part of any renegotiation (or referendum), WWF would expect to see a swift transposition of EU measures into UK law without weakening the current levels of environmental protection. It would also be necessary to put in place mechanisms that recognise the cross-border nature of effective environmental protection.

### **Introduction**

1. WWF's global mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by:
  - Conserving the world's biological diversity;
  - Ensuring that the use of renewable and natural resources is sustainable;
  - Promoting the reduction of pollution and wasteful consumption.
2. WWF's strategy as an organisation is to impact on key threats under three goals, the third of which goes to the heart of the relationship between the UK and the EU: *'To defend and extend key EU and UK environmental policies, and to strengthen their role as environmental champions on the global stage'*. As such, this Review has significant implications for WWF's Mission and the third goal of WWF's strategy in particular.
3. WWF welcomes the opportunity to respond to the Review. Whilst WWF remains ostensibly neutral on the position of the UK's membership of the EU, we note that EU environmental law and policy plays a central role in protecting biodiversity and embedding sustainable practices throughout the territory of the EU and beyond. WWF set up a European Policy Office (EPO) in Brussels in 1988-89 in recognition of the growing importance of EU legislative and policy influence in the environmental sphere.
4. We commend the approach demonstrated by the Foreign and Commonwealth Office, Defra and DECC in conducting this Review, in particular: (i) the recognition that compiling evidence of this scale and nature requires a full 12 week consultation period; (ii) the format of the launch, which allowed stakeholders to easily identify relevant civil servants with whom they were keen to engage during the Review period; (iii) the number and nature (i.e. both geographical and thematic) of the workshops held during the consultation period; and (iv) the offer of smaller and 1:1 meetings to discuss detailed concerns, thus ensuring civil society had a variety of mechanisms for engaging in the Review. In our experience, the conduct of the Review is an exemplar in best practice for public participation in decision-making (as provided for in the UNECE Aarhus Convention, to which the UK is a contracting Party).
5. WWF's evidence is presented in two parts – this covering response (with one Annex) and a report written by the Institute for European Environmental Policy (IEEP) on behalf of WWF, RSPB, Friends of the Earth and The Wildlife Trusts<sup>1</sup>. While we have drawn on a number of the key messages from the IEEP Report in this response we do not seek to replicate it unnecessarily. Thus, where appropriate, this response cross-references the relevant section(s) of the Report.
6. Finally, we have not addressed all the questions posed in the Call for Evidence in the same level of detail; we have focused on those of most relevance to WWF.

### **Call for evidence – questions**

#### **Advantages and disadvantages**

*What evidence is there that EU competence in the area of environment and/or climate change has: (i) benefited the UK/ your sector; and (ii) disadvantaged the UK/ your sector?*

7. Since the UK joined the Common Market or European Economic Community in January 1973, EU legislation and policy has benefited the environment in numerous ways – by reducing emissions of CO<sub>2</sub>, improving the quality of our beaches, ensuring clean drinking water and protecting rare, vulnerable and iconic species and habitats. However, before focusing on some of those benefits, it is important to explain why action at the EU level, as

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<sup>1</sup> 2013 (IEEP) A Report on the Influence of EU Policies on the Environment (attached)

opposed to the Member State level, is necessary. These reasons can be broadly summarised as follows<sup>2</sup>:

- The **trans-boundary nature** of many environmental issues, including those relating to e.g. air quality, the marine environment and migratory species.
- The **global nature** of many issues, including climate change mitigation, deforestation and emissions from ship and aircrafts. Where Europe acts as a bloc it is often more likely to be able to lever global change than where countries act in isolation or in shifting alliances.
- The value of **common standards** for certain products with environmental impacts, as opposed to predominantly national standards being applied within a single European market where goods and services are traded freely. This is one of the primary reasons why many businesses are anxious to maintain a strong EU component in environmental policy.
- The inclusion of clear **environmental principles and provisions** in the Treaty (TFEU), some of which have subsequently been enforced by Member States, such as the polluter pays principle, the precautionary principle and the concept of sustainable development.
- The possibility of **sharing the resources, benefit and costs** of an initiative within a group of cooperating countries, e.g. in climate policy, since the “burden” of emission reductions within the EU can be shared. Since the EU has a common budget, there is a possibility of resourcing at least some of such joint endeavours in a way that is difficult in looser federation arrangements, such as the European Free Trade Association (EFTA) or the North American Free Trade Agreement (NAFTA).
- The **economies of scale** which can be achieved through working together to develop new technologies, create the necessary infrastructure to stimulate the emergence of a green economy and, indeed, for a more coherent set of protected ecosystems, e.g. the development of new technologies to a commercial scale, such as Carbon Capture and Storage (CCS).
- The capacity to use **economic instruments** on an appropriate scale and in an effective way. For example, the EU has exclusive competence in the sphere of trade and the capacity to include an environmental dimension in common external tariffs and to improve absolute prohibitions on certain imports or regulate exports. In certain circumstances, common technical standards and/or subsidies and taxes will have merits over national initiatives because of the scale involved, the need to avoid negative impacts on the competitiveness of individual countries and the political “comfort” derived from moving forward alongside neighbours in a new direction. Many of these economic instruments have a politically sensitive element but may prove more important over time as environmental issues are embedded more deeply in what is hoped will be progressively greener economies.
- The ability to impose **penalties** in respect of non-compliance with EU legislation (including the introduction of fines in recent years) has often have motivated national authorities to attend to implementation more vigorously than they would have done in relation to a purely national set of legislation (albeit still imperfectly).
- The EU can provide a sense of **direction and momentum** in areas where there is broad political agreement that progress is required - but the capacity to initiate it is limited at a national level. Unlike most national governments the EU has developed forward programmes on the environment which are agreed with the Member States and the European Parliament. The recently agreed Seventh Environmental Action

Programme is the latest example<sup>3</sup>. Similarly, in climate policy the EU's Low Carbon Road Map looks further ahead at the steps that would need to be taken to reduce European emissions by 80% by the year 2050<sup>4</sup>.

8. The IEEP Report gives a fuller explanation of the many ways in which EU legislation and policy has benefited the environment. It also notes that the main drawback of an EU approach is the loss of flexibility for national administrations to choose a different approach or significantly lower standards, alongside the more cumbersome nature of decision-making in light of the expansion of the EU to include 28 countries<sup>5</sup>. Our own evidence also notes a slightly more nuanced position with regard to the International Whaling Commission<sup>6</sup> and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>7</sup>.
9. WWF would highlight the following issues as examples of those in which the global and trans-boundary nature of the challenge requires a collective approach:

#### **Climate change<sup>8</sup>**

10. Addressing climate change requires a strong global response, supported by concerted action at the European, national and more local levels. In terms of mitigation the effort needs to be global. Nonetheless, given the constraints on our capacity to mobilise an effective global agreement there is a strong role for groups of countries to seek an appropriate global response. Since there are few such groupings the EU has acquired a critical role in the development of a global regime. At the same time, the EU has accepted a collective target for reducing emissions and a system of burden sharing for meeting at least some elements of this target. In this sense it has become a laboratory for experimenting with, and developing approaches to, climate policy involving the trade-offs necessary where different national interests are involved.
11. The UK has been a force in shaping the EU's international and domestic climate policy significantly over the last two decades. The UK's role as frontrunner in many climate policies has helped to shape EU climate policy and hence climate policies in other EU Member States and at international level.
12. The UK has itself set out on an ambitious decarbonisation pathway with a legally binding target of 80% reductions in emissions from 1990 to 2050. A medium-term target of a 34% reduction by 2020 also has been adopted, which should be further tightened in the event of a global deal on climate change. UK climate policy, as with any other national climate policy, is strongly interlinked with and dependent on developments at international level. Where they work satisfactorily, the combination of an international agreement and an EU-wide approach help to generate the leverage required to reduce emissions on a global scale to achieve a level-playing field, reduce compliance costs and hence limit potential negative impacts on the economy.
13. The role of the EU is considered to be particularly important in addressing the issue of 'consumption emissions', i.e. carbon emissions that occur when goods and services are produced in one country but consumed in another. To obtain an assessment of the total carbon footprint of a country it is necessary to account for territorial emissions and consumption emissions. For example, the UK Committee on Climate Change suggests that "*the UK's carbon footprint has increased by around 10% since 1993, as growth in imported emissions more than offset the 19% reduction in production emissions*"<sup>9</sup>. It would take international agreement to ensure that embedded emissions were consistently assessed and reported globally, ensuring there was not duplication in the accounting of terrestrial and consumption emissions, and that there was not under-reporting of the total carbon

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<sup>3</sup> EC, 2013a

<sup>4</sup> EC, 2011a

<sup>5</sup> IEEP Report, Executive Summary.

<sup>6</sup> See paragraph 29 of this response

<sup>7</sup> See paragraphs 45-47 of this response

<sup>8</sup> IEEP Report, section 5.2

<sup>9</sup> See <http://www.theccc.org.uk/wp-content/uploads/2013/04/CF-C-Summary-Rep-web1.pdf>

footprint. As the UK CCC points out, there is no international reporting standard. Only if the EU were to be engaged would there be the chance of getting such a standard.

### **International climate politics**

14. Although recent international climate negotiations have been slow and disappointing in terms of concrete post-Kyoto commitments, there is wide agreement that despite early setbacks in the European Parliament, the EU has been a major player in international climate negotiations and has decisively helped to establish an international climate regime<sup>10</sup>. The EU's leadership can be explained by several factors. First, the EU led by example in setting relatively ambitious targets and introducing what were at the time innovative climate policy instruments, such as the EU Emissions Trading Scheme (ETS). Second, the EU's scale, economic heft and market power allows it to be take unilateral action on emission standards. Finally, the EU's ability to influence policy instruments in other parts of the world<sup>11</sup>.
15. As an individual country, the UK can make important contributions in international climate negotiations - but it cannot enjoy the same influence as the EU as whole, which is still the world's biggest trading block. At the same time, the EU's ambition in international climate negotiations and its negotiation strategy is determined by its Member States. It is not a given that the EU will continue to pursue an ambitious approach at the international level but this is precisely what is required if the UK's climate policy ambition is to be realised and not undermined by hesitation and lack of sufficient action by EU partners within the single market, some of whom may be motivated by competitiveness concerns. On the contrary there are increasing doubts raised within the EU as to whether the EU should continue its leadership role or rather wait for other international competitors to take the lead. In terms of both the global and purely national priorities it is essential that the UK maintains its influence within the EU to keep the EU on track to fight for an ambitious international climate regime in line with the UK climate policy objectives. The UK can only gain from a strong EU position in this respect.

### **The Emissions Trading System (ETS)**

16. The UK has been a strong supporter of the EU ETS as a carbon pricing policy instrument since its inception and has shaped the instrument significantly to its advantage over time. In fact, the UK was one of the few Member States that supported the Commission in the initiation phase of the EU ETS<sup>12</sup>. The UK's national experience with emissions trading was an important example for the development of the EU ETS. Although the initial design of the EU ETS was not fully in line with UK preferences due to differences with the UK system and that the UK was overruled (as was Germany) by a qualified majority in the final vote on the introduction of the EU ETS, the EU ETS as a market based instrument has been very much in line with the UK's approach to the design of climate policy. The EU ETS is designed to establish a level playing field for European industry and hence prevent competitive disadvantages for the national economy as a result of (more ambitious) national climate policies. GHG emission reductions are intended to be achieved at lowest cost based on a technology neutral approach. In practice, the performance of the EU ETS has been disappointing in terms of reducing emissions below business as usual and substantial modifications are needed. However, its key features are those displayed by UK climate policy.
17. For good reasons, the UK would prefer a more ambitious EU ETS. Given the low carbon price under the EU ETS, the UK decided to introduce a carbon floor price by removing exemptions from the Climate Change Levy (CCL) on fossil fuels used for electricity generation based on their carbon content. While the CBI supported the introduction of a

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<sup>10</sup> Oberthür, S., Roche Kelly, C. (2008): EU Leadership in International Climate Policy: Achievements and Challenges, *The International Spectator: Italian Journal of International Affairs*, Volume 43, Issue 3, 2008, pp35-50

<sup>11</sup> House of Commons Energy and Climate Change Committee (2012) *The EU Emissions Trading System*, Tenth Report of Session 2010-12, Volume I. Available from: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1476/1476.pdf>

<sup>12</sup> Skjærseth, J.B. & Wettestad, J. (2008) *EU Emissions Trading: Initiation, Decision-making and Implementation*. Aldershot, Ashgate

carbon floor price under the condition that compensatory measures were introduced at the same time<sup>13</sup>, UK industry and other observers pointed to the increase in final energy prices and its potential negative effects on UK competitiveness within Europe and globally<sup>14</sup>. This remains a sensitive point, particularly with carbon prices below €5 per tonne on the European market.

18. The scale of such an effect is uncertain and needs to be better understood but there remain strong arguments for a higher domestic carbon price in order to progress at sufficient speed towards national emission reduction targets. Nonetheless, it is clear that the conditions for meeting UK climate targets under the Climate Change Act would be much improved by both a more effective EU ETS leading to higher carbon prices and an ambitious EU climate and energy package for 2030.
19. The inclusion of the aviation sector under the EU ETS shows the challenge and difficulty in exerting leadership in the implementation of climate policies. Although the inclusion has been temporarily suspended, due to pressure from the US, China and other countries, such a step forward in international climate policy is only possible at EU level and no individual European country would have the ability to act alone. A similar step forward should, for example, be made for the shipping sector. In both cases a proactive EU approach is strongly in the interest of the UK. Inclusion of aviation in ETS is also the basis for the CCC recommending that international aviation emissions are formally included in the UK Climate Change Act. In the absence of a global deal for aviation emissions through ICAO and a weakened (or not restarted) ETS, the danger is that Government will decide not to include international aviation into the Climate Act in 2016. This would leave the fastest growing source of emissions outside the Act and give headroom to other sectors of the economy to grow their emissions while still staying within the overall 80% reduction target. UK and EU policies are therefore closely aligned and interdependent on aviation.

### **Energy and other important aspects of climate policy**

20. EU climate policy is difficult to distinguish from energy policy at one end of the spectrum, for example in relation to renewable energy. At the other end it overlaps with resource efficiency and transport policies.
21. The EU is particularly well adapted to setting binding product standards including those for vehicles, domestic appliances, building components and other products which have a bearing on energy efficiency of the economy and ultimately on greenhouse gas emissions. Several measures are available to do this, including the Eco-design Directive<sup>15</sup>. There is little commercial or practical sense in developing measures of this kind at a purely national level. Ideally, EU standards should be a platform and a model for the introduction of global standards.
22. Renewable energy policy has exerted a major positive impact on the UK and most other EU Member States. It has led to step change in levels of investment in renewables and associated equipment, has accelerated cost reductions of new technologies and has delivered these achievements whilst working in association with domestic climate legislation. Whilst the financial crisis is having some impact and investments declined in 2012, the binding nature of the EU's renewables target (and the supportive national policies it created) has allowed the EU to witness a strong growth in renewable energy capacity since 2000, aided as well by the drop in costs of technologies like onshore wind and solar PV that a high and sustained demand for renewable energy has created. **Between 2000 and 2012, 51.2% of new power capacity in the EU has been in renewable energy, with in particular a growth of 96.7GW in wind power and 69GW in solar PV.** New renewables and gas plant combined amount to 91.2% of all installed capacity in the EU since 2000 with a

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<sup>13</sup> Ares, E. (2013) *Carbon Price Floor*, House of Commons Library.

<sup>14</sup> Clark, P & Tighe, C. (2013) *UK business attacks EU carbon move*, Financial Times, 17 April 2013. See : <http://www.ft.com/cms/s/0/652c2932-a77d-11e2-0f8e-00144feabdco.html#axzz2YR9p1bnG>

<sup>15</sup> Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of eco-design requirements for energy-related products

sharp decline in carbon intensive plants such as coal (-12.7GW) and fuel oil power stations (-17.4GW).<sup>16</sup>

23. Should the relationship between the UK and the EU change, we assume national climate policies would remain in the form of the Climate Change Act 2008. However, it is clear that the Renewable Energy Directive is a key driver of industry confidence and cost reductions, as evidenced by current concerns that there may no longer be an EU renewables target by 2030. Investor confidence relies on the combination of stable and long-term, national and EU measures.
24. **It should also be made clear here that addressing the challenge of moving towards a low-carbon economy within the next 20 years will be cheaper to address through European collaboration than in a scenario where each country was to work in national silos.** For instance, there is considerable evidence showing that by increasing the UK's interconnection with Europe (which requires both physical links and regulatory harmonisation), the UK could substantially reduce the amount of back-up capacity required to keep the lights on when its renewable energy plant are providing smaller outputs of electricity. The European Climate Foundation's *Roadmap 2050* report<sup>17</sup> found for instance that greater interconnection between European power grids could reduce the amount of back-up power stations required by 35% to 40% in a future European renewables system. Similar findings were made by WWF's *Positive Energy Report*, which found that renewables could be major source of secure low-carbon power for the UK and that this could be delivered at lower costs through an approach which enabled greater interconnection with the EU<sup>18</sup>.

#### **Protection of the Marine environment<sup>19</sup>**

25. EU legislation and policy has been instrumental in protecting coastal and marine water resources. The marine environment is one example of where trans-boundary issues are critical and growing in importance given the difficulties in mobilising action in this area, partly because so many parties are involved. For example, marine litter is clearly a trans-boundary problem of global proportions.
26. The trans-boundary nature of the problem means that isolated action by one country will rarely provide an answer. Indeed, action will also be needed on an international level in order to protect EU waters. However, the EU can provide a common framework within which regional, national or even local plans and actions are implemented (as will be the case under the reformed Common Fisheries Policy). The existence of formal EU processes, less formal relationships, overlaps with other policies and the ability to agree legally binding measures are all relevant.
27. A European Council Decision establishes the position to be adopted on behalf of the EU, in relation to matters falling within its competence, at meetings of the International Whaling Commission (IWC), with regard to proposals for amendments to the International Convention for the Regulation of Whaling and its Schedule. The UK plays a leading role in the development of EU policy in relation to the IWC. However, EU positions around the IWC aiming to achieve conservation gain are sometimes restricted by the position of Denmark, which represents Greenland's interests in aboriginal subsistence whaling.

#### **Directives on Bathing Waters and Urban Waste Water Treatment**

28. The EC Directive on the quality of Bathing Waters adopted in 1976 radically changed UK practice, ending long-sea outfall discharges and driving investment in lead pipe

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<sup>16</sup> Wind in Power, 2012 European Statistics, EWEA, February 2013: <http://www.ewea.org/statistics/>  
<sup>17</sup> <http://www.roadmap2050.eu/downloads>

<sup>18</sup> The high interconnection scenario in WWF's Positive Energy report (scenario B) shows that an increase in interconnection capacity of up to 32GW above today's levels could reduce the amount of back-up power stations by over 50%.

<sup>19</sup> IEEP Report, s. 4.1.2

replacement. The original 1976 Directive has since been repealed by a 2006 Directive<sup>20</sup> with the purpose of preserving, protecting and improving the quality of the environment and to protect human health.

29. Waste water treatment was further driven by the standards set out in the Urban Waste Water Treatment (UWWT) Directive<sup>21</sup>, requiring major investment to treat discharges tackling major riverine and coastal pollution. The investment in waste water treatment has delivered benefits to river water quality, shellfish waters, bathing waters, and other components of the aquatic environment. For example, in 2009 the general quality assessment of rivers in England found 73% was of good biological quality – an improvement from 63% in 1990<sup>22</sup>. Of course these changes were achieved only by a programme of sustained investment, with unavailable impacts on costs and not without a considerable number of challenges in the Court of Justice of the European Union (CJEU). However, few today would view these investments as anything but positive. Rivers have improved, fish returned and bathers do not repeatedly fall ill through exposure to sewage. Without EU law such changes would have not occurred or would have occurred at a much slower pace.

### **Marine Natura 2000 Sites**

30. Following a landmark case in the English High Court<sup>23</sup> in which it was held that the Habitats Directive<sup>24</sup> applies in the offshore marine environment<sup>25</sup>, the UK has designated 107 Special Areas of Conservation (SACs) with marine components (covering 7.6% of the UK sea area<sup>26</sup>) and classified 107 Special Protection Areas (SPAs) with marine components<sup>27</sup>. Although only three of the latter are entirely marine sites, work is currently underway by the JNCC and the four country nature conservation agencies to identify further SPAs with marine components that will comprise a suite of entirely marine SPAs. These areas encompass the very best of our European marine biodiversity and, as a result of the mechanisms established within Article 6 of the Habitats Directive, Natura 2000 sites enjoy a consistent level of protection superior to that provided domestically by many Member States.
31. For example, the UK Marine and Coastal Access Act 2009 (MCA) and the Marine (Scotland) Act (2010) include provisions for the establishment of an ecologically coherent network of marine protected areas, which will be critical for meeting requirements under the Marine Strategy Framework Directive (see below) to put in place spatial protection measures which contribute to a coherent and representative network of marine protected areas. However the evidence so far suggests that implementation has been unimpressive<sup>28</sup>. It appears that a lack of scientific evidence has been employed as a reason for postponing MPA site selection and scientific criteria have been eclipsed by socio-economic considerations. Furthermore, resource constraints and a short-term focus on capital costs have undermined implementation<sup>29</sup>.

### **Marine Strategy Framework Directive (MSFD)**

32. The Marine Strategy Framework Directive<sup>30</sup> was adopted in 2008 but is already proving a driver for progress. While the MCA 2009 covers licensing, planning, management, and marine protected areas, the scope of the MSFD is much broader, requiring the achievement

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<sup>20</sup> Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC

<sup>21</sup> Council Directive of 21 May 1991 concerning urban waste water treatment (91/271/EEC)

<sup>22</sup> See

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf)

<sup>23</sup> *R v Secretary of State for Trade and Industry and others, ex parte Greenpeace Ltd No.2* [2002] Env LR 221

<sup>24</sup> Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora  
<sup>25</sup> i.e. to the UK Continental Shelf and to the superjacent waters up to a limit of 200 nautical miles from the baseline from which the territorial sea is measured

<sup>26</sup> See <http://jncc.defra.gov.uk/page-1445>

<sup>27</sup> See <http://jncc.defra.gov.uk/page-1414>

<sup>28</sup> Baldock, D. *et al* (IEEP) forthcoming 2013.

<sup>29</sup> *Ibid*

<sup>30</sup> Directive 2008/56/EC on establishing a framework for community action in the field of marine environmental policy



of Good Environmental Status (GES) across all aspects of the UK's marine ecosystem. The Directive also covers all key pressures and impacts on the marine environment, including cumulative impacts.

33. However, the MSFD also recognises that European seas have different characteristics ('specificities' – Art. 4). Member States sharing a marine region or sub-region are expected to cooperate to ensure that their strategies are coherent and coordinated. The burden of this is reduced as States are encouraged to use existing regional structures (the Regional Sea Conventions) to achieve this coordination.
34. Under the MSFD, Member States are required to set targets for the different descriptors. For marine litter, the targets are supposed to cover litter on coastlines, the seafloor, in the water column, micro-particles, and the impacts of litter on marine life. However, the UK has only set a target for marine litter found on coastlines - and this is trend based, requiring 'an overall reduction in the number of visible litter items'. It has set surveillance indicators to monitor litter on the seafloor and water column, but no indicators for micro-particles or impacts of litter on marine life. The MSFD is thus an example of an area in which collective action is both necessary and thoughtfully implemented – and which stretches the UK beyond its national requirements.
35. WWF-UK is leading the EC LIFE+ funded Celtic Seas Partnership Project<sup>31</sup>, which will bring together sea-users, scientists and governments from across the UK, France and the Republic of Ireland. The project will complement the cooperation between governments which is provided by the relevant Regional Sea Convention (OSPAR) by facilitating the trans-boundary cooperation at a stakeholder level which is required to deliver Good Environmental Status across the Celtic Seas.

#### **Freshwater ecosystems<sup>32</sup>**

36. Currently, the most important item of EU water law is the Water Framework Directive<sup>33</sup> (WFD). This is a measure of where the UK influence on in its design was highly significant. The proposal for the WFD coincided with the UK Council Presidency and the UK put considerable effort into re-writing much of the Commission's text as it viewed the river basin approach embodied in the Directive as building on the UK's catchment management approach. Overall the text of the Directive was influenced more by the UK than any other Member State.
37. The WFD does, however, extend beyond earlier UK practice. While the UK was developing biological approaches to river classification, the WFD takes this further to a full ecological classification. Furthermore, it sets binding obligations to meet ecological status targets which results in the need for controls on pollution sources (and abstraction) beyond previous UK practice.
38. The greatest change in the UK has been seen in Scotland, where primary legislation was adopted (given a less extensive pre-existing regime to England and Wales). Furthermore, Scotland extended the scope of the WFD in coastal waters beyond WFD requirements so as to capture fish farming – an important potential threat to the health of such waters. Scotland also introduced new mandatory controls for farmers, to the extent that its regulation is possibly stricter than the rest of the UK.
39. The WFD is a far reaching measure with a long implementation period. Therefore, at this stage there is still some uncertainty as to the full scale of action required in order to deliver the good status requirements. However, there is no doubt that farming practices will need to change given the widespread load of pollutants from diffuse sources in this sector. In environmental terms, this will be a major beneficial outcome of EU law in the UK as in most Member States since the agriculture sector is now the major source of water pressures, but

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<sup>31</sup> [www.celticseaspartnership.eu](http://www.celticseaspartnership.eu)

<sup>32</sup> IEEP Report, s.5.3

<sup>33</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

domestic regulatory initiatives are limited. This is a good example of where EU level law has been able to address an issue for which there has been limited national momentum, but for which there are significant national level problems.

40. The WFD (and related law) also provides a key mechanism for taking forward trans-boundary co-operation in water catchment management. Although co-operation across river basins has a long history in Europe, several river basins have had a poor record of co-operative frameworks and the WFD has begun to address these. This is a useful role for a European framework provided by the EU. While trans-boundary river management is not an issue for much of the UK, it is important to highlight the impact the WFD has had on co-operation between Northern Ireland and the Irish Republic. There are significant trans-boundary water issues and the trans-boundary assessment and planning on the island of Ireland has been a considerable success. Much of this has been driven by the WFD (although assisted by the changed political situation).

### **Biodiversity protection and the Wild Birds and Habitats Directives (the 'Nature Directives')**<sup>34</sup>

41. WWF has supported the development, adoption, implementation and enforcement of the Nature Directives since the evolution of the Birds<sup>35</sup> Directive in the mid-1970s. Over this period, WWF has provided grant-in-aid to UK NGOs to buy and manage thousands of hectares of Natura 2000 land and, during the 1990s WWF was largely responsible for doubling the UK list of terrestrial SACs from 300 to just over 600. We have also taken cases establishing important legal precedents at the EU and UK level. Our work in this area continues in the marine environment, with the submission of a complaint to the European Commission in 2012 regarding the UK's failure to identify any SACs for the harbour porpoise, a species listed on Annex II of the Directive and for which the designation of SACs is required.
42. Together, the Nature Directives provide invaluable protection for Europe's rarest and most threatened habitats and species. A scientific review of the impacts of the Birds Directive shows that on average the more land that is designated as an EU protected area, the more likely it is that bird populations will increase<sup>36</sup>. Protected areas also play an important role in securing vital ecosystem services benefiting human well-being. This includes providing clean water, regulating climate through carbon storage, flood prevention and recreation. A recent report published by the European Commission estimates that the economic value (i.e. the flow of ecosystem services from the terrestrial Natura 2000 network alone) is between €200 and €300 billion per year<sup>37</sup>. In the UK, our mountains, moorlands and heathlands (which comprise 18% of the UK) hold 40% of soil carbon (5 billion tonnes) and are the source of 70% of our drinking water<sup>38</sup>.
43. Along with many other NGOs, WWF submitted evidence to Defra's review of the implementation of the Habitats and Birds Directives in Autumn 2011 (attached as Annex A). WWF's evidence drew a number of conclusions relevant to the scope of this review. These include:

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<sup>34</sup> IEEP Report, s. 5.4

<sup>35</sup> Directive 2009/147/EC (Birds Directive) on the conservation of wild birds (the codified version of Council Directive 79/409/EEC as amended)

<sup>36</sup> Donald, P.F., Sanderson, F.J., Burfield, I. J., Bierman, S.M., Gregory, R.D., & Waliczy, Z. (2007). International Conservation Policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813

<sup>37</sup> See "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network" (2013) available at <http://ec.europa.eu/environment/nature/natura2000/financing/> and 'Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners' (September 2009 Edition) [http://ec.europa.eu/environment/nature/natura2000/financing/docs/benefits\\_toolkit.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf)

<sup>38</sup> UK National Ecosystem Assessment Technical Report (2011) (Chapter 5: Broad Habitats) available at: <http://uknea.unep-wcmc.org/LinkClick.aspx?fileticket=CZHaB2%2FJKl0%3D&tabid=82>

- The Nature Directives play a critical role in the protection of Natura 2000 sites and European Protected Species – the very best of Europe’s biodiversity. The Defra Review concluded that ‘It was clear from the wide range of evidence and views submitted in the course of the Review that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained’.
- Despite the Directives’ critical contribution to biodiversity protection, species and habitats continue to decline at unprecedented and unacceptable levels. In England, the latest assessment in 2008 showed that 18 out of 42 priority habitats and 120 out of 390 priority habitats were in decline<sup>39</sup>. It is estimated that England and Wales lost 97% of enclosed semi-natural grasslands between 1930 and 1984<sup>40</sup> and the Farmland Bird Index – a measure of the state of biodiversity on agricultural lands – declined by 43% between 1970 and 1998<sup>41</sup>. The UK and the EU clearly needs concerted action (as opposed to any dilution in approach) if the UK is to meet its domestic and international targets on biodiversity protection, including Aichi targets 11 and 12 agreed as part of the Convention on Biological Diversity Strategic Plan at Nagoya in 2010.
- Any suggestion that EU rules on habitats impose disproportionate costs on business contradicts independent analysis of the economic impacts of EU legislation in the UK<sup>42</sup>. The 2012 Government Review of the Habitats and Birds Directives<sup>43</sup> found that in the vast majority of development cases major problems do not arise as a result of objections on Habitats Regulations grounds. Of the 26,500 land use consultations Natural England receives annually, less than 0.5% are objected to on Habitats Regulations grounds, and most of these are successfully dealt with at the planning stage<sup>44</sup>. It is only in a relatively small number of cases that problems have arisen, leading to unwelcome delays and additional costs for developers, as well as uncertainty for local communities and the environment. These well publicised individual cases risk clouding the reputation of the Directive<sup>45</sup>.

### **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

44. It should be noted that some EU measures protecting wildlife also have a trade dimension. Most prominent is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
45. All 27 EU Member States are Parties to CITES, and CITES is implemented in the EU through common regulations: Council Regulation (EC) No. 338/97 and Commission Regulation (EC) 865/2006. These EU Wildlife Trade Regulations are directly applicable in all Member States. To be consistent with other legal instruments in the EU, i.e. the Habitats Directive and the Birds Directive, certain indigenous species are offered greater protection under the EU Wildlife Trade Regulations than required by CITES. The UK, as with all Member States, is responsible for enacting national legislation appointing the CITES Management and

<sup>39</sup> Defra (2011) *The Natural Choice – Securing the Value of Nature*. Available at <http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf>

<sup>40</sup> UK National Ecosystem Assessment (2011) Synthesis Report – see Defra Archive [http://archive.defra.gov.uk/environment/natural/documents/UKNEA\\_SynthesisReport.pdf](http://archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf)

<sup>41</sup> *Ibid*

<sup>42</sup> Davidson Review on implementation of EU legislation (2006). Commissioned by Department for Business, Innovation and Skills. <http://www.bis.gov.uk/files/file44583.pdf>

<sup>43</sup> HM Government (2012) Report of the Habitats and Wild Birds Directives Implementation Review. Department for Environment, Food & Rural Affairs. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb1372\\_4-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb1372_4-habitats-review-report.pdf)

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*

Scientific Authorities, enabling seizure and confiscation of illegal specimens and laying down the penalties for illegal wildlife trade.

46. For many years the UK has been one of the leaders in setting strong EU policy on CITES, and in advocating EU policy internationally. This was well demonstrated in the lead up to and participation in CITES CoP16 this March, especially on issues relating to trade in elephants, rhinos, tigers, and timber and marine species. The UK's policy for the conservation of species threatened by international trade has sometimes been limited by the need to reach a common EU policy. This is clearly demonstrated in the case of CITES CoP15 in 2010, when the UK officially voted in favour of the proposal for greater protection for Atlantic Bluefin Tuna, despite the EU position directing Member States to abstain.

#### **Access to Environmental Justice<sup>46</sup>**

47. Judicial Review is one of the most effective mechanisms available for individuals and civil society groups to utilise the law to protect the environment. The foundations of democracy require that citizens have access to effective mechanisms to ensure the decisions of public bodies are lawful. It is recognized that a lawful process of decision making is a minimum requirement for environmental protection.
48. The UK and the EU ratified the UNECE Aarhus Convention in February 2005. In preparation for compliance, the European Parliament and the Council of the European Union adopted a number of legal instruments including the Public Participation Directive<sup>47</sup>, which requires legal review mechanisms in respect of Environmental Impact Assessment (EIA) and Integrated Pollution Prevention and Control (IPPC) to be "*fair, equitable, timely and not prohibitively expensive*". It is widely recognised that legal procedures in the UK are typically very costly and, in 2005, the Coalition for Access to Justice for the Environment (CAJE<sup>48</sup>), led by WWF, submitted a complaint to the European Commission alleging that the UK was failing to comply with the PPD. The case was subsequently referred to the CJEU and a hearing held in July 2013 (judgment awaited). A subsequent Communication to the Aarhus Convention Compliance Committee also found the UK to be in breach of Articles 9(4), 9(5) and 3(1) of the Aarhus Convention concerning costs and injunctive relief.
49. In 2013, the Civil Procedure Rules were amended in respect of costs and environmental cases. As of 1st April 2013, adverse costs liability for unsuccessful claimants in environmental judicial reviews is capped at £5,000 for individuals and £10,000 for 'all other cases'. With respect to injunctive relief, the court must have regard to the question of prohibitive expense when considering whether a cross-undertaking in damages is required and must make necessary directions to ensure the case is heard at the earliest opportunity.
50. While it is too early to tell whether these changes will enable citizens and civil society groups to bring legal action, the mere fact that individuals and NGOs are starting to talk about the possibility of bringing cases suggests they will make a difference. One thing is certain however - these amendments would not have been effected were it not for EU law.

#### **Other advantages of EU law and policy Economic, Commercial, Health and Social**

51. Given the objectives of the policies under consideration, the main impacts considered in this response are environmental. However, there are also other impacts, including on economic performance, investment levels required, jobs created, the health of citizens and the costs of treating pollution related diseases, for example.
52. One of the primary rationales for EU policy is to prevent unfair competition between EU Member States as a result of differing environmental standards. For example, the

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<sup>46</sup> IEEP Report, s. 4.1.4

<sup>47</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

<sup>48</sup> Comprising WWF, Friends of the Earth, RSPB, Greenpeace, CPRE, ELF and Capacity Global

commercial success of some industries subject to regulation, e.g. the car industry where investment in the UK has continued to take place, despite and probably with help from more demanding EU standards for CO<sub>2</sub> emissions from vehicles which has forced the pace of development in recent years, allowing the industry based in Europe to remain competitive in global terms. Output of vehicles in the UK has been significant in recent years.

53. At the same time a common EU approach avoids the inconsistencies and fragmentation likely to arise from the alternative model of primarily national or regional regimes for addressing climate and environmental issues. For companies operating at a European scale this is a vital aspect of EU legislation and the reason why so many companies are concerned to maintain European standards and legislation wherever possible. Furthermore, EU standards provide a higher level of security for investors relative to national measures in many areas because they are less likely to alter over time with changing political circumstances.
54. Whereas there are some costs involved in adopting EU environmental legislation, the evidence at a European level is that some of the countries with the most thriving manufacturing sectors are precisely those with high environmental standards. Germany is an outstanding example. One reason for this is that environmental costs frequently are not a large component of total production costs. Another is that rising environmental standards can help to stimulate innovation, improved efficiency in production processes and contribute to new markets. Much of the “green economy” now identified as a motor for growth in the UK and elsewhere is based on environmental legislation, creating new opportunities and the need for new investment.
55. The IEEP report evidences some of the employment benefits of EU legislation<sup>49</sup>. However, we would highlight that in 2012 the CBI<sup>50</sup> noted the UK’s green business sector has continued to grow in real terms in 2010/2011, accounting for a £122 billion share of a £3.3 trillion global market and resulting in close to one million jobs. The latest report by the Department of Business, Innovation and Skills on the low carbon and environmental goods and services market in the UK, which is heavily dependent on EU driven standards, and employed around 938,000 people in 2011-2012<sup>51</sup>. The CBI has proposed a similar figure.
56. The IEEP Report also asserts that a substantial number of further jobs could be created with more vigorous implementation of environmental legislation. An EU-wide study found that full compliance with EU waste legislation would increase turnover in the waste management and recycling sector by €42 billion each year and create over 40,000 new jobs<sup>52</sup>. More specifically in the UK, a recent study published by Friends of the Earth found that turnover in the waste management and recycling sector could increase by €42 billion annually, creating over 400,000 new jobs if EU waste legislation was complied with fully<sup>53</sup>.
57. The UK’s natural environment supports almost 750,000 full-time equivalent (FTE) jobs and £27.5 billion economic output<sup>54</sup>. These figures include both direct employment and indirect employment such as jobs in agriculture and forestry, in fisheries, public service jobs and jobs in tourism<sup>55</sup>. In Scotland, it was estimated that activities and outputs dependent on the

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<sup>49</sup> IEEP Report, s. 4.3

<sup>50</sup> CBI (2012) The colour of growth: Maximising the potential of green business, [http://www.cbi.org.uk/media/1552876/energy\\_climatechangerpt\\_web.pdf](http://www.cbi.org.uk/media/1552876/energy_climatechangerpt_web.pdf)

<sup>51</sup> Department for Business, Innovation and Skills, (2013) Low carbon and environmental goods and services, Report 2011/12, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224068/bis-13-p143-low-carbon-and-environmental-goods-and-services-report-2011-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224068/bis-13-p143-low-carbon-and-environmental-goods-and-services-report-2011-12.pdf)

<sup>52</sup> BIOIS (2011) *Implementing EU waste legislation for green growth, Final report* – European Commission, DG Environment.

<sup>53</sup> Friends of the Earth (2010) *More jobs less waste – Potential for job creation through higher rates of recycling in the UK and EU*. Available at: [http://www.foe.co.uk/resource/reports/jobs\\_recycling.pdf](http://www.foe.co.uk/resource/reports/jobs_recycling.pdf)

<sup>54</sup> RSPB (2011b). RSPB reserves and local economies. RSPB, The Lodge, Sandy.

<sup>55</sup> RSPB (2011a) *Natural Foundations: Conservation and local employment in the UK*. RSPB, The Lodge, Sandy

natural environment contributed 11% of Scotland's output (£17.2 billion) and supported 242,000 jobs, 14% of FTE employment in the country in 2009<sup>56</sup>. In England, direct and indirect employment linked to natural environment activities was estimated to be 299,000 FTE in 2004, greater than the chemicals and motor vehicle industries<sup>57</sup>. Environmental policy, much of it established at the EU level will have contributed significantly to the growth of the environmental sector. It should also be noted that many of these jobs are located in remote rural areas suffering from decreasing employment in agriculture and with a lack of alternative job opportunities.

58. Furthermore, according to a 2010 report for DG Environment the full implementation and management of the Natura 2000 network can be expected to directly support 122,000 FTE jobs and to generate €3.05 billion of Gross Value Added (GVA) in those regions where Natura 2000 sites are located<sup>58</sup>. The total impact at the EU level, taking into consideration indirect effects, is estimated to support 207,400 FTE jobs and to generate €5.2 billion of GVA.
59. The IEEP Report also cites a growing body of evidence that higher environmental standards have been associated with improved human health particularly where air pollution can be reduced. Several EU measures on the environment are aimed at sources of pollution which are concentrated in urban sources and impact lower income groups particularly as they are more likely to live in the vicinity of industrial plants.
60. For example, ambient air quality standards (limit values) have been established in EU law since the 1970s, but were reframed and made stricter in the 1996 Air Quality Framework Directive and subsequent daughter Directives. There has been much debate on the practicalities of meeting some of the limit values, particularly for nitrogen dioxide and fine particulates. However, there is little doubt that without their legally binding nature the UK would not have made the progress it has. This is particularly the case with innovations on transport emissions, such as the congestion charge and low emission zone, domestic initiatives designed to help meet EU standards.
61. Analyses at EU and UK level show the benefits to health outweigh the costs of these measures. This point can be lost in the current debate on problems being encountered in the UK in meeting the limit values, but it is critical. At one level, UK performance on improving air quality has been good, with several pollutants being significantly reduced. The 2007 UK air quality strategy<sup>59</sup>, for example, stated that improvements from 1990 to 2001 have avoided 4,200 premature deaths per annum and 3,500 hospital admissions per annum. However, significant problems remain. Thus, the Strategy also concluded that continuing air pollution is estimated to reduce the life expectancy of every person in the UK by an average of 7-8 months with health costs of up to £20 billion each year. A 2010 Defra report<sup>60</sup> concluded that the health impacts of PM2.5 alone were over £16 billion per year. EU law in this area, therefore, has been an important driver in improving the UK environment and, in particular, in effect providing a counter balance to short-term 'cost' arguments, which are often politically attractive.

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

*Considering specific examples, how might the national interest be better served if decisions: (i) currently made at EU level were instead made at a national, regional or international level? (What measures, if any, would be needed in the absence of EU legislation?) (ii) currently made at another level were instead made at EU level?*

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<sup>56</sup> SNH (2009) *Valuing our Environment*. Scottish Natural Heritage

<sup>57</sup> GHK Consulting (2004) *Revealing the value of the natural environment in England*, DEFRA

<sup>58</sup> *Ibid*

<sup>59</sup> Defra (2007). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland

<sup>60</sup> Defra (2010). Valuing the Overall Impact of Air Pollution. <http://archive.defra.gov.uk/environment/quality/air/airquality/panels/igcb/documents/100303-aq-valuing-impacts.pdf>

62. In our view, the evidence provided in the previous section demonstrates that environmental protection and enhancement is better served by decision-making at the EU level due to the nature of the issues under consideration. Many environmental issues do not respect national boundaries and many environmental challenges, being trans-boundary and global in nature, require collective action. This is particularly true in respect of climate policy, marine and freshwater protection, air pollution and the protection of migratory species. Decision-making in respect of such issues is best conducted at EU and global levels.
63. However, it isn't just the scale of decision-making that's important – the nature of the instrument is also relevant. Many “soft law” measures have sought to address environmental problems but have been replaced by legislation in the form of Directives and Regulations in order to ensure progress. One such example is the 1979 Bern Convention<sup>61</sup>, which requires contracting Parties to take the appropriate legislative and administrative steps to ensure the conservation of endangered natural habitats and wild flora and fauna specified in Appendices I and II. It is widely recognised that the text of the 1992 Habitats Directive was largely based on the Bern Convention because the Convention had been poorly implemented by a number of Member States and had therefore failed to address the widespread decline in biodiversity<sup>62</sup>. There is no doubt that the ultimate backstop of the European Court, with its ability to impose daily fines and sanctions, is a primary force in motivating Member States to ensure compliance with environmental legislation. Thus, it is not only the level of decision-making that helps to ensure success – it is the nature of the measure.

#### **Internal market and economic growth**

*To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?*

*To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?*

64. As highlighted above, the value of common standards for certain products with environmental impacts significantly outweighs national standards being applied within a single European market where goods and services are traded freely. Lower environmental standards, and indeed higher standards, can lead to barriers to trade and fragment markets. Individual countries with lower standards may confer an economic advantage on their own producers. This argument is particularly relevant where climate and environment goals are best advanced through binding standards, as has been the case with energy efficiency performance in a range of goods, but these entail higher production costs, at least in the short term.
65. EU legislation has raised standards relating to products, processes, protection of ecosystems, etc, higher than they would otherwise have been in a substantial number of areas (but not all). The comfort offered by simultaneous action on a European scale has made it more palatable in political and economic terms to raise standards above what otherwise might have been the UK's chosen level.
66. EU legislation has also ensured economic and commercial benefits by establishing common EU standards for companies, which operate in an increasingly pan-European market (e.g. EU standards for CO<sub>2</sub> emissions from vehicles). There are also multiple employment and economic benefits arising from tourism and protected areas. For example, a recent report published by the European Commission entitled “*The Economic Benefits of Natura 2000*” calculates the benefits that flow from Natura 2000 are of the order of €200 to 300 billion per year. It is estimated that there are between 1.2 to 2.2 billion visitor days to Natura 2000 sites each year, generating recreational benefits worth between €5 and €9 billion per

<sup>61</sup> Convention on the Conservation of European Wildlife and Natural Habitats - Done at Bern, Switzerland in 1979

<sup>62</sup> Koester, V. (2004 ). *The Bern Convention and I – 25 years of the Bern Convention*. Published by the Council of Europe and available at <http://128.121.10.98/coe/pdfopener?smd=1&md=1&did=594649>

annum<sup>63</sup>. Natura 2000 sites also store about 9.6 billion tonnes of carbon, equivalent to 35 billion tonnes of CO<sub>2</sub>. Releasing this would have a marginal damage cost of €600-1,130bn<sup>64</sup>.

### Current legislation

*Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be: (i) focused on outcomes (results); and (ii) based on an assessment of risk and scientific evidence?*

67. Most EU law takes the form of Regulations (which are directly applicable in all Member States) or Directives (which basically set out a result to be achieved but largely leave it to the Member States to choose how to do it). Notwithstanding the above, our experience is that EU legislation relating to the environment and climate change is predominantly outcomes (results) focused and also time-bound. The examples given below are purely illustrative:

- **EU Climate and energy package** - a set of binding legislation which aims to ensure the European Union meets its ambitious climate and energy targets for 2020, comprising (see paragraph 21 for our assessment of this package):
  1. A 20% reduction in EU greenhouse gas emissions from 1990 levels;
  2. Raising the share of EU energy consumption produced from renewable resources to 20% (via the Renewables Directive<sup>65</sup>);
  3. A 20% improvement in the EU's energy efficiency.
- **MSFD** – “*This Directive establishes a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest*<sup>66</sup>”.

Good Environmental Status is determined by reference to 11 qualitative descriptors (which may all be trans-boundary in nature) relating to: biological diversity, non-indigenous species introductions, commercially exploited fish and shellfish populations, food webs, human-induced eutrophication, sea floor integrity, impacts on hydrographical conditions, concentrations of contaminants, contaminants in fish and other seafood, marine litter and underwater noise.

68. However, the nature of environmental issues can make it difficult to always be absolute about the desired objective in legislation. For example, the aim of the Habitats Directive is to “*contribute towards ensuring biodiversity through the conservation of natural habitats and of wild flora and fauna*<sup>67</sup>” in order to maintain or restore them to “*Favourable Conservation Status*” throughout their natural range<sup>68</sup>. Evaluating whether a species or habitat is at FCS at site, regional, national and EU levels is not an easy exercise – even identifying the baseline from which to start is a complex question and assessments will depend upon a range of factors operating simultaneously. In this situation, it is neither possible nor desirable to set numeric targets for the species and habitats in legislation – but in setting a general objective, which is assessed regularly and at multiple levels, Member States are obliged to establish action plans and protective regimes that address the complexity of the issue – including cumulative and long-range impacts.

### Doing things differently

*How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals and/or impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/ improving the environment?)*

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<sup>63</sup> *Supra*, n.37

<sup>64</sup> *Ibid*

<sup>65</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

<sup>66</sup> Article 1(1) MSFD

<sup>67</sup> Article 2(1) Habitats Directive

<sup>68</sup> *Ibid*, Article 2(2)



*How far do you think the UK might benefit from the UK taking: (i) more action on the environment/climate change? (ii) less action on the environment/climate change?*

*Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?*

*What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally or with third countries?*

*How important is it for the UK to be part of "Team EU" at the UNFCCC?*

69. As reinforced in our answer to question 1, the environment is a shared resource or 'common good' which benefits from the application of consistent standards. As such, legislation that takes account of national circumstances is, for the most part, inappropriate. Similarly, as highlighted in our case study on the Bern Convention, 'soft law' or voluntary approaches cannot always be relied upon to deliver the desired approach. WWF therefore favours a continued reliance on EU legislation establishing consistent standards across the territory of the EU where appropriate, combined with and supported by, national measures (as is the case with the WFD and the Water Bill, for example).
70. However, that does not mean that the processes of developing new legislation at the EU level could not be improved. Clearly, EU-wide stakeholder engagement is somewhat more of a challenge for civil servants based in Brussels than for national authorities. However, we are concerned that the European Commission appears to be increasingly reliant on electronic questionnaires as a mechanism to gather views on either developing or reviewing legislation. For example, in 2010 the Commission invited views on a review of the Environmental Impact Assessment Directive, which centred wholly on the completion of an online questionnaire estimated to take around 30 minutes<sup>69</sup>. A current consultation exercise on measures to improve access to environmental justice is being conducted in a similar manner<sup>70</sup>. Whilst superficially attractive, such processes tend to exclude certain categories of society from participating in the process (e.g. those less familiar with technology such as the old or people in rural locations with limited internet access) and prevent stakeholders from providing any background information or context for their views. Whilst it would undoubtedly increase the cost, it would be helpful if the Commission could consider in-country exercises that enable a broader spectrum of society to engage and for responses to be submitted in a variety of ways. As referred to in the introductory paragraphs, this Review provides an excellent model.

### **Future challenges and opportunities**

*What future challenges or opportunities might we face on environmental protection and climate change?*

*Going forward, what do you see as the right balance between actions taken at international, EU, UK and industry level to address these challenges and opportunities?*

*What would be the costs and benefits to the UK of addressing these future challenges at an EU level?*

71. It is clear that the environmental challenges we face will escalate as the full implications of a changing climate materialise and the demand for more housing, infrastructure, food and water puts pressure on our remaining natural resources.
72. There are a number of environmental issues on which EU intervention (whether continued or new) would be beneficial including:
- Improvements need to be made to a number of policies that are not functioning satisfactorily, such as the EU Emissions Trading System.
  - The principal EU climate targets run to 2020 and soon further targets (or alternative policies) will need to be put into place if significant emission reductions are to be achieved in the coming decades and the EU is also to respond to a global agreement, if this is achieved. While it would be possible to rely on purely national targets and

<sup>69</sup> See <http://ec.europa.eu/environment/consultations/eia.htm>

<sup>70</sup> See [http://ec.europa.eu/environment/consultations/access\\_justice\\_en.htm](http://ec.europa.eu/environment/consultations/access_justice_en.htm)

measures there is a significant danger that this would result in a fragmented and variable approach, both achieving less within Europe and probably weakening the EU's capacity to influence other states result in a global agreement. The UK government already has stated its preference for an EU 2030 emissions reduction target at a sufficiently demanding level to deliver significant results.

- There are a growing number of international issues where the EU could add value especially where trans-boundary or trade related questions are prominent or the EU's size and influence are potentially crucial, e.g. the control of greenhouse gas emissions from aircraft and shipping.
- In many areas, common standards or approaches within the EU are required to maintain a level playing field while addressing common environmental problems, such as energy efficiency in manufactured goods, vehicle emissions, policies on alternative fuels and new measures to reduce waste and increase investment in a resource efficient economy. Businesses investing in products and facilities for a green economy need an adequate scale of market and sense of confidence in the direction of policy.
- If agreed targets for biodiversity are to be met, new approaches are likely to be required and some of these are likely to have a European dimension. An example would be the development and utilisation of more environmentally sensitive fishing techniques, not just in UK waters but in the wider fishing grounds controlled by EU Member States. Action by one country alone is not going to be sufficient.
- Invasive non-native species (INNS) and wildlife disease can have significant impacts on biodiversity and on human society and its economic interests. INNS are recognised as one of the major causes of global biodiversity loss in the Millennium Ecosystem Assessment<sup>71</sup>, and therefore they have been identified as one of the 6 targets to focus on within the EU 2020 Biodiversity Strategy<sup>72</sup>. The total cost to the EU of the impacts of invasive non-native species is estimated to be at least €12.7 billion a year. In 2008, the European Commission adopted a Communication presenting policy options for an EU Strategy on Invasive Species<sup>73</sup>, which described four possible options for a future EU strategy, including a new dedicated EU legal instrument. In June 2009 the Environment Council re-iterated the need for a comprehensive EU framework that works with existing regimes, fills gaps in legislation and establishes a proportionate and cost-effective EU response to invasive non-natural species. And finally, in the recent EU 2020 Strategy the need to have a dedicated legal EU instrument to address this issue has been acknowledged<sup>74</sup>. If the UK is address such challenges, be it ash dieback, the water mould *Phytophthora* or the highly-pathogenic avian influenza (HPAI), it would benefit from participating in such a framework.

73. As highlighted above, it should be stressed here that addressing environmental challenges at European level will often be more cost-effective than doing so in national silos, with the move to a low-carbon power sector being a good example of this.

#### **Anything else?**

*Are there any general points you wish to make which are not captured in any of the questions above?*

#### **The implications of the UK exiting the EU**

74. We note the Call for Evidence does not invite views on the implications for the environment and climate change (either positive or negative) of any future decision on the part of the UK

<sup>71</sup> See <http://www.millenniumassessment.org/en/index.aspx>

<sup>72</sup> See <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

<sup>73</sup> Towards and EU Strategy on Invasive Species. Com(2008) 789 final

<sup>74</sup> <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

to change its relationship with the EU. If the UK were to withdraw from the EU, it would most likely opt to remain a member of the EEA (like Norway, Iceland and Lichtenstein) or at least EFTA (like Switzerland). Since the Prime Minister has made a point that the single market is the most important characteristic/benefit of the EU from the UK perspective, it would be rather perverse to withdraw from these fora where trade is the main focus. Therefore, it is useful to consider the implications for environment policy of membership of one or both of these agreements, both of which are likely to involve accepting a considerable proportion of EU environment policy without participating in the decision making process.

### **The European Economic Area (EEA)**

75. The EEA comprises of all EU Member States plus Norway, Iceland and Lichtenstein. It was established in 1994 and allows members to participate in the EU's single market (known as the 'internal market') without being a member of the EU. The Agreement on the EEA<sup>75</sup> aims to facilitate trade and economic cooperation, covering EU legislation relating to the four freedoms - the free movement of goods, services, capital and people. It also allows for cooperation on certain 'flanking and horizontal' policies which are relevant to the four freedoms including research and development, social policy, consumer protection and the environment.
76. The Agreement does not cover some EU policies including the Common Agriculture and Fisheries Policies (although it includes provisions on certain aspects of trade in agricultural and fisheries products), Customs Union, Common Trade Policy, Common Foreign and Security Policy, Justice and Home Affairs, and the Monetary Union<sup>76</sup>. EEA members provide financial contributions to the EU Budget in return for their participation in EU programmes, actions, services and agencies such as the 7th Framework Research Programme and the Competitiveness and Innovation Programme<sup>77</sup>. EEA EFTA members' financial contribution and payments to EU programmes, agencies and other activities was €206,084,000 in 2011 and € 241,220,000 in 2012<sup>78</sup>. In addition, grants are provided to contribute to economic and social cohesion in the area and strengthen bilateral relations with 15 EU Member States in Central and Southern Europe. For the 2009-2014 period, around €1.789 billion of funding has been agreed, made up of EEA Grants amounting to €988.5 million (of which Norway provides the vast majority 94%, Iceland provides around 5% and Liechtenstein just over 1%) and Norway Grants amounting to €800 million (which are funded solely by Norway<sup>79</sup>).
77. Acts referred to, or contained in, the Annexes to the EEA Agreement are considered binding on the Contracting Parties and are to be made part of their 'internal legal order<sup>80</sup>'. Parties are expected to adopt the full body of the *acquis communautaire* relating to the internal market in their national law<sup>81</sup>. The objectives relating to the environment in the EEA Agreement<sup>82</sup> mirror those set out in the Treaty (with the exception of objectives relating to measures at the international level which is included in Article 191 TFEU). Specific measures relating to the environment are set out in Annex XX of the EEA Agreement<sup>83</sup> and include cross-cutting EU legislation, e.g. on Environmental Impact Assessments, access to environmental information, reporting, EMAS, environmental liability, INSPIRE and eco-labels; as well as thematic legislation, e.g. on water (e.g. groundwater, drinking water, nitrates and the Water Framework Directive), air (e.g. air quality, industrial emissions, ETS, ozone), chemicals, industrial risk and biotechnology, waste and noise. A number of EU environmental acts are not incorporated in the EEA Agreement, e.g. the Birds, Habitats and Bathing Water Directives.

<sup>75</sup> OJ No L 1, 3.1.1994

<sup>76</sup> EFTA, 2013a

<sup>77</sup> EFTA, 2013b

<sup>78</sup> EFTA, 2013c

<sup>79</sup> EFTA, 2012

<sup>80</sup> Art. 7 EEA Agreement

<sup>81</sup> Council of the European Union, Conclusions on EU relations with EFTA countries, 5 December 2008, <http://register.consilium.europa.eu/pdf/en/08/st16/st16651-re01.en08.pdf>

<sup>82</sup> Article 73

<sup>83</sup> EEA Agreement, Annex XX – Environment, 15/6/2013, <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf>

78. Non-EU EEA countries have no representation in EU institutions such as the European Commission, the Parliament or the Council and have limited or no opportunities to influence the EU decision-making process<sup>84</sup>. The EEA agreement does however include provisions for the input of experts from non-EU EEA countries in the preparation of relevant EU legislation. Input can take the form of participation by EEA EFTA experts in expert groups and committee meetings including comitology committees, programme committees and other committees in specific areas<sup>85</sup>; the submission of EEA EFTA comments, and the adoption of resolutions in response to Commission initiatives. Once a piece of EU legislation has been adopted and after consultation with EFTA experts considered EEA relevant, it is incorporated in the EEA Agreement through decisions of the EEA Joint Committee and subsequently implemented with the aim to ensure simultaneous application in the EU and in non-EU EEA countries. Non-EU EEA countries thus “*have to incorporate into the EEA Agreement what has ultimately been decided, if not necessarily shaped, by others*”. For example in 2012, 64 acts relating to the environment were incorporated in the EEA Agreement<sup>86</sup>.

79. Just to summarise, the UK would still be bound by the following legislation included in the EEA agreement if it left the EU but remained in the EEA:

- Water Framework Directive
- Urban Waste Water Treatment Directive
- Nitrates Directive
- Groundwater Directive
- Priority Substances Directive
- Air Framework Directive (and daughters)
- Industrial Emissions Directive
- Emissions Trading Directive
- Directive on Carbon Capture and Storage
- Seveso Directive
- Directives on contained use and deliberate release of GMOs
- Waste Framework Directive
- Sewage Sludge Directive
- Waste Shipment Regulation
- Landfill Directive
- End of Life Vehicles Directive
- WEEE Directive
- Mining Waste Directive
- Packaging Waste Directive
- REACH Regulation
- Assessment and Management of Ambient Noise Directive

80. However, the following measures are not included in the EEA agreement and would no longer apply if the UK left the EU and stayed in the EEA:

- Birds Directive
- Habitats Directive
- Bathing Water Directive

81. As stated above, according to the Centre for European Reform, if the UK was to withdraw from the EU and join the EEA, it would still have to implement all single market legislation

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<sup>84</sup> EFTA, 2013d

<sup>85</sup> EFTA, 2007

<sup>86</sup> EFTA Annual Report 2012,  
<http://www.efta.int/~media/Files/Publications/Annual%20Report/annual-report-2012.pdf#page=30>

into law (including any future laws that are agreed among EU Member States<sup>87</sup>), with little or no ability to shape this legislation.

### **The European Free Trade Association (EFTA)**

82. The EFTA is an intergovernmental organisation to promote free trade and closer economic cooperation among its members (Norway, Iceland, Lichtenstein and Switzerland). The EFTA seeks to promote free trade between its members; with the EU (through the EEA agreement and bilateral agreements between EU-Switzerland); and with third countries.
83. The EFTA Convention governs the trade relations between its members covering aspects relating to trade in goods and services, investment and the movement of people. It recognises the need for mutually supportive trade and environmental policies in order to achieve the objective of sustainable development and allows for prohibitions or restrictions on trade between the Member States for the protection of, *inter alia*, the health of the environment, although this should not constitute a means of arbitrary discrimination or a disguised restriction<sup>88</sup>.
84. The Convention does not require the adoption of particular pieces of EU legislation. However, it incorporates the principles and rules established between the EU and EEA-EFTA States in the EEA Agreement and between the EU and Switzerland in the EU-Swiss Bilateral Agreements, which includes provisions on the requirements products need to meet on safety, consumer protection, health and the environment.

### **Bilateral agreements between the EU and Switzerland<sup>89</sup>**

85. As the IEEP report discusses the basis of Switzerland's economic and trade relations with the EU<sup>90</sup> in detail we do not repeat it here. However, it would seem relevant to reinforce that Switzerland has adopted a policy of 'voluntary adaptation' whereby Swiss law is aligned with the EU's *acquis communautaire* in order to make its economy more compatible with that of its main trading partner (the EU). According to Church et al (2012), recent research indicates that around 55% of laws passed by the Swiss parliament concern the transposition of international, including EU, legislation<sup>91</sup>. Switzerland is thus compelled (both directly and indirectly) to adopt a large part of EU law without having any influence on the decision-making process. The numerous Bilateral Agreements together with this policy of voluntary adaptation '*have led to Switzerland being much more deeply integrated with the EU than suggested by its formal status as a non-member. Indeed, in certain respects such integration is deeper than that of EU members such as the UK, as the case of Schengen shows*'<sup>92</sup>.
86. The rather blunt conclusion from all this is that if the UK wishes to entirely free itself of the 'shackles' of EU environmental legislation it will have to stand alone as far as trade is concerned. If it wishes to yield the benefits of remaining within the EEA, it will still be bound by numerous environmental regulations and directives, yet it will have no control over them, or any new legislation, that may be imposed upon it. The Swiss experience suggests that in the event of a total withdrawal from the EU (and a bilateral agreement with it), the UK will have to retain a proportion of EU-based legislation in order to ensure that its economy retains compatibility with the EU.

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<sup>87</sup> Centre for European Reform (2012) Britain should not go Swiss, <http://www.cer.org.uk/insights/britain-should-not-go-swiss>

<sup>88</sup> EFTA, 2010

<sup>89</sup> IEEP Report, s.6.4

<sup>90</sup> Essentially a bi-lateral free trade agreement signed in 1972 supplemented by additional agreements on trade in agricultural products, a protocol on processed agricultural products, mutual recognition in relation to conformity assessment and public procurement (EEAS – Switzerland, see [http://eeas.europa.eu/switzerland/index\\_en.htm](http://eeas.europa.eu/switzerland/index_en.htm))

<sup>91</sup> Church, C., Dardanelli, P., Mueller, S., (2012) The 'Swiss Model' of Relations with the EU and its relevance for the UK, Written evidence, The Future of the European Union: UK Government Policy, FEU-08, Session 2012-13. Available from: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcaff/writev/futunion/feu08.htm>

<sup>92</sup> *Ibid*

87. Notwithstanding the above, if there were a shift in competence from the EU to the UK following any renegotiation of the UK's membership, or in the event that the UK withdrew from the EU following a referendum, WWF would expect to see a swift transposition of EU measures into UK law thereby ensuring continued environmental protection to the same level.

## **Conclusions**

Key messages emerging from the IEEP Report and this Evidence include:

- A large proportion of UK environmental law and policy is based upon EU legislation or other policy measures. They are no longer entirely distinct. British institutions, procedures, IT systems, monitoring arrangements and other elements of environmental policy are heavily geared to the amalgam of European and domestic requirements that has evolved. To disentangle the two would be difficult.
- There are many areas where EU measures have been helpful in augmenting or raising the ambitions of domestic UK legislation. For example, EU legislation has led to improvements in water quality, reductions in industrial emissions and reduced levels of waste going to landfill. Even in areas where the UK had relatively well established systems prior to the emergence of EU measures, their introduction has added value. This is the case with the Habitats Directive and Water Framework Directive.
- In a number of areas, such as waste policy and the drive towards more efficient products and building standards, EU measures provide direction, drive and a clear context within which more locally specific initiatives can be framed.
- Many of the issues considered here require progressive action over a long time period. Some also depend on relatively large investments with medium to long term paybacks. In such areas, policy stability has particular value. The EU can provide this in a different way to national governments since it is less subject to shorter term political perturbation and the impacts of national electoral cycles. Whereas EU policy sometimes can be difficult to amend in the short term, equally it is resistant to political fashion at the national level. This is a more important requirement in the realm of climate and most environment policy than it may be in other spheres where a more nimble policy may have greater merits.
- There is solid evidence of increases in environmental quality arising directly from a number of the EU policies in place and there are opportunities to raise standards to a higher level within the current framework without significant changes in existing national legislation if UK authorities wish to do this.
- Equally there is room for administrations in the different countries making up the UK to pursue distinctive policies of their own within the European framework and increasingly they are doing so.
- At the same time, EU measures have been crucial in laying the foundations for the "green economy" driving innovation, the emergence of new industries and products and helping to create opportunities for competing in new markets, for example in Asia where highly efficient low impact products are prominent in the market place. The CBI has acknowledged the crucial role of "green" industries in creating growth and new employment within the UK in recent years. A cleaner and healthier environment has economic as well as inherent benefits, not least in attracting new investment. The successful car industry in the UK shows that manufacturers can adapt to rising EU standards and remain competitive, creating new jobs while reducing pollution levels.

- There are also employment and economic benefits arising from tourism and from the establishment of protected areas. For example, Natura 2000 sites play an important role in securing vital ecosystem services benefiting human well-being. This includes providing clean water, regulating climate through carbon storage, flood prevention and recreation. The European Commission estimates that the economic value (i.e. the flow of ecosystem services from the terrestrial Natura 2000 network alone) is between €200 and €300 billion per year. In the UK, our peatlands hold 40% of soil carbon (5 billion tonnes) and are the source of 70% of our drinking water.
- While there are costs associated with EU Environmental policy and it can force adjustments in production and infrastructure it should not be misrepresented simply as a source of constraints on economic activity when it also leads to innovation, new investment, evolving technologies and the increased sustainability and efficiency of production systems.
- Alongside these economic benefits, there are social benefits, such as the health of citizens and less tangible changes in the quality of life and aspects of culture.
- The UK has shown that it can be an influential force in environment and climate policy from inside the EU and for climate mitigation particularly needs a strong EU position to complement national objectives. A deliberate choice to act as an outsider in this sphere now would have much greater drawbacks than would be justified by any gain in flexibility.
- If the UK were to leave the EU - but wished to yield the trade benefits of remaining within the European Economic Area - it would still be bound by numerous environmental regulations and directives, yet it would have no control over them, or any new legislation, that may be imposed upon it. The Swiss experience suggests that in the event of a total withdrawal from the EU (and a bilateral agreement with it), the UK would have to retain a proportion of EU-based legislation in order to ensure that its economy retains compatibility with the EU.
- Notwithstanding the above, if there were a shift in competence from the EU to the UK following any renegotiation of the UK's membership, or in the event that the UK withdrew from the EU following a referendum, WWF would expect to see a swift transposition of EU measures into UK law thereby ensuring continued environmental protection to the same level.

**WWF-UK and WWF European Policy Office (EPO)**

9<sup>th</sup> August 2013